

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org. App / Misc. Petn / Cont. Petn / Rev. App.

68/84

In O.A.

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

Name of the Respondent(s) H. O. T. Qons

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

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

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
116378.612	2.4.2004	Present : The Hon'ble Sri Kailash Singh, Member (J), The Hon'ble Mr. K.V. Prabh ladaan, Member (A),
1153804		Heard learned counsel for the parties.
		The application is allowed for the reasons recorded in separate sheets. No order as to costs.
ps taken with clips.		K. Prabh Member (A)

Steps taken with
envelope.

pg

KV Balakrishnan
Member (A)

Member (J)

NO 5yo. has been filed with
original application. ptl put
up when remove the jaws.

✓
16/3/04

Remove defects

25
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19.4.04

Copy of the
order has been
sent to the Dfsee
for issuing the
same to the agent
as well as to the
resp Dr No 4.

85

Recd. copy of
MM Ch 22/4/04

22/04/04

Recd. a COPY
of OA 168-2004
of Saryay
S1/CS1/GW/H.
for DIG (NER) GB1
Guwahati
r.no -4
Saryay
22/4/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 1 : 68 of 2004

DATE OF DECISION 02.04.04

Sri Suresh Pal Singh Yadav

.....APPLICANT(S).

Mr.P.K.Tiwari

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

Union Of India & Ors.

.....RESPONDENT(S)

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. MR.KULDIP SINGH, MEMBER, JUDICIAL

THE HON'BLE MR.K.V.PRAHALADAN, MEMBER, ADMINISTRATIVE

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

Judgment delivered by Hon'ble Member JUDICIAL

Kundu

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 68 of 2004.

Date of Order : This the 2nd Day of April, 2004.

The Hon'ble Shri Kuldip Singh, Judicial Member.

The Hon'ble Shri K.V.Prahladan, Administrative Member.

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

... Applicant

By Advocate Sri P.K.Tiwari.

- Versus -

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

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

3. The Addl.Director,
Central Bureau of Investigation,
East Zone, Nizam Palace, AJC Bose Road,
Kolkata.

4. The Deputy Inspector General of Police,
Central Bureau of Investigation (NE Region)
Guwahati.

5. KC Kanungo, Dy. Inspector General,
Kulti Disciplinary Monitoring Agency,
Central Bureau of Investigation,
1/10 Jamnagar House, Hutmants,
Akbar Road, New Delhi-110011.

... Respondents.

O R D E R

KULDIP SINGH, MEMBER (J)

Heard Sri P.K.Tiwari, learned counsel for the applicant.

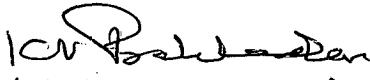
The applicant was served with a penalty order of stoppage of 3 increments with cumulative effect though he has been issued a memorandum of minor penalty. After receipt of the show cause notice the applicant filed a reply but instead of a minor penalty major penalty was imposed on the applicant. The applicant preferred an appeal before the appellate authority who passed an order suspending the punishment ~~keeping~~ till

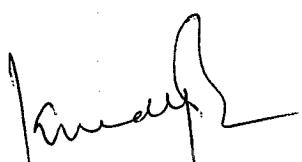


further orders vide Annexure-A/9 dated 2.8.2001. However, the appeal has not yet been disposed of and it is still pending with the appellate authority.

We think that O.A. can be disposed of at this stage with a direction to the appellate authority to dispose of the appeal within 3 months from the date of receipt of this order.

The O.A. is accordingly allowed and the respondents are directed to dispose of the appeal within a period of 3 months from the date of receipt copy of this order. All other issues raised in this O.A. shall remain open.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(KULDIP SINGH)
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

O.A. No. 68 of 2004

Suresh Pal Singh Yadav

... Applicant

- VS -

Union of India & Ors.

... Respondents

SYNOPSIS

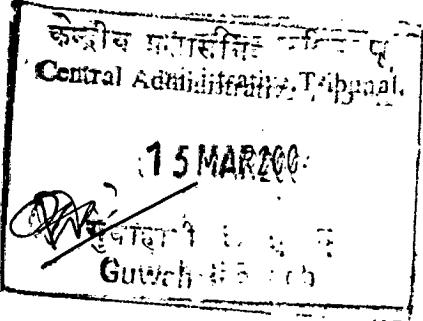
In the present case Applicant is assailing the legality of the order of imposition of major penalty of stoppage of three increment with cumulative effect. The aforesaid major penalty was imposed upon the Applicant vide office order No. 39 dated 15.2.2001 communicated vide No. A/20/157/93/01066-70 dated 15.2.2001 by Superintendent of Police, CBI, Guwahati. The impugned order was passed in pursuance of a departmental proceeding initiated against the Applicant for imposition of minor penalty under Rule 9 of the Delhi Special Police Establishment (Subordinate ranks) Discipline & Appeal Rules, 1961. Though the procedure for imposition of minor penalty was followed but the penalty imposed on the Applicant was major. For imposition of major penalty Rule 8 of the Rules provides an elaborate procedure. In the present case, the procedure laid down by Rule 8 of the Rules was not followed and without holding any enquiry a major

penalty was imposed upon the Applicant. The impugned order is without jurisdiction or authority of law and the same is ab-initio void. The Applicant preferred an appeal under Rule 15 of the Rules against the imposition of major penalty. The Appellate Authority vide order dated 2.8.2001 suspended the punishment till further orders. However, the appeal of the Applicant is pending disposal till date. The Applicant submitted the reminder dated 25.6.2002 but the same also did not yield any response. Hence the present application.

Filed by

P.K. Tiwari

P.K. Tiwari, Advocate



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. 68 of 2004

Suresh Pal Singh Yadav ... Applicant

- Versus -

Union of India & Ors. ... Respondents

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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. 68 of 2004

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 Additional Director, Central Bureau of Investigation, East Zone, Nizam Palace, AJC Bose Road, Kolkata.
4. The Deputy Inspector General of Police, Central Bureau of Investigation (NE Region), Guwahati.
5. KC Kanungo, Deputy Inspector General, Multi Disciplinary Monitoring Agency, Central Bureau of Investigation, 1/10 Jamnagar House, Hutmants, Akbar Road, New Delhi-110011.

.... Respondents

DETAILS OF APPLICATION

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

The present application is directed against the order No. 39 dated 15.2.2001 passed by the then Deputy Inspector General of Police, CBI, NER, Guwahati imposing upon the Applicant a major penalty of stoppage of three increments in pay with cumulative effect without holding any enquiry.

Filed by: The Applicant
Through: *Prakash Bhuyan & Co.*
Advocates
15.3.2004.

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2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

The applicant preferred a statutory appeal dated 13.4.2001 under Rule 15 of the Delhi Special Police Establishment (Subordinate ranks) Discipline & Appeal Rules, 1965 against the impugned order dated 15.2.2001. The Appellate Authority vide office order No. 214 dated 2.8.2001 suspended the punishment till further orders and since then the aforesaid appeal is pending disposal. The Applicant also submitted the reminder dated 25.6.2002 but the same did not yield any response. Hence the present application within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That in the present case Applicant is assailing the legality of the order of imposition of major penalty of stoppage of three increment with cumulative effect. The aforesaid major penalty was imposed upon the Applicant vide office order No. 39 dated 15.2.2001 communicated vide No. A/20/157/93/01066-70 dated 15.2.2001 by Superintendent of Police, CBI, Guwahati. The impugned order was passed in pursuance of a departmental proceeding initiated against the Applicant

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for imposition of minor penalty under Rule 9 of the Delhi Special Police Establishment (Subordinate ranks) Discipline & Appeal Rules, 1961, hereinafter referred to as "the Rules". Though the procedure for imposition of minor penalty was followed but the penalty imposed on the Applicant was major. For imposition of major penalty Rule 8 of the Rules provides an elaborate procedure. In the present case, the procedure laid down by Rule 8 of the Rules was not followed and without holding any enquiry a major penalty was imposed upon the Applicant. The impugned order is without jurisdiction or authority of law and the same is ab initio void. The Applicant preferred an appeal under Rule 15 of the Rules against the imposition of major penalty. The Appellate Authority vide order dated 2.8.2001 suspended the punishment till further orders. However, the appeal of the Applicant is pending disposal till date. The Applicant submitted the reminder dated 25.6.2002 but the same also did not yield any response. Hence the present application.

4.2 That the Applicant was appointed as Inspector of Police in the Central Bureau of Investigation on being send on deputation by the Uttar Pradesh Police. After his appointment on deputation the Applicant joined as Inspector of CBI (Anti Corruption Branch), in the office of the Superintendent of Police, CBI, Shillong in September, 1993. 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. The Applicant also

handled certain highly sensitive cases, like the case relating to fraudulent withdrawal of advance TA against the Judges of the Hon'ble Gauhati High Court as well as the staff of the Gauhati High Court from Kamrup Treasury. In this case also the Applicant was given commendation certificate as well as cash reward for his effective investigation.

The Applicant craves leave of this Hon'ble Tribunal to produce the relevant documents showing the conferring of rewards on the Applicant for his competence and effective investigation.

4.3 That the difficulties of the Applicant started from October 1999 onwards when the Respondent No. 4/5 the then Disciplinary Authority developed an animus against the Applicant. The Respondent No. 5 came to Guwahati in July 1999. The official difficulties of the Applicant started with the Applicant filing OA No. 338/99 (admitted on 15.10.99) before the Guwahati Bench of the Hon'ble Central Administrative Tribunal assailing the order of his repatriation from CBI and seeking his absorption in the said organisation. The Hon'ble Tribunal admitted the said OA and passed the interim order in favour of the Applicant on 15.10.99.

4.4 That the filing of the aforesaid Original Application piqued the Respondent 4/5. Since during the period the aforesaid OA 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

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Applicant was absent 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.

