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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 186/2004

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SECTION OFFICER (Judl.)

10.11.17

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET.

Org. App./Misc. Petn./Cont. Petn./Rev. Appl. 18.6/04

In O.A.

Name of the Applicant(s) S. P. Singh Jadav

Name of the Respondent(s) U. O. I. Govt

Advocate for the Applicant P. K. Tiwari, J. Purkayastha

Counsel for the Railway/C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

25.8.04.

Present: Hon'ble Mr. D. C. Verma, Vice-Chairman.

Hon'ble Mr. K. V. Prahladan, Administrative Member.

Heard learned counsel for the parties.

During the course of the argument the learned counsel Mr. P. K. Tiwari for the applicant stated at the bar that to avoid the bar of plural remedy he has pressed this O.A. in respect of relief claimed in para 8.2 only. In respect of other reliefs it will be at liberty to pursue the same in the reliefs. The other reliefs as per above be deleted.

During the course of the argument it has been brought to notice that the applicant has been reprimanded by a separate order to Lucknow. The learned counsel for the applicant submitted that when the applicant went to join at Lucknow he was not allowed to join there. So he approach this Bench for reliefs.

con td/-

206/113569

Date 19.8.04

Dy. Registrar

Steps taken with
envelops.

Ans.

Copy not yet served.
24/8/04

25.8.04.

Notice & order
sent to D/section
for issuing to
resp. Nos 1 to 4,
by regd. with
A/D post.

6/9/04.

Mr. A. Deb Roy, Sr. C.G.S.C. accepts
notice on behalf of the Respondent
No. 3. The applicant wants to point
out the maintainability of this
O.A. before this Bench.

Issue notice to the Respond-
ents. Returnable by four weeks.

List on 30.9.04 for orders.

K. P. Bhatta
Member.

R. V. Prahladan
Vice-Chairman

lm

30.9.2004 Present: The Hon'ble Mr. Justice R.K.
Batta, Vice-Chairman.

The Hon'ble Mr. K. V. Prahladan,
Member (A).

Mr. P. K. Tiwari, learned Advocate for
the applicant as well as Mr. A. Deb Roy,
learned Sr. C.G.S.C. were present.

Mr. Deb Roy seeks four weeks time to
file reply. Stand over to 8.11.2004.

K. P. Bhatta
Member (A)

R. V. Prahladan
Vice-Chairman

bb

8.11.2004

The only issue which is sought to be
pressed in this ~~ix~~ application is to give
direction to the respondents to complete
disciplinary proceedings. Mr. A. Deb Roy,
learned Sr. C.G.S.C. seeks further time
in the matter. This ~~xxx~~ is the ^{adjournment} third
time which is being sought. Last and fina.
adjournment is granted in the matter. If
any further adjournment is sought, there
shall be no alternative but to impose
costs on the respondents and the liabili-
ty to pay the costs shall be from the
personal pocket of the officer who is
responsible for filing written statement.
Stand over to 13.12.2004.

K. P. Bhatta
Member

R. V. Prahladan
Vice-Chairman

bb

29.9.04
Service report
awaited.

P. K. Tiwari

5/11/04

1) No reply has been filed.

2) Notice duly served on
R-no. 1 & 2.

3) Service is awaited for
R-no. 3 and 4.

NR
5/11/04

my 3/11/04

Counter Reply has been
fired on behalf of the
Respondents No. 4.....

P. K. Tiwari

13.12.04. The learned counsel for the applicant states that copy of the written statement has been received to-day only. The applicant may file rejoinder if any, within six weeks from to-day. The matter be listed for hearing on 7th February, 2005.

14-12-04

lm


Vice-Chairman

W/S Submitted
by the Respondents.

7.2.2005 present: The Hon'ble Mr.M.K.Gupta,
Judicial Member.

This being a Division Bench matter is to be listed on 14.2.2005 before the Division Bench.


Member (J)

4.2-05

no rejoinder filed.

bb

14.02.2005

None appears. List on 16.2.2005.


Member (J)

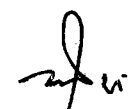
Rejoinder not
filed by the applicant

mb

16.2.2005

It is stated that Mr P.K. Tiwari, learned counsel for the applicant, is engaged in a part heard matter in the High Court. Hence prayer is made to adjourn the matter. Adjourned to 6.4.05.


Member (A)


Member (J)

nkm

6.4.2005

Mr.J.Purkayastha, learned counsel for the applicant submits that the applicant would like to withdraw this application. Since this is a Division Bench matter post on 11.4.2005.


Vice-Chairman

bb

5-4-05

No rejoinder has been

filed.

11.4.05. Present: Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman.

Hon'ble Mr. K. V. Prahladan, Administrative Member.

Mr. J. Purkayastha, learned counsel for the applicant submits that in view of subsequent development the applicant would like to withdraw the application to enable him to pursue the matter before the appropriate forum.

Heard Mr. M. V. Arundhaney, Addl. C.G.S.C. for the Respondents. Since the applicant wants to withdraw the application with liberty to pursue the matter before the appropriate forum, this application is dismissed as withdrawn with liberty to take up the matter before the appropriate forum.

K. V. Prahladan
Member

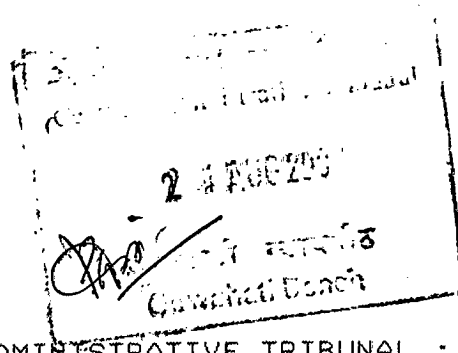
G. Sivaraman
Vice-Chairman

*Pl. comply order
dated 11.4.05.*

*13.4.05 -
29/4/05*

lm

11.5.05
Copy of the order
has been handed
over to the Addl. C.S.C.
and ~~extra~~ copy of
the same has been
sent to the D/Secy.
for issuing the applt.
by post.
H.P.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

O.A. No. 186 of 2004 .

S.P. Singh Yadav ... Applicant

- Versus -

Union of India & Ors. ... Respondents

SYNOPSIS

The Applicant was appointed as Inspector of Police in the CBI on being sent on deputation by the UP Police. While on deputation with the CBI, the Applicant was placed under suspension vide order dated 26.4.2000 in malafide exercise of power. Disciplinary proceedings were initiated against the Applicant as an act of vendetta on frivolous grounds and most of these proceedings ended either in closure or in setting aside of the proceedings. Only two of the memorandum of charges dated 17.5.2000 and 22.5.2000 respectively have still remained alive and in regard to these two memorandums also, there is an observation of this Hon'ble Tribunal that the same are not legally sustainable. Be that as it may, while in suspension, the Applicant was repatriated vide order dated 12.5.2002. After the order of repatriation, the Respondents sent the disciplinary proceedings files of the Applicant pertaining to two charge sheets dated 17.5.2000 and 22.5.2000 to the lending authority i.e. U.P. Police for disciplinary action against the Applicant. The files of the disciplinary proceedings were sent by the CBI to the U.P. Police purportedly in exercise of power under Rule 13(3) of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961.

The Applicant challenged the order of repatriation dated 12.5.2002 before the Hon'ble Tribunal in O.A. No. 154/2002 on the ground that his case for absorption was not properly considered by the CBI contrary to the judgment and order of the Hon'ble High Court dated 9.5.2001 passed in W.P.(C) No. 3420/2001. The O.A. No. 154/2002 was dismissed vide order dated 23.9.2002. Being aggrieved, the Applicant preferred W.P.(C) No. 1338/2003 before the Hon'ble Gauhati High Court. Till 19.1.2004 there was a stay of the Hon'ble Gauhati High Court against the order of Applicant's repatriation dated 12.5.2002. On 20.1.2004, the Hon'ble High Court vacated the stay order, but reiterated that Applicant be paid his subsistence allowance. Subsequently, vide order dated 12.3.2004, the High Court dismissed the writ petition of the Applicant against the order of his repatriation and on the basis of the submission of the Standing Counsel for the CBI, the Hon'ble High Court observed that as a matter of course on the passing of the order repatriating the Applicant to the parent department, the order suspending the Applicant stands revoked.

However, fact remains that there is no formal order revoking the suspension of the Applicant. The Applicant has also not been paid the salary/subsistence allowance from 12.5.2000 onwards. Various other dues of the Applicant have also not been cleared by the borrowing authority. The borrowing authority has also not issued a proper relieving order, last pay certificate and no due certificate which are essential for ensuring smooth joining of the Applicant in

his parent department. The parent department is not allowing the Applicant to join in the absence of the aforesaid orders.

Meanwhile the lending authority of the Applicant sent back the Applicant's case files to the CBI stating that the disciplinary proceedings initiated against the Applicant is in regard to internal working of the CBI and as such, the same should be completed by CBI. It is pertinent to mention that the Respondents acted in contravention of Rule 13(3) of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961 by sending the case files pertaining to disciplinary proceeding of the Applicant to his lending authority without withdrawing the charge sheets in question. Since the lending authority has sent back the case files to the CBI stating that the case in question is in regard to the internal working of the CBI, hence, it should be completed by the CBI, therefore, it is incumbent for the Respondents to complete the disciplinary proceeding without any further delay. Hence the present application.

Filed by :

P.K. Tiwari
(P.K. Tiwari)
Advocate

24 AUG 2004

GUWAHATI BENCH

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. 186 of 2004

S.P. Singh Yadav Applicant

- Versus -

Union of India & Ors. RespondentsI 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. 18-6 of 2004

Filed by:
The Applicant-
Through:
Jaideep Purbheyaski
2.8.8.04
Advocate

BETWEEN

Suresh Pal Singh Yadav,
R.G. Baruah Road, Sundarpur,
Guwahati-781005.

... Applicant

AND

1. The Union of India, through the Secretary, Ministry of Personnel & Training, Government of India, New Delhi.
2. The Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi.
3. The Deputy Inspector General of Police, Central Bureau of Investigation (NE Region), Guwahati.
4. K.C. Kanungo, Deputy Inspector General, Multi. Disciplinary Monitoring Agency, Central Bureau of Investigation, 1/10 Jamnagar House, Hutments, Akbar Road, New Delhi-110011.

.... Respondents

DETAILS OF APPLICATION

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

The present application is in regard to the following :

- (i) For quashing the order of suspension dated 26.4.2000 passed by the Deputy Inspector General of Police, CBI, N.E. Region, Guwahati (Respondent No. 3).

Ww

- (ii) For completion of the disciplinary proceeding in regard to charge sheets dated 17.5.2000 and 22.5.2000 without any further delay.
- (iii) For appropriate direction to Respondents to treat the period of Applicant's suspension to be on duty and to pay all the consequential benefits to the Applicant for the period of suspension.
- (iv) For appropriate direction to the Respondents to issue a formal order of revocation of suspension and to pay him salary and allowances for the period till the formal order of revocation of suspension is issued.

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 present application is within the statutory period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. This is because of the fact that though the order of Applicant's suspension is dated 26.4.2000 and the order of his repatriation is dated 12.5.02, but the stay on the order of repatriation was vacated by the Hon'ble Gauhati High Court only on 20.1.04 and since there was

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no formal order of revocation of suspension, it was only vide order dated 12.3.04 that the Hon'ble High Court made it clear that the order of suspension should not be treated to be in force once the Respondents passed the order of repatriation. This application raises the question as to what will happen to the period during which the Applicant was under suspension and as to whether the Applicant would not be entitled to the salary and other benefits of increments during the period of suspension. Since the effect of suspension has not been wiped out therefore the Applicant is assailing the very legality of the order of suspension. Moreover, the lending authority of the Applicant (i.e. the State of U.P.) is refusing to accept the Applicant till the order of suspension is formally revoked and the disciplinary proceeding against the Appellant which were initiated by the borrowing authority were completed. In view of the nature of issues involved in the present application, it is submitted that the present application is within the period of limitation.

4. FACTS OF THE CASE :

4.1 That the Applicant was appointed as Inspector of Police in the Central Bureau of Investigation (hereinafter referred to as "CBI") on being sent on deputation by the Uttar Pradesh Police for a period of three years vide office order dated 14.10.93. However, his appointment was made effective from 24.9.93 as the

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Applicant joined as Inspector of CBI (Anti Corruption Branch) in the office of the Superintendent of Police, CBI, Shillong on 24.9.93. The performance of the Applicant in the CBI was exemplary and he was given 17 rewards and 8 commendation certificates for his excellent investigation in various cases.

4.2 That the CBI authority on completion of the deputation period of the Applicant intimated the DIG (Personnel), UP Police, by letter dated 16.10.97 that the services of the Applicant are required by the department and it is not possible to relieve him. It was requested that necessary action extending the period of the Applicant in deputation for 3 years more i.e. upto 23.9.99 may be accorded and conveyed to the CBI Office.

4.3 That thereafter the Applicant continued working in CBI. However, from September, 1998 onwards there were series of happenings which resulted in strained official relationship between the Applicant and his senior officers. The facts pertaining to strained relationship with senior officers are part of the records in O.A. No. 127/2002 filed by the present Applicant before the Central Administrative Tribunal, Guwahati Bench, which dealt with adverse remarks in the ACR of the Applicant for the year 1998. the Hon'ble Tribunal, by judgment and order dated 11.9.2002 was pleased to allow the aforesaid application by setting aside and quashing the impugned adverse remarks against the Applicant.

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4.4 That on 11.9.98 upon being humiliated by the then DIG, CBI, the Applicant submitted a letter on the spot requesting the SP, CBI, Guwahati to repatriate him to his parent department in the State of UP. The aforesaid letter dated 11.9.98 was forwarded by the SP, CBI the same day to the DIG, CBI.

4.5 That the then DIG, CBI received the letter of SP, CBI on 11.9.98 itself and on the same day gave his recommendation for the repatriation of the Applicant to the Joint Director, East Zone, CBI, Calcutta and while doing so, he made an adverse remark about the Applicant that "Shri Yadav who was a deputationist from UP Police completed the deputation period and further it is found that his conduct is unbecoming of a CBI officer."

4.6 That the aforesaid uncalled for observations of the then DIG, CBI while recommending the Applicant's requests for repatriation resulted in the Applicant changing his mind of going back to his parent department. The Applicant instead decided to remain in CBI and to fight against the uncalled for remarks and to leave the CBI only with clean image. Hence, the Applicant wrote a letter dated 30.10.98 to the Joint Director (Administration), CBI withdrawing his request for repatriation and stating that he was willing to continue in CBI.

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4.7 That by letter dated 3.11.98, the Administrative Officer, CBI, New Delhi intimated the SP, CBI, Guwahati that the repatriation of the Applicant is approved by the competent authority and that the Applicant is directed to be relieved on repatriation.

4.8 That the letter of the Applicant dated 30.10.98 withdrawing his request for repatriation was rejected by the competent authority vide wireless message dated 16.11.98.

4.9 That since at the relevant point of time, the Applicant was an investigating officer in a case relating to fraudulent drawal of advance T.A. in the name of the Hon'ble Judge of the High Court as well as the establishment staff of the said Court from the Kamrup Treasury, therefore, when the Hon'ble High Court came to know that the Applicant is likely to be repatriated soon, therefore, on 19.12.98 the matter of the Applicant's repatriation was suo moto taken up by the Division Bench of the Hon'ble High Court and the SP, CBI was directed to ensure that till the investigation is complete and the charge sheet is filed the Applicant shall not be repatriated.

4.10 That the SP, CBI wrote to the then DIG, CBI, Guwahati in regard to the desire of the Hon'ble Court and as a result the repatriation of the Applicant was postponed till the filing of the charge sheet in the aforesaid case.

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4.11 That some time after March, 1999, the Head Office, CBI asked the present DIG, CBI, North East Region for re-examination of the repatriation case of the Applicant.

4.12 That the present DIG, CBI, vide letter No. 1444/142/99-NER dated 16.9.99 which was addressed to Administrative Officer (E), CBI, New Delhi, stated that the Applicant is handling a number of cases and his repatriation at this stage would not be appropriate. Further, there is nothing adverse on record against the Applicant.

4.13 That on 29.9.99, the Applicant was communicated with the adverse remarks made in his ACR for the year 1998. Immediately thereafter, some time in October 1999, the move was made to repatriate the Applicant. Being aggrieved, the Applicant approached the Hon'ble Central Administrative Tribunal by way of O.A. No. 338/99 (filing of this O.A. also led to series of happenings which will be discussed in the latter part of this O.A.) wherein the Applicant raised the issue of his absorption in CBI in terms of the scheme contained in various circulars issued by the CBI. The Applicant also submitted a representation dated 29.10.99 against the adverse remark made in his ACR for the year 1998.

4.14 That the Hon'ble Tribunal, by judgment and order dated 9.5.2001 dismissed the aforesaid O.A. No. 338/99 on the ground that the deputationist does not have a

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right to continue on deputation if the borrowing authority wants to repatriate him on completion of his tenure.

4.15 That against the aforesaid judgment and order dated 9.5.2001, the Petitioner preferred a writ petition, being W.P.(C) No. 3420/2001 before the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court disposed of the said writ petition by giving certain directions to the CBI. It was directed that the representation of the Applicant against the adverse remarks for the year 1998 communicated to him on 29.9.99 should be decided by the competent authority and the decision on the same be taken within a month. It was also directed that after the decision on the representation is taken, the case of the Applicant for absorption in CBI may be considered in accordance with the relevant circulars on the subject with entire service records of the Applicant. It was also directed that certain observations made by this Hon'ble Tribunal in regard to correctness of the observations of the then DIG that the conduct of the Applicant is "unbecoming of a CBI officer" should not be taken into consideration and the authority deciding the representation should form its own opinion and come to independent findings. The Hon'ble Court disposed of the writ petition with the observations that if the Applicant is adversely affected by any order that may be passed by the competent authority he would have

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liberty to challenge the same before an appropriate forum.

4.16 That the filing of the Original Application No. 338/99 piqued the then DIGP, CBI, NER (Respondent No. 4). His anger against the Applicant was reflected in his behaviour towards the Applicant. It can be seen from the following facts : During the period the aforesaid O.A. No. 338/99 was filed and moved before the Hon'ble Tribunal, the Applicant was convalescing on medical advice having suffered from severe chest pain on 30.9.99, consequently, the Applicant abstained from duty from 1.10.99 to 28.10.99 (Total for 28 days). Applicant reported for duty on 29.10.99 along with necessary documents/medical papers with the request for granting him 28 days medical leave. However, 28 days medical leave was not granted and salary of the Applicant for the month of October 1999 was also withheld.

4.17 That such was the degree of animus bore by the Respondent No. 4 against the Applicant that some time in November/December 1999 in file No. 153/99/Vol. II/NER, the Respondent No. 4 in his note to the S.P., CBI wrote that "SP should stop giving reward indiscriminately which some time puts the Branch in awkward position as in case of Shri S.P. Singh Yadav who is using it to his advantage in fighting his case in CAT, Guwahati." It is due to this observation, that since 1999 reward and commendation certificates were

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not conferred on the Applicant on many occasions when as per the CBI Manual, he was entitled to get such rewards and commendation certificates.

4.18 That the then DIGP, CBI, NER (Respondent No. 4) apart from withholding the salary of the Applicant for the month of October 1999 and refusing to sanction him medical leave for the aforesaid period, exercised police powers which he did not possess. In exercise of police powers, CBI personnel were sent to the Gauhati Medical College to interrogate the Doctor, who had issued Medical Certificate to the Applicant. Phone calls were made at the residence of the concerned Doctor. Even the Superintendent of Gauhati Medical College was contacted by the CBI personnel and intimidated.

