

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 167/02.....

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SECTION OFFICER (Judl.)

FROM No. 4  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 167 / 2002  
Misc Petition No.                       
Contempt Petition No.                       
Review Application No.                     

Applicants. Binoy Kumar Mishra

-Vs-

Respondant(s) Not 2018

Advocate for the Appellant(s) A.S. Bhattacharjee, K. Paul, A. Sarma,  
J.P. Chaudhary, G.D. Paul & D.K. Dey.

Advocate for the Respondant(s) Case.  
Court. Adv. Assam

Notes of the Registry	Date	Order of the Tribunal
<p>C.F. No. 76/549497 Date: 21/5/2002 By: Registrar 24/5/02</p>	24.5.02	<p>Heard Mr. A.S. Bhattacharjee, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records. Returnable by four weeks.</p> <p>Issue notice to show cause as to why interim order as prayed for shall not be granted.</p> <p>List on 24.6.2002 for further orders.</p>
<p>Slips taken Excess amount for Rs 5/- deposited Notice prepared and sent to DPs for filing the Respondent No 1 to 6 by Regd. A.A. D/No 1544 W 50 Dtd 29/5/02</p>	24.6.02	<p>Heard Mr. A.S. Bhattacharjee, learned counsel for the applicant.</p> <p>Await service report. List on 10.7.2002 for admission.</p>
<p>① Service report are still awaited. 30/5/02</p>		<p>Member Vice-Chairman</p>

10.7.02

Heard Mr. A.S. Bhattacharjee, learned Sr. counsel for the applicant, Mr. Bhattacharjee, learned counsel prays for stay of the operation of the disciplinary proceeding. Let the matter be posted on 18.7.2002 for orders in the presence of the <sup>learned</sup> Govt Advocate, Assam. A copy of the order be served upon ms M. Das the learned Govt Advocate Assam

Member

Vice-Chairman

mb

+ also Mr A.K. Chaudhary  
the learned Additional Central Govt  
Specially Counsel who has stated  
that the Central Govt are  
not filing its written  
Statement Separately.

Notes of the Registry

Date

Order of the Tribunal


Contd...

18.7.2002

Upon hearing the learned Sr. counsel for the applicant and considering the facts and circumstances of the case as an interim measure we direct the respondents to stay the enquiry proceeding initiated vide memo dated 4.5.2002 until further orders. The State Govt. of Assam may file written statement, if any, within four weeks from today.

List the case for further order on 19.8.2002.

K. Usham  
Member

  
Vice-Chairman

bb

19.8.02

Written statement has been filed. List the matter for hearing on 2.9.2002 alongwith the connected records.

K. Usham  
Member


  
Vice-Chairman

mb

2-9-02

Heard Mr A.S.Bhattacharjee, learned counsel for the applicant and also Dr. Y.K.Phukan, learned senior Government Advocate, Assam on behalf of the respondents at length. Hearing concluded. Judgment reserved. Dr. Phukan is to submit report of the NHRC within seven days.

K. Usham  
Member

  
Vice-Chairman

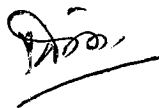
pg

NO W/S has been  
filed.

JS  
16/8/02

23.8.02

W/S submitted  
by the Respondent  
No. A 2155



3/N

O.A.167/2002

Notes of the Registry

Date

Order of the Tribunal

10.7.2002

Heard Mr.A.S.Bhattacharjee, learned Sr.counsel for the applicant, also Mr.A.K.Chaudhury, the learned Addl. Central Govt. Standing counsel who has stated that the Central Govt. are not filing its written statement separately. Mr.Bhattacharjee, learned counsel prays for stay of the operation of the disciplinary proceeding. Let the matter be posted on 18.7.2002 for orders in the presence of the learned Govt. Advocate, Assam. A copy of the order be served upon Mrs.M. Das the learned Govt. Advocate, Assam.

Copy of The order  
Dtd-10.7.02 Sent to  
D. Section for issuing  
of The Govt Adv.  
Assam.

By  
15.7.02.

mb

18.7.2002

K.K.Sharma  
Member

  
Vice-Chairman

Heard Mr.A.S.Bhattacharjee, learned Sr. counsel for the applicant, who has prayed for an interim order. The matter came up on 10.7.2002 on which date it was ordered for posting of the matter in presence of the learned Govt. Advocate of Assam. Steps were taken from the Office for communicating the order. There was no representation from the side of the State Govt. of Assam. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. appearing for the Union of India stated that Union of India is only watching the proceeding, and it is for the State Govt. of Assam to act.

Contd...

O.A. 167/2002

Notes of the Registry	Date	Order of the Tribunal
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5.9.02

Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.

Recd Assoc.  
12/9/02

Judgment dtd 5/9/02  
Communicated to the  
Applicant and the forlign  
Council.

mb

K. Khan  
Member

Vice-Chairman

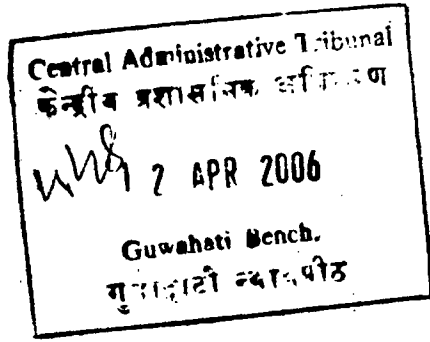
Recd  
13.11.02

4  
Notes of the Registry

Date

Order of the Tribunal

URGENT



THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO.6646 OF 2003

Shri Binoy Kumar Mishra, IPS  
s/o Jagdish Mishra,  
Resident of D/3265 Vasant Kunj,  
New Delhi -110070.

... Petitioner.

-Versus-

1. Union of India,  
represented by the Secretary to the  
Government of India,  
Ministry of Home Affairs,  
New Delhi.
2. The Joint Secretary(Police),  
Ministry of Home Affairs,  
Government of India,  
North Block, New Delhi.
3. The State of Assam,  
represented by the Chief Secretary  
to the Government of Assam,  
Dispur, Guwahati-781006.
4. The Commissioner & Secretary to  
the Government of Assam,  
Home Department,  
Dispur, Guwahati-6.

... Respondents.



P R E S E N T

HON'BLE THE CHIEF JUSTICE MR.B.SUDERSHAN REDDY  
HON'BLE SMTI JUSTICE A. HAZARIKA

For the petitioner : Mr.G.K.Bhattacharyya,  
Mr.Z.Kamar,  
Mr.P.Sarmah,  
Mr.D.Goswami, Advocates.

For the Respondents: Mr.D.C.Chakraborty, Central Govt Counsel.  
Mr.B.J.Talukdar, Govt Advocate, Assam.

Date of hearing : 30<sup>th</sup> March, 2006

Date of judgment : 30<sup>th</sup> March, 2006

**JUDGMENT AND ORDER**  
**(ORAL)**

**B.S.REDDY, CJ.**

This writ petition filed under Article 226 of the Constitution of India is directed against the order dated 05.09.2002 made in O.A. No.167/02 on the file of Central Administrative Tribunal, Guwahati Bench.

2. The question that falls for our consideration is whether the order passed by the Central Administrative Tribunal suffers from any error apparent on the face of records requiring interference in exercise of our certiorari jurisdiction. Relevant facts, which are in brief, may have to be noticed.



3. The petitioner is a senior IPS officer of 1988 batch and he belongs to the Assam Meghalaya Cadre. That a Departmenta Proceeding was initiated against the petitioner. Vide proceedings dated 03.07.1995 two charges were framed against the petitioner, namely –

**Charge No.1:** That while Shri B.K.Mishra, IPS(U/S) was posted as Commdt. 2<sup>nd</sup> A.P.Bn. Makum, he committed sexual assault on Smti Bharati Saikia (Bey) w/o his orderly Constable Kamal Singh Bey on the night of 6.12.94 in a room of his official residence at Makum during the absence of Constable Kamal Singh Bey. The incident has been described in Annexure-II.