4.5 That such was the degree of animus bore by the Respondent No. 4/5 against the Applicant that some time in November/December 1999 in File No. 153/99/Vol.II/NFR, the Respondent No. 4/5 in his note to the S.P. CBI, wrote that rewards should not be given to person like SP Singh Yadav who is using the reward money for fighting CAT cases against CBI (emphasis added). It is due to this observation, that since 1999 reward and commendation certificates were not conferred on the Applicant on many occasions when as per the CBI Manual, he was entitled to get such rewards and commendation certificates.

4.6 That the Respondent No. 4/5 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. The authority of

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Dr. (Mrs.) Rupali Barua, MBBS MD, who is an Associate Professor in Gauhati Medical College and had issued sickness and fitness certificate to the Applicant, was questioned.

4.7 That when the Applicant was not paid the salary for the month of October 1999 and for the said period he was treated to be on unauthorised absent, the Applicant preferred an Original Application to this Hon'ble Tribunal. The application preferred by the Applicant was allowed by this Hon'ble Tribunal with cost against the official Respondents. This Hon'ble Tribunal in its order held that the Applicant could not have been treated to be unauthorisedly absent and was entitled to the salary for the said period.

• Applicant craves leave of this Hon'ble Tribunal to produce a copy of the order passed in the said case.

4.8 That it is in this backdrop that the circumstances which culminated in initiation of the departmental proceeding giving rise to the present case, has to be seen.

4.9 That the Applicant was served with a memorandum dated 7.12.99 by the Superintendent of Police, CBI (ACB), Guwahati wherein certain allegations were made against him in regard to his behaviour on 2.12.99. The narration of the events in regard to the occurrence in question shows that not only the Deputy Superintendent of Police was the witness of the alleged occurrence but

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even the DIG, CBI (Respondent No. 4/5) who happened to be the Disciplinary Authority of the Applicant, also witnessed the alleged incident. The memorandum dated 7.12.99 also shows that it was on the report of the DSP, CBI, the memorandum in question was served upon the Applicant calling for his explanation.

Copy of the memorandum dated 7.12.99 is annexed herewith and marked as Annexure-A/1.

4.10 That in response to the aforesaid memorandum the Applicant submitted his reply on 15.12.99 wherein he denied the allegations made against him and attributed motives to the Disciplinary Authority for making such an allegation.

Copy of the reply submitted by the Applicant dated 15.12.99 is annexed herewith and marked as Annexure-A/2.

4.11 That subsequently vide memorandum dated 10.1.2000 the Superintendent of Police, CBI, ACB, Guwahati proposed an action for imposition of minor penalty on the Applicant under Rule 9 of the Rules. The statements of imputation of misconduct against the Applicant was enclosed with the aforesaid memorandum and the Applicant was directed to submit his written explanation against the same.

Copy of the memorandum dated 10.1.2000 enclosing therewith the statement of imputation of misconduct are annexed herewith and marked as Annexure-A/3 colly.

4.12 That the statement of imputation of misconduct

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enclosed with the memorandum dated 10.1.2000 were in regard to the same occurrence for which the Applicant was served with the memo dated 7.12.99. The nature of allegation made against the Applicant was exactly the same and as such the Applicant in his letter dated 17.1.2000 alleged malafide against the Disciplinary Authority and requested for entrusting the entire matter to any other competent authority.

Copy of the letter of the Applicant dated 17.1.2000 is annexed herewith and marked as Annexure-A/4.

4.13 That subsequently the Applicant submitted his written statement of defence on 22.1.2000. In his written statement of defence, the Applicant submitted his parawise denial of the allegations made against him and reiterated his allegations of malafide against the Disciplinary Authority.

Copy of the written statement of defence submitted by the Applicant dated 22.1.2000 is annexed herewith and marked as Annexure-A/5.

4.14 That thereafter the Superintendent of Police vide office order No. 39 dated 15.2.2001 forwarded to the Applicant the extract of the orders of DIG, CBI received vide No. 361/A/20/157/93 dated 2.2.2001. In his order the Disciplinary Authority held the Applicant guilty of misconduct and imposed upon him what he described as a "minor penalty" of stoppage of three increments with cumulative effect.

Copy of the office order No. 39 dated 15.2.2001 is annexed herewith and marked as Annexure-A/6.

4.15 That being aggrieved by the impugned office order dated 15.2.2001, the Applicant preferred a statutory appeal dated 13.4.2001 under Rule 15 of the Rules. The Applicant urged various grounds in the appeal. For the sake of brevity Applicant craves leave of this Hon'ble Tribunal to refer to the averments made and grounds urged in the appeal for the purpose of the present application.

Copy of the statutory appeal dated 13.4.2001 is annexed herewith and marked as Annexure-A/7.

4.16. That when after the expiry of more than three months the Applicant did not hear anything about the action taken on his appeal. He submitted the representation dated 31.7.2001 to the Appellate Authority seeking earlier disposal of his appeal.

Copy of the representation dated 31.7.2001 is annexed herewith and marked as Annexure-A/8.

4.17. That subsequently the Appellate Authority vide office order No. 214 dated 2.8.2001 suspended the punishment imposed on the Applicant till further orders.

Copy of the office order No. 214 dated 2.8.2001 is Annexed herewith and marked as Annexure-A/9.

4.18 That though the Applicant got the relief in the form of the interim order but he wanted the final disposal of the appeal. However, the statutory appeal of the Applicant continued to remain pending. The

Applicant on various occasions approached the competent authority for disposal of his appeal but till this very date no order has been communicated to him and to the best of the knowledge of the Applicant his statutory appeal has remained pending.

4.19 That the Applicant has waited for long for the disposal of his appeal and no fruitful purpose would be served in waiting any further. Hence the Applicant files this application bonafide and for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 Because the penalty of stoppage of increment with cumulative effect has been treated to be a major penalty. Hence the Disciplinary Authority seriously erred in law by imposing the same by following the procedure for imposition of minor penalty.

5.2 Because since the penalty of stoppage of increments is a major penalty the same could not been imposed on the Applicant without following a procedure for imposing major penalties as laid down in Rule 8 of the Rules. In the case of the Applicant no enquiry was held and procedure for imposing major penalty was not followed and as such the impugned order imposing major penalty on the Applicant is illegal and the same is liable to be quashed and set aside.

5.3 Because when penalty was imposed withholding three increments with cumulative effect it means that the

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three increments earned by the Applicant were cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. Consequently, the clock was put back to a lower stage in the time scale of pay. The insidious effect of the impugned order, by necessary implication, is that the Applicant is reduced in his time scale by three places in perpetuity during the rest of the tenure of his service. The nature of the penalty was imposed upon the Applicant therefore has the effect of lowering the Applicant in time scale or to a lower stage in a time scale within the meaning of Rule 6 (vii) of the Rules which is a major penalty. Therefore, the impugned order is without jurisdiction or authority of law and the same is ab-initio void.

5.4 • Because the procedure laid down for imposing major penalty under Rule 8 of the Rules was not followed. The issuance of the notice and consideration of the explanation is not a procedure in accordance with Rule 8 and as such the imposition of major penalty of the stoppage of three increments with cumulative effect is a nullity.

5.5 Because the impugned order was passed in malafide exercise of power without following the procedure established by law.

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 impugned office order No. 39 dated 15.2.2001 (Annexure-A/6).

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

8.3 Award cost of the application.

9. INTERIM ORDER PRAYED FOR :

In the facts and circumstances of the case, the Applicant does not pray for an interim order.

10.

The Application is filed through Advocate.

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

(i) I.P.O. No. : 116 378612

(ii) Date : 15.3.2004

(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

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 to 4.4, 4.6 and 4.8 are true to my knowledge ; those made in paragraphs 4.5, 4.7 and 4.9 to 4.19 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 10th day of ~~February~~^{MARCH}, 2004 at Guwahati.

Suresh Pal Singh Yadav

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ANNEXURE A/1

CENTRAL BUREAU OF INVESTIGATION,
OFFICE OF THE SUPDT.OF POLICE,
ANTI CORRUPTION BRANCH,
GUWAHATI:-5.
NATIONAL POLICE

M E M O

It has been reported by Dy.SP/CBI(NER)Guwahati that on 02/12/99 @ 11.35AM you went to CBI,Regional Office,Guwahati on being called by the DIG for discussion of case No.RC.34(A)/96-SHG. At that time, one Shri Arun Baruah on being called by the DIG was discussing about the complaint filed by him against you alongwith the Dy.SP(R) with the DIG in his Chamber. At about 11.45AM after discussion with the DIG the said Shri Baruah came out from the DIG's Chamber alongwith the Dy.SP(R). At that time you came out of the office and confronted Shri Arun Baruah in the office Verandah and started shouting at him,uttering "Tuo Chor,yahan Kaise Aaya",Tujhko nahin Choranga", "You Cheat" and caught hold of his collar and tried to assault him. Somehow,Dy.SP(R) managed to prevent you from assaulting Shri Baruah. Hearing the shouting,the DIG,CBI(NER) came out from his chamber and sternly ordered you to stop shouting and asked Shri Baruah to leave the office. Const.Mukut Baruah, Const.G.R.Das,Const.Mukul Deka of CBI,Regional Office and Const. Bhupen Das,PSQ to DIG also witnessed the incident.

2. In view of the above facts and circumstances, you are directed to explain as to why disciplinary action should not be taken against you for your such behaviour and misconduct.
3. Your explanation should reach this office within 5 days from the date of issue of this Memo,failing which stern disciplinary action will be taken against you as per rule.

To

Sri S.P.Singh Yadav,
Inspector of Police,
CBI(ACB)Guwahati.

Endst.No.DP/SHL/1999/P 3805 A/20/157/93 Dated:- 7/12/99
Copy to :-

The Dy.Inspr.Genl.of Police,CBI(NER)Guwahati w.r.t.
his Endst No.2347/CR/SIL/99/06 Dated 2/12/99 for
information please.