4.19 That the Applicant was also served with the memorandum dated 7.12.99 by SP, CBI, Anti Corruption Branch, Guwahati at the behest of the Respondent No. 4 (who at the relevant point of time was working as Respondent No. 3) making allegation against him in regard to his behaviour dated 2.12.99. Subsequently, in connection with the aforesaid, the proceeding for imposition of minor penalty under rule 9 of Delhi Special Police Establishment (Subordinate Ranks) (Disciplinary & Appeal) Rules, 1961, was initiated which ultimately culminated in imposition of major penalty on the Applicant of stoppage of three increments in pay with cumulative effect vide order No.

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39 dated 15.2.2001 passed by the Respondent No. 4. On appeal of the Applicant, the Appellate Authority suspended the punishment vide order dated 2.8.2001, but appeal was not finally disposed of. Later on, when the Applicant preferred O.A. No. 68/2004 assailing the imposition of major penalty on him in a proceeding for minor penalty, this Hon'ble Tribunal vide order dated 2.4.2004 passed in O.A. No. 68/2004 directed the disposal of the appeal preferred by the Applicant. This ultimately culminated in passing of the office order No. 28/2004 dated 30.4.2004 by the Appellate Authority setting aside the order of penalty dated 15.2.2001.

- » Copy of the office order No. 28/2004 dated 30.4.2004 is annexed herewith and marked as ANNEXURE-A/1.

4.20 That during the later part of the year 1999 and the early part of the year 2000, the bad blood between the Applicant and the Respondent No. 4 (the then Respondent No. 3) showed its effect when Respondent No. 4 recommended minor penalty against the Applicant in different files viz. official notings dated 29.2.2000 in three different files i.e. File No. SA/SHG/99/20, SA/SHG/99/21 and SA/SHG/99/22 respectively for no cogent reason.

4.21 That it was due to this animus that the Respondent No. 4 made certain adverse remarks in the ACR of the Applicant for the period 1.1.98 to 31.12.98.

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However, despite these adverse remarks, the Applicant was rated "good". The Applicant in O.A. No. 127/2002 assailed the legality of these adverse remarks and prayed for their expunction. This Hon'ble Tribunal vide its order dated 11.9.2002 allowed the O.A. No. 127/2002 and quashed the impugned memorandum containing adverse remarks in the ACR of the Applicant for the year 1998.

4.22 That thereafter the Respondent No. 4 (the then DIGP, CBI, NER) served on the Applicant an order dated 28.3.2000 wherein unsubstantiated allegations of gross misconduct, lack of devotion of duty and integrity etc. were made against the Applicant. The aforesaid order was silent on material particulars and it only stated that in view of gross misconduct of the Applicant, it has been decided to issue charge sheet on him for major penalty and that the Applicant should forthwith hand over charge of all cases with him to the Deputy Superintendent of Police.

4.23 That since the salary of the Applicant for the month of October 1999 was withheld the Applicant filed O.A. No. 137/2000 for regularisation of the period of absence by granting medical leave, and consequently for payment of salary for the month of October 1999. The aforesaid O.A. was filed on 18.4.2000.

4.24 That filing of the O.A. No. 137/2000 further angered the Respondent No. 4 resulting in issue of order of suspension dated 26.4.2000 pending disciplinary proceeding.

Wew

Copy of the order of suspension dated 26.4.2000 is annexed herewith and marked as ANNEXURE-A/2.

4.25 That after the order of suspension and during the pendency of O.A. No. 137/2000, the Applicant was served with three different charge sheet dated 11.5.2000, 17.5.2000 and 22.5.2000. Charge Sheet dated 11.5.2000 was with regard to the absence of the Applicant from 1.10.99 to 28.10.99. This was the same period for which the Applicant had filed O.A. No. 137/2000 for regularisation of the period of absence by granting medical leave and for payment of salary for October 1999.

Copies of the charge sheets dated 17.5.2000 and 22.5.2000 are annexed as ANNEXURE-A/3 colly

4.26 That assailing the maintainability of three different charge sheets dated 11.5.2000, 17.5.2000 and 22.5.2000, the Applicant filed three Original Applications viz. O.A. Nos. 30, 31 and 61 of 2001 for quashing the aforesaid charge sheets. The Hon'ble Tribunal vide its order dated May 2001 disposed of the aforesaid three Original Applications with an observation that ".....these are the cases where the impugned departmental proceedings can be said to be legally unsustainable." However, the Hon'ble Tribunal instead of quashing the charge sheet directed the Respondent No. 4 (the then Respondent No. 3) to recuse himself from the enquiry and not to act as the

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Disciplinary Authority in all the aforesaid three cases against the Applicant.

Copy of the common order dated May 2001 passed in O.A. Nos. 30, 31 and 61 of 2001 is annexed as ANNEXURE-A/4.

4.27 That in O.A. No. 137/2000 which was filed by the Applicant for regularisation of period of absence of 28 days by granting him medical leave and for payment of salary for October 1999, this Hon'ble Tribunal vide its order dated 9th July 2001 allowed the Original Application with cost of Rs.1000/- and directed the Respondents to pay the salary for the month of October 1999 to the Applicant on the basis of the medical certificate furnished by him. In its order, the Hon'ble Tribunal described the stand of the Respondents as "obdurate" and observed that "the Respondents instead of engaging themselves to other important issues were more confined to some irrelevant and extraneous issues."

Copy of the order dated 9th July 2001 passed in O.A. No. 137/2000 is annexed as ANNEXURE-A/5.

4.28 That pursuant to the common order of this Hon'ble Tribunal dated May 2001 passed in O.A. Nos. 30, 31 and 61 of 2001, the Respondent No. 4 (the then Respondent No. 3) was removed as a Disciplinary Authority of the Applicant and Shri Vijaya Kumar, IPS, DIG/CBI, Kolkata was appointed as New Disciplinary Authority, who in

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view of the order of this Hon'ble Tribunal dated 9th July 2001 passed in O.A. No. 137/2001 closed the charge sheet dated 11.5.2000 vide his letter dated 18.10.2001. It is pertinent to mention that in other two charge sheets, the Applicant submitted his written statements raising preliminary objections in regard to the maintainability of the charge sheets. No action was taken in the other two charge sheets and no further enquiry took place. It has come to the knowledge of the Applicant that the files pertaining to the aforesaid two charge sheets dated 17.5.2000 and 22.5.2000 were sent for legal opinion and the recommendation was for closing the cases. However, neither the cases have been closed nor the same have been pursued to logical conclusion.

Copy of the letter dated 18.10.2001 issued by the Disciplinary Authority closing the charge sheet dated 11.5.2000 is annexed herewith and marked as ANNEXURE-A/6.

4.29 That the Applicant thereafter received the impugned office order No. 101/2002 dated 12.5.2002 passed by the SP, CBI, Guwahati relieving the Applicant from CBI, Guwahati with immediate effect in the afternoon of 12.5.2002 itself with direction to report to his parent department.

A copy of the aforesaid order of repatriation dated 12.5.2002 is annexed herewith and marked as ANNEXURE-A/7.

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4.30 That being aggrieved by the aforesaid order dated 12.5.2002, the Applicant filed an application being O.A. No. 154/2002 before the Central Administrative Tribunal, Guwahati Bench assailing the legality of the said office order.

4.31 That this Hon'ble Tribunal vide order dated 23.9.2002 dismissed the O.A. No. 154/2002.

4.32 That the Applicant assailed the legality of the order of this Hon'ble Tribunal dated 23.9.2002 passed in O.A. No. 154/2002 in W.P.(C) No. 1338/2003 before the Hon'ble Gauhati High Court. The Hon'ble High Court vide order dated 28.3.2003 issued notice of motion and directed the Respondents not to give effect to the order of Applicant's repatriation during the pendency of the departmental proceeding. It was also directed by the Hon'ble Court that the subsistence allowance, if any due, shall be paid to the Applicant in accordance with the provisions of law.

Copy of the order dated 28.3.2003 passed in W.P.(C) No. 1338/2003 is annexed herewith and marked as ANNEXURE-A/8.

4.33 That the Respondents filed Misc. Case No. 475/2003 in W.P.(C) No. 1338/2003 for vacating the order of stay dated 28.3.2003. The Hon'ble High Court vide order dated 20.1.2004 passed in Misc. Case No. 475/2003 vacated the stay on the order of repatriation,

but made it clear that the other part of the interim order dated 28.3.2003 in regard to payment of subsistence allowance shall remain in tact.

Copy of the order dated 20.1.2004 passed in Misc. Case No. 475/2003 is annexed herewith and marked as ANNEXURE-A/9.

4.34 That subsequently vide order dated 12.3.2004, the Hon'ble High Court dismissed the W.P.(C) No. 1338/2003. On contention of the Applicant that he could not have been repatriated when the order of suspension was operative, the Hon'ble High Court took note of the submission of the Standing Counsel for the CBI to the effect that as a matter of course on the passing of the order repatriating the Applicant to the parent department, the order suspending the Applicant stands revoked. While taking note of the aforesaid submission, the Hon'ble High Court observed that on and from the date the Applicant was repatriated, there was no order of suspension in force and as such, the order of repatriation dated 12.5.2002 was issued in accordance with law.

Copy of the order dated 12.3.2004 passed in W.P.(C) No. 1338/2003 is annexed herewith and marked as ANNEXURE-A/10.

4.35 That on receipt of the order dated 12.3.2004 passed in W.P.(C) No. 1338/2003, the Applicant submitted a representation dated 29.3.2004 to the Deputy Inspector General of Police, CBI NER, Guwahati.

In the representation, the Applicant spoke about the difficulties he would be facing if no formal order of revocation of suspension is passed. The Applicant also highlighted the fact that he was not paid arrears of salary including increments, bonus, extra salary, medical bills, LTC, transfer allowance etc. for the period of suspension. This was followed by another representation dated 12.5.2004.

Copies of the representations dated 29.3.2004 and 12.5.2004 are annexed herewith and marked as ANNEXURE-A/11 colly.

4.36 That the Applicant has not been paid the following dues by the borrowing authority for the period he was in their service :

- (a) Balance salary @ 50% w.e.f. 26.4.2000 as during period of suspension only 50% subsistence allowance was given without its revision to 75% after 3 months as per FR 53.
- (b) Non-payment of 13 months salary outstanding for the year 2000, 2001, 2002 and 2003 respectively.
- (c) Non-granting of increment fell due in Sept. 2000 2001, 2002 and 2003.
- (d) Non-payment of Medical reimbursement of approximately Rs.18000/-.
- (e) Non-payment of any transfer allowance advance etc. before release in order to enable the Applicant

join his parent cadre at Lucknow, as owing to more than two years of suspension and non-revision of subsistence allowance from 50% to 75% the Applicant do not have even fund to proceed to Lucknow and join parent cadre as ordered.

4.37 That in response to the representation of the Applicant, the Respondent No. 3 requested the Applicant for a personal hearing on 1.7.2004 vide letter dated 28.6.2004.

4.38 That accordingly on 1.7.2004, the Applicant personally appeared before the Respondent No. 3 and briefed the Respondent No. 3 about his claims and the difficulties he is facing in the absence of any formal order revoking the suspension. The Applicant also appraised the Respondent No. 3 that his parent department at Lucknow has denied joining to the Applicant on the ground that there is no formal order revoking suspension by the borrowing authority coupled with the fact that the borrowing authority has not taken appropriate steps regarding issuance of no dues certificate, last pay certificate and an appropriate relieving order, all of which are necessary for the purpose of allowing the Applicant to join in the parent department. In this connection, Applicant also submitted the representation dated 1.7.2004 to the Respondent No. 3.

Copy of the representation dated 1.7.2004 is annexed herewith and marked as ANNEXURE-A/12.

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4.39 That unfortunately, the Respondent No. 3 failed to appreciate the true import and purpose behind the representations of the Applicant dated 29.3.2004, 12.5.2004 and 1.7.2004. It was felt by the Respondent No. 3 that the Applicant is challenging the legality of the order of repatriation dated 12.5.2002 and as such, placing reliance on the order of the Hon'ble High Court dated 12.3.2004 passed in W.P.(C) No. 1338/2003, the Respondent No. 3 disposed of the representation of the Applicant vide communication dated 13.8.2004 denying him any relief in regard to issuance of the formal order of revocation of suspension.

Copy of the communication dated 13.8.2004 is annexed herewith and marked as ANNEXURE-A/13.

4.40 That after passing the order of repatriation dated 12.5.2002, the borrowing authority of the Applicant despatched all the materials pertaining to the disciplinary proceeding of the Applicant in regard to charge sheets dated 17.5.2000 and 22.5.2000 to the lending authority of the Applicant expecting the latter to take the same to their logical conclusion. However, it has been reliably learnt by the Applicant that the Inspector General, Provincial Armed Constabulary Hq. Mahanagar Lucknow vide letter dated 27.7.2004 sent the case files of the Applicant back to the borrowing authority stating inter alia that the departmental action proposed by the borrowing authority was in regard to the internal matter of the borrowing

authority and as such, the same can only be decided by the borrowing authority. Though the copy of the aforesaid letter was not given to the Applicant, but the Applicant had the occasion to see the copy of the aforesaid letter and he could note down the relevant contents of the same. The aforesaid letter, to the extent possible, is quoted hereinbelow :

"To

Date : 27.7.04

The Supdt. of Police,
Central Bureau of Investigation,
Govt. of India,
R.G. Barua Road, Bye Lane No.1,
Sunderpur, Guwahati-5.

Subject : Transfer of RDA Case of Sri S.P. Singh
Yadav, Inspector at present on deputation to
CBI/ACB, Guwahati.

Sir,

Please refer to your letter dated 10.6.2004 and 17.6.2004 addressed to DGP, U.P. on the subject cited above sending therewith files relating to departmental action against Inspector S.P. Singh Yadav.

It is to inform that departmental action proposed by the CBI are related to internal matter of your unit. It can only be decided by the CBI itself.

Therefore the following files sent by your letter cited above are being returned for taking decision in the matter :

- 6 Nos. of files -

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As already requested by this office letter of even No. dated 12.9.2000, the action proposed against Sri S.P. Singh Yadav, Inspector on deputation to CBI may please be completed by CBI itself and decision be taken accordingly. Character Roll and Service Book of Shri S.P. Singh Yadav are being sent to you along with this letter for upto dating and further action at your end.

Sd/-
Inspector General

PAC, Hq. Mahanagar
Lucknow, U.P.

Copy to :

- i) DIG/PHQ, Allahabad
- ii) IG/Establishment, DGP, HQ, Lucknow, U.P."

4.41 That the Respondent No. 3 in her communication dated 13.8.2004 conveniently ignored the consequences arising out of the communication dated 27.7.2004 of the Inspector General, PAC, Lucknow. In fact no mention was made of the communication dated 27.7.2004 in the communication dated 13.8.2004 of the Respondent No.3.

4.42 That in the context of the above, it will be apposite to refer to Rule 13 of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961 (hereinafter referred to as "the Rules"). Rule 13 of the Rules deals with provision regarding officers borrowed from State Government. Sub-rule (3) of Rule 3 provides that when the Disciplinary Authority is of opinion that a subordinate Police

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Officer whose services have been borrowed from the State Government is guilty of misconduct so as to warrant the imposition of any of the penalties specified in clauses (vii) to (x) of Rule 6, it may, at its discretion, revert such subordinate Police officer to the lending authority without holding any enquiry at all and report the details of the case to the lending authority for such action as it deems necessary.

4.43 That it is an admitted position that the charge sheets dated 17.5.2000 and 22.5.2000 were issued against the Applicant under Rule 8 of the Rules for imposing major penalties as provided under Rule (vii) to (x) of Rule 6. The Central Bureau of Investigation is an establishment of the Central Government. In regard to disciplinary matters, the Rules of 1961 have been made applicable to the CBI. So far as the U.P. Police is concerned, there are separate set of Rules. Both the U.P. Police and the Central Bureau of Investigation enjoy powers independent of each other in their respective domains. One is not under the control of the other. Therefore, it is obvious that neither the CBI can dictate terms to the U.P. Police or vice versa.

4.44 That under Rule 13(3) when the CBI authority decided to exercise the power and despatched the case files pertaining to the disciplinary proceeding of the Applicant to the U.P. Police, it made a grave error of law by not withdrawing the charge sheets dated 17.5.2000 and 22.5.2000. The language of Rule 13, sub-rule (3) makes it clear that the CBI authority can

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only report the details of the case to the lending authority for such action as it deems necessary. Therefore, the CBI cannot dictate the lending authority compelling it to take action. It is for the lending authority to decide about taking any action in the matter if it deems it necessary. Non-withdrawal of the charge sheets dated 17.5.2000 and 22.5.2000 was an indication of the fact that the CBI authority did not leave anything for the lending authority to decide and it dictated the lending authority to proceed de novo from the stage upto which the proceedings were completed by the borrowing authority. Once the Applicant is repatriated to his parent department, the Disciplinary Authority of the Applicant in the parent department exercises its powers under separate statutory rules. The Disciplinary Authority of a lending department has its own statutory powers and discretion to exercise and it cannot be guided or compelled or dictated by the Disciplinary Authority of a borrowing department to act or not to act in a given manner.

4.45 That possibly, it was in view of the above that the State of U.P. sent back the case files of the Applicant to the borrowing authority stating that as the matter was in regard to its own internal functioning, therefore, the disciplinary proceeding should be taken to its logical conclusion by the borrowing authority itself. Under these circumstances, now it becomes incumbent for the borrowing authority

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i.e. the CBI to complete the disciplinary proceeding against the Applicant without any further delay.

4.46 That under law if it is held that it is incumbent for the Respondents to complete the disciplinary proceeding against the Applicant, then it would necessarily follow that payment of salary and other allowances to the Applicant till the disciplinary proceeding is completed, have to be paid by the borrowing authority.

4.47 That the O.A. No. 154/2002 and the W.P.(C) No. 1338/2003 dealt with the issue of the Applicant's right of absorption in CBI and lack of proper consideration of his case for such absorption. The legality of the order of repatriation was challenged on the ground that the same was passed without properly considering the Applicant's case for absorption. Legality of the action of the CBI of sending the case files pertaining to the disciplinary proceeding of the Applicant to the U.P. Police was not the issue either before the Tribunal in O.A. No. 154/2002 or before the Hon'ble High Court in W.P.(C) No. 1338/2003. As to how the period of suspension is to be treated and as to who will pay the salary and allowances of the Applicant for the period of Applicant's suspension was also not the issue before the Hon'ble High Court.

4.48 That the order of suspension was passed against the Applicant in malafide exercise of power. Similarly, the disciplinary proceedings were also initiated in

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malafide exercise of power. When the Respondents realised that they will not be able to take the disciplinary proceeding to their logical conclusion because of the baselessness of the allegations, the responsibility was shifted in an illegal manner to the lending authority thereby victimising the Applicant.

4.49 . That from the facts and circumstances of the present case, it is evident that the order of Applicant's suspension dated 26.4.2000 was passed in malafide exercise of power. The sole motive behind passing the order of suspension was the harassment of the Applicant. Most of the proceedings which were initiated against the Applicant had either been dropped or set aside. Only two memorandum of charges issued against the Applicant are still alive, but even there this Hon'ble Tribunal had clearly opined that the disciplinary proceeding in question are not legally tenable. Hence, the order of suspension dated 26.4.2000 is ex-facie illegal and arbitrary and the same is liable to be quashed and set aside.

4.50 That though the order of Applicant's repatriation is dated 12.5.2002, but till 19.1.2004, there was stay order of the High Court against the order of repatriation. It was only on 20.1.2004 that the Hon'ble High Court vacated the order of stay dated 28.3.2003. Moreover, even in the order dated 20.1.2004, the Hon'ble Gauhati High Court reiterated the right of the Applicant to receive subsistence allowance making it

clear that the order of suspension of the Applicant was operative.