The above act on the part of Shri B.K.Mishra, IPS (U/S) involving the wife of one of his own force personnel, is unbecoming of a member of IPS to which he belong. Shri B.K.Mishra, IPS(U/S), therefore, contravened Rule 3(I) of All India Services (Conduct) Rules, 1968. He is, therefore, charged accordingly.

**Charge No.2:** That while Shri B.K. Mishra, (U/S) was posted as Commdt. 2<sup>nd</sup> A.P.Bn., three Bn. personnel of 2<sup>nd</sup> A.P.Bn. were sent under his instruction to his house at Bombay for doing private work. The incident has been described in Annexure-II. Shri B.K.Mishra, IPS utilized the services of Govt. personnel for doing private work whereby he failed to maintain absolute integrity, devotion to duty and a conduct nor unbecoming of an officer of All India Service. Shri B.K.Mishra is, as required under Rule 3(I) (ibid) Shri B.K.Mishra, IPS (U/S) is, therefore, charged accordingly.




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ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN  
SUPPORT OF THE CHARGES FRAMED AGAINST  
SHRI B.K.MISHRA, IPS (U/S)

That while Shri B.K.Mishra, IPS was posted as the  
Commdt. 2<sup>nd</sup> A.P.Bn., Makum following incidents took  
place.

Incident No.1: Constable Kamal Singh Bey of 2<sup>nd</sup> A.P.Bn.,  
Makum was posted as orderly Constable to Shri  
B.K.Mishra, IPS(U/S) then Commdt. A.P.Bn.Makum  
herein after called the Charge officer, Constable Kamal  
Singh Bey was staying with his wife Smti Bharati Saikia in  
an annex house in the compound of the official residence  
occupied by the charged officer. The charged officer  
permitted his orderly Constable Kamal Singh Bey to be  
detailed for dak duty occasionally. On 5.12.94, Constable  
Kamal Singh Bey detained for dak duty in Sonitpur  
District. Taking advantage of the absence of Constable  
Kamal Singh Bey, next night, the Charged officer entered  
into the place where Smti Bharati Saikia (Bey) w/o  
Constable Kamal Singh (Bey) was alone and managed to  
take Saikia (Bey) with him into his (charged officer's)  
room and commit sexual assault on her. At about 10.30  
P.M. on the same night, Const. Kamal Singh Bey  
chanced to return to his living place from Sonitpur. He did  
not find his wife at home but her bed was ready with  
mosquito curtain down and tucked in. Kamal Singh Bey  
searched for his wife and during search he entered the  
residence of the charged officer through the lavatory.



Kamal Singh Bey could listen to his wife's weeping voice. Then he pushed the door open and found the charged officer in a compromising position with his wife. The TV was on but light was off. Constable Kamal Singh Bey gave three blows successfully to the charged officer. Constable Kamal Singh Bey rescued wife and took her to their house.

On 13.12.94, the charged officer ordered that Constable Kamal Singh Bey and his wife should be sent to Diphu on the day by a Battalion truck which was going to Guwahati to collect medical stores. The reason was as given by the charged officer Constable Kamal Singh Bey was creating nuisance in the business premises. Accordingly the order was carried out.

The above act on the part of the charged officer is unbecoming of a member of All India Service as he is and is tantamount to a violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968.

Incident No.2: On 27.1.95 Honorary Lance Naik Golap Boruah, Hony, Lance Naik Ramjit Mala Const. Someswar Dihingia all of 2<sup>nd</sup> A.P.Bn., Makum left for detachment bgr. Delhi for misc duties on Railway passage warrant with instructions to report to Incharge detachment Bgr. The charged officer instructed them to go to Bombay by train from Delhi to do Bore work in his house at Bombay. The charged officer paid the railway fare for journey from Delhi to Bombay and back. The aforesaid personnel of the Bn. went to house of the charged officer at Bombay as per instructions and returned to detachment bgr. Delhi on



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17.3.95. They were allowed to leave detachment bgr. On 19.3.95 PM on passage warrant. They reached Bn bgr. On 23.3.95. The charged officer provided as a guide to locate his house at Bombay, a sketch map to the aforesaid 3 personnel.

*The charged officer by the above act misused his official position for private work thereby violating Rule 3(I) of the All India Services (Conduct) Rules, 1968."*

4. A Departmental Proceeding was drawn up against the petitioner herein and an Inquiry Officer was appointed to make inquiry into the charges. Surprisingly, by order dated 01.06.1999 the disciplinary proceeding was dropped. The order reads as under:

*"Read : The Departmental proceeding drawn up against Shri B.K.Mishra, IPS vide this Deptt. Memorandum No.HMA(IPS) 145/115 dated 3.7.95 and his written statement of defence dated November, 1995 and other relevant records in this regard.*

*and*

*Also read the report of the Inquiring Officer.*

*Order : After careful consideration of report of the Inquiring Officer and other relevant documents, the Governor of Assam is pleased to drop the proceedings against Shri B.K.Mishra, IPS. Shri B.K.Mishra is, however, cautioned to be careful in future in respect of deploying personnel of the forces."*

5. The order does not say as to whether charges framed against the petitioner were held proved or not. The order merely reads, on

*B*

careful consideration of the report of the Inquiring Officer and other relevant documents, the Government has chosen to drop the proceeding. By a subsequent order dated 08.07.99 the period of suspension from 19.05.95 to 27.08.95 in respect of the petitioner was directed to be regularized by treating the period as on duty for all purposes.

6. Be that as it may, the Government of Assam vide order dated 04.05.2002 reviewed its earlier order dated 01.06.1999 only after the National Human Rights Commission has expressed its anguish about the manner of framing of charges and disposal of the Departmental Proceeding drawn up against the petitioner. The National Human Rights Commission advised the Government to review its order dated 01.06.99. The review order reads – *"After careful examination of the Inquiry Report submitted by C.I.D., charges framed, other relevant documents and observations of the National Human Rights Commission, the Governor of Assam is pleased to review the case and start de-novo inquiry into the charges by invoking powers conferred on the State Govt. under Rule 24 of AIS(D&A) Rule, 1969 read with Rule 28 of the same Rule. Accordingly, the order No.HMA(IPS) 145/Pt.II/173 dated 1.6.99 in the Departmental Proceeding case against Shri B.K.Mishra, IPS stands reviewed."*

7. The said order dated 04.05.2002 has been challenged by the petitioner in O.A. No.167/2002 before the Central Administrative Tribunal, Guwahati Bench. The learned Tribunal after an elaborate consideration of the matter vide judgment and order dated 05.09.2002 declined to grant any relief to the petitioner on the ground that the order of review has been passed by the State Government




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on basis of the opinion expressed by the National Human Rights Commission, which is a high powered Constitutional Body. This writ petition is directed against the said order passed by the Central Administrative Tribunal dismissing the O.A. No.157/2002 preferred by the petitioner.

8. The petitioner has raised a number of grounds in the writ petition challenging the impugned order passed by the Tribunal.

9. Shri G.K.Bhattacharyya, learned Senior Counsel appearing for the petitioner, inter alia, submitted that the impugned order of the Central Administrative Tribunal suffers from incurable infirmities and deserves to be set aside by this Court in exercise of its certiorari jurisdiction. The learned Senior Counsel mainly contended that the impugned order of review passed by the Government on 04.5.2002 is ultra vires. The Government has no power to review or revise its own order after a period of one year of passing of the original order, which may provide cause of action for exercise of revisional power. The suo moto power exercised by the Government of Assam is hopelessly time barred. It is also contended that the Government is vested with no power to review its own order since power under Rule 24A is with the Central Government and not the State Government.

10. It is a very peculiar case in which the Central Government made a "short submission" stating that Central Government does not intend to file any separate reply in the matter since none of the instructions/ rules administered by the Central Government has been challenged. The State Government having filed counter affidavit did not produce record and the learned Government Advocate states that



in absence of record he is not in a position to argue the matter. However, since the State has already filed its affidavit-in-opposition, we may usefully refer the same to the averments made in the affidavit filed in opposition. Obviously, there is something more than meets the eye.