Superintendent of Police,
CBI(ACB)Guwahati.

-0-0-0-0-

el/-

Certified to be true Copy

S. Mukul Baruah
15/3 Advocate

ANNEXURE - A/2

To,

The Suptd of Police
CBI/ACB/SPE
Guwahati

Ref : Memo communicated vide Endorst. No. DP/SIIJ/999/03805/A-
20/157/93 dtd. 07.12.99.

Sir,

With reference to the above, I have honour to state that I have received the aforesaid memo on 10.12.99 and have gone through the contents made therein and I am surprised to note the allegations therein, however as directed I am submitting my explanation which is as follows :-

1. That at the very outset I would like to point out that the report on which the aforesaid memo has been issued, have not been furnished along with said memo and I am completely in dark regarding report said to be given by Dy. SP(R)/CBI/NER Guwahati, and so I have reserved my right to submit my further necessary explanation as and when the copy of the said report is furnished by your honour.
2. That from the aforesaid memo it is seen that the same has been issued by the Supdt. of Police CBI/ACB/Ghy, but the same has been signed by Sri K.C. Choudhury Dy. SP(R)/CBI/NER on 07.12.99. From such memo it can be easily inferred that the aforesaid memo has been issued with malafide intention in as much as the basis of issuance of said memo was reported by Dy. SP(R)/CBI/NER Sri K.C. Choudhury and show cause was called for by the same person. However the entire allegations made in the said memo are deemed to be denied, save and except which are specially admitted.
4. That the statement that I was called by the DIG on 02.12.99 at 11.35 AM in CBI/Regional Office Chenikuti, Ghy for discussion of the case No RC-34(A)/196-SIG are

Certified to be true Copy

S. Choudhury
15/3 Advocate

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correct. However regarding the statement that at that time one Sri Arun Barua on being called by the DIG was discussing about the complaint filed by him against me along with Dy. SP(R) with the DIG in his chamber are not known to me nor any information was given to me in that regard. The statement that at about 11.45 AM after discussion with DIG the said Sri Arun Barua came out from the DIG's chamber along with the Dy. SP(R) and at that time I came out from the office and confronted Sri Arun Barua in the office verandah and started shouting at him uttering "Tuo chor Yahan Kaise Aaya", "Tujhko nahin choranga" "You Cheat" and caught hold of his Collar and tried to assault him and somehow Dy. SP(R) managed to prevent me from assaulting Sri Barua, are not correct and are stoutly denied. It is also denied that hearing the shouting, the DIG/CBI/NER came out from his chamber and sternly ordered me to stop shouting and asked Sri Barua to leave the office. It is also not correct that Const. Mukut Barua, Const.G.R. Das, Const. Mukul Deka of CBI regional office and Const. Bhupen Das P.S.O of DIG witnessed the incident. Infact the aforesaid persons said to be having witnessed the incident are working under DIG/CBI/NER and they cannot go against the instruction by the DIG, and therefore these witnesses cannot be said to be independent witnesses. From the allegations itself it is found that the entire story is nothing but a concocted and made out story.

5. That before issuing the memo I was not given any opportunity to see what complaint has been filed against me by Arun Barua, nor any inquiry has been made in connection with the said complaint as well as regarding the background of Mr. Arun Barua. If any complaint is filed with some allegations against any person, he should be given a chance for explanation of the allegations, but in the present case when an alleged complaint is filed by Mr. Arun Barua, without any intimation, the discussions was going against me

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Shubhayon The
1573 Advocate

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and behind my back which also reveal that some conspiracy was going on against me.

6. That the aforesaid circumstances as well as issuance of the memo by the Dy. SP/CBI/NER is nothing but a further steps to harass me and to interfere. In my valuable service career which has been done to me earlier also, I hereby reiterate that entire allegation made in the memo are totally false as I did not utter such word against Mr. Arun Barua on 02.12.99 in the verandah of the DIG chamber. Infact, when I was waiting in the verandah in front of the DIG chamber to be called, for said discussion, Sri Arun Barua came out from the chamber of the DIG and on seeing him I became surprised and so I asked him whether he has come to file any complaint against me. Mr. Arun Barua did not respond properly and tried to avoid me however I waited for being called by the DIG and when the DIG did not call me and informed me through Dy. SP(R) Sri K.C. Choudhury to return as no discussion was to take place with DIG. I returned to my office at Sunderpur, Ghy.

7. That in this regard I like to place on relevant facts for which the aforesaid memo has been given for malafide intention and Arun Kanti Barua has been made a lever with intent to malign me and harass me. From last one year some disputes are going on with Sri Arun Barua and some proceedings are still pending in different courts. There are so many F.I.R's filed against Sri Arun Barua by my wife for the illegal act and mis- behaviour of Sri Arun Barua and a case has been registered vide F.I.R No 1165 dtd 20.11.98, U/S 147/148/447/325/PC, over and above other complaints were also lodged against Mr. Barua in P.S. Dispur on 23.09.98, 30.09.98, 30.10.98 and 16.11.98 which are under investigation by the Police.

Not only that, a Civil Suit being title Suit No 214/98 and Misc case No 119/98 against Arun Kanti Barua

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Shankarayya
1573 Advocate

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& others are also pending against him and in connection with aforesaid cases being Misc appeal No 40/98 & 37/98 are pending before District Judge, Ghy. The aforesaid cases were filed against the illegal act of Sri Arun Barua in the building where I am residing with my family. In this connection a case was also filed before the hon'ble Guahati High Court vide civil Revn. No 372/1998 which was disposed off on 25.11.99 in my favour.

Not only that Sri Arun Barua is a person of criminal nature and dubious character and a case was registered on 29.09.95 with P.S. Dispur, Ghy U/S 324/307/498 A of IPC. The said FIR was registered as FIR No 696/95.

Not only that, Sri Arun Barua was also charge sheeted by CBI/ACB Guwahati branch U/S 420, 468, 471 & 477 (A) of IPC and section 13(2) R/W 13(1)(d) of P.C. Act 1988 in RC- 7(A)/96-SIG for defrauding New Bank of India (Now Punjab National Bank, fancy Bazar, Ghy) to the tune of Rs.11,00,000 (approx) and for the said criminal mis-conduct the authority of P.N.B. dismissed Sri Barua from service and the charges against him are framed in Special Judge Assam Court and further trial is on. The case was investigated by Inspector Sri. B.R. Roy now posted at CBI/ACB, Calcutta.

Not only that Sri Barua is so dare devil that he intimidated & assaulted a Public Servant Smt. Anjali Goswami, Town Planner, GMDA, Ghy during discharge of her official duties on 23.09.98 and as such the Chief Executive Officer GMDA, Ghy, Sri Ashutosh Senguta, IAS also lodged a complaint with P.S. Dispur, Ghy vide letter No GMDA/6/94-95/27 dtd 24.09.98.

8. From the afore said we can asses the character of Mr. Arun Kumar who is also acting against me and that is why he was called by the DIG without informing me and with his help present case has been made out against me which

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15/3 Advocate

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is nothing but a bad motive of the officer concerned who are also acting against me and this type of conspiracy is not expected from such high ranking official. I am sanguine that a tacit understanding has also reached between Sri Arun Barua & DIG to save Sri Barua from conviction by prevailing upon the available evidence and witnesses through prosecuting officers of the CBI conducting the case. On this sole ground the allegations made against me can be brushed aside and if any proceeding is initiated on such false allegations that will certainly be illegal and malafide one. In this regard I do not like to mention anything regarding illegal steps taken by DIG/CBI/NER, but since learned DIG has acted in such a manner to harm my career and so I am compelled to mention some actions taken by him against me which are relevant for issuing memo in question.

9. In this regard it is pertinent to mention that I was compelled to seek the protection of hon'ble Guahati bench of Central Administrative Tribunal against the arbitrary and malicious remark of DIG/CBI/NER and my repatriation order secured thereon, by filing an application vide OA No 338/99 and the Hon'ble bench after hearing, was pleased to stay my said repatriation vide its order dtd 15.10.99. Since then with a view to harass me my salary for the month of October was stopped and not yet released putting me to great financial hardship. I was also issued memo 537/CON/29/92-SHG dt 01.10.99 thereby irregularly and illegally fixing responsibility on me for the lapses of others. Further vide memo DP/SII/1999/055/03/A/20/157/93 dtd 30.11.99 I am threatened to treat my medical leave as unauthorised absence on flimsy ground despite the fact that I had submitted all the required MEDICAL documents.

Thus the aforesaid incidents are not to be viewed in isolation but a part of the conspiracy to harass me.

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Surjya Prakash
15/3 Advocate

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The said memo is also the result of same conspiracy whereby I was unsuspectingly called by the DIG for the purported discussion of RC 34A/96-SHG, the SP's report of which is already submitted, and than implicate me concocting false story vide said memo with a view to initiate departmental proceedings and thereby jeopardize my service career.

10. From the aforesaid circumstances and if the entire facts are considered than it will be inferred that the allegations made against me are totally false and baseless and as such my this explanation may be accepted, and the matter may be dropped without any further action or steps.

I hope the case may be considered sympathetically and according to law.

22/12/99

SURESH PAUL SINGH YADAV
INSP/CBI/ACB
Guwahati.

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Shrikanya
15/3 Advocate

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ANNEXURE - A/3 COLLY

Office of the Supdt. of Police,
Central Bureau Of Investigation,
Anti-Corruption Branch,
Sundarpur, Guwahati- 5.

No.: DPSHL/1999/ 0021 / A/20/157/93

Date: 10/1/2020

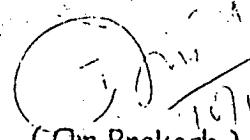
MEMORANDUM

Under Rule 9 of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 an action is proposed to be taken against Shri S. P. Singh Yadav, Inspector, CBI, Guwahati Branch.