4.51 That it was only vide order dated 12.3.2004 that the Hon'ble High Court dismissed the W.P.(C) No. 1338/2003 filed by the Applicant and on the basis of the submission of the Standing Counsel for the CBI observed that as a matter of course on the passing of the order repatriating the Applicant to the parent department, the order suspending the Applicant stands revoked. However, the difficulties had arisen because the parent department of the Applicant is insisting on certain basic formalities. Unfortunately for the reasons not known, the borrowing authority is shying away from carrying out these formalities which are sine qua non for ensuring Applicant's smooth joining in his parent department.

4.52 That notwithstanding the order of the Hon'ble High Court dated 12.3.2004 that as a matter of course on the passing of the order repatriating the Applicant to the parent department, the order suspending the Applicant stands revoked, the question would still remain as to till what period the Applicant would be entitled to get subsistence allowance/salary from the borrowing authority. Would it be only upto 12.5.2002 when the order of repatriation was passed or it will be upto 12.3.2004 when the Hon'ble High Court by its order tried to clear the mist over the status and position of the Applicant. Be that as it may, it is incumbent on

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the borrowing authority to discharge its duty under the provisions of the Fundamental Rules and to pass appropriate orders clearing the dues of the Applicant and clarifying as to how the period of Applicant's suspension should be treated.

4.53 That the Applicant by submitting representations to the official Respondents tried to get his grievances redressed, but without success. Hence, being left with no other alternative, the Applicant is approaching this Hon'ble Tribunal for the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 Because the impugned order of Applicant's suspension dated 26.4.2000 has been passed in malafide exercise of power and the same is not sustainable in law.

5.2 Because the impugned order of suspension dated 26.4.2000 is arbitrary and illegal as there was no basis behind passing such an order.

5.3 Because after passing the order of Applicant's repatriation dated 12.5.2002 it was incumbent on the Respondents to pass the formal order revoking the suspension of the Applicant and clarifying as to how the period of Applicant's suspension would be treated.

5.4 Because before passing the order of Applicant's repatriation, it was incumbent upon the Respondents to clear the various dues of the Applicant including his

balance salary @ 50% with effect from 26.4.2000 upto 12.5.2002 and full salary from 12.5.2002 upto the date of revocation of suspension order to be passed or at least upto 12.3.2004 when the W.P.(C) was decided, payment of 13 months salary outstanding for the year 2000, 2001, 2002 and 2003 respectively, granting of increment fell in September, 2000, 2001, 2002 and 2003, payment of medical reimbursement for an amount of approximately Rs.18,000/- and transfer allowance payment of the bonus due for the year 2001, 2002, 2003 etc.

5.5 Because the Respondents acted arbitrarily by not issuing proper relieving order of the Applicant. It was also incumbent on the Respondents to issue no due certificate, last pay certificate of the Applicant etc.

5.6 Because it is incumbent on the Respondents under the provisions of the Fundamental Rules to not only clear the dues of the Applicant, but also clarify as to how his period of suspension would be treated.

5.7 Because the impugned action of the Respondents is contrary to the provisions of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961.

5.8 Because failure of the Respondents to withdraw the charge sheets dated 17.5.2000 and 22.5.2000 and sending the case files of the Applicant pertaining to the disciplinary proceeding to the lending authority for

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pursuing the disciplinary proceeding de novo, is contrary to the scheme of Rule 13 of the 1961 Rules.

5.9 Because once the lending authority has sent back the case files of the Applicant pertaining to the disciplinary proceeding, to the borrowing authority, it has now become necessary for the borrowing authority to take the disciplinary proceeding to its logical conclusion without any further delay.

6. DETAILS OF REMEDIES EXHAUSTED :

That in the present case, no other adequate alternative remedy is available to the Applicant under law.

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 of suspension dated 26.4.2000 with direction to treat the period of Applicant's suspension to be on duty with further direction to the Respondents to pay all the consequential benefits to the Applicant for the

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period of suspension and upto the formal revocation of the order of suspension.

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8.2 Direct the Respondents to complete the disciplinary proceeding pertaining to the charge sheets dated 17.5.2000 and 22.5.2000 without any further delay and/or in the alternative direct the Respondents to withdraw the charge sheets dated 17.5.2000 and 22.5.2000 and to act strictly in compliance with the requirements of Rule 13(3) of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961.

8.3 Quash and set aside the order/communication No. 2000/307/2003-NER dated 13.8.2004 issued by the Respondent No. 3.

8.4 Direct the Respondents to pay the following dues :

X (a) Balance salary @ 50% w.e.f. 26.4.2000 upto 12.5.2002. (As during period of suspension only 50% subsistence allowance was given without its revision to 75%).

X (b) Due salary from 12.5.2002 upto the formal revocation of the order of suspension and/or issue of relieving order and/or upto 12.3.2004 when the Hon'ble High Court in its order held that the suspension of the Applicant should be deemed to have been revoked.

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- (c) Payment of 13 months salary outstanding for the year 2000, 2001, 2002 and 2003 respectively.
 - (d) Grant of increment, due from Sept. 2000, 2001, 2002 and 2003 with payment of corresponding arrear.
 - (e) Payment of Medical reimbursement of approximately Rs.18000/-.
 - (f) Payment of any transfer allowance advance etc.
 - (g) Payment of due bonus for the year 2000, 2001, 2002 and 2003.
 - (h) Cash compensation for the earned leave not availed for the year 2000, 2001, 2002, 2003 and 2004.

8.5 Pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

8.6 Award cost of the application.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, be further pleased to direct the Respondents to issue relieving order of the Applicant with no due certificate and last pay certificate so as to enable the Applicant to join his parent department.

10.

The Application is filed through Advocate.

12/11/2004

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

- (i) I.P.O. No. : 206 113569
(ii) Date : 19.8.2004
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

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

I, Suresh Pal Singh Yadav, son of Late Netra Pal Singh Yadav, aged about 50 years, resident of Dorothy Apartment, 4th Bye Lane, ABC, Tarun Nagar, G.S. Road, Guwahati, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.2, 4.3, 4.4, 4.6, 4.9, 4.13, 4.16, 4.18, 4.23, 4.30, 4.35, 4.36, 4.38, 4.41, 4.47, 4.48, 4.49, 4.50, 4.51, 4.52, 4.53 are true to my knowledge ; those made in paragraphs 4.5, 4.7, 4.8, 4.10, 4.11, 4.12, 4.14, 4.15, 4.17, 4.19, 4.20, 4.21, 4.22, 4.24, 4.25, 4.26, 4.27, 4.28, 4.29, 4.31, 4.32, 4.33, 4.34, 4.37, 4.39, 4.40 being matters of records are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. The grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 23rd day of August 2004 at Guwahati.

Suresh Pal Singh Yadav.

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CENTRAL BUREAU OF INVESTIGATION
EAST ZONE : KOLKATA

Tel : (033) 2247-8496 Fax : (033) 2240-0232

e.mail : jdeast@cbi.nic.in**ORDER**Office Order No. 28/2004

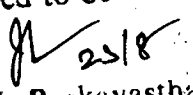
Dated :: 30-04-2004.

Whereas SP/CBI/Guwahati vide No.DP SHIL/1999/0021/A/20/157/93 dated 10.1.2000 had issued a Memorandum proposing to take action against Shri S.P.Singh Yadav, the then Inspector of Police, CBI, Guwahati Branch (Since repatriated), hereinafter referred to as the Appellant, under Rule 9 of the Delhi Special Police Establishment (Subordinate ranks) (Discipline and Appeal) Rules, 1961 for contravening Rule 3 (1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. The Appellant submitted his written explanations dated 17.1.2000 and 21.1.2000 in reply to the said Memorandum.

2. Whereas, the DIG/CBI/Guwahati vide his Order communicated under letter No.361/A/20/157/93 dt. 2.2.01, after examining the above said two explanations of the Appellant imposed a penalty of stoppage of three increments with cumulative effect in the pay of the Appellant. As the Appellant was under suspension w.e.f. 26.4.2000 and was not earning any increment, the above said order of the DIG/CBI/Guwahati was not implemented.

3. Whereas, the Appellant vide his letter dated 13.4.2001 appealed under Rule 15 of the D.S.P.E. (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 before the Additional Director, CBI, Kolkata, who was then holding the charge of JD (East), CBI, Kolkata for setting aside the above said order of the DIG/CBI/Guwahati, which was also followed by reminder dated 31.7.2001 of the Appellant.

Certified to be true copy


(J. Purkayastha)
Advocate

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4. The Additional Director, CBI, Kolkata, after considering the appeal of the Appellant, directed the DIG/CBI/Guwahati to keep the punishment imposed on the Appellant suspended until further orders vide I.D.No. 860/1/Admn./Disp/EZ/2000 dated 12.7.2001.

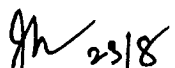
5. Whereas, the Appellant filed OA No.68 of 2004 before the Central Administrative Tribunal (CAT), Guwahati Bench, Guwahati praying for final disposal of his appeal. The CAT, Guwahati Bench vide its ex-parte order dated 2.4.04 has directed the Respondents to dispose of the appeal within a period of 3 months from the date of receipt of the order. The Appellant vide his letter dated 8.4.2004 received in the Office of the undersigned on 12.4.2004 has sent a copy of the above said order of the CAT for necessary action.

6. Now, therefore, the undersigned being the Appellate Authority has considered the above said appeal of the Appellant.

7. That in the instant case, SP/CBI/Guwahati, who is competent to impose minor penalty on the Appellant had issued the above said Memorandum on the Appellant proposing to impose minor penalty under Rule 9 of the DSPE (Subordinate Ranks) (Discipline and Appeal) Rules, 1961, whereas the DIG, who is the Appellate Authority as per the Schedule to the above said Rules had imposed the penalty. The said rules are silent as to whether this is permissible or not. Therefore, the instant case may be decided as per the relevant provisions of the CCS (CCA) Rules, 1965. As per Rule 12 of the CCS (CCA) Rules, 1965 a penalty can be imposed only by the prescribed Punishing Authority and the Appellate Authority or any other Authority, higher than the appropriate Punishing Authority, can not exercise any concurrent original disciplinary jurisdiction.

8. That though as per Rules 9 of the DSPE (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 and Rule 11 of the CCS (CCA) Rules, 1965 with-holding of increment is a Minor Penalty, the Hon'ble Supreme Court in

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(J. Purkayastha)
Advocate

the State of Punjab and Others - Vs - Ram Lubhaya Bagga etc. has held that "withholding of increments with cumulative effect" is a major penalty. In the instant case, though the said major penalty was imposed on the Appellant vide the above said impugned order of the DIG, CBI, NER, Guwahati, the procedure for imposing a major penalty, as prescribed in Rule 8 of the DSPE (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 was not followed.

9. Now, therefore, the undersigned, after considering the above facts and all other material carefully, is of the opinion that the proper procedure as prescribed in the DSPE (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 was not followed in imposing the above said penalty on the Appellant.

Accordingly, the impugned order of the DIG, CBI, Guwahati, communicated to the Appellant under No. 361/A/20/157/93 dated 2.2.2001, is hereby set aside.

K.P.P. Rao
(K.P.P. Rao) 20/01/2001
Joint Director (East)
CBI : Kolkata

Certified to be true copy

J. Purkayastha
(J. Purkayastha)
Advocate

-38- ANNEXURE - A/2

CENTRAL BUREAU OF INVESTIGATION,
N.E. REGION : GUWAHATI.

O R D E R

Whereas a disciplinary proceeding against Shri Suresh Pal Singh Yadav, Inspector, CBI, ACB, Guwahati is contemplated (Ref. CBI ID No. 821/12/COMP/SLC/NER dated 28.3.2000).

Now, therefore, the undersigned in exercise of the powers conferred by Sub-rule (1) of Rule 5 of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961, hereby places the said Shri Suresh Pal Singh Yadav, Inspector, CBI, ACB, Guwahati under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of Shri Suresh Pal Singh Yadav, Inspector, CBI, ACB, Guwahati should be Guwahati and the said Shri Suresh Pal Singh Yadav, shall not leave the headquarters without obtaining previous permission of the undersigned.

(K.C. Kanungo),

By. Inspector General of Police,
CBI, N.E. Region, Guwahati.

To Shri S.P. Singh Yadav, Inspector, CBI ACB,
Guwahati.

(Through Supdt. of Police, CBI, ACB, Guwahati.)

CBI ID No. 1191 /12/COMP/SLC/NER/99 Dated: 26.4.2000

Copy to the Director General of Police, Uttar Pradesh, Lucknow, alongwith a copy of CBI ID No. 821/12/COMP/SLC/NER Dt. 28.3.2000, for favour of information.

2. Copy to the Joint Director (East Zone), CBI, Calcutta alongwith a copy of CBI ID No. 821/12/COMP/SLC/NER dt. 28.3.2000 for favour of information.

3. Copy to SP CBI ACB Guwahati for keeping in the Personal File of Inspector S.P. Singh Yadav, CBI, ACB, Guwahati.

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(J. Purkayastha)
Advocate

39- ANNEXURE-A/3 Co

NO. 1477 /12/COMP/SLC/NER/99/(PT.III),
02001 Government of India,
Central Bureau of Investigation,
N.E.Region, Guwahati -781 0003.

Dated 17/5/2000.

MEMORANDUM.

The undersigned proposes to hold an Inquiry against Shri Suresh Pal Singh Yadav (@ S.P.Singh Yadav), Inspector, CBI, ACB, Guwahati (under suspension) under rule 8 of The Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1964. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of Charge (Annexure - I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed in [Annexure-II(i) and Annexure-II(ii)].

2. Shri S.P.Singh Yadav is hereby 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 inquiry will be held only in respect of those articles of charge as that are not admitted by him. He should, therefore, specifically admit or deny each article of charge.

4. Shri S.P.Singh Yadav, Inspector (Under suspension) is further informed that if he does not submit his written statements 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 with the provisions of the Rules Orders/ directions issued in pursuance of the said rule, the inquiry authority may hold the inquiry against him exparte.

5. Attention of Shri S.P.Singh Yadav, Inspector (U/S) is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government 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

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service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri S.P.Singh Yadav, Inspector is aware of such a representation and that it has been made at his instance and action will be taken against him for such violation.

6. Receipt of the Memorandum should be acknowledged.

Enclo: As stated
(Five Sheets)

(K.C.Kanungo)
Dy.Inspector General of Police,
CBI, N.E.Region, Guwahati.

✓ To
Shri S.P.Singh Yadav, Inspector (U/S)
CBI, ACB, Guwahati.
(Through SP CBI ACB Guwahati)

Endt. No. 1477 /12/COMP/SLC/NER/99/(PT.III) Dated: 17/5/2000

Copy for information to:-

1. Director General of Police, U.P., Lucknow. This refers to our earlier communication No.1192/12/COMP/SLC/NER/99 Dt. 26.4.2000.
2. Joint Director(East Zone), C.B.I., Calcutta. This refers to this office ID No.1193/12/COMP/SLC/NER/99 dated 26.4.2000.
3. Supdt. of Police, CBI, ACB, Guwahati.

(K.C.Kanungo),
Dy.Inspector General of Police,
CBI, N.E.Region, Guwahati.

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(J. Purkayastha)
Advocate

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ANNEXURE-I

ARTICLE OF CHARGES FRAMED AGAINST SHRI SURESH PAL SINGH
YADAV, INSPECTOR, CBI ACB GUWAHATI (UNDER SUSPENSION)

ARTICLE OF CHARGE NO.1.


That Shri Suresh Pal Singh Yadav @ S.P.Singh Yadav while being posted and functioning as Inspector, CBI, ACB, Guwahati during the year, 1996 to 1999 showed lack of devotion to duty and acted in an unbecoming manner in as much as did not submit Weekly Diary/ Monthly Diary for the whole year of 1997, even after several reminders were issued to him by the Supdt. of Police, CBI, ACB, Guwahati Branch and he thereby contravened provision of Rule 3(1)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE OF CHARGE No.2

That Shri Suresh Pal Singh Yadav while working as Inspector CBI, ACB, Guwahati Branch in the year 1999 submitted weekly Diaries showing that he had conducted investigation on various dates in RC.5(A)/98-SHG though on those dates no case Diary was issued by him in RC.5(A)/98-SHG, showing thereby that he either did not conduct investigation in R.5(A)/98-SHG on those dates or else he had shown gross negligence and lack of integrity by not submitting Case Diaries on those dates in the said case and thus contravened provision of Rule 3(1)(i)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

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ANNEXURE -II (i).

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF
ARTICLE OF CHARGE NO.I FRAMED AGAINST SHRI SURESH PAL SINGH
YADAV, INSPECTOR, CBI, ACB, GUWAHATI, (UNDER SUSPENSION).

1. That Shri Suresh Pal Singh Yadav, was working as Inspector, in the office of SP, CBI, ACB Guwahati during 1996 to 1999.

2. That as Inspector of CBI it was one of his important duties to submit Weekly Diaries/ Monthly Diaries to the office of SP CBI ACB Guwahati branch regularly.


3. That said Shri Suresh Pal Yadav @ S.P.Singh Yadav did not submit his Weekly Diaries for the whole year 1997.

4. Several reminders were issued to him by office of SP CBI ACB Guwahati, but to no effect.

5. That vide letter No.SPSY/4155 dt. 30.6.97(1st.Reminder), Shri S.P.Singh Yadav was directed by SP CBI ACB Guwahati to submit his Weekly Diaries w.e.f. 30.12.96 to 31.5.97 immediately but he did not pay heed to the above reminder, and did deliberately submit Weekly Diaries / Monthly Diaries.He also did not give any reply explaining his difficulties , if any in this regard, though there could be generally no such difficulties.

6. That as said Shri S.P.Singh Yadav did not submit Weekly Diaries /Monthly Diaries. SP CBI ACB Guwahati issued 2nd. reminder vide No.MD/SPSY/97/5028 dt. 11.8.97, directed him once again to submit his Weekly Diaries / Monthly Diaries w.e.f. 30.12.96 to 31.5.97 but again Shri S.P.Singh Yadav did not take any note of the said reminder and nor

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did comply with the order of the SP.

7. That the SP CBI ACB Guwahati, issued 3rd. reminder to Shri S.P.Singh Yadav ^{vide no MD/SPSY/97/5870 dated 24.9.97} once again directing him to submit his Weekly Diaries / Monthly diaries w.e.f. 30.12.96 to 31.5.97 but this reminder too fell flat on him and the Inspector did not bother to submit his Weekly Diaries.

8. That another reminder was issued to Shri S.P.Singh Yadav by SP CBI ACB Guwahati, by way of 4th. reminder vide No.MD/SPSY/97/907 dt.9.2.98 directing him to submit his up-to-date Weekly Diaries w.e.f. 30.12.96 which again was of no consequence to him.

9. In view of the above gross careless, negligent conducts and defiance of the order of SP CBI ACB Guwahati by Shri S.P.Singh Yadav, he was called upon to explain, by DIG CBI NER Guwahati, vide No.753/12/COMP/SLC/NER dt. 22.3.2000, as to why departmental proceedings should not be started against him and he should not be kept under suspension for such deliberate misconduct and gross negligence on his part but even then Shri S.P.Singh Yadav did not bother to the above Memo. of DIG CBI NER, Guwahati.

10. That in the manner aforesaid Shri S.P.Singh Yadav showed gross negligence and utter defiance and casual attitude in the performance of his duty and insubordination and thus contravened Rule 3(1)(i)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

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ANNEXURE-II(ii)

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF
ARTICLE OF CHARGE NO.II FRAMED AGAINST SHRI SURESH PAL
SINGH YADAV, INSPECTOR, CBI, ACB, GUWAHATI, (UNDER SUSPENSION).