11. In the affidavit filed in opposition, it is stated in clear and categorical terms that the case was reopened and order was issued vide Government order dated 04.05.2002 ordering de-novo enquiry "as the NHRC in its proceeding dated 11.1.2002 had expressed anguish over the order of the State Government in disposing the Departmental Proceeding. Accordingly, Departmental Proceeding was drawn up and the petitioner was asked to show cause vide No. HMA(IPS) 145/Pt.II/186 dated 31.5.2002. But the petitioner did not respond the matter and filed an appeal petition in the Hon'ble CAT being O.A.No.167/02." After dismissal of the O.A.No.167/02 by the Central Administrative Tribunal vide order dated 05.09.2002, the petitioner was reminded to submit his written statement in reply to the show cause notice. The petitioner instead of submitting his reply requested the Government to furnish some documents which has no relevance whatsoever to the Departmental Proceeding since almost all the documents have already been furnished to the petitioner in connection with the Departmental Proceeding. It is further stated that the writ petition filed by the petitioner after a period of one year of the order passed by the Central Administrative Tribunal is hopelessly time barred. It is also stated that "The petitioner is an indisciplined litigant type of officer. Being not satisfied with the work he has been prematurely repatriated from Central Deputation in NCRB, New Delhi. .... Petitioner should have joined the parent cadre within the





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*prescribed joining time and reportedly he had reported to the DGP to arrange his posting, but the petitioner has not reported for joining till date. Instead, the petitioner had submitted earned leave petition for 60(sixty) days on 6.6.2003. The said leave period is already over and there is no information from the petitioner. Further, the officer has not been maintaining a good relation with his wife and therefore his wife had also submitted a complaint against him to the NHRC and the NHRC has referred the case to the State Government for inquiry and now the matter is under examination." It is further stated that "the Departmental Proceeding initiated was dropped, but the officer was cautioned to be careful in future. The Government did not take any drastic action against him with an expectation that a budding career would be reformed, but his activities narrated above showed clearly against expectation."*

12. Be that as it may, the Government even before passing the order dated 04.05.2002, put the petitioner on notice requiring his explanation as to why the order dated 01.06.1999 dropping the Departmental Proceeding against him should not be reopened for the purpose of making a de-novo inquiry. The petitioner admittedly did not file any reply whatsoever to the said show cause notice. The petitioner as well could have raised his objections, which were raised by him on the earlier occasion as well as in the proceedings before the Central Administrative Tribunal. In our considered opinion the petitioner is not entitled to raise any dispute as regards the validity of the order dated 04.05.2002 since he did not respond and raised any objection to the proposed revision of the order dated 01.06.1999 whereunder the Departmental Proceeding initiated against him was dropped.

*Sur*

13. We also find substantial merit in the objection raised by the Respondent State in its counter affidavit that this writ petition deserves dismissal on the ground of laches. There is no explanation forthcoming from the petitioner as to why he did not challenge the order passed by the Central Administrative Tribunal, if he was so aggrieved by it, within a reasonable time. No explanation as such is forthcoming and whatever explanations offered is not acceptable to us. This conduct of the petitioner disentitles him for grant of any relief.


14. It is, however, contended before us that the State Government could not have revised its own order after a long lapse of more than three years to have a fresh look into the matter. We find no merit in the submission. In our considered opinion, Rule 24 of the All India Services (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules') cannot be read in isolation and should be read with Rule 28 of the Rules, which confers power upon the authority concerned to condone the delay if good and sufficient cause is shown and accordingly extend time specified. If Rule 24 is to read along with Rule 28, it becomes clear that specification of one year period within which revisional jurisdiction may have to be exercised is not mandatory. That period can always be extended by the State or the Central Government for good and sufficient reasons. In cases of exercise of suo motu jurisdiction by the State Government, the period of one year prescribed may not be strictly applicable.

15. Facts narrated above, suggest that the entire matter involving the petitioner leading to initiation of departmental inquiry and further orders dropping the proceedings of the Departmental



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inquiry about which the National Human Rights Commission made observations with advise to the State Government to take appropriate decision in the matter is required to be viewed from a proper perspective. The delay, if any, on the part of the State Government in initiating appropriate action to revise its own order cannot be held to be fatal. The State Government is admittedly clothed with power to condone the delay, if any, in the matter of filing of revision petition by the aggrieved individuals and if so, there is no reason as to why the same power cannot be exercised in order to initiate suo motu proceedings in appropriate cases even after the prescribed period of one year. The prescribed period of one year in Rule 24 is not required to be rigidly complied with, particularly, in cases where revisional power is sought to be exercised suo motu by the Government. We accordingly hold that Rule 24 is directory in its nature and the period prescribed can always be relaxed for good and cogent reasons. The case in hand is one where the State Government for good and cogent reasons and in view of the subsequent developments due to intervention of the National Human Rights Commission has exercised its suo motu revisional power to revise its own earlier order. The question what order ultimately the Disciplinary authority may have to pass is a different matter altogether, but the decision proposing to revise its earlier order itself does not suffer from any jurisdictional problems. At any rate, the petitioner did not raise his little finger when he was put on notice by the State Government requiring his explanation as to why its earlier order dropping the Disciplinary Proceeding should not be revised. The petitioner shall be deemed to have accepted the proposal.



URGENT

16. Viewed from any angle, we find no merit in any of the contentions of the petitioner and in this writ petition. The writ petition shall accordingly stand dismissed without any order as to costs.

17. Observations, if any made in this order, shall have no bearing whatsoever upon the merits of the Departmental Inquiry and the same may have to be completed in accordance with law. The State Government, however, is directed to complete the Disciplinary Proceeding initiated against the petitioner within a period of 6(six) months from the date of receipt of this order.

Sd/- A HAZARIKA  
JUDGE

Sd/- BS REDDY  
CHIEF JUSTICE

Memo No.HC.XXI 5316-20 R.M. dtd. 11.4.06

Copy forwarded for information and necessary action to :

1. Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. The Joint Secretary (Police), Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
3. The State of Assam, represented by the Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6.
4. The Commissioner & Secretary to the Government of Assam, Home Department, Dispur, Guwahati-6.
5. Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati-5. He is requested to acknowledge receipt of the following case records. This has a reference to his letter No. 16-3/02/JA/277 dated 27-12-2005.

Enclo :- 1. O.A. No. 167/2002 Part 'A'  
with Judgment and order sheets.

By Order

*[Signature]*  
Asstt. Registrar(I&E)  
Gauhati High Court, Guwahati

*[Signature]*  
11/04/06

*[Signature]*  
12/4/06  
So(5)

*2. Pl. Messenger*

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. /~~XXX~~ No. 167. of. 2002. . . of

DATE OF DECISION. 5.14.7 Sept. 2002....

Shri Binoy Kumar Mishra

APPLICANT(S)

Mr. A.S. Bhattacharjee, K. Paul, A. Sarma  
J.P. Chauhan, G.D. Paul & D.K. Dey.

ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Others.

RESPONDENT(S)

Mr. A.K. Chaudhuri, Addl. C.G.S.C. & ADVOCATE FOR THE  
Mr. Y.K. Phukan, Sr. Govt. Advocate, Assam. RESPONDENT(S)

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

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

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

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.167 of 2002.

Date of Order : This the 31<sup>st</sup> Day of September, 2002.

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

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

Shri Binoy Kumar Mishra  
S/o Jagadish Mishra  
Assistant Director (Records)  
National Crime Records Bureau (NCRB)  
East Block-7, R.K.Puram  
New Delhi. . . . . Applicant.

By Advocates Mr.A.S.Bhattacharjee, K.Paul, A.Sarma,  
J.P.Chauhan, G.D.Paul & D.K.Dey.

- Versus -

1. Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Home Affairs  
New Delhi.
2. The Joint Secretary (Police)  
Ministry of Home Affairs  
Government of India, North Block  
New Delhi.
3. The Director  
National Crime Records Bureau  
East Block-7, R.K.Puram  
New Delhi.
4. State of Assam  
Represented by the Chief Secretary  
to the Government of Assam  
Dispur, Guwahati-781 006.
5. The Commissioner and Secretary  
to the Government of Assam  
Home Department, Dispur  
Guwahati - 781 006.
6. The Director General of Police  
Assam, Ulubari  
Guwahati - 781 007. . . . . Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C. &  
Mr.Y.K.Phukan, Sr.Govt.Advocate, Assam.