The statement of imputation of misconduct against Shri S. P. Singh Yadav, Inspector is enclosed herewith.

Inspector, S. P. Singh Yadav is hereby directed to submit his written explanation/defence within 5(five) days of receipt of this Memo and also he should say whether he wants to be heard in person. If the written explanation/defence is not received within the specified time, as mentioned above, the undersigned will presume that he has nothing to explain on his behalf and further action would be taken against him as deemed proper.

Shri S. P. Singh Yadav, Inspector should acknowledge receipt of this memo.

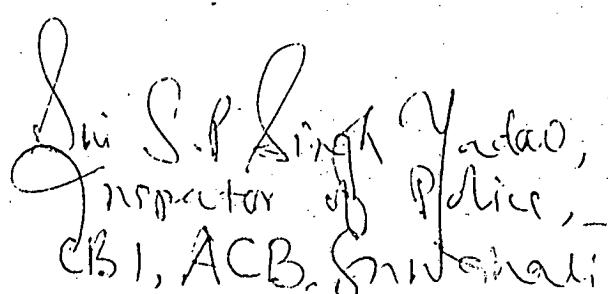

(Om Prakash)
Supdt. of Police,
CBI, ACB, Guwahati.

Encl: Statement of imputation against
Inspector S. P. Singh Yadav.

No.: DPSHL/1999/ 0021 / A/20/157/93
Copy forwarded to:

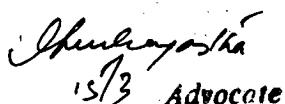
Date: 10/1/2020

The Dy. Inspector General of Police, CBI, NER, Guwahati for favour of
information please.


Shri S.P. Singh Yadav,
Inspector of Police,
CBI, ACB, Guwahati

Supdt. of Police,
CBI, ACB, Guwahati

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Hemlata
15/3 Advocate

**STATEMENT OF IMPUTATION OF MISCONDUCT AGAINST SHRI S. P. SINGH
YADAV, INSPECTOR, CBI, GUWAHATI BRANCH.**

That Shri S. P. Singh Yadav had criminally assaulted one Shri A. K. Baruah and threatened him with a revolver on account of various property dispute between them relating to purchase of a flat by Smt. Jonali Baruah, said to be wife of Shri S. P. Singh Yadav at Dorothi Apartment, 4th Bye Lane, Tarun Nagar, Guwahati-5 and said Shri A. K. Baruah made a complaint against Shri Yadav to the Director, CBI, which has been forwarded to DIG, CBI, NER for causing verification and reporting the matter to HO. In connection with which Shri K. C. Choudhury, Dy. SP, Regional Office was asked by the DIG, NER to examine the complainant when DIG, CBI, NER was present at HQ, so that he could also talk to him.

2. Accordingly, Shri Chaudhury, Dy. SP called Shri Baruah to Regional Office on 30/11/99, who came and reported to him at about 11.15 am. As per instruction of the DIG, Shri Choudhury, Dy. SP after discussing the matter with the complainant and enquiring from him about the origin of the allegation etc., produced the complainant Shri Baruah before the DIG, as desired, in the DIG's chamber at about 11.30 am. and DIG after discussing the matter in presence of Shri Chaudhury, Dy. SP allowed the complainant to go.
3. That said Shri S. P. Singh Yadav, Inspector had also been called to Regional office to report to DIG for discussing his case No. RC 34(A)/96-SHG for finding out the delay in preparation of SP's report and its enclosures, which have been going on since 16/6/99, as revealed from the weekly diary of Shri Yadav. But said Shri Yadav, instead

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15/2 Advocate

of reporting at Regional office at 10.00 am. reported at about 11.30/11.35 am for reason best known to him. There is no entry also in the local movement register of I.O.'s maintained in the DO section, about the departure of Shri S. P. Singh Yadav on 30/11/99 from the office.

4. That when the complainant, Shri A. K. Baruah was about to leave the office, Inspector, S. P. Singh Yadav, who was sitting in the room of Dy. SP, suddenly came out to the verandah and started shouting at Shri Baruah, uttering "Tu Chor", "Yaha Kaise Aaya", "Tujhko Nalain Choroonga", "You Cheat". Inspector S. P. Singh Yadav also caught hold of his collar and tried to assault him but was prevented upon with great difficulty by Shri Chaudhury, Dy. SP and other staff of Regional Office.

5. That hearing the loud shouting of Shri Yadav, the DIG came out from office chamber and asked Shri Yadav to let Shri Baruah, go as he was called by the DIG and not came on his own accord and expressed his serious displeasure at the unbecoming behaviour of Inspector, S. P. Singh Yadav.

6. The explanation of Shri Yadav was called for by the undersigned vide endst. No. DPSHL/1999/05805-06/A/20/157/93 dtd. 7/12/99, which was issued under signature of Dy. SP, Sh. K. C. Choudhury, who was holding the charge of the branch, under my order, to explain his conduct and also to explain as to why disciplinary action should not be taken against him for such behaviour and conduct.

7. But said Shri Yadav instead of giving proper explanation of his misconduct and misbehaviour, which was not only uncivilized and high-handed, has made false malicious allegations against all the staff of Regional office, who had seen the incident and also

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Surayosha
15/3 Advocate

Shri K. C. Choudhury, Dy. S.P. who had called Shri Baruah and DIG, alleging false, baseless allegations of having conspired against him without stating any reasons for such conspiracy and thereby, further misbehaving, misconducting and showing gross insubordination just for the sake of creating false defence in his favour.

8. That said Shri Yadav has made further false allegation against DIG for conspiring with Shri A. K. Baruah to save him from the criminal case filed against him by CBI, without any basis and made similar false, wild, baseless allegations without any evidence, circumstances for making such allegations.

9. That said Shri S. P. Singh Yadav in manner aforesaid has committed gross misconduct and behaved in unbecoming manner showing gross insubordination and has lowered the dignity and prestige of CBI and Senior officers by his aforesaid misconduct and subsequent false and malicious accusations and has shown by such misconduct on his part that he is unfit for working in an organisation like CBI any longer and has contravened Rule 3(1)(i)(ii) and (iii) of CCS(Conduct) Rules, 1964.

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Debbaraj Chakraborty
15/3 Advocate

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ANNEXURE - A/A

To

Supdt. of Police
CBI/ACB/Guwahati.

Ref : Memo No. DPSHL/2000/0021/A/20/157/93 dtd. 10/1/2000

Sir,

May kindly refer as above whereby under Rule 9 of the DELHI SPECIAL POLICE ESTABLISHMENT (SUBORDINATE RANKS) DISCIPLINE & APPEAL RULES - 1961, an action is proposed to be taken against me and my written explanation / defence, if any is sought within 5 days from the date of receipt of the said memo.

2. In this connection at the very outset I most humbly submit that the Disciplinary Authority which had issued the memorandum of Imputation contemplating imposition of penalty under above rule on me is not competent to exercise such power in the instant case on account of bias and personal animus against me for my explanation dated 7/12/99 against Memo issued by him vide No. 537/CON/29/92-SHG dt. 1st October, 1999. As a result of this explanation Sri Om Prakash SP/CBI/ACB/GHY (The Disciplinary Authority) bore a grudge against me. It is due to this grudge that the situation arose culminating into initiation of this proceedings under Rule 9 of the D.S.P.E. (Subordinate Rank) Discipline and Appeal Rules - 1961.

3. It is also pertinent to mention that the Appellate Authority, DIG/CBI/NER Sri K.C. Kanungo also bears animus against me as I have filed a complaint against him in File No. SA/SHG/99/03 dt. 6/5/99.

Further a complaint dated 23/12/99 against Appellate Authority Sri K.C. Kanungo was also moved to the DCBI/New Delhi (Copy enclosed herewith as Annexure 'A'). I also sent a representation dated 19/12/99 to DCBI soliciting his benign intervention in the matter wherein the Disciplinary Authority Sri Om Prakash, SP/CBI/ACB/GHY and

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Surjya Prakash
15/2
complainant

Appellate Authority Sri K.C. Kanungo DIG/CBI/NER/GHY both illegally & arbitrarily stopped my salary for the month of October, without issuing any office order to that effect, when I was on Medical Leave on the advice of the Doctor of Guwahati Medical College, Guwahati.

4. As such both the Disciplinary Authority as well as the Appellate Authority have acted in malafide and connived to fix me up in the instant case by misusing and abusing their said authority and power and the issuance of this memo and imputation under Rule 9 of DSPE (Subordinate Rank) Discipline and Appeal Rules 1961 is initiated as a result of said malafide and bias.

Thus in view of what has been stated above and hereinafetr, neither the Disciplinary Authority Sri Om Prakash SP/CBI/ACB/GHY, nor the Appellate Authority Sri K.C. Kanungo DIG/CBI/NER/GHY are competent to sit over judgement in this case as both are not impartial and dispassionate in instant case. As stated above both have grudge against me and bear animus against me. Hence in the present case DOCTRINE OF BIAS is fairly applicable and thus both Disciplinary Authority and Appellate Authority should transfer the case to other authority outside the NE Region or to Head Office competent to exercise power under the Act.

5. It is further submitted that the Appellate Authority Sri K.C. Kanungo DIG/CBI/NER/GHY for his dissatisfaction over his transfer from one hard area, i.e. from Jammu to another disturbed region at Guwahati and therefore to avenge his grudge against his superior officers, he with mis-motivation and malice, by abusing and mis-using his supervisory powers, is mentally torturing, misbehaving and harassing all the CBI personnels in the region on the pretext of supervision. Thus he is consciously disturbing the smooth functioning of entire region including the branch as well as conducive atmosphere for public service and investigation work by the IO's, as also the healthy functional relationship, based on mutual trust and respect, between

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Om Prakash
15/3 Advocate

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seniors and subordinates, with a view to avenge supposed unfairness meted out to him at the hand of H.O. This is evident from his reaction to Ex DIG/CBI/NER Sri N.R. Roy on 12/8/99 in my presence over his posting at Guwahati when he stated that "Head Office wanted to trouble me by posting me from Chandigarh to Jammu, instead I troubled H.O. even more, and now they have posted me to Guwahati and I will make them repent for this move".