1. That Shri Suresh Pal Singh Yadav @ S.P.Singh Yadav was functioning as Inspector, CBI, ACB Guwahati during year, 1999.
2. That said Shri S.P.Singh Yadav was required to submit Weekly Diaries/ Monthly Diaries indicating actual work done by him on day to day basis.
3. That persual of Weekly Diaries of Shri S.P.Singh Yadav for the year, 1999 showed that he had shown to have conducted investigation on various dates during 1999 in RC.5(A)/98-SHG but when the Case Diary file of RC.5(A)/98-SHG was checked it was found that no Case Diaries was submitted by him on the following dates, though these were shown in his weekly diaries.

(1)	25.2.99	(19)	6.7.99
(2)	10.3.99	(20)	8.7.99
(3)	17.3.99	(21)	12.7.99
(4)	19.3.99	(22)	13.7.99
(5)	24.3.99	(23)	3.8.99
(6)	3.4.99	(24)	4.8.99
(7)	30.4.99	(25)	24.8.99
(8)	7.5.99	(26)	27.8.99
(9)	13.5.99	(27)	8.9.99
(10)	29.5.99	(28)	9.9.99
(11)	4.6.99	(29)	<u>21.9.99</u>
(12)	8.6.99	(30)	27.9.99
(13)	11.6.99	(31)	02.11.99
(14)	14.6.99	(32)	26.11.99
(15)	15.6.99	(33)	<u>28.12.99</u>
(16)	17.6.99	(34)	2.7.99
(17)	24.6.99	(35)	5.7.99
(18)	3.7.99		

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4. That explanation of Shri S.P.Singh Yadav was called for by DIG vide Memo. No.751/12/COMP/SLC/NER dt. 22.3.2000 for explaining immediately why Disciplinary Action should not be taken against him and why on the aforesaid dates shown in his Weekly Diaries in which he had conducted investigation in RC.5(A)/98-SHG but did not submit any Case Diary, those dates should not be treated as dies non but Shri S.P.Singh Yadav did not bother to submit any explanation.

5. That in the manner above, Shri S.P.Singh Yadav by submitting false Weekly Diaries and by showing gross negligence and malafide intention in not having submitting Case Diaries on the aforesaid dates in RC.5(A)/98-SHG showed lack of integrity and devotion to duty and contravened Rule 3(1)(i),(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

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(J. Purkayastha)
Advocate

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No. 1516 / 12 / COMP / SLE / NER / (P-11)

Government of India
Central Bureau of Investigation
N.E. Region, Guwahati: 781 003

Dated... 22.5.2000

MEMORANDUM

The undersigned proposes to hold an Inquiry against Shri S.P. Singh Yadav, Inspector, CBI, ACB, Guwahati (under suspension), under Rule. 8 of The Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal Rule 1961). The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of article of charge is enclosed (Annexure II).

2. Shri S.P. Singh Yadav is hereby directed to submit, within 10 days of the receipt of this Memorandum, a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held in respect of the articles of charge as are not admitted. He should, therefore, specifically admit or deny the article of charge.

4. Shri S.P. Singh Yadav, Inspector (u/s) is further informed that if he does not submit his written statement of defence on or before the date specified in para. 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of the Rules orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri S.P. Singh Yadav, Inspector (u/s) is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government 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

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(J. Purkayastha)
Advocate

his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri S.P. Singh Yadav, Inspector is aware of such a representation and that it has been made at his instance and action will be taken against him for such violation .

6. The receipt of the Memorandum should be acknowledged.

10/02/2018
K.C. Kanungo

(K.C. Kanungo)

DIG CBI NER Guwahati

Name and designation of Competent Authority

To

✓ Shri S.P. Singh Yadav, Inspector(U/S)
CBI, ACB, Guwahati
(Through SP, CBI, ACB, Guwahati)

Encl:

Annexure:I and Annexure:II

(Page 1 to 7)

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Advocate

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ANNEXUR: I

**ARTICLE OF CHARGE FRAMED AGAINST SHRI SURESH PAL SINGH YADAV, INSPECTOR
CBI ACB GUWAHATI (NOW UNDER SUSPENSION)**

That Shri S.P. Singh Yadav, Inspector, (Sub. Inspector of U.P. Traffic Police on deputation to CBI as Inspector), while functioning as such in ACB, Guwahati Branch during 1996 to 1999 committed gross misconduct by failing to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of him in as much as he, who was entrusted with investigation of RC.27(A)/96-SHG dt. 12.7.96 against Shri Purna Kanta Borah, Supdt. Engineer, ONGC, Nazira registered, u/s 13(2) r/w 13(i)(e) of P.C. Act, 1988 without investigating the case properly, recommended for its closure, apparently with malafide intention, showing gross negligence and lack of devotion to duty and thereby contravened Rule 3(1)(i), (ii) & (iii) of CCS conduct Rules, 1964.

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Advocate

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ANNEXURE:II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE
AGAINST SHRI S.P. SINGH YADAV, INSPECTOR CBI ACB GUWAHATI (NOW UNDER
SUSPENSION)

(1) That Shri S.P. Singh Yadav, (a Police S.I. on deputation from U.P. Traffic Police) was working as Inspector in ACB, CBI, Guwahati Branch during 1996 to 1999.

(2) That a case vide RC. No. 27(A)/96-SHG was registered in CBI, Guwahati Branch on 12.7.96 against Shri Purna Kanta Bora @ P.K. Borah, Supdt. Engineer, ONGC (here in after to be referred to as S.O.) for allegedly having acquired assets disproportionate to his known sources of income, u/s 13(2) r/w 13(i)(e) of PC Act, 1988 and the investigation of this case was entrusted to Said Shri S.P. Singh Yadav. (Here in after to be referred to as I.O.)

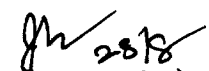
(3) It was alleged in this F.I.R. that during 1986 to 1999, said Shri P.K. Borah (S.O.), had earned total income of Rs. 4,68,386.00 from all his sources while his assets were to the tune of Rs. 4,74,313.00. The S.O. had incurred an expenditure, (1/3 of his total income) during the above period to the tune of Rs. 1,56,000/- and as such S.O. was alleged to have acquired and was in possession of assets disproportionate to his known sources of income, to the tune of Rs. 1,62,155/- punishable u/s 13(2) r/w 13(i)(e) of P.C. Act, 1988.

(4) During investigation of this case searches were conducted on 10/10/96 at various places including residence and office of S.O. Inventories of House hold goods were also prepared.

(5) The CD file and FR(i) of the above case submitted by Shri S.P. Singh Yadav, Inspector show that the I.O. did not conduct investigation of this case in proper manner, making a total mess of the investigation. He extended the check period beyond what was mentioned in the FIR, although short check period should have been selected, keeping in view, the acquisition of major assets by the S.O, which in this case was confined to a period of 8 years (approx) from 1986 to March, 1994 as mentioned in the FIR. It could have been further reduced by proper analysis but I.O. unnecessarily extended it upto December, 1977. Though on papers, he had taken the check period from 23/08/80 to 10/10/96, but virtually it was extended upto 31/12/97.

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Advocate

(6) A comparison of movable assets of SO as mentioned in the FIR and of what was actually found by IO as mentioned in his FIR(i) are given below:

Sl.No.	Item	Value movable assets (Shown in the F.I.R)	Value of Movable Assets as finally calculated by IO in F.R(i)
(i)	NSCs	Rs.80,000.00	Rs.55,000.00
(ii)	NSS	Rs.20,000.00	Nil
(iii)	UTI	Rs.10,000.00	Rs.20,000.00
(iv)	Jivandhara	Rs.14,800.00	Rs.14,800.00
(v)	Bank Balances	Rs.44,013.00(2 accounts) (A/c No.443 & 838)	Rs.58,095.00 (5 A/cs)
(vi)	Motor Cycle	Rs.31,500.00	Rs.31,000.00
(vii)	Car	Rs.1,00,000.00	Rs.1,50,000.00
(viii)	Firm Equipments	Rs.12,000.00	Rs.12,000.00
	Total:	Rs.3,12,313.00	Rs.3,30,895.00

(7) Moreover, movable assets which were not shown in the FIR , but found out by the I.O. during investigation and included in the Final calculation of Assets by I.O. as mentioned in the F.R(i) are as under:

(i)	Share	Rs.40,500.00
(ii)	Onida TV	Rs.22,700.00
(iii)	Refrigerator	Rs.13,000.00
(iv)	Booking of Fiat UNO	Rs. 2,300.00
(v)	Cash	Rs. 17,000.00
(vii)	IDBI Bond	Rs. 5,300.00
		Rs.1,00,800.00

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Advocate

(8) Therefore, the total value of movable assets found out by the I.O. during investigation, as mentioned above under para 6 and para 7 above was Rs.3,30,895/- + Rs.1,00,800 = Rs.4,31,695/-

(9) Thus there had been increase in value and number of movable assets by Rs. 1,19,382/- as found out by the I.O. during investigation, and as mentioned in the F.R(i)

(10) In case of immovable assets also the values of which was shown as Rs. 1,62,000/- in the F.I.R, consisting of two plots of land, increased upto Rs. 4,02,000.00. This increase in value of immovable assets of S.O. was primarily on account of booking of a flat by S.O's wife at Delhi for which a sum of Rs.2,28,000.00 was paid to the housing Co-operative society at Delhi, during the check period, but the latter asset was not taken into account by the I.O. in the F.R(i), while making final calculation.

(9) The investigation had thus disclosed that the S.O. had deliberately concealed the above payment made to the Co-operative Society at Delhi by his wife, as well as other movable assets acquired by him in his name/ in the name of his wife. The aforesaid payment of Rs.2,28,000/- made to the Housing Co-operative Society was not disclosed by the S.O. in his proforma property returns, which the S.O. had submitted on 3/3/97, to his Department, during investigation of this case. This was an act of deliberate gross misdeclaration and concealment on the part of the S.O. for which could have been made liable for prosecution/Regular Deptt. action, but I.O. in stead of recommending actions against the S.O. as above, recommended closure of the case.

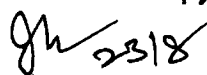
(12) During investigation of the above case, a number of gross misconducts were committed by Shri S.P. Singh Yadav, Inspector as mentioned below.

(i) He did not scrutinise the seized documents nor did he submit any scrutiny report. The CDs do not indicate any such action on the part of the I.O.

(ii) He did not collect any evidence/ or evidence in proper manner to prove each item of income, assets, and expenditure of the S.O. As a matter of fact, I.O. did not examine a single witness during investigation of this case. As such I.O. did not submit calender of evidence (oral) and Calender of evidence (documentary), along with the FR(i), which constitute an integral and vital part of F.R(i), which he was bound to do.

(iii) The I.O. wrote a few letters to some authorities/Bodies etc. for verifying expenditure and assets of the S.O. but without waiting for their replies or without showing the

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result of the replies so obtained/ received in the case diary or FR(i), hurriedly submitted Final Report , Part:I without collecting any evidence which was further facilitated due to lack of adequate supervision by the S.P in charge.

(iv) The I.O. did not consider various expenditures incurred by the S.O. during the check period, even though documentary evidence was available for proving such expenditure. He did so in order to make out the case, fit for closure.

(v) The S.O. was having five L.I.C Policies. The I.O. did not calculate premium paid by the S.O. on account of his five LIC policies, the annual premium against these policies being to the tune of Rs 30,328.00 I.O. also did not include these amounts in the expenditure of the S.O. during the check period, in order to favour the S.O.

(vi) Likewise, the I.O., did not include expenditures of the S.O. on many other heads like (i) educational expenditure of S.O's childrens. (ii) payments of house rent made by S.O. (iii) expenditures incurred on conveyances, including payments made towards road tax, insurance, POL and maintenance, as the S.O. was having one car and one motor cycle during the check period, on account of which the expenditure on these heads would have been very substantial.

(vii) The I.O. allowed a lot of benefits to the S.O. as alleged income of S.O. without any shred of evidence, merely based on statement of the S.O., and without verifying the S.O's statements.

(viii) The IO, did not disclose about the proforma property return dated 3.3.97, submitted by the S.O. which (S.O.) had received from the Dept. of the S.O., during investigation of this case, in order to allow various undue benefits to the S.O. which the S.O. himself did not show in his proforma property returns dtd. 3/3/97.

(ix) Like wise, IO allowed an income of Rs. 2,16,695.00 to the S.O. on account of matured values of NSCs etc. without collecting proper evidence and gave benefit of the entire matured sum of NSCs and other such investment as the income of the S.O. during the check period, whereas only interest earned by the S.O. against this investments should have been considered as his income during the check period, provided the S.O. had declared/shown these incomes in his Tax returns and property statements.

(x) The I.O. allowed benefit to the S.O. on account of agricultural income, to the tune of Rs. 86,700.00 during the check period, all though the S.O. in his property return

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Advocate

dtd. 3/8/90 had shown agricultural income of Rs 21,000/- only which as such, had been taken into account in the allegation made in the F.I.R. ✓

(xi) The I.O. had shown an amount of Rs 2,300.00 as booking amount for booking Fiat UNO car by the S.O. although the S.O. had actually deposited a sum of Rs. 23,300.00 against the said booking, showing thereby an undue benefit of Rs. 21,000/- to the S.O. on this head.

(xii) The I.O. again allowed benefit of income to the S.O. to the tune of Rs. 97,350.00 towards alleged profit made by the S.O. in the purchase and sales of shares during 1992 to 1994, although this was not shown by the S.O. in his proforma property return dtd. 3/3/97 nor in S.O's income tax returns.

(xiii) The I.O. also did not conduct any investigation or made any verification in this regard and gave the entire benefit to the S.O., obviously with improper/malafide intention.

(xiv) The I.O. did not recommend any action against the S.O., but instead recommended the case to be closed against the S.O.

(xv) The I.O. did not recommend any action against the S.O. for concealment of his income, said to have been derived from the sale/purchase of shares. The speculation in purchase/sale of shares being itself a misconduct, which generally is prohibited in the conduct rule, the I.O. should have verified and recommended actions against the S.O. which he did not.

(xvi) The I.O. did not requisition the services of Technical Officer for scrutinising the seized documents in this case which he was mandatorily required to do, which further facilitated him for recommending closure.

(xvii) That it seems the actions of the I.O. was not critically examined by the Branch, for reasons best known to him. Law Officer who examined this case as such agreed, putting implicit faith on him (though uncalled for)

(xviii) That due to unanimous recommendations of closure of branch officials, based on the result of investigation and calculations made by the I.O. all had agreed with recommendation of I.O., without having any reason to suspect any malafide at the relevant time, which has now become clear on in thorough study of case diaries etc. and analysis of facts mentioned by the I.O. in the F.R(i).

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Advocate

(xix) In the manner aforesaid said Shri S.P. Singh Yadav, showed lack of integrity, lack of devotion to his duties and conducted in an unbecoming manner and thereby contravene Rule 3(1) (i), (ii) and (iii) of CCS Conduct Rule 1964.

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Advocate

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ANNEXURE-A/4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application Nos. 30, 31 & 61 of 2001.

Date of decision : This the Day of May 2001

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

HON'BLE DR. R.K. SHARMA, ADMINISTRATIVE MEMBER

/

Shri Suresh Pal Singh Yadav, Inspector, (Under Suspension) Central Bureau of Investigation, Office of the Superintendent of Police, Central Bureau of Investigation, R.G. Baruah Road, Sundarpur, Guwahati-781005.

... Applicant

By Advocate Mr. B.K. Sharma, Mr. P.K. Tiwari and Mr. S. Sarma.

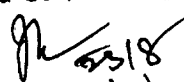
- Versus -

1. K.C. Kanungo, Deputy Inspector General of Police, Central Bureau of Investigation, North Eastern Region, Guwahati-3.
2. The Deputy Inspector General of Police, Central Bureau of Investigation, North Eastern Region, Guwahati-3.
3. The Union of India, through the Secretary to the Government of India, Ministry of Personnel & Training, New Delhi-2.

... Respondents

By Advocate Mr. B.C. Pathak, Addl. C.G.S.C.

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(P.K. Joshi)
Advocate

33

O R D E R

CHOWDHURY, J. (V.C.)

O.A. 30, 31 & 61 of 2001 are taken up for consideration together since all these Applications embrace self case issues arising out of like situations appertaining to the propriety of initiation of the three departmental proceedings. the Applicant assailed the legitimacy of the aforesaid actions of the Respondents as well as the continuance of the departmental proceedings against him, in those O.As.

2. We have heard leasnred Counsel for the parties at length. After going through the materials on records and upon considering the submission on behalf of the parties, we are of the opinion that these are the cases where the impugned departmental proceedings can be said to be legally unsustainable. The article of charges are framed against the Applicant. He has already submitted his written statements denying and disputing the allegations. All things considered, we are not inclined to intervene and we are of the view that the departmental proceedings in question should proceed and case to its logical end as per law.

3. Enquiry Officer has already been appointed and from the conduct of Enquiry Officer and also from the materials on records, we do not perceive any disability in the Enquiry Officer and to debilitate him from the enquiry. Considering all aspects of the matter we,

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Ju 2318
(J. Purkayastha)
Advocate

however, feel that the Respondent No.1 shri K.C. Kanungo, Deputy Inspector General of Police should not act as a disciplinary authority. The Applicant has specifically expressed his apprehension that he is not expecting to get treatment in hand of Respondent No.1 as the disciplinary authority.

4. Mr. B.K. Sharma, learned Senior Counsel for the Applicant, particularly referred to us to the observations made by the aforementioned officer of Police, in his order deciding to hold a formal enquiry after receipt of the written statement. Considering the findings and observations made in the aforesaid order read with the written statement filed, we feel that it would not be appropriate for the said Respondent to act as disciplinary authority and therefore he should be recused. We have adopted this course to recuse the Respondent No.1 to act as a disciplinary authority to avoid all misgivings. Justice not should only be done, but should manifestly and undoubtedly be seen to be done. Justice must be rested in confidence. The concerned authorities including the Director, CBI re ordered to act accordingly. The enquiry shall now proceed as per law. We expect that the enquiry shall be conducted with utmost expedition. We, however, make it clear that the Applicant should entitled to raise all the legal issues those are raised in the O.A. including the maintainability of the departmental proceedings before enquiry as well as the disciplinary authorities.

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Jh 23/8
(J. Purkayastha)
Advocate

With the observation made above, the applications stand disposed of. There shall, however, be no order as to costs.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (Admn).

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Jh 23/8
(J. Purkayastha)
Advocate

59
ANNEXURE-A/5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 137 of 2000

Date of decision : This the 8th day of July 2001

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

The Hon'ble Dr. R.K. Sharma, Administrative Member

Shri Suresh Pal Singh Yadav, Inspector, Central Bureau
of Investigation, Office of the Superintendent of
Police, Central Bureau of Investigation, Guwahati.

... Applicant

By Advocate Mr. B.K. Sharma, Mr. P.K. Tiwari and
Mr. S. Sarma.

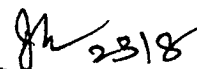
- Versus -

1. The Union of India, through the Secretary to the
Government of India, Ministry of Personnel &
Training, New Delhi.
2. The Director, Central Bureau of Investigation, New
Delhi.
3. The Deputy Inspector General of Police, Central
Bureau of Investigation, Guwahati.
4. The Superintendent of Police, Central Bureau of
Investigation, Anti Corruption Branch, Guwahati.
5. The Administrative Officer (E), Central Bureau of
Investigation, Government of India, Administrative
Division, New Delhi.

... Respondents

By Advocate Mr. B.C. Pathak, Addl. C.G.S.C.

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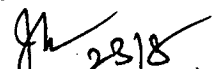

(J. Pulkayastha)
Advocate

O R D E R (ORAL)

CHOWDHURY, J. (V.C.)