O R D E R

CHOWDHURY.J.(V.C.) :

Is there an inhibition of a second enquiry by the disciplinary authority after the delinquent officer had once been absolved is the subject matter of controversy raised in this application. The basic facts relevant for the purpose of adjudication of the proceeding are recorded herein below :-

1. The applicant is an IPS Officer of 1988 Batch and belongs to the Assam Meghalaya Cadre. He was posted as Commandant, 2nd Assam Battalion, Makum, Assam in the year 1994-95. During that period a disciplinary proceeding was initiated against the officer vide communication No.HMA/(IPS)145/115 dated 3.7.1995. One of the charges was related to sexual harrassment caused to the wife of orderly Constable Kamal Singh Bey by the officer. The other charge was that of deployment of Carpenters from 2nd A.P.Bn. to work in the flat of the officer at Bombay. The charges were enquired into. The Governor of Assam vide order dated 1.6.1999 was pleased to drop the proceeding against the applicant. The officer was, however, cautioned to be careful in future in respect of deploying personnel of the force. The applicant thereafter went on deputation as an Assistant Director (Records) of National Crime Records Bureau, New Delhi for a period of four years. By the impugned order dated 4.5.2002 the Govt. of Assam has now sought to embark review the case and upon a de-novo enquiry into the

charges levelled against the applicant. The legitimacy of which is assailed in this proceeding as arbitrary, discriminatory and malafide exercise of power. The competence of the authority in <sup>issuing</sup> the order without due concurrence of the Ministry of Home Affairs in this proceeding is also one of the ground of challenge.

2. The respondent Nos.4 & 5 submitted its written statement and referred to Rule 24 & 28 of the AIS (Discipline & Appeal) Rule 1969. The respondents also, in the written statement, referred to the report submitted by the enquiry officer conducted by an Inspector General of Police (CID), Assam vide memo No.C.CID/95/195 dated 24.4.1995 and contended that both the charges levelled against the applicant were found to be proved.

3. Mr.A.S.Bhattacharjee, learned Sr. counsel appearing on behalf of the applicant, assailing the legitimacy of the de-novo proceeding contended that the authority conducted an enquiry and on completion of the enquiry did not find the applicant guilty. The order passed by the authority under disciplinary rules is quasi judicial order that was passed with due application of mind. The said order has its own sanctity. The respondents in a most lighthearted manner initiated a purported disciplinary proceeding only with a view to punish the applicant and <sup>to besmirch</sup> ~~dis~~mare his reputation at the <sup>contended</sup> ~~behest~~ of some interested Sr.IPS officers, <sup>contended</sup> ~~answering~~ the contentions of the applicant Dr.Y.K.Phukan, learned Sr.Govt. Advocate appearing on behalf of the respondent



Nos.4 & 5 referred to the provisions of the AIS (Discipline & Appeal) Rules 1969, more particularly, Rule 24 & 28. of the same and contended that the authority took a conscious decision to re-open the matter on due application of mind. The authority, considering the nature, facts and circumstances of the case, condoned the delay and initiated the proceeding under Rule 24 of the Rules. Mr.Y.K.Phukan, the learned Sr.counsel particularly drawn our attention to the findings reached by a Sr.officer, who conducted the enquiry on assessing the evidence on records, which found the applicant guilty of the charges.

4. We have called for the records and on perusal of the records, it transpires that the report submitted by the then IGP (CID), Assam dated 24.6.1995 was a report passed on preliminary enquiry. A full fledged proceeding was drawn up against the applicant under disciplinary rules and thereafter appointed an enquiry officer. After completion of the enquiry the enquiry officer submitted its report and thereafter only by order dated 1.6.1999 the proceeding was dropped. By the impugned order dated 4.5.2002 the de-novo enquiry was started to enquire into the charges against the applicant.


5. We have given our anxious consideration on the matter. Undoubtedly, a full fledged disciplinary proceeding was conducted against the applicant. After the completion of the enquiry the competent authority, after considering all the aspects of the matter dropped the


proceeding. The discretion exercised by the authority was, no doubt, a conscious decision. The power of revision is not unfattered. It is <sup>hedged</sup> /with limitation, as was contended by Mr.A.S.Bhattacharjee. But then, facts remained that the authority acted upon the observations made by National Human Rights Commission (NHRC) on the complaint lodged by Shri Kamal Singh Bey. The observation made by the NHRC is <sup>binding</sup> of / on the State Govt. Needless to state that the NHRC is a high powered body constituted by an Act of Parliament known as (THE) Protection of Human Rights Act, 1993. It is an Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. The Parliament entrusted the NHRC all the necessary powers for protecting and preserving the human rights. Chapter III of the Act enjoined upon the Commission its functions and powers. Chapter IV of the Act indicated the procedure of the Commission. Steps after enquiry are mentioned in the Section 18 of the Act. The commission is charged with the power to recommend to the concerned State Govt for initiation of proceeding for prosecution or such other action as the Commission may deem fit against the concerned person or persons. Considering the nature and functions of the NHRC, it cannot be said that its recommendation, findings, <sup>opinions</sup> /and observations can be

disregarded by the State Govt. Admittedly, in this case, the State Govt. dropped the proceeding as far back on 1.6.1999 and proceeding was initiated only after the directions issued by the NHRC. The minutes of the meeting of the Chairperson of NHRC with the Senior officer of the Assam State Government held on 11.1.2002 was placed before us by the State Govt. counsel for our perusal. Mr. A.S.Bhattacharjee, learned Sr.counsel for the applicant, towards the end of his submission sought to question the authority of the NHRC for issuing the direction or observation in a manner, which finally concluded by the competent authority. On consideration of all the aspects of the matter, we are not persuaded to go into that areana. NHRC is a high powered body established by the Parliament of India to preserve and protect the human rights. The object of the exercise was attainment of the goal set out by the Statute. All in all it will lead us to transgression of our jurisdiction which we loath to embark upon. Above all it will be against our better judgement.

All things considered, no illegality is discernible in the impugned action of the respondents, calling for Judicial Review. For the reasons stated above the applicaion is liable to be dismissed and thus dismissed. <sup>h</sup>The interim order dated 18.7.2002 stands ~~dismissed~~ vacated

There shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D.N.CHOWDHURY )  
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

O.A. No. 167 OF 2002

Shri Binoy Kumar Mishra ..... Applicant.

-Versus -

Union of India & Ors ..... Respondents.

I N D E X

SL NO.	PARTICULARS OF DOCUMENT	ANNEXURE NO.	PAGE NO
01	Application		1-9
02	Government notification Dated 01-06-1999 bearing Memo No. HMA(IPS) 145/PT-II/ 173	A	1030
03	Order dated 04-05-2002 bearing Memo No. HMA(IPS) 145/Pt.II/185	B	111
04	Representation dated 16-05-2000	C	12-13

Binay Kumar Mishra  
SIGNATURE OF THE APPLICANT

Filed by -  
Binay Kumar Mishra  
Through Binay Kumar Mishra  
Advocate, Guwahati High  
Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:::GUWAHATI

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

O.A. NO.                      OF 2002

Shri Binoy Kumar Mishra  
Son of Jagdish Mishra  
Assistant Director (Records)  
National Crime Records Bureau (NCRB)  
East Block-7, R.K. Puram,  
New Delhi.

- APPLICANT

- Versus -

- 1) Union of India,  
represented by the Secretary to the  
Government of India, Ministry  
of Home Affairs,  
New Delhi.
- 2) The Joint Secretary (Police),  
Ministry of Home Affairs,  
Government of India, North Block  
New Delhi.
- 3) The Director, National Crime Records Bureau,  
East Block-7, R.K. Puram,  
New Delhi.
- 4) State of Assam,  
represented by the Chief Secretary to the  
Government of Assam, Dispur,  
Guwahati-781 006.

Contd...(2).

29  
Filed by -  
Binoy Kumar Mishra  
Through, Ainsworth & Co.  
Advocate, Guwahati High  
Court.

- (2) -

5) The Commissioner and Secretary  
to the Government of Assam,  
Home Department, Dispur,  
Guwahati-781 006.