6. It is thus obvious that Appellate Authority is acting contrari to the spirit of Public Service and right motivation, but for extraneous considerations to create trouble to Head Office and his superior officer by humiliating, misbehaving and torturing mentally his subordinate in the name of supervision and discipline. In this connection all the observations made by DIG/CBI/NER on files as well as explanation so far called by him from his subordinate may be scrutinized which speaks amply his mis motivation, humiliating, disturbing and arbitrary style of functioning.

As a result Sri K. Barman, Insp. a deputationist sought pre-mature repatriation. Sri K.C. Choudhury Dy. SP/CBI/NER/Ghy who is working in CBI for the last 18 years also represented for his transfer to even Andaman & Nicobar Island or Zonal Office at Calcutta. Recently due to the misbehaviour of DIG/CBI/NER Sri K.C. Kanungo, Sri Choudhury also submitted his application for pre mature repatriation to State Police.

The observation made by DIG/CBI/NER against Insp. Mao, Insp. Khemran, Insp. Heng Singh, Insp. D. Dutta, Sub-Insp. J.N. Gogoi, Sri S.K. Mukherjee, Constable Driver Khan of Assam Police, and other executive and ministerial staff also speaks volumes regarding the motive of DIG/CBI/NER Sri K.C. Kanungo, because of the terror of DIG/CBI Sri J.N. Gogoi S.I. & ASI Sri Limbu have proceeded on long leave.

7. There are also information to the effect that DIG/CBI/NER Sri K.C. Kanungo the appellate authority is also

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black mailing SP/CBI/ACB/GHY the disciplinary Authority who has expressed his apprehension several times in meetings in presence of other I.O's that Sri K.C. Kanungo DIG/CBI/NER, the appellate Authority will definitely spoil his ACR this year thus jeopardising his prospects of further promotion.

Thus in view of aforesaid facts also the Judgement of Disiplinary Authority is severally clouded under the hovering threat of adverse remark by DIG/CBI Sri. K.C. Kanungo the appellate Authority if he does not follow even the arbitrary, illegal and malicious dictates of the DIG/CBI/NER.

As such fairness and justice is not expected from either Disiplinary Authority or Appellate Authority. Therefore the entire matter deserved to be referred to H.O. for review or to any authority competent outside the N.E. Region.

8. That the Appellate Authority Sri K.C. Kanungo, DIG/CBI/NER is highly vindictive prejudiced and biased against me and that he is acting illegally and with malafide in violation of rules and procedure in this regard to serve the personal interest of a dismissed Bank Employee and CBI Charge Sheeted person in RC - 7(A) /96-SING Sri. A.K. Barua, and as such he cannot apply his mind dispassionately and with objectivity as can be evidenced from the fact that the said complaint of Sri A.K. Barua after due inquiry by Dy. SP/CBI Agartala Sri D.S. Mann was closed by competent authority i.e. JD/EZ/CBI on 10/12/99 at Silchar. Moreover all the subject matter of said complaint is sub judice in various Law Courts of Guwahati. However the Appellate Authority DIG/CBI/NER Sri K.C. Kanungo, with bad motive, without order from competent authority and by illegally conferring upon himself the power is harping on the same matter, without order from the competent authority, which culminated into issuance of the imputation under Rule 9 in the instant case and he thereby illegally transgressing the power of the law court.

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Chandreyash
15/2 Advocate

9. The appellate authority Sri K.C. Kanungo DIG/CBI/NER is so biased and prejudiced against me that in orders to find fault and thereby fix me further in the name of supervision and discipline, he called for review all the crime files of cases investigated by me, since my joining on deputation in CBI in 1993, and wherein charge sheet, Final report U/S 173 Cr. PC were filed in court of law following passing of Final orders to that effect by competent superior officers, and than issued letter No. 00194/3/27(A)/96-SHG dt. 10th January, 2000 (copy enclosed as Annexure 'B') to me through DySP/CBI/NER Sri K.C. Kanungo ordering me to explain the investigation with all documents to Sri Choudhury where as the case no. RC-27(A)/96-SHG following unanimous recommendation of IO/PP/SP/DLA/DIG Sri N.R. Roy was closed by competent Authority i.e. JD/EZ/Calcutta vide order/Fax No. 392/98/3/27(A)/96-SHG/EZ dtd. 3.12.98, and accordingly final report U/S 173 CrPC was filed in Special Judge Court and the Hon'ble Court also accepted the said report without any objection. However the appellate authority DIG/CBI/NER Sri K.C. Kanungo with bad motive, illegally and without competency ordered the Dy.SP/CBI/NER Sri K.C. Choudhury to re-investigate/review the case so that the DIG/CBI/NER could find fault in the investigation by misusing and abusing his supervisory capacity and thereby fix me up.

10. It is thus obvious that the appellate authority DIG/CBI/NER Sri K.C. Kanungo neither observe any rule or procedure as laid down in CBI crime manner, violation of which is misconduct to all CBI personnel, nor he cares for the legal provision of Law Court, for the furtherance of his bad motives. Inview of these facts, also appellate authority is not expected to discharge his authority without prejudice, bias and animus against me while deciding the instant case, as well as other official matters such as reviewing my work performance during his incumbency.

11. That the mind of Disciplinary Authority Sri Om Prakash, SP/CBI/ACB/GHY and appellate Authority Sri K.C.

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Choudhury
Advocate
15/3

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Kanungo DIG/CBI/NER are so clouded with bias and prejudice against me and are acting with such animus and vindictiveness that the said Authority by displaying their Nadir, of indecency and incivility towards even my family, and in order to humiliate them also sent two CBI personnels to my house to deliver the said charge sheet when I was very much present on duty on 10/1/2000 and as such my wife deeply perturbed and anguished over said incident complained to DCBI/Assam State Commission for Woman Ghy/National Commission for Women, New Delhi/Human Rights Commission New Delhi/Assam Human Rights Commission Ghy, for doing needful in accordance with Law.

It is thus obvious that both the disciplinary Authority and appellate Authority under the circumstances cannot Act with objectivity and Fairness while sitting over judgement in the Disciplinary Proceedings in instant case.

In view of above I pray to your honour that in the interest of Fair Justice the entire matter may be referred to CBI Head Office for taking appropriate steps for entrusting the entire matter to any other competent Authority other than N.E. Region, where I crave leave to submit my explanation regarding imputation of misconduct under Rule 9 of DSPE (Subordinate Ranks) Discipline & Appeal Rules 1961.

Submitted :

Suresh Pal Singh Yadav
SURESH PAL SINGH YADAV
INSPR/CBI/ACB
Guwahati.

Dated : 16/1/2000

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*Shambhu Prasad
Advocate*
15/3

ANNEXURE - A/5

To

The Supdt. of Police
CBT/ACB/SPE
Guwahati.

Ref : 1) Your memo no. DPSHL/1999/03805/A/20/157/93
dtd. 7/12/99 and

2) Memo no. DPSHL/2000/0021/A/20/157/93 dtd. 10/1/2000.

Sir,

May kindly ref. as above. In this connection submissions were made vide my explanation/defence dtd. 15/12/99 and 17/1/2000, but due to over sight I could not give my comments/explanation. Parawise, as alleged against me and so I am filing my parawise explanation against the allegations made against me and these explanation may also be treated as a part and in continuation of the explanation filed on 17.1.2000.

In continuation of my earlier explanation, I beg to state furhter which is as follows :-

Para I of the statement of Imputation :- The statements / allegations made in Para I of the imputation are not correct and therefore I deny the same in toto. Further the aforesaid allegations in the imputation have been brought forth a-new as the same was not incorporated in earlier memo no. (I) abovesaid. However the allegations made in this Para I of the imputation are false and cooked up story by said Sri A.K. Baruah, a dismissed and CBI charge sheeted Bank clerk in RC-7(A)/96-SHG and in this regard. I have already made submission in Para 7 of my explanation dtd. 15/12/99. Further said complaint was also inquired by Sri P.K. Deb Kanungo DySP/CBI/GHY, Sri B.N. Mishra SP/CBI/GHY who found the complaint malicious and false and accordingly the SP/CBI Sri B.N. Mishra apprised the result of said inquiry to JD/CBI/E2/Calcutta. Further this complaint was endorsed to Sri D.S. Mann DySP/CBI/Agartala who caused the inquiry discretly,

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Debbarayosha
15/3
Advocate

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and submitted the report and as such the JD/CBI/E2/Calcutta closed the said complaint on 10/12/99 vide his inspection note of the CBI Silchar branch at Silchar.

Therefore further inquiry on the same complaint and issuance of memo of imputation thereon without order of the competent authority speaks bad motive and extraneous interests of appellate authority Sri K.C. Kanungo DIG/CBI/NER whose bias and animus against me is elaborately explained in my submission dtd. 17/1/2000. Further the said complainant was called by DIG as stated in memo no (I) above said also speaks his personal interest in the complaint other wise all complaint even very serious one are endorsed to the Field officers and their report accepted. However the report regarding examination of the complainant by DIG/CBI Sri K.C. Kanungo was not furnished to me to enable me know the result thereof.

Further it is also pertinent to note that vide CBI/HO circular no. 21/17/66-PD dtd 23/3/71 the CBI branches and division were cautioned to refrain from entertaining complaints of undesirable persons approaching CBI officers ostensibly for the purpose of giving information against Public Servants, whereas the real purpose of such persons may be to use CBI as a tool for harassing the public servant against whom they have grudge or to exploit the fact of complaint to the CBI for the purpose of black mail or some such nefarious object.