The only controversy involved in this application pertains to the payment of salary of the Applicant for the month of October 1999. The Applicant served as an Inspector of Police under the Respondents on deputation. On completion of his deputation the Applicant was repatriated to his parent department, which was a subject matter of a separate O.A., since disposed of. By this application the Applicant has moved this Tribunal for a direction for payment of his salary for the period from 1.10.1999 to 28.10.1999. In the application, it was inter alia, stated that on 30.9.1999, at late night, the Applicant felt severe chest pain and irritation. The nearest CGHS Dispensary from the Applicant's residence at Guwahati was located at a distance of 7 to 8 kilometres. It has also been stated that the Applicant was not registered in any of the CGHS Dispensary, and therefore, he was taken to the nearest available Doctor of Gauhati Medical College who stayed very close to the Applicant's residence. the Applicant continued to be under treatment and on being declared medically fit, he joined duty on 29.10.1999. He submitted his joining report on 29.10.1999 along with necessary documents and medical papers requesting the Respondent authority to grant him twenty eight days medical leave. Since the Respondents did not respond to it and salary for the aforesaid period was not paid, the Applicant moved this O.A. for appropriate remedy.

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(J. Purkayastha)
Advocate

2. The Respondents contested the case and disputed the claim of the Applicant. According to the Respondents, the leave of the Applicant was unauthorized, and therefore, the Respondents did not commit any irregularity. The Respondents also contested the admissibility of medical leave for the aforesaid period. We thought that this matter could be sorted out by the Authority, more so, in view of the fact that the Applicant is now repatriated to his parent department and the matter should have been amicably resolved by the department. The Respondents, on the other hand, took a very obdurate stand and stated that the claim for medical leave was not permissible since the Applicant did not submit any authorised medical certificate. According to the Respondents, the leave was not permissible under the CCS (Leave) Rules, 1972. Admittedly, these rules are not applicable so far a deputationist is concerned and deputationists are guided by the rules of the parent department. The very CCS Leave Rules, on which the Respondents relied upon, also indicate that leave can be granted on medical certificate made by a non-gazetted Government servant accompanied by a medical certificate in Form 4 given by an authorised Medical Attendant or a registered medical practitioner. Admittedly, the Applicant was examined and treated in the Gauhati Medical College Hospital and also by one Doctor (Mrs.) Rupali Baruah, Assistant Professor, Comm. Medicine, Gauhati Medical College. Instead of relying on the medical certificate issued by

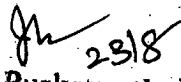
Certified to be true copy


(U. Purkayastha)
Advocate

the aforesaid Assistant Professor, who treated the Applicant, the Respondents made certain queries and took time investigating the matter and obtaining a report from the Dr. B.R. Baruah, Superintendent, Gauhati Medical College as to the credentials of Dr. (Mrs.) Rupali Baruah, Superintendent, Gauhati Medical College to the Superintendent of Police, CBI also indicated that Dr. (Mrs.) Rupali Baruah, M.D. was an officer in the rank of Assistant Professor of Gauhati Medical College and therefore the medical certificate issued by her to the Applicant was not related with the Gauhati Medical College Hospital. Teh Respondents mainly emphasised on the fact that the certificate issued by the aforesaid Doctor to the Applicant was not related with the Gauhati Medical College Hospital. Teh report, however, did not indicate that the Doctor (Mrs.) Rupali Baruah was not a register practitioner. The Respondents instead of engaging themselves to other important issues, were more confined to some irrelevant and extraneous issues.

3. On hearing Mr. P.K. Tiwari, learned counsel for the Applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C., the Respondents are directed to take necessary steps for payment of salary of the Applicant on the basis of the medical certificate submitted by the Applicant without insisting for any other certificate from CGHS. The Respondents are directed to take necessary steps for payment of salary of the Applicant for the aforesaid period within two weeks from teh date receipt of the order.

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(J. Purkayastha)
Advocate

4. The application is accordingly allowed and the Respondents are directed to pay cost of Rs.1000/- (Rupees one thousand only) to the Applicant.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (Admn):

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Jh 23/8
(J. Purkayastha)
Advocate

No. 833 /13/3/2001/CRO

87

Central Bureau of Investigation,
Government of India,
Kolkata Region,
Nizam Palace,
2nd MSO Building (14th Floor),
234/4, A.J.C. Bose Road,
Kolkata-20.
Dated:- 18/10/2001

ORDER

WHEREAS an enquiry under Rule 8 of Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules 1961 against Shri Suresh Pal Singh Yadav, Inspector(Under Suspension), CBI, ACB, Guwahati is in progress as per Memorandum issued vide No. 1478/12/Comp./SLC/NER/PT(III) dt. 17.5.2001 and No. 1516/12/Comp./SLC/NER/PT(II) dt. 22.5.2000. The other memorandum No. 1378/12/Comp./SLC/NER/PT (I) dt. 11.5.2000 has already been decided in the Hon'ble CAT, Gauhati Bench by releasing the salary for the period 1.10.99 to 28.10.99.

WHEREAS the undersigned has been appointed as the Disciplinary Authority in the matter pending against Shri Suresh Pal Singh Yadav as per order of the Additional Director, CBI, Kolkata dated 16.7.2001.

Now, therefore, the undersigned, in exercise of the power conferred by Sub-rule(2) of the said rule hereby appoints Shri A.Prasad, SP, CBI, Silchar as Enquiry Officer to enquire into two charges as mentioned at para 1 above framed against the said Shri Suresh Pal Singh Yadav.

This supercedes this Office Order No. 645/13/3/2001/CRO dt.24.8.2001

Sd/-

(Vijoy Kumar)

Dy. Insp. Genl. of Police
CBI/ Kolkata Region/Kolkata

Despatch No - 833

dt.:- 18/10/01

Copy to:-

1. Sh. A.Prasad, SP, CBI, Silchar.
2. Staff Officer to the Additional Director, CBI, Kolkata
3. DIG, CBI, NER Gauhati. for information w.r.t. his L.D. No. 2511/08/30/2001 dated 10.9.2001.
4. Sh. Suresh Pal Singh Yadav, Insp. CBI, Guwahati through SP, CBI, ACB, Guwahati.
5. Sh. Manoj Banerjee, S.I, CBI, Gauhati (P.O.) for information and necessary action.

W. M. Banerjee

(Vijoy Kumar)

Dy. Insp. Genl. of Police
CBI/ Kolkata Region/Kolkata

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J. Purkayastha
(J. Purkayastha)
Advocate

Received

20/11/2001

-65-
24

ANNEXURE-A/3

GOVERNMENT OF INDIA
CENTRAL BUREAU OF INVESTIGATION
OFFICE OF THE SUPDT. OF POLICE
ACE, GUWAHATI

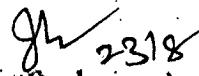
OFFICE ORDER NO. 101/2002 Dated 12.5.2002

Pursuant to order dated 5.2.2002 passed by Hon'ble High Court of Judicature at Guwahati in W.P.(C) No. 3420/2000, filed by Sri S.P. Singh Yadav, Inspector (Under suspension), the DCBI, New Delhi being the competent Authority, considered the representation dated 29.10.99 of Sri S.P. Singh Yadav against the adverse remarks in his (Sri Yadav) A.C.R. for the year 1998 and finally rejected the appeal of Shri Yadav after looking into all the grounds, justifications explained in his appeal with reference to the adverse remarks of the Reviewing and Accepting Authority.

The matter of absorption of Sri S.P. Singh Yadav, Inspector (U/S) in the CBI as Inspector of Police was considered by Screening committee in accordance with relevant circulars etc. The Screening Committee also interviewed Sh. Yadav on 29.1.2002. After due consideration the Screening Committee did not recommend the case of Sri Suresh Pal Singh Yadav, Inspector (U/S) for his permanent absorption in CBI. The recommendation of the Screening Committee has been approved by the Director, CBI, New Delhi, the competent Authority.

In view of the above, Sri Suresh Pal Singh Yadav, Inspector (U/S) stands relieved from CBI, ACB, Guwahati Branch with immediate effect from 12.05.2002 (A/N). He

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(J. Purkayastha)
Advocate

should report to his parent deptt. i.e. DG (P) UP since he had joined CBI on deputation from U.P. Traffic Police.

Sd/-
(Narayan Jha)
Superintendent of Police,
CBI, ACB : Guwahati

Endst.No.DP.GWH2002/2866-74 OA 1420/2000 Dated 12.5.2002

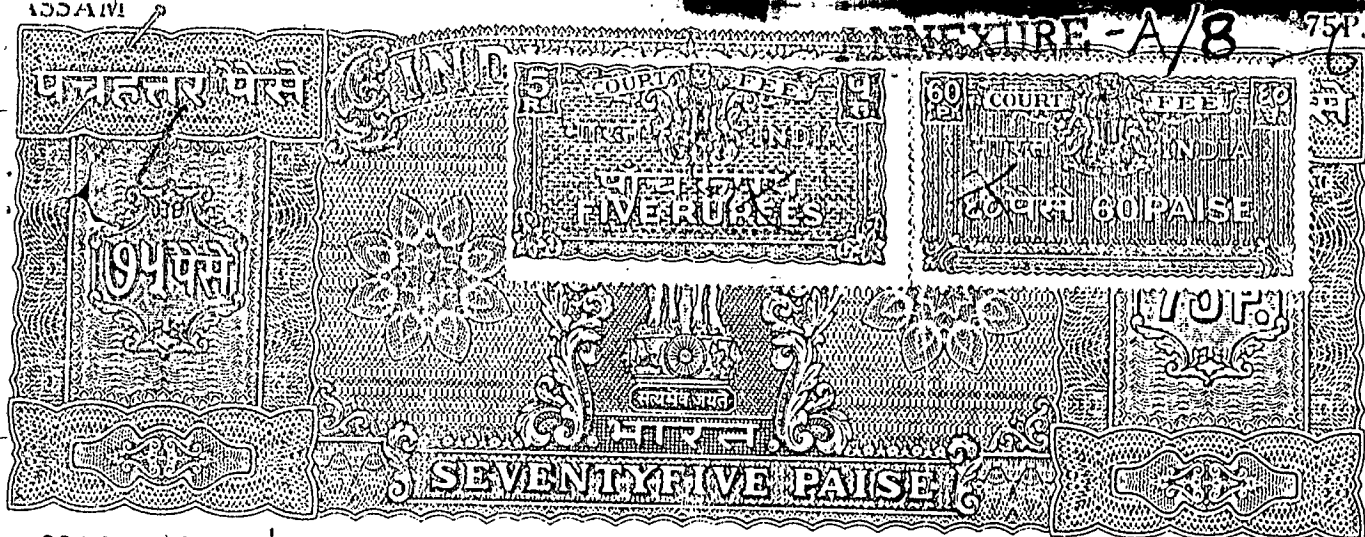
Copy to :

1. The Dy. Director(A) CBI, New Delhi.
2. the Joint Director, CBI, Kolkata.
3. The Administrative Officer (L), CBI, New Delhi.
4. The Director General of Police, Uttar Pradesh for favour of information.
5. The Dy. Inspector General of Police (Personnel), UP Police H.Q. Allahabad for information.
6. The Dy. Inspector General of Police, CBI, NER, Guwahati.
7. The Accountants Section, CBI, ACB, Guwahati for n/a.
8. Shri S.P. Singh Yadav, Inspector of Police (U/S), CBI, Guwahati. He is directed to report to DGP, UP immediately.
9. Personnel file.

Sd/- 12.5.2002
(Narayan Jha)
Superintendent of Police,
CBI, ACB : Guwahati

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Jh 23/8
(J. Purkayastha)
Advocate



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
28/3/03	29/3/03	29/3/03	29/3/03	29/3/2003

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR TRIPURA
MIZORAM & ARUNACHAL PRADESH)

W.P. (C) NO. 1338/2003.

Shri Suresh Pal Singh Yadav,
Inspector, General Bureau of Investi-
gation, Office of the Suptd. of Police,
Central Bureau of Investigation, R.G.
Baruah Road, Sundarpur, Guwahati- 5.

...Petitioner.

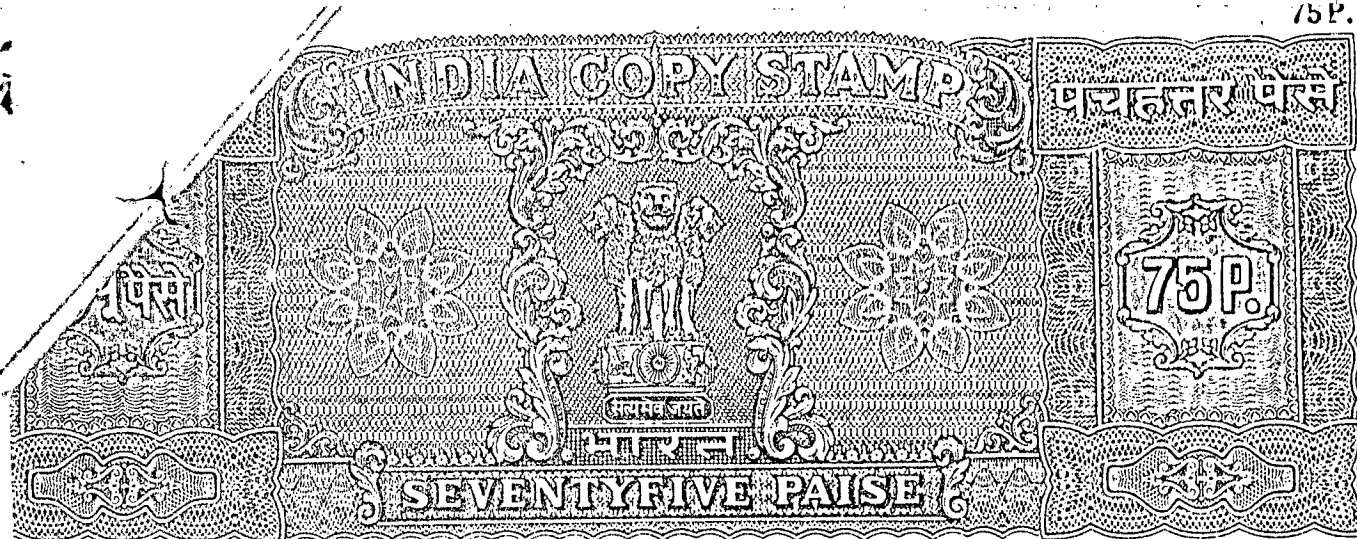
--Vs--

1. The Union of India through the
Secretary to the Government of India,
Ministry of Personnel & Training, New
Delhi.
2. The Director, Central Bureau of
Investigation, CGO Complex, Lodhi Road,
New Delhi.
3. The Selection Committee headed by
Mr. Y.P. Singh, Deputy Inspector General,
Special Crime Branch, Central Bureau of
Investigation, C.G.O. Complex, Lodhi Road,
New Delhi, which had its sitting on 29.4.2002
for consideration of applicant's case for
permanent absorption in CBI.

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Jh 23/8
(J. Purkayastha)
Advocate

Contd..



प्रतिनिधि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिनिधि देने की तारीख Date of making over the copy to the applicant.

2.

4. The Deputy Inspector General, Central Bureau of Investigation North East Region, Chenikuthi, Navagraha Hill side, Guwahati- 3.

5. The Suptd. of Police, Central Bureau of Investigation, Anticorruption Branch, Guwahati.

... Respondents.

PRESENT.

THE HON'BLE MR JUSTICE D.BISWAS

THE HON'BLE MR JUSTICE AMITAVA ROY

FOR THE PETITIONER : Mr.K.P.Pathak,
Mr.S.K.Sharma,
Mr.P.Borthakur,
Mr.K.S.Pathak, Advocates.

FOR THE RESPONDENTS : St.counsel, C.G.S.C.

5/

28.3.2003.

ORDER

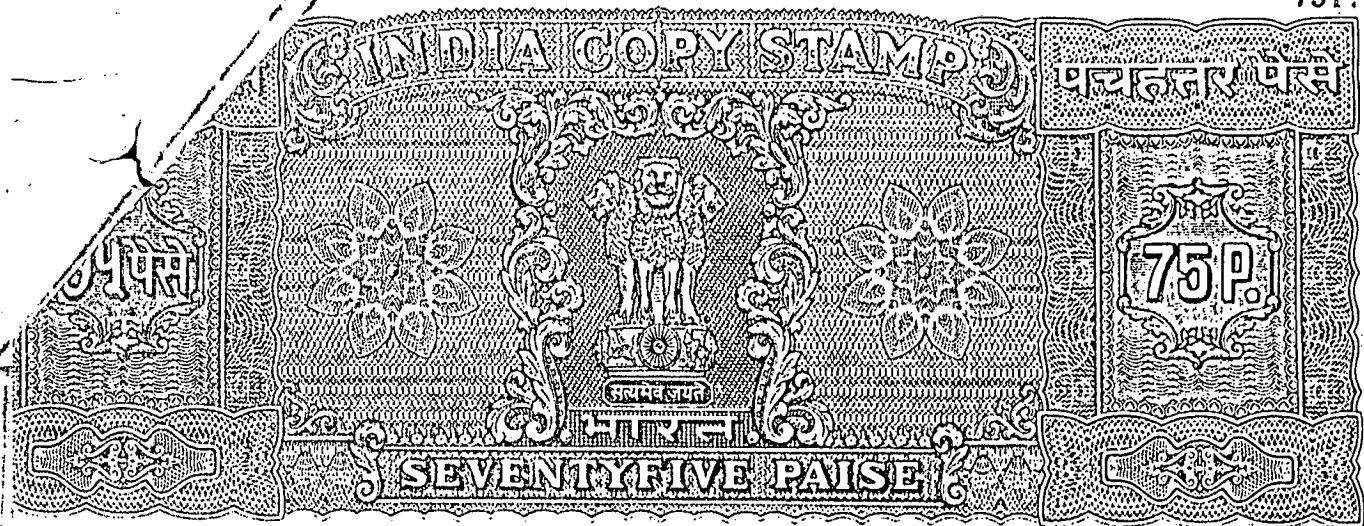
Heard Mr.KP Pathak, learned senior counsel
for the petitioner.

Issue notice of motion.

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Contd...3

(J. Purkayastha)
Advocate



प्रतिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिपि देने की तारीख Date of making over the copy to the applicant.

3.

Returnable within six weeks.

Mrs. G. Singh, learned Addl. CGSC accepts notice on behalf of all the respondents.

Also issue notice on the interim prayer.

In the meantime and until otherwise directed the respondents are called upon not to give effect to the order of repatriation during the currency of the departmental proceedings. Subsistence allowance, if any due, shall be paid to the petitioner in accordance with the provisions of law.

Sd/-AMITAVA ROY
JUDGE

Sd/-D. BISWAS
JUDGE

Registered No. of Petition.....	5532
Photostats by/Type by.....	29/13/03
Read by..K. D.S.	29/13/03
Compared by.....	29/13

CERTIFIED TO BE TRUE COPY
Date
Superintendent (Copying Section)
Gauhati H. & Const
Amended 1.15.15, Jul 1, 1978

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(J. Purkayastha)
Advocate

प्रार्थना के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
21/11/04	22/11/04	22/11/04	22/11/04	22/11/04

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

Misc case W) 475/203

in WP C NO 1338/203

No. of 200

Union of India & Ors

Appellant

Petitioner

Suresh pal Singh Yadav

Versus

Respondent

Opposite Party

Appellant

For

Petitioner

Mrs. G. Singh, High Court

Respondent

For

Opposite Party

Mr. K.P. Pathak

Mr. S.K. Sharma

Mr. P. Borah

Mr. K.S. Pathak

Noting by Officer or

Advocate

Serial

No.