6) The Director General of Police,  
Assam, Ulubari,  
Guwahati- 781 006.

- RESPONDENTS .

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

An order dated 04-05-2002, bearing Memo No.  
HMA(IPS) 145/PT-II/185, passed by the Commissioner and  
Secretary to the Government of Assam, Home Department, see-  
king to initiate de-novo inquiry against the applicant,  
by invoking powers conferred on the State Government  
under Rule 24 of the All India Services (Discipline and  
Appeal) Rules, 1969 read with Rule 28 of the same Rules.

2) JURISDICTION OF THE TRIBUNAL:-

The applicant submits that the subject matter  
of this application is within the jurisdiction of this  
Hon'ble Tribunal.

3) LIMITATION :-

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

Contd.....(3).

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Binay Kumar Mishra

4) FACT OF THE CASE :-

4.1 That the applicant is a citizen of India and is therefore entitled to all the rights and protection guaranteed by the Constitution of India and the laws framed thereunder .

4.2. That the applicant is working as Assistant Director (Records) in the National Crime Records Bureau, New Delhi, on deputation since November, 2000 for a period of four years. Prior to this , he was posted as Superintendent of Police, Kamrup.

4.3 That during his service tenure, the applicant was posted as Commandant, 2nd Assam Police Battalion, ~~Mamum~~ <sup>Makum</sup>, Assam in the year 1994-95 and during that period some baseless and totally concocted allegations were levelled by one constable named Kamal Singh Rey against the applicant alleging sexual assault on his wife. The constable was prompted to take this step because he was facing suspension and disciplinary action for his long and unauthorised absence from duty. This was done at the behest of a senior IPS Officer with whom the applicant had some differences and who wanted to teach the applicant a lesson.

4.4. That after preliminary inquiry, the departmental proceeding was drawn up against the applicant by the Government of Assam vide Memo No. HMA(IPS) 145/115 Dated 03-07-1995 and inquiry was conducted by the then Additional DGP (CID) Assam. On completion of the inquiry, the Government of Assam dropped the proceedings vide order dated 01-06-1999 bearing Memo No. HMA(IPS) 145/Pt-II/173,

Contd....(4).

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Kumar  
Mishra

as the allegations were found to be without basis and hence could not be substantiated. Be it stated here that nowhere in the said order it is mentioned that the departmental proceeding was dropped giving benefit of doubt.

A copy of the order dated 01-06-1999 is annexed hereto and marked as ANNEXURE-'A' to this application.

4.5. That though allegations involving commission of some crime were made by the said constable, he never reported this matter to any police station. It was learnt that some complaint had been filed with the National Human Rights Commission (NHRC), New Delhi by the said constable but during the course of inquiry he denied having done so. On being asked repeatedly, he admitted that he had never heard about this Organization. This fact was specifically pointed out to the inquiry Officer which clearly indicates that the entire thing was fabricated at behest of someone else.

4.6. That on the advice of the NHRC, the Govt. of Assam has passed an order for reviewing the departmental proceedings and start de-novo inquiry against the applicant. The said order dated 04-05-2002 bearing Memo No. HMA(IPS) 145/Pt-II/185 has been issued by the Commissioner and Secretary to the Government of Assam, Home Department by invoking powers under Rule 24 of the All India Services (Discipline and Appeal) Rules 1969 read with Rule 28 of the same Rules.

Contd....(5).

30  
Binary human rights



It has been mentioned in the order dated 04-05-2002 that the Government vide order dated 01-06-1999 dropped the departmental proceedings against the applicant by giving him the benefit of doubt, but on the observation made by the NHRC, a decision has been taken to start de-novo inquiry by reviewing the order dated 01-06-1999.

A copy of the order dated 04-05-2002 is annexed hereto and marked as ANNEXURE-'B' to this application.

4.7. That the applicant begs to state that the order dated 04-05-2002 is not sustainable because the power of review has been invoked after the period of limitation was over. Besides the departmental proceedings against the applicant was dropped vide order dated 01-06-1999 because the charge against the applicant could not be proved and not by giving benefit of doubt. More over Government has passed an order for reviewing the departmental proceedings without giving any opportunity to the applicant to present his case and it is also not known to the applicant whether concurrence of the Ministry of Home Affairs was obtained or not before passing such order.

The applicant by high lighting the aforesaid facts submitted a representation and requested the authority concerned to rescind the order dated 04-05-2002 as it has caused immense mental agony and harassment to the applicant.

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Nidhra  
Bijay Kumar

A copy of the representation dated 16-05-2002 is annexed here to marked as ANNEXURE-'C' to this application.

4.8. That the applicant is an IPS Officer of the 1988 batch and he belongs to the Assam Meghalaya Cadre. His promotion is due soon. Therefore, if the impugned order dated 04-05-2002 is given effect to, it will adversely affect his career. Moreover the applicant is on deputation to the NCRB, New Delhi for a period of 4(four) years where he has joined in November, 2000. If at this stage the applicant is asked to attend the departmental proceedings at Guwahati before completion of his deputation period, it will cause immense hardship to the applicant. The impugned order dated 04-05-2002 has been issued after expiry of the period of Limitation prescribed under the All India Services (Discipline and Appeal) Rules 1969, and it is not sustainable in law.

5) GROUND FOR RELIEF WITH LEGAL PROVISIONS :-

5.1 That the decision to review the order dated 01-06-1999 and initiate de-novo Inquiry against the applicant as communicated vide order dated 04-05-2002 is beyond the period of Limitation stipulated in the All India Services (Discipline and Appeal) Rules 1969. Therefore, the order dated 04-05-2002 is liable to be set aside and quashed.

5.2 That, the respondent authority concerned committed illegality in holding that in the earlier

Contd....(7).

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Binay Kumar Mishra

proceedings, which culminated in the order dated 01-06-1999 the applicant was given the benefit of doubt whereas it is actually not so. The respondents are legally estopped from initiating fresh departmental proceedings against the applicant simply because the earlier inquiry report did not appeal to them.

5.3 That the order dated <sup>04-05-02 Adm.</sup> 05-04-2002 is not sustainable because no opportunity was given to the applicant to present his case. The applicant is not aware whether the concurrence of the Ministry of Home Affairs was obtained before passing the impugned order. The impugned order is therefore liable to be set aside and quashed.

5.4 That the respondents have taken the decision to initiate De-novo inquiry without any justifiable reason only to deprive applicant from promotional benefit. The authority concern<sup>ed</sup> did not apply his mind and acted mechanically before deciding to initiate De-novo inquiry against the applicant.

5.5. That no useful purpose would be served by initiating de-novo inquiry against the applicant on the same charge since it has already been found to be false and baseless. The fact remains that no complaint was made to the NHRC and the present proceedings is at the behest of some person having vested interest to harass and humiliate the applicant. Therefore, the impugned order dated 04-05-2002 needs to be set aside and quashed.

5.6. That, the Respondents authority did not follow the procedure laid down in the All India Services (Discipline

Contd....(8).

58  
Higher  
Member  
Disciplinary

and Appeal) Rules 1969 and by their impugned action have violated the fundamental and legal rights of the applicant. The impugned order is also violative of the principles of natural justice and ~~and~~ Administrative fairplay. Therefore the order dated 04-05-2002 is liable to be set aside and quashed.

6) DETAILS OF THE REMEDIES EXHAUSTED :-

There is no specific remedy available in the Rules . However the applicant has pursued the matter with the departmental authority but without any result.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :-

The applicant further declares that he had not previously filed any application, writ petition or suit, regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8) RELIEFS SOUGHT :-

In premises aforesaid it is therefore prayed that your Lordships may be graciously be pleased to admit this application, call for the Records of the case, and issue Rule calling upon the Respondents to show cause as to why the impugned order dated 04-05-2002 bearing Memo No. HMA(IPS)/145/Pt-II/185 (Annexure-'B') shall not be set aside and quashed and after hearing the cause/causes been shown and upon perusal of the records be pleased to make the Rule absolute and/or be pleased to pass any such

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Mishra  
Bijay Kumar

further or other order/orders as your Lordships may deem fit and proper.