However I specifically deny that I assaulted Sri A.K. Baruah and threatened him with a revolver on account of various property dispute relating to purchase of a flat by Smt. Jonali Baruah. However it is correct that due to illegal acts of Sri Arun Baruah some cases have been filed by Smt. Jonali Baruah my wife who is the owner of a residential flat. The said dispute are private dispute and that cannot be linked with my service in any manner. However if any complaint has been filed by Mr. Baruah, I have not been apprised regarding

Gertified to be true

Chandrayan Singh
advocate
15/3

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the contents of the said complaint. Without furnishing the copy of the complaint it is difficult to give any comment but whatever allegation made in the complaint, the same are deemed to be denied. Further I like to point out that without furnishing any copy of the aforesaid complaint, any inquiry or action will be illegal and malafide.

Para 2 : Regarding the statement in Para 2 of the imputation I like to state that those statements are matter of records and regarding that nothing was communicated to me and whatever has been done that has been done behind my back which amounts to unfair inquiry and such inquiry has no legal sanctity. Further this statement that IG discussed the complaint with Sri Baruah in presence of Dy SP Sri K.C. Choudhury are not correct since K.C. Choudhury all along sat in his chamber with me.

Para 3 : The fact as stated in Para 3 of the said statement of imputation is admitted to the extent that I was called by DIG over phone in connection with discussion on SP's report in Rc-34(A)/96-SHG. The move to call me for discussing the said report without calling branch SP itself speaks the conspiracy of DIG and Sri Arun Baruah as SP's report is the personal responsibility of branch SP as per CBI crime manual. Therefore calling me alone for the proposed discussion on the said SP's report without presence of SP himself is totally unwarranted and undesirable which seems to be malice on the part of the officer concerned.

Further as called by the DIG over phone, immediately I proceeded to Regional Office from branch, which is about 10 Km from R.O. as such I reached to R.O. and waited in Dy SP Sri K.C. Choudhury's room for being called by DIG. Thus calling me by DIG at the same time to R.O. on the pretext of discussing SP's report in Rc-34(A)/96-SHG for which branch SP is personally responsible, and at the same time calling the complainant Sri Arun Baruah was found to be a plan to malign me on one pretext or other and by making Mr. Baruah as handle against me which is very regretful on the part of concerned officer.

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Shubhayosha
15/3 Advocate

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Para 4 : That the allegations made in Para 4 are incorrect and I most stoutly deny all the allegations made therein in toto. I have already denied specifically in my explanation dtd. 15/12/99 and by reiterating I again deny that suddenly I came from the room of Dy SP to the veranah and started shouting at Sri Baruah uttering "Tuo chor hai", "Yenha Keise Aya" Tuzhko nahin chouruga", you cheat".

It is further denied that I caught hold of his collar and tried to assault him but was prevented upon by Sri K.C. Choudhury Dy SP and other staff. These allegation are required to be proved with reliable evidence and in absence of that I may not be held liable in any manner.

Para 5 : That regarding statement in Para 5 I beg to submit that the said statements are a made out story only to harass me illegally and with bad motive.

Para 6 : Regarding contents of this Para of said imputation, explanation was submitted already vide my explanation dtd. 15/12/99. However the other statements of said Para are matter of records.

Para 7 : The facts brought out vide my explanation dtd. 15/12/99 are true and correct to the best of my knowledge and I still reaffirm and reiterate the same.

It is totally incorrect to say that I have misbehaved, misconducted and showed gross in-subordination just for the sake of creating false evidence in my favour. In fact I gave my statement on true facts, which may be harsh but not false.

Para 8 : Regarding contents of Para 8, submission were already made vide my explanation dtd. 15/12/99 and 17/1/2000, however I further reiterate that I have not made any allegations against DIG for conspiracy with Sri A.K. Baruah. It is also totally false that I have made false, wild, baseless

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Chandayosha
15/3 Advocate

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allegations without any evidence, circumstances for making such allegations. However I like to say reluctantly that if the matter is inquired about by an unbiased higher authority the real facts will be brought out. This statement I have given as because a private dispute have been linked with my service career which is not only regretful but also painful and which cannot be expected from a high official of CBI.

Para 9 : Futher the allegations made in Para 9 that I (S.P. Singh Yadav) has committed gross misconduct and behaved in unbecoming manner showing gross in- sub-ordination and has lowered the dignity and prestige of CBI and senior officers by aforesaid conduct and subsequent false and malicious accusations, are totally false and baseless allegations. It is also totally false that due to such misconduct I am not fit for working in an organisation like CBI any longer. These allegations are totally false, baseless, concocted and based on made out story. It is also not correct that I have acted in such a manner which contravened.. Rule 3.1(i) (ii) (iii) of CCS conduct Rule 1964 Or any Provision of Rules of Delhi Special Police Establishment (Sub-ordinate Ranks), Discipline and Appeal Rule-1961 and so no proceedings can be taken up under either of the aforesaid provisions and as such the entire proceedings is totally irregular and not maintainable.

Further the aforesaid action under the aforesaid provision are self contradictory and such action is not at all tenable in law. Moreover it also contravenes the circular No. 21/6/99-PD of CBI Policy & Co-ordination Division Govt. of India D/o Personnel & Training dtd. 10/10/1999.

It is further submitted that whereas the Disciplinary Authority and Appellate Authority deems it fit to apply aforesaid Rules for the proposed disciplinary action considering me Central Govt. Employee. However while granting me certain benefits, due to a Central Govt. Employee, are being denied to me on the ground that I am a State Govt. Employee and as such on this ground I was denied following benefits

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Chhurayashtha
15/3 Advocate

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despite my several representations :-

- (1) Special Duty Allowance
- (2) Deputation Duty Allowance at enhanced rate w.e.f. 01/07/97.
- (3) Emergency Travel concern.

Further the benefit which are due as being state Govt. Employee and are admissible while on deputation to Central Govt. Department are also being denied without any explanation or order such as

- (1) leave encashment in lieu of Earned leave not availed despite H.O's clear cut order in this regard.

In view of aforesaid how this CCS conduct Rule 1964 is made applicable in my case, also shows biasness of the authority concerned only to trap me in their malafide action which cannot be expected atleast from our such responsible department. However I hope that my case will be considered without any biasness and by giving me full opportunity of being heard.

2000
22/10/2000
(S.P. SINGH YADAV)
INSP/CBI/ACB
Guwahati.

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Surbajyoti
Advocate

CENTRAL BUREAU OF INVESTIGATION
O/o the Superintendent of Police
Anti-Corruption Branch
Guwahati

Office Order No 32.....

DATE :: 15/2/2001

Extract of the orders of DIG, NER received vide no. 361/A/20/157/93 dtd. 2/2/2001 is reproduced below :

O R D E R

A memorandum vide no. DP SHL/199/0021/A/20/157/93 dtd. 10/01/2000 was served on Shri S.P. Singh Yadav, Inspector, CBI, Guwahati Branch, (on deputation from U.P. Police), (now under suspension) proposing action to be taken against him under rule 9 of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 for contravention of rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules 1964, for committing gross misconduct, for his unbecoming manner, insubordination and for making false and malicious accusations against the staff and Regional DIG, thereby lowering the dignity and prestige of the staff and the DIG etc. The statement of imputations of misconduct / misbehaviour was enclosed with the above memorandum. Shri S.P. Singh Yadav, Inspector was directed to submit his written explanation/defence within five days of receipt of this memo and he was further directed to say whether he wanted to be heard in person.

2 The allegation against Shri S.P. Singh Yadav, Inspector (under suspension) is that he criminally assaulted one Shri A.K. Baruah (who had complained against him) in the Regional Office before the room of DIG, CBI, N.E. Region, Guwahati on 30/11/99 at about 11.30 AM and abused him and shouted at him uttering filthy words "Tu Chor", "Yaha Kaise Aaya", "Tujhko Nahin Choroonga", "You Cheat" etc. Inspector S.P. Singh Yadav also caught hold of the collar of Shri A.K. Baruah and tried to assault him but was prevented from doing so, with great difficulty by Shri K.C. Choudhury, Dy. SP and other staff of Regional Office.

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*Chunkeyashka
15/3 Advocate*

3. On hearing the loud shouting of said Shri S.P. Singh Yadav, the DIG came out from his office chamber and asked Shri Yadav to let Shri Baruah off as he was called by the DIG and had not come to the R.O on his own.

4. The explanation of Shri S.P. Singh Yadav, Inspector was called for under the instruction of DIG,CBI,NER,Guwahati, vide Endst. No.DP SHL/1999/05805-06/A/20/175/93 dtd. 07/12/99, issued under signature of Dy.SP Shri K.C. Choudhury, who was holding the charge of the branch, to explain his conduct and also to explain as to why disciplinary action should not be taken against him for such misbehaviour and unbecoming conduct.

5. But said Shri Yadav instead of giving any explanation of his misconduct and misbehaviour, which was uncivilized and high-handed, made false and malicious allegations against the staff of Regional Office including DIG who had seen the incident and also Shri K.C. Choudhury,Dy.SP who had called Shri A.K. Baruah to RO in connection with verification of a complaint against Shri S.P. Singh Yadav. Shri S.P. Singh Yadav also made false, baseless allegations against DIG,N.E.Region of having conspired against him without stating any reasons for such conspiracy and without any basis and thereby further misbehaved, and misconducted, and showing gross insubordination just for the sake of creating false defence in his favour.

6. It appears that the immediate provocation for above misconduct and misbehaviour for Shri S.P. Singh Yadav,Inspector (under suspension) is that Shri A.K. Baruah whom he assaulted and abused filthily had earlier made a written complaint against Shri S.P. Singh Yadav to various authorities including Director, CBI and there was some property dispute between him and Shri S.P. Singh Yadav relating to which various civil/criminal cases were filed by both of them some of which are said to be still pending and his sudden appearance in the Regional Office possibly infuriated Shri S.P. Singh Yadav.