Date

Office notes, reports, orders or proceedings
with signature

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Jh 28/8
(J. Purkayastha)
Advocate

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COU

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2

Patna High Court

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IN THE MATTER OF :

1. Union of India through the
Secretary to the Government of
India, Ministry of Personnel &
Training , New Delhi.

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Jh 23/8
(J. Puikayastha)
Advocate

Contd....2/-

2. The Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi.
3. The Selection Committee headed by Mr. Y.P. Singh, Deputy Inspector General, Special Crime Branch, Central Bureau of Investigation, C.G.O. Complex, Lodhi Road, New Delhi, which had its sitting on 29/4/2002 for consideration of applicant's case for permanent absorption in CBI.
4. The Deputy Inspector General, Central Bureau of Investigation North East Region, Chenikuthi, Nabagraha Hill Side, Guwahati-3.
5. The Suptd. of Police, Central Bureau of Investigation, Anti Corruption Branch, Guwahati.

... .. Respondents/Petitioners

- VS -

1. Suresh Pal Singh Yadav

.... Writ petitioner/
Opposite Party

Certified to be true copy

Jh 28/8
(J. Purkayastha)
Advocate

The petitioners above named state as follows :-

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

MISC CASE (W) NO.475/03
IN W.P(C) NO.1338/03

BEFORE
HON'BLE THE CHIEF JUSTICE MR.P.P.NAOLEKAR
THE HON'BLE MR.JUSTICE I.A.ANSARI

20.01.2004

Heard Mrs. G.Singha, learned counsel for the
respondent/applicant.

The learned counsel for the respondent/
applicant submits that the repatriation order of the petitioner
has already been given effect on 12.05.2002. The petitioner
was on deputation to the CBI from the U.P. Traffic Police
and as a result of the repatriation he has been sent back to
his parent department. As the repatriation order has already
been given effect to and prima facie we do not find any right
of the petitioner to continue on the post on deputation, we
vacate the interim order staying the order of repatriation.

The other part of the order of stay dated 28.03.2003 shall
remain intact.

The application stands disposed of.

Sd/- I.A. Ansari
Judge

Sd/- P.P. Naolekar
Chief Justice

6927

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21/1/04

(J. Purkayastha)

Advocate

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M. K. Bapatra

Date 22/01/04

Disposed of
App. communicate
the order
to

तारीख Date of application for the copy.	रफ़्ता सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	तारीख Date of making over the copy to the applicant.
15/3/03	15/3/03	15/3/03	17/3/03	17/3/03

ANNEXURE A/10

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

WP(c) No. 1338 of 2003

Suresh pal Singh Yadav Appellant
Petitioner

Versus

Union of India & ors.

Respondent

Opposite Party

Appellant For Mr. K.P. Pathak, Sr. Advocate
Petitioner Mr. S.K. Sharma
Mr. P. Borahakar
Respondent For Mr. K.S. Pathak
Opposite Party C.G. S.C.

Certified to be true copy

Jm 28/8
(J. Purkayastha)
Advocate

75
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(2)

Shri. Suresh Pal Singh Yadav,
Inspector, Central Bureau of Investi-
gation, Office of the Suptd. of Po-
lice, Central Bureau of Investigation,
R.G. Baruah Road, Sundarpur, Guwahati-
781005.

.....Petitioner.

-AND-

1. The Union of India through the
Secretary to the Government of India,
Ministry of Personnel & Training, New
Delhi.

2. The Director, Central Bureau of
Investigation, CGO Complex, Lodhi
Road, New Delhi.

3. The Selection Committee headed by
Mr. Y.P. Singh, Deputy Inspector
General, Special Crime Branch, Central
Bureau of Investigation, C.G.O. Com-
plex, Lodhi Road, New Delhi, which had
its sitting on 29/4/2002 for considera-
tion of applicant's case for permanent
absorption in CBI.

4. The Deputy Inspector General,
Central Bureau of Investigation North
East Region, Chenikuthi, Navagraha
Hill Side, Guwahati-3.

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(J. Purkayastha)
Advocate

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(3)

5. The Suptd. of Police, Central
Bureau of Investigation, Anti-
Corruption Branch, Guwahati.

Respondents.

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(J. Purkayastha)
Advocate

-77-86

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
I	2	3	4
	12.3.2004		<p>WP(C) No 1338/2003</p> <p>BEFORE THE HON'BLE THE CHIEF JUSTICE MR PP NAOLEKAR THE HON'BLE MR JUSTICE AMITAVA ROY</p> <p>Heard Mr P Borthakur, learned counsel for the appellant and Ms G Singh, learned CGSC.</p> <p>The petitioner came on deputation to the Central Bureau of Investigation from the UP Police Cadre on 24.9.93 for a period of three years. He continued to be in deputation to Central Bureau of Investigation. However, by an order dated 12.5.2002 the petitioner has been repatriated to his parent department. Before the repatriation order dated 12.5.2002 was passed, the petitioner represented before the Central Bureau of Investigation for absorption and the petitioner's case was placed before the Screening Committee of the Central Bureau of Investigation to find out as to whether the petitioner could be absorbed in the department or not. But the Screening Committee report came out adverse to the petitioner and, therefore, the order dated 12.5.2002 was issued. The petitioner challenged the order of repatriation before the Central Administrative Tribunal, Gauhati Bench. However, the learned Tribunal dismissed the petition filed by the petitioner. Aggrieved, the present writ petition</p>

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(J. Purkayastha)
Advocate

5 -78-87

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

has been filed before us. It is contended by the learned counsel for the petitioner that while the petitioner was on deputation in the Central Bureau of Investigation department he was placed under suspension and without revoking the order of suspension the Central Bureau of Investigation could not have repatriated the petitioner to the parent department.

To counter the aforesaid argument, the learned Standing Counsel for the CBI, contended that as a matter of course, on the passing of the order repatriating the petitioner to the parent department, the order suspending the petitioner stands revoked and, therefore, there could not be any predicament in issuance of the order of repatriation.

On the submissions made by the learned counsel for the parties, we find that on and from the date the petitioner has been repatriated there was no order of suspension in force and thus the order dated 12.5.2002 was issued in accordance with law. Therefore, we do not find any good or sufficient reason to interfere with the order passed by the learned Central Administrative Tribunal.

The Writ Petition dismissed.

⇒ J. Ambekar Ray ⇒ P. Madhukar
Justice

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Jn 23/8
(J. Purkayastha)
Advocate

P. No 1008
15/3/03

CERTIFIED TO BE TRUE COPY
Akon Borpatra Gohain
Date 17.3.04
Superintendent (Criminal Section)
General Public
Enforced U/S 75, Cr.P.C., 1972

Date: 29.3.2004

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The Dy. Inspector General Police,
Central Bureau of Investigation,
NER, Guwahati.

Sub : Judgment dtd. 12.3.2004 in WP(C) No. 1338/2003/Revocation of suspension order
dtd. 26.4.2000/Payment of pending dues etc.

Madam,

May kindly refer Judgment dated 12.3.2004 of the Hon'ble Division Bench of Guwahati High Court in the matter of WP(C) No. 1338/2003. In the said Judgement at para (3), the Learned Standing Counsel for CBI, Mrs. Gauri Sinha on behalf of the Respondents stated that :-

"As a matter of course on the passing of the order repatriating the petitioner to the parent deptt., the order suspending the petitioner stands revoked and, therefore, there could not be any predicament in issuance of the order of repatriation."

On the submissions made by the Learned Counsels for the parties, we find that on and from the date the petitioner is repatriated, there was no order of suspension in force and thus the order dtd. 12.5.2002 was issued in accordance with law. Therefore, we do not find any good or sufficient reason to interfere with the order passed by the Hon'ble Central Administrative Tribunal."

COPY OF THE ORDER DTD. 12.3.2004 IS ANNEXED AS ANNEXURE-1.

2. That in this connection, it is submitted that this petitioner was placed under suspension by the then DIG, CBI, NER, Guwahati, Shri K. C. Kanungo w.e.f. 26.4.2000 vide his order, CBI ID No. 1191/12/Comp/SLC/NER/1999 dtd. 26.4.2000 and since then the petitioner has not received any order of the competent authority revoking the said suspension order as contended by the Learned CGSC before the Hon'ble Division Bench of Guwahati High Court.

COPY OF THE SUSPENSION ORDER DTD. 26.4.2000 IS ANNEXED AS ANNEXURE- 2..

3. That it is also pertinent to mention that the petitioner was served a repatriation order vide Office Order No. 360 dtd. 9.1.2002 which was withdrawn vide office order No. 2 dtd. 6.2.2002 in pursuance to the Orders dtd. 16.5.2001 and 11.1.2002 respectively passed by the Hon'ble Division Bench of Guwahati High Court in WP(C) No. 3420/2001. Be it stated that the repatriation order dtd. 9.1.2002 was passed and withdrawn vide Order dtd. 6.2.2002 during currency of suspension, on the direction of the Hon'ble High Court that the petitioner shall not be repatriated to the cadre post till the enquiry is completed. However, no order for revocation of suspension and payment of salary due as well as for increments, treatment of period under suspension etc. were passed by the competent authority as per provision of FR -54B, at that point of time, if the suspension would have been revoked as a matter of course with the issuance of repatriation order dtd. 9.1.2002 as contended by the learned CGSC before the Hon'ble High Court. It is also pertinent to mention that when earlier repatriation order dtd. 9.1.2002 was withdrawn vide office order No. 2 dtd. 6.2.2002 pursuant to Hon'ble Guwahati High Court order dtd. 16.5.2001 and 11.1.2002, then why the defective and unlawful repatriation order dtd. 12.5.2002 issued during currency of suspension and pending disciplinary proceedings was not withdrawn so far, to cure its inherent defects and illegality, following order dtd. 28.3.2003 of the Hon'ble Division Bench of the Guwahati High Court, but perpetuating unreasonably the illegality and defectiveness of the repatriation order during currency of suspension and pending disciplinary proceedings and in violation of all the relevant laws in this regard.

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(J. Purkayastha)
Advocate

COPY OF THE FIRST REPATRIATION ORDER DTD. 9.1.2002, WITHDRAWAL ORDER DTD. 6.2.2002, GUWAHATI HIGH COURT ORDERS DTD. 16.5.01 AND 11.1.2002 ARE ANNEXED AS ANNEXURE 3, 4, 5 AND 6 RESPECTIVELY.

4. That another repatriation order vide office order No. 101 dtd. 12.5.2002 under signature of Shri Narayan Jha, SP, CBI, ACB, Guwahati was also issued significantly again during currency of suspension by specifically mentioning in para (3) of the said order that :-

"In view of the above, Shri Suresh Pal Singh Yadav, Inspector(U/S) stands relieved from CBI, ACB, Guwahati Branch with immediate effect from 12.5.2002(A/N)."

It is evident therefore that this repatriation order also relieves the petitioner during currency of suspension and does not speak anything as regards to revocation of suspension order and payment of dues as well as treatment of period under suspension from 26.4.2000 upto 12.5.2002 as per relevant provision of FR to be passed by the competent authority. No order as to revocation of suspension order was issued prior to, or subsequent to issuance of Impugned repatriation order, nor any order issued so far as regards payment of salary dues etc. as per Provision of Fundamental Rules, if the suspension is revoked as a matter of course with the issuance of repatriation order at that point of time, i.e. on 12.5.2002.

THE COPY OF THE 2ND REPATRIATION ORDER DTD. 12.5.2002 IS ANNEXED AS ANNEXURE-7.

5. That in pursuance to common order dtd. 4.5.2001 in O.A. No. 30, 31, and 61 of 2001, the Hon'ble CAT directed the DCBI, New Delhi to recuse Shri K. C. Kanungo, DIG, CBI, NER, Guwahati, the present Disciplinary authority of the petitioner and appoint a new Disciplinary Authority in place of Shri Kanungo and accordingly Additional Director, CBI, Kolkata vide his order dtd. 16.7.2001 appointed Shri Vijay Kumar, IPS, the then DIG, CBI, Kolkata Region as new Disciplinary Authority of the petitioner. The new D.A., Shri Vijay Kumar, IPS, DIG, CBI, Kolkata Region vide order dtd. 18.10.2001 appointed Shri Akhileshwar Prasad, SP, CBI, Silchar as new Inquiring authority, who for the first time on 13.2.2002 called the petitioner for preliminary hearing and as such the Regular Inquiry was in progress in the said matter. As the Hon'ble CAT vide its order dtd. 4.5.2001 while observing the legal unsustainability of the pending proceedings, granted the liberty to the petitioner to file representation against the Charge Memorandum before the new D.A. seeking order of maintainability of the said charge Memorandums dtd 11.5.2000, 17.5.2000, & 22.5.2000 to be passed by new D.A. Therefore, a representation dtd. 26.11.2001 was submitted to the new D.A. to pass order for maintainability of the Charge Memorandum. However, said representation remains indisposed as yet regarding any order of maintainability on the charge memorandum dtd. 17.5.2000, and 22.5.2000, although charge memorandum dtd. 11.5.2000 was dropped by the new Disciplinary Authority vide his order dtd. 18.10.2001.

In view of the appointment of new D.A., and Inquiring Authority as aforesaid and the Inquiry proceeding in progress, the order for revocation of suspension/repatriation could have not been passed by any other authority like Shri Narayan Jha, SP, CBI, ACB, Guwahati or Shri K. C. Kanungo, DIG, CBI, NER, who were not the competent authority in the eye of law to pass such impugned order dtd. 12.5.2002(Annexure-7).

THE COPY OF THE ORDERS DTD. 4.5.2001, 16.7.2001, 18.10.2001, 13.2.2002 AND 26.11.2001 ARE ANNEXED ANNEXURE 8, 9, 10, 11 AND 12 RESPECTIVELY.

6. That the operation of this impugned order repatriation order dtd. 12.5.2002 was stayed by the Division Bench of Hon'ble Guwahati High Court vide order dtd. 28.3.2003 in WP(C) No. 1338/2003. The Hon'ble Court in interim also directed the respondents that:-

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(J. Purkayastha)
Advocate

"In the meantime and until otherwise directed the respondents are called upon not to give effect to the order of repatriation during the currency of departmental proceedings. Subsistence allowance, if any due, shall be paid to the petitioner in accordance with the provisions of law."

Thereafter, the respondents filed a Misc. Case(WP) No. 475/03 in WP(C) No. 1338/03 and the Hon'ble High Court while disposing the said misc. case passed the order dtd. 20.1.2004 that :-

"The learned counsel for the respondent/applicant submits that the repatriation order of the petitioner has already been given effect on 12.5.2002. The petitioner was on deputation to the CBI from the U.P. Traffic Police and as a result of the repatriation, he has been sent back to his parent department. As the repatriation order has already been given effect to and prima facie we do not find any right of the petitioner to continue on the post on deputation, we vacate the interim order staying the order of repatriation. The other part of the order of stay dtd. 28.3.2003 shall remain intact."

It is evident therefore that even upto the disposal of the misc. case on 20.1.2004, the Hon'ble Court kept intact the direction of earlier Division Bench order dtd. 28.3.2003 regarding payment of subsistence allowances as well as completion of pending disciplinary proceeding, which ipso facto mean that the petitioner is continuing under suspension and hence entitled for subsistence allowance. It is also significant that learned CGSC, Mrs. Gauri Sinha on behalf of the respondents did not submitted even uptill then regarding revocation of suspension which she contended while making submission vide Hon'ble Guwahati High Court order dtd. 12.3.2004, without producing the copy of the revocation of suspension order along with order for payment of other pending dues to the petitioner, and even until now.

THE COPY OF THE ORDERS DTD. 28.3.2003 AND 20.1.2004 OF HON'BLE GUWAHATI HIGH COURT ARE ANNEXED AS ANNEXURE 13 AND 14 RESPECTIVELY.

7. That relevant laws/rules of lien during suspension, continuation of suspension until modification/revocation of suspension, effective date of revocation of suspension, necessary procedure for invocation and revocation of suspension, other necessary contingent order to be passed on revocation of suspension orders are as follows :-

FR 13(e) : A Govt. servant who has acquired lien on a post retains the lien on that post while under suspension.

Rule 10(5)(a) of CCS(CCA) Rules, 1965 :-

"An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so."

Rule 5(5) of DSPE, Subordinate Ranks(Disciplinary and Appeal) Rules, 1972 :-

An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Balvant Rai Ratilal Patel-Vs- State of Maharashtra, AIR 1968 SC 800 at 806: 1968 lab IC 984

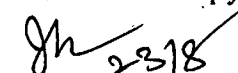
"The order of suspension could not be automatically terminated but it could have only been terminated by another order of the Govt. Until therefore, a further ORDER of the state Govt. was made terminating the suspension, the applicant had no right to be reinstated to service.

Om Prakash Gupta -Vs- State of U. P.

"Order of suspension could only come to an end with an order replacing it.

i) State of Assam -Vs- Kanak Ch. Dutta, AIR 1967 SC 884 at 886:

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(J. Puikayastha)
Advocate

ii) Charanjit Lal Choudhury V-s UOI AIR 1951 SC 41 at 63 :

That the power of disciplinary control is an indicia of the relationship of master and servant was also noted by the Supreme Court, when it observed that amongst other things, the states right to suspend and dismiss is an important factor (in conjunction with other circumstances) in establishing the relationship of master and servant,

- FR- 54 B:-**
- (1) When a Govt. servant who has been suspended is reinstated (or would have been reinstated but for his retirement(including premature retirement) while under suspension], the authority competent to order reinstatement shall consider and make a specific order;-
 - (a) regarding the pay and allowances to be paid to the Govt. servant for the period of suspension ending with reinstatement or [the date of his retirement(including premature retirement), as the case may be; and
 - (b) whether or not the said period shall be treated as a period spent on duty.
 - (2)
 - (3)
 - (4)
 - (5)
 - (6)
 - (7)
 - (8)
 - (9) etc. etc.

Procedure for revocation of suspension as per CVC Manual vide Para 10.6, 10.7, 10.8 at page 68 of Vigilance Mannual, Vol.I, 4th Edition, CVC:-

Para 10.6 : "The order of revocation of suspension will take effect from the date of issue. However, where it is not practicable to reinstate a suspended Government servant with immediate effect, the order of revocation of suspension should be expressed as taking effect from a date to be specified."

Para 10.7 : "On revocation of an order of suspension, a Govt. servant is reinstated in service. Further action should be taken after such reinstatement as indicated in Chapter XIV."

COPY OF THE PROVISION AS CONTAINED IN CHAPTER XIV OF CVC MANNUAL IS ANNEXED AS ANNEXURE -15.

Para 10.8 : "An order of revocation of suspension should be made in the prescribed form."

Ministry of Home Affairs O. M. No. 221/18/65-AVD dtd. 7th September, 1965:-

Para 3 :- " It has, therefore, been decided that in cases of officers under suspension, the investigations should be completed and a charge sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in case of departmental proceedings within six months as a rule. If the investigation is likely to take more time, it should be considered whether the officer should continue to remain under suspension or whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collections of evidence etc. or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order."

Significantly aforesaid expressed provision of law do not speak for revocation of suspension without any specific order, or revocation of suspension as a matter of course with the issuance of reinstatement order, or revocation of suspension and reinstatement without any contingent order as provided

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(J. Purkayastha)
Advocate

under FR-54B. Further relevant OM of MHA provides even transfer in the same department after revocation of suspension order, however this petitioner is sought to be repatriated two times, vide order dtd. 9.1.2002 and 12.5.2002 during currency of suspension unlawfully by the then DIG, CBI, NER, Shri K. C. Kanungo and SP, CBI, ACB, Guwahati, Shri Narayan Jha, without revocation of suspension and reinstatement, without payments of dues, pending disciplinary proceedings and without any order from the competent authority i.e. DIG, CBI, Kolkata, Shri Vijay Kumar, IPS, the new Disciplinary authority of the petitioner, appointed by ADCBI/ EZ, Kolkata in pursuance to CAT order dtd. 4.5.2001 in OA No. 30/2001, 31/2001 and 61/2001.