9) INTERIM ORDER, IF ANY PRAYED FOR :-

Pending final decision on the application the applicant respectfully prays that Your Lordships may be graciously be pleased to stay the operation of the impugned order 04-05-2002 bearing Memo No. HMA(IPS)/145/Pt-II/185 (Annexure-'B') and/or be pleased to pass any further interim order/orders as your Lordships may deem fit and proper.

10) PARTICULARS OF POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE :-

Indian postal order No. 745494 97 Dated 22/05/02 for Rs. 50'00 (Fifty) is enclosed.

11) LIST OF ENCLOSURES :-

As in Index.

V E R I F I C A T I O N

I, Shri Binay Kumar Mishra Son of Jagadish Mishra, aged about 40 years, working as Assistant Director, National Crime Record Bureau, East Block-7, R.K. Puram, New Delhi do hereby verify that the contents of paragraphs 4.1 to 4.8 are true to my personal knowledge and paras 5 to 11 believed to be true on legal advice and that I have not suppressed any material facts.

Date : 24.5.2002  
place: Gwalhati

Binay Kumar Mishra  
SIGNATURE OF THE APPLICANT

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR  
NOTIFICATION

NO.HMA(IPS) 145/pt.II/173 Dated Dispur, the 1st June, 1999.

Read : The Departmental Proceeding drawn up against  
Shri B. K. Mishra, IPS vide this Deptt. Memorandum  
No.HMA(IPS) 145/115, dated 3.7.95 and his written  
statement in defence dated November, 1995 and other  
relevant records in this regard.

and

Order : Also read the report of the Inquiring Officer.  
After careful consideration of the report of the  
Inquiring Officer and other relevant documents  
the Governor of Assam is pleased to drop the  
proceedings against Shri B. K. Mishra, IPS. Shri  
B. K. Mishra is, however, cautioned to be careful  
in future in respect of deploying personnel of  
the force.

Sd/- M. K. Barooah,  
Secretary to the Govt. of Assam,  
Home etc. Department.

Memo.No.HMA(IPS)145/pt.II/173-A Dated Dispur, the 1st June, 1999.

Copy to:- (1) The Accountant General, Assam, Maidamgaon,  
Beltoia, Guwahati-28

(2) The Director General & Inspector General of  
Police, Assam, Ulubari, Guwahati-7

(3) The Director (Police), Government of India,  
Ministry of Home Affairs, New Delhi.

(4) Shri B. K. Mishra, IPS, Superintendent of Police,  
Kamrup, Guwahati-1

(5) The Superintendent, Assam Govt. Press, Bamuni-  
maiden, Guwahati-21 for publication of the Notification.

By order etc.

Memo No.

Deputy Secy. to the Govt. of Assam,  
Home (A) Department.

Proc. Cell/XXVII/15/95/58

Dated Guwahati, the 5<sup>th</sup> June '99

Copy forwarded to Sd/- Shri B. K. Mishra, IPS, Supdt. of Police  
Kamrup for information.

2) supdt. of Force (A), D.G.P's office for  
information and necessary action.

Deputy Inspector General of Police, (A)  
Assam: : : Guwahati.

Certified to be

true Copy.

Aniruddha Sharma

Advocate.

24/05/02

@@@@@

Ms. HMA(IPS) 145/Pt. II/185.

Dated Dispur, the 4th May/2002.

ORDER

The disciplinary proceeding drawn up against Shri B. K. Mishra, IPS the then Commandant, 2nd Assam Police Battalion, Makum vide letter No. HMA(IPS) 145/115, dated 3/7/95 on the charges of alleged rape on Smti. Bharati Saikia Bex wife of Constable Kamal Singh Bex of 2nd Assam Police Battalion could not be proved beyond reasonable doubt. Therefore, Govt. vide No. HMA(IPS) 145/Pt. II/173, dated 1/6/99 dropped the case giving benefit of doubt.

Shri Kamal Singh Bex has meanwhile lodged a complaint to the National Human Rights Commission and a case was registered under No. 3/30/95-LD.

The National Human Rights Commission has made some observations on the framing of charges and disposal of the Departmental Proceeding drawn up against Shri B. K. Mishra, IPS and advised the Govt. to review the case.

After careful examination of the Inquiry Report submitted by C.I.D., charges framed, other relevant documents and observations of the National Human Rights Commission, the Governor of Assam is pleased to review the case and start de-novo inquiry into the charges by invoking powers conferred on the State Govt. under Rule 24 of AIS (D & A) Rule, 1969 read with Rule 28 of the same Rule. Accordingly, the order No. HMA(IPS) 145/Pt. II/173, dated 1/6/99 in the Departmental Proceeding case against Shri B. K. Mishra, IPS stands reviewed.

Sd/- H. S. DAS.

Commissioner & Secretary to the Govt.  
of Assam, Home Department.

Memo No. HMA(IPS) 145/Pt. II/185-3. Dated Dispur, the 4th May/2002.

Copy forwarded to :-

1. The Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6.
2. The Joint Secretary (Police), Ministry of Home Affairs, Government of India, New Delhi-
3. The Under Secretary to the Govt. of Meghalaya, Home(P) Deptt., Shillong.
4. The Under Secretary, U.P.S.C., Dholpur House, New Delhi-
5. Shri B. K. Mishra, IPS, Asstt. Director, National Crime Record Bureau, East Block-7, R.K. Puram, New Delhi-
6. The Political (A) Department, Dispur, Guwahati-6.
7. The Director General of Police, Assam, Ulubari, Guwahati-7.
8. The Director, National Crime Record Bureau, East Block-7, R.K. Puram, New Delhi-

By order etc.

Deputy Secy. to the Govt. of Assam,  
Home (A) Department.

RD/KB.

Certified to be  
true copy

Amranyya Sarma  
Attro case

24/05/02

No. 109/AD(R)/Pers/2000/NCRB  
Government of India  
Ministry of Home Affairs  
National Crime Records Bureau

East Block - 7, R.K. Puram,  
New Delhi - 110 066.

Dated : 16/05/2002

To,

Shri O.P.Arya  
Joint Secretary (Police), Ministry of Home Affairs  
Government of India, North Block  
New Delhi - 11001

Through : Proper Channel

Reference : The Govt. of Assam's order regarding reviewing of the Departmental Proceeding against undersigned vide its Memo No. (IPS)145/pt.II/185-A Dtd. 4<sup>th</sup> May/2002.

Sir,

With reference to above, this is to inform that while I was posted as the Commandant, 2<sup>nd</sup> Assam Police Battalion, Makum, Assam in year 1994-95, some baseless and totally concocted allegations were leveled by one Constable named Kamal Singh Bey against undersigned alleging sexual assault to his wife. The constable was prompted to take this step because he was facing suspension and disciplinary action for his long and unauthorized absence from duty. This was done at the behest of a senior IPS officer with whom I had some differences and who was ought to teach me a lesson but is no more part of the service.

2. After some preliminary inquiry, the departmental proceeding was drawn up by the Govt. of Assam against undersigned vide Memo No. HMA(IPS)145/115 dtd. 3.7.1995 and inquiry was conducted by then Addl.DGP(CID), Assam. On completion of inquiry, the Govt. of Assam dropped the proceeding as the allegations were found to be without basis and hence could not be substantiated. The copy of the said order passed vide Memo No. HMA(IPS)145/pt.II/173 dtd. 1.6.1999 is enclosed for the ready reference. It may be stated, in this context, that **nowhere in the said order it is mentioned that the departmental proceeding was dropped giving benefit of doubt.**

3. It may also be stated in this connection that though allegations involving commission of some crime were made by the said constable, he never reported this matter to any police station. It was learnt that some complaint had been filed with the National Human Rights Commission (NHRC), New Delhi in name of the said constable but during the course of inquiry he denied having done so. **On being asked repeatedly, he admitted that he had never heard about this organization.** This fact was specifically pointed out to the Inquiring officer which clearly indicated that the entire thing was fabricated at behest of someone else.

certified to be  
true copy.