7. Shri S.P. Singh Yadav gave his reply through the above memorandum on 17/01/2000 which was received in the Office of SP,CBI,Guwahati vide receipt no.00195 dtd. 17/01/2000.

8. In his reply Shri S.P. Singh Yadav did not explain any of the misconduct / misbehaviour attributed to him. On the contrary he made again false and baseless allegations against both SP and DIG imputing false motive to their action proposed against him on the ground of alleged grudge malice prejudices

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Surkayosha
15/2 Advocate

and vindictiveness against him by SP/DIG without any basis. He also asserted that SP and DIG had no power to take action against him which is totally false and misconceived as both SP and DIG are competent to take action against Inspector on deputation to CBI under rule 9 of the Delhi Special Police Establishment (Subordinate Rank), (Discipline and Appeal) Rules, 1961.

9. Shri S.P. Singh Yadav submitted another explanation of his own accord, to the above charge sheet which was received in the office of SP/CBI/Guwaati, vide receipt no. 00278 dtd. 21/01/2000, in which he had denied all the allegations. He denied to have assaulted and abused Shri A.K. Baruah. He alleged that it was a pre-plan to malign him by the authority. This false accusation was made by him inspite of the fact that Shri S.P. Singh Yadav committed open acts of assaulting and abusing Shri A.K. Baruah in the Regional Office in broad day-light, in presence of the staff of the Regional Office and DIG including Shri K.C. Choudhury, DSP who prevented the Inspector from further assaulting the complainant after Shri S.P. Singh Yadav, Inspector caught hold of his collar. Besides, Shri Mukul Deka, Constable, Shri G.R. Das, Constable and Shri Mukut Baruah, Constable were also present at the scene of the occurrence and their statements were also recorded by Shri K.C. Choudhury, DSP, and all of whom have testified to the charges made against him based on which, the aforesaid charge sheet was served on Shri S.P. Singh Yadav.

10. Not only that, Shri S.P. Singh Yadav made various false complaints to different authorities directly/through his wife Smt. Jonali Baruah. The complaint of Smt. Jonali Baruah made to Director CBI was inquired into by Dr.U.N. Biswas, Joint Director (East), CBI Calcutta who found it totally false and reported the matter to HO accordingly. This fact has been confirmed through the D.O. letter No.Dy.SDE 2000 00329 L/0079 dtd. 6/3/2000 of Shri P.C. Sharma, Special Director, CBI, New Delhi. Likewise Shri S.P. Singh Yadav through Smt. Jonali Baruah made false complaint to Human Right Commission against DIG which too was found to be totally false, mischievous and baseless, which has, accordingly, been reported to National Human Rights Commission, New Delhi. However, as far as making false complaints are concerned, these are separate issues on which separate actions will be taken against Shri S.P. Singh Yadav, Inspector.

11. As far as the present charge sheet against Shri S.P. Singh Yadav is concerned, he has apparently failed to offer any satisfactory explanation. The act of physically assaulting the complainant, threatening him and abusing him in foul languages, that too, in the office of DIG, and before his room are not

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Ombarapatha
15/3/2000

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only acts of gross indiscipline and high-handedness but also are act of desperation and abuse of official position and authority and contempt of higher authority and can not by any means dismissed lightly. In view of the above, the undersigned being Disciplinary Authority for imposition of minor penalty against Shri S.P. Singh Yadav, hereby orders that there would be stoppage of three increments in the pay of Shri S.P. Singh Singh Yadav with immediate effect, which would have cumulative effect. This will be, without prejudice to any other action that may be taken against him for his other misconduct and for making false and baseless allegations against higher authorities.

Sd/.

(K.C. Kanungo)
Dy.Inspector General of Police
CBI :: NER :: GUWAHATI

(Om Prakash)
Superintendent of Police
CBI :: ACB :: Guwahati

Endst.No.A/20/157/93/ 01066-70DATE :: 18/12/2001

Copy to :

1. Shri S.P. Singh Yadav, Inspector (U/s) for information.
2. SB Clerk/CBI/ACB/Guwahati for necessary entries.
3. A/c Section/CBI/ACB/Guwahati for necessary action.
4. DD(A)/CBI/CGO Complex, New Delhi.
5. Dy.Inspector General of Police,CBI/NER/Guwahati for information.

(Om Prakash)
Superintendent of Police
CBI :: ACB :: Guwahati

/nc.

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Ghembayor Ha
15B Advocate

ANNEXURE

From : Suresh Pal Singh Yadav
Inspector of Police (U/S)
CBI/ACB/SPE
Guwahati.

1st CP AIR MAIL
PA 1000
TO ABC PTE LTD
GIA (P) PTE LTD
1000 P SINGHADAR
WT 400grams Pre 0.00
Amt: 55.00 14/04/2001 13:00:12
HAVE A NICE DAY

To : The Additional Director
CBI/EZ/Calcutta
Nizam Palace, AJC Bose Road,
Calcutta.

HAVE A NICE DAY

Sub : Appeal under Rule 15 of DSPE (Subordinate Ranks) Discipline & Appeal Rules, 1961 against Penalty imposed by DIG/CBI/NER Sri K.C. Kanungo.

Ref : Order No 357/A/20/157/93 dtd 02/02/2001 in the matter of
Memo No. DPSHL/2000/0021/A/20/157/93/ Dtd. 10/01/2000.

Sir,

May kindly ref above (Photocopy enclosed for ready reference as Annexure - A).

In this connection it is humbly submitted that the said order of the DIG/CBI/NER Sri K.C. Kanungo imposing penalty for stoppage of 3 increments with cumulative effect with immediate effect in the matter of charge sheet (Photocopy enclosed as Annexure - B) for minor penalty under Rule 9 of DSPE (Subordinate Ranks) Discipline & appeal Rules 1961 for contravention of Rule 31 (i), (ii), (iii) of C.C.S conduct Rules 1964, is illegal, unlawful, unjust, unfair, unreasonable, unwarranted, arbitrary & perverse. The said order was passed with revengeful and closed mind, ignoring essentials of natural justice, with ulterior motive to cause irreparable loss to me, without any basis for the said charge sheet and holding any full fledged inquiry before imposing impugned penalty and hence the said order imposing penalty is unsustainable in law and therefore appealed hereby to set aside said penalty for the following reasons.

REASON 1 : The said memo dated 10/11/2000 was served on me under Rule 9 of DSPE (Subordinate Ranks) Discipline and Appeal Rules 1961 for Minor penalty, however the penalty imposed by stopping of three increments with cumulative effect Tanta-Mount to Major Penalty as held by Hon'ble Supreme Court of India in the case of Kulwant Singh Gill Vs State of Punjab (1991) to the effect that " with holding of increments with cumulative effect amounts to a major Penalty of reduction to a lower stage in the time scale of Pay ". As per laid down Rules, procedure & Laws, major Penalty can be imposed only after causing due & proper Inquiry with fairness and giving reasonable opportunity to the charged official to defend hi self.

However, in the instant case no regular inquiry was conducted but punishment was imposed arbitrarily, maliciously and illegally to settle personal scores for highlighting the alleged

1573 Advocate

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misdeeds of the DIG/CBI/NER Guwahati i.e. The Disciplinary Authority Sri K.C. Kanungo before the higher authority.

REASON 2 : In the said order dt. 02/02/2001 of Sri K.C. Kanungo DIG/CBI/NER at Para - 9, it is alleged that the so called incident took place in presence of DIG himself. Thus it is apparent that he is one of the witness to the charge sheet dtd. 10/01/2000. At the same time he has passed aforesaid order dt. 02.02.2001 imposing MAJOR PENALTY as disciplinary authority which is not only irregular but also illegal and against the spirit of Natural Justice, as " a person who is a witness cannot function as a disciplinary authority ". This was held by Hon'ble supreme court of India in the case of State of U.P. Vs Mohammed Noor reported in 1958 SCR 595; AIR 1958 SC 86.

Further as per the decision of Ministry of Home Affairs File No 7/29/6/ESTS (A) it has been laid down that " where the officer who is the prescribed disciplinary authority is/will be the complainant and / or the witness in a departmental proceedings, another officer should be specified as disciplinary authority ". as such the said order passed by Sri K.C. Kanungo DIG/CBI/NER being complainant, witness, Inquiring Officer and disciplinary authority all himself is unfair, unjust, arbitrary, perverse and illegal.

REASON 3 : In the aforesaid order imposing penalty dtd. 02/02/2001 by Sri K.C. Kanungo DIG/CBI/NER, at Para 10 & 11. It is clear that the said order was passed in the background of purported allegation including others made by me before the competent authority praying for inquiry regarding Financial Irregularities committed by DIG, and the same are heavily weighing in the mind of the disciplinary authority while passing the said order dtd. 02/02/2001. Thus it is apparent that the matter relates to himself and the DIG has a grouse against me for the complaints made by me & my wife and therefore the DIG/CBI/NER Sri K.C. Kanungo is biased and thus cannot & ought not have acted as disciplinary authority in the matter relating to himself.

The hon'ble Supreme Court of India in the case of Arjun Chaubey Vs U.O.I (1984) held that the disciplinary authority being himself concerned with the matter and a witness to the incident which involved him could not consider the explanation of the employee himself and decide the matter. The Hon'ble Court further held that no person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who

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Debbarma
Advocate
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has personal stake in an Inquiry must keep himself aloof from the conduct of Inquiry. Therefore the said order of the DIG dtd. 02/02/2001 is in utter violation of prescribed rules & laws and hence unjust, unfair, arbitrary, perverse and defective.