8. That the Learned Standing Counsel for the respondents though vide her submission dtd. 12.3.2004 before the Division Bench of Hon'ble Guwahati High Court in WP(C) No. 1338/2003 stated that suspension order dtd. 26.4.2000 against petitioner stands revoked as a matter of course with the issuance of repatriation order dtd. 12.5.2002. However, no orders in this regard from the competent authority was communicated to this petitioner, as well as any order on the various petitions of the petitioner submitted before the competent authority remain unresponded until now. The various petitions of the petitioner on various service matter as reflected in his comprehensive petition dtd. 22/2/2002, 7.4.2003 and 9.6.2003 addressed to the Director, CBI, New Delhi through proper channel remains indisposed even as yet in as much as that financial dues of the petitioner such as arrears of salary including increments, bonus, extra salary, Medical bills, LTC, transfer allowances etc. for the period of suspension are not paid as yet. In view of it, the submission of the Learned Standing Counsel has no meaning as for revocation of suspension order there ought to be specific order for revocation of suspension and reinstatement accompanied with other contingent order as regards payment of dues and treatment of intervening period etc. as provided under expressed provision of law under FR aforesaid.

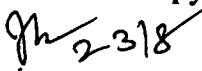
THE COPY OF THE COMPREHENSIVE PETITION DTD. 22.2.2002, 7.4.2003 AND 9.6.2003 IS ANNEXED AS ANNEXURE- 16.

9. That the Inherent Illegality and Irregularity in the issuance of repatriation order dtd. 12.5.2002 passed by Mr. Narayan Jha, SP, CBI, ACB, Guwahati and consequent irreparable losses and injury to the petitioner was also brought to the notice of Director General of Police(DGP), Uttar Pradesh Police, Lucknow, requesting him to kindly refer the matter to the Director, CBI for appropriate instructions onward to local CBI authorities of Guwahati for corrective and expeditious disposal of the instant matter as per law, and/or to communicate any order/advice contrary to the abovesaid request of the petitioner. However, no communication in this regard was received by the petitioner so far.

THE COPY OF THE LETTER DTD. 10.6.2002 IS ANNEXED AS ANNEXURE- 17.

10. That the petitioner after being placed under suspension w.e.f. 26.4.2000 and until now has been performing his official duties before the Hon'ble Court and Inquiring Authority, as and when summoned through CBI for which also this petitioner was not paid any T.A. and DA etc. The said dates are :

- a) In the court of Special Judge, Assam :-
- | | | | | | |
|----------|----------|----------|-----------|----------|----------|
| 5.12.01, | 8.1.02, | 29.1.02, | 11.2.02, | 22.3.02, | 12.4.02, |
| 24.5.02, | 3.6.02, | 18.7.02, | 11.11.02, | 5.5.03, | 2.6.03, |
| 10.6.03, | 24.6.03, | 2.9.03, | 22.9.03, | 10.11.03 | 18.12.03 |
| and | 13.2.04. | | | | |
- b) Communication of Order by SP, CBI, Guwahati :-
Order dtd. 15.6.02 and Order dtd. 21.6.02.

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(J. Purkayastha)
Advocate

It is therefore, evident that the petitioner was performing his official duties before the Hon'ble Court on behalf of CBI/ACB, Guwahati.

The petitioner craves the leave of your goodness to present the documents substantiating the aforesaid dates as and when required.

11. That since passing of the suspension order dtd. 26.4.2000 this petitioner has incurred irreparable loss and injury for no fault on his part. The petitioner sought for the fairness and justice which has been denied to the petitioner unjustly and hence this petition is filed bonafide for the interest of justice.

12. In the premises aforesaid, it is most humbly prayed that your goodness would be kind enough to communicate the order of revocation of suspension and other contingent order provided under the law within a period of one week to enable the petitioner to take over the charge of new assignment in his parent cadre in U. P. Police.

Yours faithfully,

(S. P. SINGH YADAV)

Inspector of Police,
CBI, ACB, Guwahati(U/S)

Dorothy Apartment, 4th Bye Lane, ABC,
Tarun Nagar, Guwahati- 5.

- Copy to :
- 1) The Director, CBI, CGO Complex, Lodhi Road, New Delhi
 - 2) The Director General of Police, Uttar Pradesh, Lucknow.
 - 3) The Additional Director General of Police, PAC, Uttar Pradesh, Mahanagar, Lucknow
 - 4) The Joint Director, CBI(EZ), Kolkata, 15th Floor, Nizam Palace, A. J. C. Bose Road, Kolkata.

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(J. Purkayastha)
Advocate

- 85 -

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To
Sri K.P.P. Rao, IPS
Joint Director (East Zone)
Central Bureau of Investigation
MSO Building, Nizam Palace
A.J.C. Bose Road, Kolkata.

Respected Sir,

I am in receipt of your Office Order No. 28/2004 dt. 30/4/2004 setting aside the order of penalty issued by the then DIG, CBI, NER, Sri K.C. Kanungo.

I have not enough words to express my gratitude and thanks for deciding the matter fairly and judiciously, as also for restoring my faith in the superiors and in administrative system, and for saving me from slipping into deep abyss of hopelessness, depression, disappointment and cynicism that civil service in the country's body politic is no more of shining steel frame but of an ordinary lusterless iron frame work, worn out, weak and rusted, crumbling under pressure of civil servants of "you scratch my back and I will scratch yours" type only, having no respect for law, justice, fairness, knowledge and understanding of rules and implementation of the same without subversion, pretence, façade, fear and favour. It were those virtues for which we looked the superior officers with awe, inspiration and guidance, and used to adore them as heroes, and respect them virtually as God. During my last part of tenure in CBI, however, the deliberate, systematic, consistent and prolonged victimisation by certain officials for personal and private reasons and indifference of superior officers to set the wrongs done against me right, made me think about them otherwise. It is unmistakably you who have made me to think that I was wrong while generalising the services as a whole in poor light and there are indeed officers like you who not only understand the law and administrative procedure but also apply them in letter and spirit. Your lawful action in the matter has carved out a special and respectful niche in my heart and memory of service life.

Soliciting your benign indulgence, I have to humbly submit further that I had sent a representation dtd. 29/3/2004 for your kind consideration and to pass necessary orders in the said matter as per law. It is also most humbly submitted that I may kindly be given personal hearing to explain the matter and counter the comments of Mrs. Gauri Sinha, ACGSC, Sri Narayan Jha, SP, CBI, Ghy and DIG, CBI, NER, Ghy forwarded to your office along with my said representation which are totally inconsistent with the provisions of law and procedure, and are submitted in the said form for collateral object in view only.

And for this act of your kindness, I shall remain ever grateful.

With heart felt regards.

Yours faithfully,

202/ 12-05-2004
(S.P. Singh Yadav)
Inspector, CBI/ACB/GHY
C/o Dorothy Apartments
4th Bye Lane, ABC Tarun Nagar,
Guwahati-781005
Ph.No. : 0361-2451226

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Jh 28/8
(J. Purkayastha)
Advocate

- 86- 95
ANNEXURE-12

BY HAND
Dtd.1.7.2004

To

The Dy.Inspr. Genl. of Police,
Central Bureau of Investigation,
North Eastern Region,
Sunderpur, R.G. Baruah Road,
Guwahati-5.

(Disciplinary Authority)

Sub : Personal hearing in the matter of representation
dated 29.3.2004 and 12.5.2004/Further
developments in the matter.

Ref : Your letter No. 1488/307/2003/NER/WP(C) 1338/03
dated 28.6.04.

Respected Madam,

Kindly refer as above, in pursuance whereof I am
presenting myself before your honour today i.e.
1.7.2004 for the purpose of personal hearing in the
matter.

2. In the matter aforesaid, I have to apprise further
that in the month of April and also in May 2004 I
approached my parent department at Lucknow for the
purpose of joining. However, I was denied joining on
the ground that neither my suspension order dated
26.4.2000 passed by the then DIG/CBI/Hqr. is revoked as
yet, nor any communication in this regard has been
conveyed to them ever since expiry of the said
suspension order dated 26.4.2000. I was also directed
to submit revocation of suspension order, proper
receiving order, no dues certificate, last pay
certificate etc. at the time of joining. I am thus
subjected to great injustice and harassment by

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Jh 03/8
(J. Purkayastha)
Advocate

denying/preventing me to work in service and earn my livelihood in CBI as well as my parent department i.e. U.P. Police.

3. In view of aforesaid I may kindly be given order for revocation of suspension dated 26.4.2000, relieving order, no dues certificate, last pay certificate, transfer TA advance, disbursement of pending medical bill, arrear salary, increments, cash compensation for leave not availed, bonus etc. for the period under suspension w.e.f. 26.4.2000 until the date of receiving to enable me join my parent department peacefully and without any legal and procedural laches. Further, necessary orders may also be passed in the representation dated 10.9.2001, 26.11.2001 in the matter of two pending proceedings regarding maintainability of charge memo dated 17.5.2000 and 22.5.2000 as directed by Hon'ble CAT/Ghy in its common order dated 4.5.2001 in O.A. No. 30, 31 and 61/2000.

4. Pending disposal of the aforesaid matter, I may kindly be given reinstatement order and I may be allowed to work in order to earn my livelihood for there is no suspension now as per order dated 12.3.2004 of Hon'ble Gauhati High Court in W.P.(C) No. 1338/2003.

And for this act of your kindness, I shall remain ever grateful.

Yours faithfully,

Sd/- (S.P. Singh Yadav)
Insp./CBI/ACB (U/S) Ghy.

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Jh 2318
(J. Purkayastha)
Advocate

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ANNEXURE -A/13 97

No. 2 C. D. O. 1307/2003 NER

Government of India
Central Bureau of Investigation
O/o the Dy. Inspector General of Police
North Eastern Region : Sunderpur
Guwahati - 05 : Assam

Dated - 13.8.04

To

✓ Shri Suresh Pal Singh Yadav
Ex - Inspector, CBI, ACB, Guwahati
R/o- Dorothy Apartment
4th Bye Lane, ABC
Tarun Nagar, Guwahati - 05

Sub :- Representation dated 29.03.2004, 12.05.2004 and personal hearing dated 01.07.2004

.....

Your representation referred to above has been examined at the competent level. The main contention of your representation is that the repatriation order No. 101 dated 12.05.2002 is defective and unlawful since it was issued during the currency of suspension. It was also issued without any mention regarding revocation of the suspension.

2. WP(C) No. 1338/2003 filed by you on the above facts has already been dismissed by the Hon'ble High Court vide order dated 12.03.2004 with the observation that - "..... on and from the date, the petitioner has been repatriated, there was no order of suspension in force and thus, the order dated 12.05.2002 was issued in accordance with law. Therefore, we do not find any good or sufficient reason to interfere with the order passed by the Ld. Central Administrative Tribunal."

3. Regarding payment of dues during the suspension period, subsistence allowance due has already been paid. Payment of amount beyond what already has been paid and also the consideration of the period of suspension will depend on the result of inquiry.

Certified to be true copy

Jh 23/8
(J. Purkayastha)
Advocate

received
15/8/04

During the personal hearing / as referred in your application dated 01.07.2004 regarding your representations dated 10.09.2001 and 26.11.2001, both the applications were addressed / sent directly to Shri Vijoy Kumar, IPS, the then DIG, CBI, Kolkata. As such this office has no record of the action taken on the same.

5. Service record, LPC and other related records have already been forwarded to the U.P Police.

6. In view of the above, please note that no action is to be taken by the CBI on this representation.

(D.R. Doley Barman) IPS
Dy. Inspector General of Police
CBI : N.E. Region :: Guwahati

Copy to :-

The Supdt.of Police, CBI, ACB, Guwahati.

Certified to be true copy

(J. Purkayastha)
Advocate

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A. NO. 186 OF 2004

IN THE MATTER OF

S.P.Singh Yadav	Petitioner
Versus		
UOI & ors.	Respondents

Sub: COUNTER REPLY FILED BY RESPONDENT
NO. 4

Para 4.1 It is ridiculous for the applicant to claim that his performance in CBI was exemplary when he was placed under suspension for serious acts of gross indiscipline, insubordination and various misdemeanors for which he was chargesheeted for both major and minor penalties.

Para 4.2 CBI being a deputationist oriented organisation, services of deputationist officers are needed from time to time and hence no reading between the lines is called for in this regard.

Para 4.3 No comment.

Para 4.4 to 4.12 Does not concern R-4 and hence no comment.

The R-4 who took over charge of DIG, Guwahati Region on 16th July 1999 and as such had hardly

- 91 - 2

any scope to be intimately acquainted with the work and conduct of the applicant at that point of time.

Para 4.13 to 4.15 No comment.

Para 4.16 The applicant feigned illness after learning that the order of his repatriation had been issued and without handing over charge and without divulging his whereabouts, unauthorisedly absented from duty, creating great impediments in the smooth functioning of the official duty.

Para 4.17 The allegation of animus borne by the R-4 is false, baseless and motivated and hence denied. The grant of reward in indiscriminate manner was forbidden under CBI Manual which the Respondent No. 4 had reiterated. The applicant can not claim any reward when he was being chargesheeted for dereliction of duty.

Para 4.18 There were reasons to believe that the applicant submitted bogus medical certificate. It was, as such, necessary to verify its genuineness before sanctioning medical leave, which is required under

extant rule. The use of police power, etc. as alleged is totally misconceived and baseless and hence denied.

Para 4.19 No comment.

Para 4.20 & 4.21 The action taken/initiated against the applicant was warranted under existing circumstances occasioned by the applicant on account of his indifferent attitude in discharge of official duties, for his recalcitrant behaviour, and for unauthorised and motivated action and dilatory practices and conduct which necessitated adverse remarks in his ACR.

Para 4.22 The order of suspension of the applicant was issued in accordance with the rule, and no violation of any rule has been pointed out by the applicant in this regard.

Para 4.23 No comment.

Para 4.24 It is denied that filing of O.A. by the applicant was in any way concerned with the order of suspension issued against him.

Para 4.25 & 4.26 That the prayer of the applicant for quashing the chargesheets was rejected by the Hon'ble Tribunal

- 93 - 4

would itself show that the chargesheet was served
not without basis.

Para 4.27 . No comment.


Para 4.28 to 4.34 No comment as it does not concern the R-4.

Paras 4.48,4.49}
5.1 and 5.2 } With reference to paras 4.48, 4.49 and Paras 5.1, 5.2,
it is denied that the order of suspension was passed
in malafide exercise of power. It was neither issued
arbitrarily nor was done in violation of any law/rule
in this regard.

VERIFICATION

I, Shri K.C. Kanungo, s/o late Shri B.R. Pattanaik,
aged about 59 years, resident of 52-F, Nivedita Kunj, R.K. Puram, Sector
10, New Delhi-22, do hereby solemnly affirm and verify that the
statements made in the paragraphs above are true to my knowledge and/or
based on information derived from official records and my honest opinion
of law, etc. and I have not suppressed any material/fact in this regard.

I sign this verification on this day of 17th November,
2004.


(K.C. KANUNGO)
DIG/CBI/MDMA
NEW DELHI

8/10, Jamnagar House Hutments,
Akbar Road, New Delhi-11.

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103

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A. NO. 186 OF 2004

IN THE MATTER OF

S.P.Singh Yadav

.....

Petitioner

Versus

UOI & ors.

.....

Respondents

Sub:

**COUNTER REPLY FILED BY RESPONDENT
NO. 4**

Para 4.1

It is ridiculous for the applicant to claim that his performance in CBI was exemplary when he was placed under suspension for serious acts of gross indiscipline, insubordination and various misdemeanors for which he was chargesheeted for both major and minor penalties.

Para 4.2

CBI being a deputationist oriented organisation, services of deputationist officers are needed from time to time and hence no reading between the lines is called for in this regard.

Para 4.3

No comment.

Para 4.4 to 4.12

Does not concern R-4 and hence no comment.

The R-4 who took over charge of DIG, Guwahati Region on 16th July 1999 and as such had hardly

- 95 -
2
104

any scope to be intimately acquainted with the work and conduct of the applicant at that point of time.

Para 4.13 to 4.15 No comment.

Para 4.16

The applicant feigned illness after learning that the order of his repatriation had been issued and without handing over charge and without divulging his whereabouts, unauthorisedly absented from duty, creating great impediments in the smooth functioning of the official duty.

Para 4.17

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- 96 - 3 105

extant rule. The use of police power, etc. as alleged is totally misconceived and baseless and hence denied.

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97-4

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not without basis.

Para 4.27 No comment.

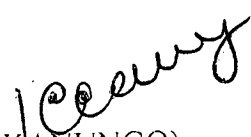
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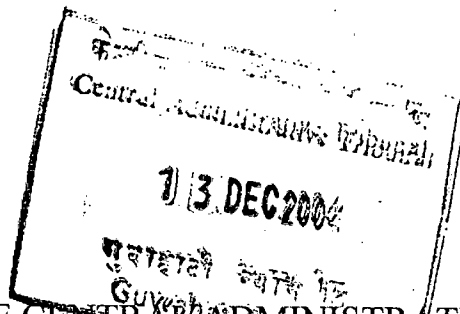
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arbitrarily nor was done in violation of any law/rule
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VERIFICATION

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aged about 59 years, resident of 52-F, Nivedita Kunj, R.K. Puram, Sector
10, New Delhi-22, do hereby solemnly affirm and verify that the
statements made in the paragraphs above are true to my knowledge and/or
based on information derived from official records and my honest opinion
of law, etc. and I have not suppressed any material/fact in this regard.

I sign this verification on this day of 17th November,
2004.


(K.C. KANUNGO)
DIG/CBI/MDMA
NEW DELHI
8/10, Jamnagar House Hutments,
Akbar Road, New Delhi-11.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH - GUWAHATI

Filed by
13/12/04
CA. DEVI ROY
Sr. C. G. S. C.
A. T. Guwahati Bench
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O.A. NO. 186 OF 2004

Shri S.P.Singh Yadav

- Vs -

Union of India and others

In the matter of :

Written Statement submitted by the
respondents

The respondents beg to submit the parawise written statement as follows

PRELIMINARY OBJECTIONS

1. That Applicant was repatriated/relieved from CBI vide order dt. 12.5.2002. The said order was challenged by the Applicant by filing O.A No.154/2002 before this Hon'ble Tribunal but said O.A. was dismissed by this Hon'ble Tribunal vide order dt. 23.9.2002. Applicant challenged the dismissal by filing W.P(C) No. 1338/2003 before Hon'ble Guwahati High Court. Hon'ble Guwahati High Court

File by
13/12/04

vide its judgment dt. 12.3.2004 upheld the repatriation/relieving order. The judgment of Hon'ble Guwahati High Court has become final and binding.

2. Petition is bad in law for nonjoinder of party. DGP, PAC, HQ, U.P. is a necessary party. ✓
3. The subject matter of the present O.A. pertains to carrying on with the disciplinary proceedings against the Applicant. The decision whether the disciplinary proceedings should be carried on or not, is to be taken by the present Disciplinary Authority of the Applicant in UP Police. After passing of repatriation/relieving order dt. 12.5.2002, CBI has become functus-officio in the matter of such disciplinary proceedings. Applicant cannot directly or indirectly challenge the said repatriation/relieving order dt. 12.5.2002 by seeking completion of disciplinary proceedings by CBI. ✓
4. As such, relief prayed for by the Applicant in respect of completion of departmental proceedings cannot be granted by this Hon'ble as against CBI.
5. No such relief can be granted as against UP Police also as this Hon'ble Tribunal has no jurisdiction over UP Police.
6. In these circumstances, the present O.A. is not maintainable and is liable to be dismissed with costs against the Applicant.

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10/11/04

REPLY ON MERITS

1. That with regard to para 1 to 3 of the application, it is submitted that this Tribunal has no jurisdiction to entertain the present O.A. in so far as subject matter of the O.A. is completion of the Disciplinary Proceedings against the Applicant. The completion of the Disciplinary Proceedings is to be decided by the present Disciplinary Authority of the Applicant i.e. U.P. Police over which this Tribunal has no jurisdiction.