Amiranga  
Date 24/05/02

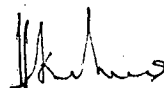


4. Now, on the advice of NHRC the State Govt. has passed an order for reviewing the departmental proceeding without giving a chance to the undersigned to present my case. I joined this Bureau in November, 2000 and my services were placed at the disposal of Ministry of Home Affairs for four years but **I am not aware whether concurrence of MHA was obtained by the Govt. of Assam before passing such order.** This is certainly going to adversely affect my career as my batch (1988 -RR) will be soon due for promotion both at the Centre as well as State level. After seeking the copies of the relevant records, I shall be submitting a representation to the Govt. of Assam at the earliest requesting to rescind this order passed unilaterally, causing immense mental agony and harassment to the undersigned.

Submitted for kind perusal and needful.

Enclo : As above

Yours faithfully



(B.K. Mishra)

Assistant Director (Records)

Received  
Jayantay-K.O P.A. (b220000)  
16/5/02

19

Filed by: - 4  
The State of Assam  
--- Respondent Nos.  
4 and 5  
Strength: -  
Manjinder Datta  
Pr. Govt. Delivered  
CAT (St. of Assam)  
19/8/02

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

O.A. NO. 167/02

In The Matter of :

O.A. No. 167/02

Sri B.K. Mishra

-Vs- .....Applicant

Union of India & Ors ... .. Respondents

- AND -

In The Matter of :

Written statement on behalf of the  
Respondent Nos 4 ( State of Assam,  
represented by the Chief Secretary  
to the Government of Assam ) and 5  
( Commissioner and Secretary to the  
Government of Assam, Home Department )  
in the above case.

Written statement on behalf of the Respondent Nos  
4 and 5 to the application filed by the applicant.

I Sri P.P. Barooah, ACS, Deputy Secretary  
to the Govt. of Assam, Home (A) Deptt.,  
Dispur, Guwahati-6, do hereby solemnly  
State as follows :-

1. That I am the Deputy Secretary to the  
Govt. of Assam, Home Department, Dispur, Guwahati-6  
copies of the above case had been served upon  
Respondent Nos 4 and 5. I perused the same and  
understood the contents thereof. I have also been  
authorised by the respondent Nos 4 and 5 to file  
this written statement on their behalf and I am  
competent to file this written statement before  
this Hon'ble Tribunal. I do not admit any of the  
allegations averments which are not specifically  
admitted hereinafter are to be deemed as denied.

( Contd....2/-P)

2. That with regard to the statements made in paragraph 4.1 and 4.2 of the application the answering respondent has nothing to make comment on it. He however does not admit any statements which are contrary to record.

3. That the answering respondent categorically deny the statements made in paragraph 4.3 of the application. The incident of alleged sexual harassment to Smt. B. Saikia Bey, wife of K.S. Bey was duly enquired into by the Inspector General of Police (CID) ( Since expired ) and the charges are clearly proved. ~~Why~~ there is nothing sort of exertion or any influence of any senior IPS Officer.

A photocopy of the Inquiry report is annexed hereto and marked as Annexure-I.

4. That the statements made in paragraph 4.5 of the application are being matter of records of the case.

5. That with regard to the statements made in paragraph 4.6 of the application, it is stated that on availability of further information and references, the State Govt. by invoking powers conferred under Rule 24 of AIS ( Discipline and Appeal ) Rule 1969 read with Rule 28 of the Rule Review the matter and start de novo inquiry vide order No.HMA(IPS) 145/Pt.II/185, dated 4.5.02.

6. That the answering respondent deny the correctness of the statements made in paragraph 4.7 of the application. The humble respondent beg to state that the period of limitation had been condoned and in the Notification the relevant rules has been quoted. Further, one of two charges made against the Officer was proved. The Officer against whom the charges are made will get opportunity to defend him-self during the course of proceedings.

( Contd.....3/-P)

7.

That with regard to the statements made in paragraph 4.8 of the application, it is stated that it is obligatory on the part of the Govt. to promote an officer of blameless career only to senior responsible post. The promotions are made on the basis of select list prepared by the selection committee, constituted for this purpose. While selecting the officers the committee should also consider the question of suitability of the officers for selection with reference to their integrity. Therefore the charges levelled against the officer must be proved beyond reasonable doubt even it is detrimental to his personal interest. The Govt. is duty bound to comply or follow the rules and regulations as prescribed under the law.

8.

That it is humbly submitted that there is no merit at all, and the application is liable to be dismissed.

VERIFICATION

I, Sri P.P. Barooah, S/o. Late N. N. Barooah, presently working as Deputy Secretary to the Government of Assam, Home Department, Dispur, Guwahati-6, do hereby solemnly state that the statements made in above paragraphs 1,2,3,5,7 and 7 are true to my knowledge, these made in paragraph 4 are true to my information being matters of records of the case derived therefrom which I believe to be true and the rest are humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

I sign this verification on this the  
... 19th . August, 2002 at Guwahati.

Signature



~~TOP SECRET~~

OFFICE OF THE INSPECTOR GENERAL OF POLICE :: CID ::  
ASSAM :: DISPUR :: GUWAHATI-6.  
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Dated, the 24th Apr/95

Memo No. C. CID/95/195

From : Shri S.K. Deb, IPS,  
Inspector General of Police, CID,  
Assam, Guwahati.

To : Shri B.V.P. Rao, IAS,  
Secretary, Home Department,  
Govt. of Assam, Dispur.

Subject : Allegations against Shri B.K. Misra,  
Commandant, 2nd A.P.Bn., Makum.

Ref. : Govt. letter No. HMA(IPS) 145/30  
dated 13.4.95.

Sir,

I am to state that the allegations against Shri B.K. Misra, IPS, Commandant, 2nd A.P.Bn., as mentioned in the Govt. letter under reference, have been duly enquired into. In course of the enquiry, statements etc. of relevant persons were recorded, which are attached as appendices on the basis of which this report is submitted as follows :-

- 4605  
26.4.95
- (1) Sexual harassment caused to the wife of orderly Constable Kamal Singh Bey by Shri B.K. Misra

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25/4

Constable 499 Kamal Singh Bey is working as orderly of Shri B.K. Misra attending to his domestic chores. He along with his young wife Smt. Saikia Bey was given residential accommodation in the compound of C.O.'s bungalow by renovating an old room used as kitchen by an earlier Commandant of the battalion. There were three other orderlies also for the Commandant who were accommodated separately in the orderly-room in the compound.

As per the statement of Constable Kamal Singh Bey, after the departure of the wife of Commandant for Bombay, sometime in the later part of October, 94, Shri B.K. Misra told him that he should do some other duties and accordingly he used to perform magazine guard duties which is for 24 hours. As per the statement of Subedar Major of the Battalion, Commandant also told him that in view of the shortage of personnel in Bn. HQ, his orderly Constable Kamal Singh Bey should be detailed for duties accordingly.

(Contd.)

The magazine Guard duty register also shows that Constable Kamal Singh Bey was detailed for guard duties on 26.10.94, 29.10.94, 2.11.94, 9.11.94, 11.11.94, 24.11.94 and 26.11.94. However although there were 3 other orderlies with the Commandant, no other orderly was detailed for magazine guard duties. Constable Kamal Singh Bey also stated that he was also sent out of HQ on dak duty occasionally at the orders of the Commandant. As per command certificate supported by R.I's statement, the Constable was deputed to Tezpur, Golaghat, Dergaon and Jamuguri on 26.10.94, 4.11.94, 15.11.94 and 5.12.94.