1(A). That with regard to para 4.1 & 4.2, of the application, the respondents beg to offer no comments.

2. That with regard to the statement made in para 4.3 of the application, the respondents beg to state that the averments made in this paragraph are misconceived based on the imagination of the applicant. The relations between applicant and his senior officers were official and were guided by the rule/guidelines. Whatever the applicant claims to be part of O.A.No. 127/2002 is matter of record and needs no comments.

3. That with regard to the statement made in para 4.4 of the application, the respondents beg to state that the contents of this paragraphs are also not admitted. It is only contention of the applicant that he was humiliated by the then DIG, CBI, Shri N.R. Ray which led his submission of application for repatriation and rest is matter of record and needs no comments.

4. That with regard to the statement made in para 4.5 of the application, the respondents beg to state that it is a matter of record and need no comments. The observation of the DIG, CBI regarding the conduct of the applicant, being

10/11/04

unbecoming of a CBI officer was made in courses of official transition with intention that the higher authorities of CBI could take a correct decision.

5. That with regard to the statement made in para 4.6, of the application the respondents beg to state that it reflects the personal decisions of the applicant, hence, no comments are required, however there are sufficient guidelines regarding appeal against the adverse comments which could have been taken during the course of official duty by the applicant.
6. That with regard to the statement made in para 4.7 & 4.8, of the application, the respondents beg to state that the decision to repatriate the applicant was approved by the competent authority i.e. CBI, HO as per rules, hence, needs no comments and withdrawal of repatriation of the applicant had been rejected by the competent authority, hence needs no comments.
7. That with regard to para 4.9, 4.10 and 4.11, of the application, the respondents beg to offer no comments.
8. That with regard to the statement made in para 4.12, of the application, the respondents beg to state that the letter dated 16.09.99 was written by the then DIG (not present DIG) during the official work based on official records available with him.
9. That with regard to para 4.13, 4.14, and 4.15, of the application, the respondents beg to offer no comments.
10. That with regard to the statement made in para 4.16, of the application, the respondents beg to state that the same is misconceived and not based on facts. The

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matter relates to O.A. No. 338/99 and this is matter of records. Hence no comments.

11. That with regard to the statement made in para 4.17, of the application, the respondents beg to state that decision to grant reward or not is an administrative decision that was taken in objective manner, any instruction issued in this regard by senior officers can not be taken as adverse remark. The claim of the applicant that he was entitled for reward and /commendations certificates on many occasions is the imagination of the applicant.

12. That with regard to the statement made in para 4.18, of the application, the respondents beg to state that the same are based on imagination of the applicant. Cross-checking the medical certificates and the documents from the concerned medical officer, was administrative decision of the DIG in order to satisfy himself regarding the genuineness of the medical documents for granting leave on medical ground. The other parts of the submission of the applicant regarding intimidation of the Medical Doctors/Medical Superintendent of CMC are false hence, denied.

13. That with regard to the statement made in para 4.19, of the application, the respondents beg to state that the para is also misconceived and based on the imagination of the applicant, hence, same are denied. The proceedings initiated and the penalty imposed against the applicant are matter of records, hence, need no comments.

14. That with regard to the statement made in para 4.20, of the application, the respondents beg to state that the para is incorrect as the relations between the

Ray
10/12/07

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applicant and Respondent were purely official and all the decisions were taken as per the rules/guidelines and can not be said to affect "Bad Blood" between the applicant and the respondent. Recommending Minor penalty against the applicant is again an administrative decision, taken by the Senior officers and applicant could avail the opportunity as per rule for putting up his version/explanation to the Sr. Officers.

15. That with regard to the statement made in para 4.21, of the application, the respondents beg to state that it is the matter of records of this Hon'ble Tribunal and hence needs no comments.

16. That with regard to the statement made in para 4.22, of the application, the respondents beg to state that the order dated 28.03.2000, conveying decision to initiate major penalty against the applicant and the direction, issued to hand over the cases to other officers was a decision taken by the competent authority on merits and the applicant could avail the opportunity as per rules to put up his version before them.

17. That with regard to the statement made in para 4.23, of the application, the respondents beg to state that it relates to the records of his Hon'ble Tribunal, hence need no comments.

18. That with regard to the statement made in para 4.24, of the application, the respondents beg to state that it is incorrect to say that the applicant was placed under suspension for his having filed O.A. No. 137/2000 in this Hon'ble Tribunal.

Rajy
10/10/04

The suspension purely was an administrative decision, taken by the competent authority under the rules.

19. That with regard to the statement made in para 4.25, of the application, the respondents beg to state that it is the matter of records. The decision to serve charge sheet on the application was the decision of the competent authority, based on the official records, it is incorrect to say that issue of charge sheets to the applicant was a result of having filed O.A. No. 137/2000 by the applicant.

19(A). That with regard to the statement made in para 4.26, applicant is misinterpreting the order dated May 2001 passed by this Hon'ble Tribunal in OA. No. 30, 31 & 61 of 2001. It was clearly stated in the said order that "....we are not inclined to intervene and we are of the view that the departmental proceedings in question should proceed and case to its logical and as per law" (Para-2).

20. That with regard to the statement made in para 4.27 of the application, the respondents beg to offer no comments.

21. That with regard to the statement made in para 4.28, of the application, the respondents beg to state that it is the matter of records of this Hon'ble Tribunal. It is submitted that before taking final decision, the matter was processed at various levels at HO and final decisions was taken by the competent authority. It is also mentioned that the applicant did not attend the inquiry, and thereby the inquiry could not be completed in time.

filed
11/12/04

22. That with regard to the statement made in para 4.29, of the application, the respondents beg to state that the facts are admitted as the applicant was repatriated w.e.f 12.5.2002.

23. That with regard to para 4.30 & 4.31, of the application, the respondents beg to offer no comments.

24. That with regard to para 4.32, of the application, the respondents beg to state that it is the matter of records of the Hon'ble Guwahati High Court, hence, need no comments.

25. That with regard to para 4.33 & 4.34, of the application, the respondents beg to state that it is the matter of records of the Hon'ble High Court, Guwahati hence, needs no comments.

26. That with regard to the statement made in para 4.35, of the application, the respondents beg to state the order dated 12.03.2004 had been passed by the Hon'ble High Court in WP (C) No. 1338/2003. There was no need for issuing a separate order and the order of the Hon'ble High Court had to be obeyed by all concerned in letter and spirit.

The matter regarding payment of arrear or salary and other allowances was not decided by Hon'ble High Court as this was an issue related the inquiry pending against the applicant and final decision, regarding arrear or salary, increments, extra salary etc. were to be decided after outcome of the inquiry pending against the applicant due non appearable.

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10/12/04

27. That with regard to the statement made in para 4.36, of the application, the respondents beg to state that the applicant has been paid 50% subsistence allowance till the date of his repatriation by this office. The question of the payment for the balance salary is again a separate issue which has to be decided based on the result of the inquiry against the applicant.

Regarding non payment of 13th month salary, it is admitted that 13th month salary is paid for working on holidays and Sundays by the IO, since the applicant was under suspension and had not worked on Saturdays, Sundays and holidays, he was not entitled for 13th month salary.

Regarding granting of increment, the increments were not granted as the applicant was under suspension, the final decision in this regard has to taken after completion of the inquiry against him.

Regarding non payment of medical reimbursement, it is submitted that the medical bills submitted by the applicant were found deficient and returned to the applicant to completes the deficiency and to resubmit the same again but he has not submitted the same to this office.

Regarding non payment of transfer T.A. Advance, it is submitted that the applicant has submitted an application dated 10.06.2002 directly to the JD(EZ), CBI, Kolkata, knowing well that such payment has to be made by the office of the SP. By that time, this application was received back in the branch, LPC had already been issued to the applicant hence, the advance could not be paid to him. The

Pradyum
10/12/07

transfer TA Allowances could be paid to him on receipt of transfer TA Bill from the applicant which has not yet been received till date. It is also submitted that an application dated 02.07.2003 was submitted by the applicant in the Court of Special Judge, Guwahati with copy to SP, CBI, and the Sr. PP/CBI mentioning that he is going to join UP Police and all the summons should be sent to him through UP Police which he has not submitted till date.

A copy of the letter dated 02.07. 2003 is annexed herewith and marked as Annexure - A- .

28. That with regard to the statement made in para 4.37, of the application, the respondents beg to state that the para is admitted, as the applicant had sought personal hearing from the DIG, CBI, Guwahati..
29. That with regard to the statement made in para 4.38 of the application, the respondents beg to state that the facts are admitted to the extent that the applicant appeared before the DIG, CBI, Guwahati on 01.07.2004 and it was made clear to him that the order of the Hon'ble High Court dated 12.03.2004 was sufficient to prove that he was not under suspension and there was no need of any administrative order, when judicial order was issued by Hon'ble High Court. The applicant has not submitted any order to his parent department for not allowing him to join duty by U.P. Police, Lucknow.
30. That with regard to the statement made in para 4.39, of the application, the respondents beg to state that the para is incorrect hence denied. As already

Boyer
10/12/04

submitted, that a judicial court of the status of the Hon'ble High Court has passed an order dated 12.03.2004 hence, there was no need to issue any administrative order in this regard.

31. That with regard to the statement made in para 4.40, of the application, the respondents beg to state that the para is admitted to the extent that the records of the pending proceedings against the applicant were sent to DGP, PAC, UP Police on 17.06.2004 for taking necessary action at their end and the DGP, PAC, UP vide letter dated 27.07.2004 returned all the documents, informing that the applicant has not joined his parent department and the proposed departmental action relate to internal matter of the borrowing authority and the matter can be decided by the borrowing authority. All the relevant records were once again sent to DGP, PAC HQ, UP Police on 1.11.2004 with the clarification that as per Rule 12 (GOI's order No. 3) of CCS/CCA rules 1965 the new Disciplinary Authority can carry on with the enquiry proceedings in such cases at the point where the transfer of accused officer was effected. It is submitted that the matter relating to departmental proceeding against the applicant has to be decided at the administrative level by UP Police which is under process.

32. That with regard to the statement made in para 4.41, of the application, the respondents beg to state that the para is baseless. The issue regarding letter dated 27.7.2004 of the DGP, UP Police is to be decided at the administrative level regarding departmental action to be taken against the applicant. The matter is in progress. It is incorrect to say that it was conveniently ignored by the DIG, CBI. The DGP, UP has also intimated that Shri S.P. Singh Yadav had not joined his parent department. This is despite the fact that Shri S.P. Singh Yadav had

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10/11/04

intimated the Hon'ble Special Judge, Guwahati vide letter dated 02.07.2003 that he is going to join his parent department i.e. U.P. Police.

33. That with regard to para 4.42, of the application, the respondents beg to state that it is the matter of record hence no comments.

34. That with regard to the statement made in para 4.43, of the application, the respondents beg to state that the same is denied to the extent that the matter relates to dictating the terms by CBI to UP Police or vice versa. The decision to refer the matter regarding departmental proceedings against the applicant to the UP Police was taken by the competent Authority of CBI as per laid down provisions of Rule 13 of DSPE (Subordinate ranks) (Discipline and Appeal) Rules 1961. The competent Authority was of the view that the penalties of clause vii to x of Rule 6 of said rules can be taken against the applicant.

35. That with regard to the statement made in para 4.44, of the application, the respondents beg to state that the para is misleading hence denied, it is submitted that as per rules, charge sheet dated 17.05.2000 and 22.05.2000 were sent to the DGP, UP for taking necessary action against the applicant, it is incorrect to say that CBI has dictated any term to UP Police and compelled them to take action against the applicant.

36. That with regard to the statement made in para 4.45, of the application, the respondents beg to state that the para is based on imagination and are misleading

Prady
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37. That with regard to the statement made in para 4.46, of the application, the respondents beg to state that the applicant has already been relieved from CBI to join his parent department and CBI has also paid him the pay and allowances as per rules till the date of his repatriation i.e. 12.05.2002. The LPC dated 13.05.2002 has also been issued and sent to the parent department of the applicant which will entitle him to draw salary from his parent department on joining his duty.

38. That with regard to the statement made in para 4.47, of the application, the respondents beg to state that the para is incorrect and misleading except the portion, which is part of the OA No. 154/2002 and WP (C) No. 1338/2003.

Regarding sending files of the departmental proceedings of application to the DGP, UP which is purely an administrative decision of the competent authority. The matter regarding his suspension period will be decided as per rules after departmental inquiry against the petitioner is completed.

39. That with regard to the statement made in para 4.48, of the application, the respondents beg to state that the contents are denied.

40. That with regard to the statement made in para 4.49, of the application, the respondents beg to state that the para is also denied. The proceedings which were set aside against the applicant were done on merits. The pending proceedings has also to be decided on the merit. Respondents crave leave to refer to and rely on para 19(A) herein above. It is incorrect to say that either the suspension or the proceedings were drawn to harass the applicant.

[Handwritten signature]
11/10/04

41. That with regard to para 4.50, of the application, the respondents beg to offer no comments.

42. That with regard to the statement made in para 4.51, of the application, the respondents beg to state that the contents of para are matter of the Hon'ble High Court, Guwahati hence, not commented upon. It is incorrect to say that CBI is shifting away for completing the formalities as required by DGP, UP.

43. That with regard to the statement made in para 4.52, of the application, the respondents beg to state that the contents of para are not acceptable in fact and law as the suspension of the applicant which stands revoked, departmental inquiry and payment of allowances, salary etc are three different matters. The departmental inquiry is to be completed and payment of salary etc. is to be decided after completion of the proceedings against the applicant. The borrowing authority has paid the subsistence allowance till the date of repatriation of the applicant i.e. 12.05.2002, thereafter, the salary and allowances are to be paid by the parent department i.e. UP Police. Treatment of period of suspension, depends on the outcome of the inquiry.

44. That with regard to the para 4.53, of the application, the respondents beg to offer no comments.

45. That with regard to the statement made in para 5.1, of the application, the respondents beg to state that the contents of the para are denied. It is incorrect that

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order of suspension was passed in malafide exercise of power because the decision of suspending the applicant was taken on merit.

46. That with regard to the statement made in para 5.2, of the application, the respondents beg to state that the contents are denied. Order of suspension was issued on merit. It is incorrect to say that the same was taken arbitrarily and illegal manner.

47. That with regard to the statement made in para 5.3, of the application, the respondents beg to state that the suspension period stands revoked from the date of his repatriation i.e. 12.5.2002. A decision regarding how the period of suspension would be treated can not be taken before the departmental inquiry is completed against the applicant and that any order regarding the same has to be issued after the outcome of inquiry.

48. That with regard to the statement made in para 5.4, of the application, the respondents beg to state that CBI has paid 50% subsistence allowance to the applicant till date of his repatriation and any order for further payment to be made to the applicant has to follow the final outcome of the inquiry. As such the payments of salary and allowance, bonus etc. will be paid by CBI after the outcome of the inquiry. The medical bill was found defective and the bill was sent back the applicant on 3.6.2002. which has not sent back so far.

49. That with regard to the statement made in para 5.5, of the application, the respondents beg to state that the contents are denied. Proper order of relieving

[Signature]
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dated 12.5.2002 was issued to the applicant, a LPC was also issued on 13.5.2002.

Hence, there is no need to issue certificate as stated by the applicant.

50. That with regard to the statement made in para 5.6, of the application, the respondents beg to state that the contents of para are repetition of the facts, hence, no comments.

51. That with regard to the statement made in para 5.7, of the application, the respondents beg to state that the contents are denied. All the actions taken by the Respondent are in conformity with the departmental rules.

52. That with regard to the statement made in para 5.8., of the application, the respondents beg to state that the contents of para are misleading hence denied.

53. That with regard to the statement made in para 5.9, of the application, the respondents beg to state that the contents of the para are misleading hence denied. A decision regarding departmental proceedings has to be taken by the administrative authorities of UP Police.

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

55. That with regard to the statement made in para 7, of the application, the respondents beg to state that the applicant has filed a review petition No. 114 dated 14.09.2004, which is arising out of WP (C) No. 1338/03 filed by the applicant in the Hon'ble Guwahati High Court.

Reyju
10/12/04

56 That with regard to para 8 & 9 of the application, it is submitted that the Applicant is not entitle to any relief. Reliefs sought for are emphatically opposed.

57. That with regard to para 10 to 12 of the application, the respondents beg to offer no comments as these are matter of record.

VERIFICATION

I, Prabhu Dayal Meena, S/o Late Ganga Ram Meena, Superintendent of Police, CBI, ACB, Guwahati being authorised do hereby verify that the statements made in paragraphs 1 to 57 of the written statement are true to my knowledge being matter of records derived therefrom which I believe to be true and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 10th day of December, 2004.

Declarant

flaym 10/12/04.

(P. D. MEENA)

Superintendent of Police,
CBI, ACB, Guwahati

For respondents No. 1, 2 and 3.

Annexure - A

(18) (100) -115-

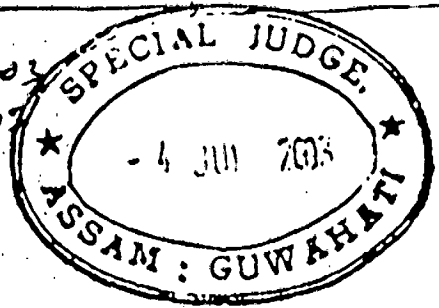
IN THE COURT OF SPECIAL JUDGE ASSAM: GUWAHATI

Date of application for copy 16-9-03

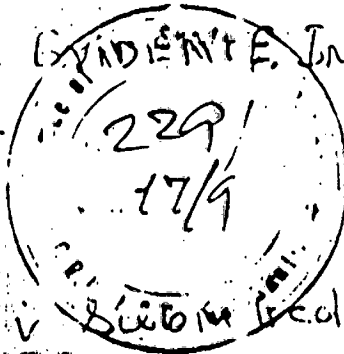
Date on which the copy was received 16-9-03

Date of making over the copy to 16-9-03

Signature
Court of Special Judge
Assam Guwahati



SUBJECT: SUMMONS FOR EVIDENCE IN THE CASES
UNDER TRIAL



Most humbly I submit that the

undersigned is proceeding shortly to join
his parent cadre in U.P. Police, in view of
the office order no 101/2002 dated 17/5/2002
of SP/CB/A.B/Guwahati, copy thereof annexed
herewith for ready reference.

It is therefore requested that Summons
for evidence in under trial cases investigated
by the undersigned may kindly be
forwarded through his parent employer,
D.G.P., U.P. Police.

Submitted.

Signature As Above

(Cross with filing)

RECEIVED DISTRICT JUDGE GUWAHATI
FOR INFORMATION AND COMPLIANCE
BY SR. MARSHAL JIA, SP/CB
AND SP/PP, CBT AND RANGIT
THE THIRD INSPECTOR A

- 116 -
125

(19)

Annexure - 'A' (Typed Copy)

IN THE COURT OF SPECIAL JUDGE ASSAM: GUWAHATI

Subject:- Summons for Evidence In the Cases Under Trial.

Sir,

Most humbly it is submitted that the undersigned is proceeding shortly to join his parent cadre i.e. U.P. Police, in view of the office Order No. 101/2002 dtd. 12/5/2002 of SP/CBI/ACB/Guwahati, copy thereof annexed herewith for ready reference.

It is therefore requested that summons for evidence in under trial cases investigated by the undersigned may kind be forwarded through his parent employee i.e. DIG/UP Police.

Submitted.

Yours faithfully

Sd/- 2/07/03

Annexure as above

Copy to:- Respected DIG/CBI/NER.

For information and compliance

by Sh. Narayan Jha, SP, CBI, Guwahati

and Sr. PP/PP, CBI, ACB, Guwahati.

(S.P. Singh Yadav)
the then, Insp., CBI.