Smti Bharati Saikia Bey, the wife of Constable Kamal Singh Bey gave a statement to the effect that on the night of first detailment of her husband in magazine guard duties (i.e. on 24.10.94) when she was all alone in her quarter, somebody appeared in her door step and repeatedly called her by name, but out of fear, she did not open the door. After 3/4 days, her husband was sent away from HQ on some duties. On that night, after she had taken her rest, Commandant Shri B.K. Misra appeared at her quarter and after her protestations dragged her to his bed room threatening her to keep quiet and thereafter forcibly committed sexual intercourse with her. Next day her husband returned to his duties, but out of fear and a sense of shame she did not disclose anything to her husband. Again on another day when her husband was sent away from HQ on dak duty, Commandant again came to her at night and dragged her to his bed room and committed sexual assault. Even after that he did not let her go, but was insisting for second time to satisfy his carnal desire. At that time, at about 10 P.M. Constable Kamal Singh Bey returned from Tezpur and not finding her in their room was looking for her, when he heard the entreaties of his wife coming from C.O.'s bungalow. He entered into the bed-room through the back door of the bathroom and found his wife in the clutches of the Commandant in a dishevelled condition. Enraged at this scene, he assaulted him with 2/3 blows but the C.O. managed to escape and shut out the door. He could, however, drag out his wife before that. Next day he proceeded on 8 day's M&L C

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took his wife to a Siva temple in Sibsagar where his wife Bharati narrated all the happening including the sexual assault on her on the earlier occasion, when Kamal Singh was out of station on dak duty. They returned from Sibsagar on 12.12.94 and on the early hours of next morning, when Bharati went to fetch water, the Commandant from the doorstep made some overtures, whereupon she claimed to have made an attempt on him with a knife which she carried in her person on that day. Immediately after that they were forcibly ejected from their house and packed off to Diphu bag and baggage in a battalion vehicle which was to go to Guwahati.

Analysis of evidence:

The veracity of the statements of Constable Kamal Singh Bey and his wife alleging sexual assault by the Commandant cannot be authenticated by direct evidence from obvious reasons. But the following fact does lend credence to the allegations.

(1) The Commandant allowed S.M. of the battalion to utilise only Constable Kamal Singh Bey in magazine guard duties although there were 3 other orderlies also. This indicates that the C.O. was planning to cause absence of Kamal Singh Bey from his residence at night. The fact that it was again as per C.O.'s order Kamal Singh was detailed for dak duties outside the HQ during that relevant period only as mentioned in the statement of the Reserve Inspector also similarly indicates a design to cause absence of the Constable from his house at night with his wife all alone and it was on these occasions the Commandant satisfied his carnal desire.

(2) The incident on the morning of 13.12.94, in which Bharati Saikia Bey is stated to have attacked the Commandant with a knife was not corroborated but it was rather unusual for the Commandant to eject Kamal Singh and his wife from their residence bag and baggage with such haste and pack them off to Diphu in a Govt. vehicle ~~on that~~ ~~pace~~ ~~chief~~ unless something quite serious had happened. The plea of the Commandant that his order was not heard by the S.M. properly as he was heard of hearing was not all convincing.

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(3) The R.I. in his statement mentioned that when he went to Kamal Singh Bey to persuade him comply with the orders of the C.O. to leave the battalion HQ immediately by his Govt. vehicle to Diphu, Kamal Singh Bey told him about the C.O.'s sexual assaults on his wife, which the Reserve Inspector narrated to the 2 i/c of the battalion which was also confirmed by the 2 i/c in his statement.

(4) The subsequent conduct of the Commandant in regard to Constable Kamal Singh Bey was also found to be vindictive. After expiry of his Addl. C.L. for 8 days on 17.12.94, Const. Kamal Singh Bey came to battalion seeking E.L. for 60 days, which was granted by the 2 i/c (in absence of C.O. who was on C.L. during that period). But the Commandant on return reduced the leave of Const. Kamal Singh Bey to 30 days E.L. and thereafter issued notices asking for his explanation for not joining the duties. The Commandant's plea that this was done due to shortage of manpower was too hollow to be convincing. The Constable was also debarred from entering into Battalion campus by verbal orders of the C.O. so much so that when he came to HQ to take his pay for the month of December, the QMI who was <sup>the</sup> disbursing officer had to go to Battalion gate for the purpose, but even then Kamal Singh was not given his pay as the QMI was directed by the Commandant to deduct Rs. 2000/- from his pay as Kamal Singh reportedly took Rs. 10,000/- from the C.O. to purchase a T.V. set. Kamal Singh flatly denied to have taken any money from the Commandant to purchase a T.V. set and did not agree to this deduction of Rs. 2000/- and declined to sign the muster roll.

In this context, it is relevant to refer to the statement of Constable Kamal Singh Bey, where he stated that on the day of his forcible eviction from his quarters on 13.12.94 the cook of the C.O. thrust upon him a packet of Rs. 10,000/- said to have been given by the C.O. to him. This was however not corroborated by the cook Bhagabati in his statement, may be for some obvious reasons. As I found no reason to disbelieve Kamal Singh's assertion.

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One would wonder if this was not meant to be hush up money. When hushing up did not succeed, it turned to be a loan for purchase of T.V. set, which the QMI was instructed to recover from the monthly pay of the Constable by the C.O. This refers to the statement of QMI enclosed in appendices. During the enquiry the C.O. however took stance of total denial of having paid any money to the Constable as loan or otherwise but I find no other reason for the QMI to refuse payment of salary to Kamal Singh unless he agreed to receive Rs. 2000/- less.

(5) Lastly no man would expose himself <sup>to</sup> such shameful indignity and humiliation of sexual assault on his young wife by another man by bringing false allegation. Kamal Singh Bey was burning with rage to seek revenge on the Commandant and as per his statement he wanted to punish the Commandant for causing such outrageous act on him. Similarly it does not stand to reason for a young married girl to bring false allegation of rape on her by another man exposing herself to such humiliation and disgrace.

In view of the fact and circumstances mentioned above, the allegation of sexual harassment to the wife of Const. Kamal Singh Bey by Shri B.K. Misra, IPS, Commandant 2nd APBn, Makum appears to be true.

(2) Deputation of Carpenters from 2nd A.P.Bn to work in the flat of Shri B.K. Misra at Bombay:

In course of enquiry into the above allegation it was found that 3 Carpenters of the Unit namely (1) L/NK Golap Barua, (2) Hony. L/NK Ranjit Mala and (3) Someswar Dihingia were deputed to the Det. HQ of the Battalion at Delhi for miscellaneous duty. Accordingly Command certificate was also issued to them on 27.11.57. However, as per the statements given by the three carpenters they had gone to Bombay to work in the flat owned by the Commandant, as per his verbal order. As per the arrangement made by the Commandant they had gone upto Delhi on police warrant, but instead of reporting to the Det HQ, they boarded the train to Bombay by purchasing Rly tickets.

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which the Commandant had given them the Rly fare. On completion of work in the flat of C.O. at Bombay, they returned to Delhi on 19.3.95 and thereafter sent back Bn HQ at Makum by using Rly passage warrant. The statement of the three carpenters is enclosed in the appendices. The Command certificate issued to them is also enclosed in Appendices in original.

It appeared during examination of the carpenters that before leaving for Bombay via Delhi, they were given a detailed briefing indicating location of the flat at Bombay, a sketch map showing location, reportedly drawn by the wife of the Commandant in office. A pad of the Commandant is also enclosed in original with the report in appendix. As per the briefing, the Carpenters were asked to report Shri D.N. Jha at 9/250 Revenue Apartments New M.I.G. Coloney, Bandra(E) Bombay-51 where they were to go to Thakur Complex, Kandhivali for their work in the flat.

The Commandant has however denied the whole thing and fabricated official records by looking up a story of that one of the three carpenters, while on the way to Delhi fell ill and hence all three got down at Gorakhpur where treatment was arranged for the sick carpenter and when he recovered after almost one and a half month all the three again resumed journey and reported to Det HQ at Delhi from where they were returned to Makum. The absence of the 3 carpenters has also been duly regularised by granting them E.L. for the period.

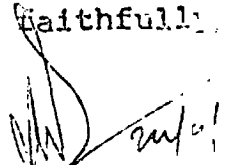
In view of the statement given by the 3 carpenters, coupled with production of sketch map showing location of the flat at Bombay, there remains no doubt about wrongful utilisation of the carpenters by the Commandant for his personal work at Bombay at Govt. c.

In view of these facts and circumstances, the second allegation against Shri B.K. Misra is proved beyond doubt.

Yours Faithfully,

Enclosed:-

As per list of  
appendices.

  
( S.K. DEB )  
Inspector General of Police  
CID, Assam, Guwahati.

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