REASON 4 : The disciplinary authority vide his order dtd. 02/02/2001 imposed penalty of stoppage of three increments with cumulative effect, which is a major penalty indeed, but instant chargesheet was issued under rule 9 of DSPE (Subordinate Ranks) discipline & appeal Rules 1961, which is prescribed for minor penalty only. It is pertinent to mention herein that vide my written statement dtd. 15/12/99, 17/01/2000 and 22/01/2000 I requested the competent authority for holding full fledged Inquiry to arrive at logical conclusion in the matter. However the disciplinary authority passed the said impugned order arbitrarily and illegally without holding full fledged inquiry as asked for.

The Hon'ble Supreme Court of India in the cases Ram Prakash Mahato Vs U.O.I. (1987), C.G. Joydev Vs R. Raj Gopal (1988) and U.O.I. Vs K.K. Garg (1989), held that request for holding full fledged Inquiry even in case of minor penalty can not be rejected summarily. The disciplinary authority is duty bound to apply its mind to the request taking into account the various circumstances of the case. Such an inquiry must be held where the facts can be established only through a full fledged inquiry.

Further the disciplinary authority did not cite any reason in the impugned order mentioned above for not holding full fledged inquiry as requested. In this regard the Hon'ble Apex Court further held in the case of Sri G. Pentaiah Vs U.O.I. (1983), that it is obligatory for the disciplinary authority to apply its mind to the question as to whether on the basis of the circumstances appearing in the charge memo and the ground furnished by the delinquent employee in his representation for holding inquiry was necessary even for imposing minor penalty punishment. The record of the case must disclose such application of mind. In the absence of such material it will be presumed that discretion has been, exercised arbitrarily and the onus will be on the disciplinary authority to prove that in the circumstances of the case, the holding of the inquiry was indeed not necessary.

Thus from the impugned order dtd 02/02/2001 of the disciplinary authority i.e. DIG/CBI/NER Sri K.C. Kanungo, it is

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*Ishwarayosha
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clear that he neither considered my request for holding full fledged inquiry nor applied his mind in this regard, rather he exceeded his limit in as much as imposing penalty of stoppage of three increments with cumulative effect, which tantamount to major penalty but without holding an inquiry what so ever, and as such the order dtd. 02/02/2001 of disciplinary authority Sri K.C. Kanungo DIG/CBI/NER stating "that he being disciplinary authority for imposition of minor penalty against Sri S.P. Singh Yadav that there would be stoppage of three increments in the pay of Sri S.P. Singh Yadav with immediate effect, which would have cumulative effect. This will be without prejudice to any other action that may be taken against him for his other misconduct and for making false & baseless allegations against higher authority", is in blatant violation of the aforesaid principles of Natural Justice laid down by the Hon'ble Apex Court as arbitrary, perverse and illegal.

REASON 5 : The impugned order dtd. 02/02/2001 passed by the disciplinary authority Sri K.C. Kanungo is nothing but the aggravated form of explanation dtd. 07/12/99 vide No. DPSHE/1999/5805/A/20/157/93 (enclosed as annexure - C) and memo No. DPSHL/1999/0021/A/20/157/93 dtd. 10/01/2000 (enclosed as annexure - B) both issued by the SP/CBI/ACB Guwahati in as much as that whereas in the said explanation & memorandum allegations were to the extent of "Tried to assault Sri A.K. Baruah" only, in the impugned order of DIG/CBI/NER dtd. 02/02/2001 it was made as "Criminally assaulted one Sri A.K. Baruah". It clearly shows that the disciplinary authority has passed the impugned order not even by euphemistic non-application of mind or closed mind but by giving extra kick of venom to his overflowing prejudicial mind which translated into aggravation of alleged charge which in turn culminated into passing of major penalty punishment under the facade of the provision for Minor Penalty, and as such the punishment by disciplinary authority is nothing but an exercise of his revengeful mind to seek retribution and give vent to his hysterical feelings of wrath against me. Obviously a revengeful mind can not look the matter with rational and objectivity and hence the impugned order is arbitrary, perverse, defective, illegal and unsustainable in law.

REASON 6 : The order dtd. 02/02/2001 of disciplinary authority Sri K.C. Kanungo DIG/CBI/NER, nowhere reflects that he has anywhere considered the explanation offered by me in my written

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Shenbaghatha
15/3 Advocate

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statements dtd. 15/12/99, 17/01/2000 & 22/01/2000. The disciplinary authority in his impugned order nowhere reflected as to the finding of my guilt by a proper analysis of the fact on record but the entire order is couched with and focussed on the question of punishment only by suppressing material facts reflected in my written statements and giving colour, twist and aggravation on paper only in order to give punishment as per his no hold barred hysterical wrath against me which is the talk of the town in CBI.

The said order dtd. 02/02/2001, nowhere discloses the process of reasoning by which the disciplinary authority Sri K.C. Kanungo reaching the guilt of mine culminating into awarding of major penalty punishment under the provision of minor penalty only, but without ordering for full fledged inquiry despite my request to that effect in this regard. Thus the impugned order is unjust, arbitrary, unreasonable perverse and hence condemnable for the reason that it is not even the case of non-application of mind but overzealous application of mind bent upon establishing guilt on the basis of allegations only.

REASON 7 : The order dtd. 2/2/2001 of disciplinary authority Sri K.C. Kanungo is not only the translation of his biased and prejudiced mind but also shows his arrogant manifestation of open hostility towards me as is evidenced from Para-10 of the said order in particular and whole text in general, disentitling him to act as disciplinary authority in the cause of his own case. His hostility could further be seen in calling for numerous explanation at the drop of hat after digging up the matter of past record and then passing order to the prejudice to me, without even waiting for explanation sought. For example three explanation viz (I) No 753-754/12/COMP/SLC/NER dtd. 23.03.2000 calling immediate explanation (II) No 747/3/5(A)/98-SHG dtd. 22.03.2000 calling immediate explanation on the observation of DIG in more than 30 pages against CD No.1 dt. 17.02.98 to CD No.144 dt. 19.01.2000 immediately and (III) No 751/12/COMP/SLC/NER dtd. 22.03.2000 received on 23.03.2000 giving 10 days only for explanation which obviously was to expire on 3.04.2000, however the schizophrenic and hysterical personnae of the worthy DIG would not wait even the deadline for submission of explanation set by him but his over zealous interest in causing vexation and overwhelm force him to issue order vide CBI ID No. 821/12/COMP/SLC/NER on 28.03.2000 itself ordering for handing over of the charge of all file relating to investigation, complaint, GIR etc. to Dy.SP sri A.K. Saha followed by suspension

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Dhunhoyosha
15/3 Advocate

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order dt. 26.04.2000. Thus it could be seen that the so called opportunity to explain the matter and reasonable opportunity to show cause was a farce and mere pretence.

Further the disguised motive of disciplinary authority Sri K.C. Kanungo could be seen from his observation in CBI Case No. RC-5(A)/98 - SHG vide CBI ID No. 45/3/A/98 - SHG dtd. 06.01.2000 threatening me with disciplinary action without properly going through the case or discussion with me and ordering for immediate submission of FR-I. I submitted my explanation in this regard vide noting S/N 162, 163, 164, 165, 166, 167 dt. 27/01/2000 in crime file of RC-5A/98-SHG. But the DIG with bad motive deviated from the context of investigation as referred to vide aforesaid notings and than noted in crime file at Sl.No. 169 which reads..... " Does the SP understand the implication ? Why has he not offered his comments and initiated action against him. Do I am to understand that SP is incapable to take any decision ? Has he submitted uptodate W.D's if not chargesheet may be issued to him". In reply to it the branch SP as well as the crime branch clerk U.C. Razak who keeps the record of weekly diary apprised to DIG at noting No. 170 that Sri S.P. Singh Yadav submitted weekly diaries upto 09/01/2000, i.e. upto date. However the DIG called for the weekly diary File and with bad motive removed the weekly diaries for the period of 1996-97 which was submitted following reminders in 1996-97 and than issued chargesheet for major penalty on the basis of said reminders.

Further he arbitrarily and with revengful mind to cause vexation & injury issued series of explanation and chargesheets all at once. One such chargesheet for major penalty is on the allaged, irregularity in investigation of RC-27(A)/96-SHG which was closed following speaking order of the Court of special judge on the basis of a unanimous recommendation of I.O., Sr. PP, SP, DLA, DIG and Additional Director CBI/EZ/Calcutta. This case was closed even before transfer of Sri K.C. Kanungo as DIG/CBI/NER.

He also in a most arrognat and high handed manner stopped the salary for the month of October 1999 when I was on medical leave and than issued yet another chargesheet for major penalty by extracting statements of concerned Supdt. of Guwahati Medical College & Principal Guwahati Medical College under coercion and misusing & abusing police power and twisting the facts to mischievously cause injury to me some how. Challenging the legality of aforesaid three chargesheets three OA's vide No. 30/2001, 31/2001 & 61/2001 were filed in the Ghy bench of CAT which was pleased to suspend the disciplinary proceedings after going into the matter. *Certified to be true Copy*

*Surjyashree
15/3/2001*

Further the disciplinary authority issued order for minor penalty on three verified report vide (1) No. SA/SHG/99/20, (2) SA/SHG/99/21 & (3) SA/SHG/99/22 submitted for registration of cases duly recommended for registration by PP and branch SP.

Besides aforesaid acts of open hostility the disciplinary authority with a view to further secure leverage in his ^S mischievous design and thereby systematically damage the service career issued arbitrary, unreasonable, unjust and coercive direction dt. 14/01/2000 at Page No. 104 of branch. Inspection Report for the year 1999 to the effect 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 while fighting his cases in CAT Guwahati, which leaves none in doubt about the deep seated grouse, animus and revengfulness of the disciplinary authority Sri K.C. Kanungo. As a result during 1999 & 2000 I was not given reward / commendation certificate etc. despite securing convictions in court of law, C.V.C. Departmental proceedings, surprise checks leading to registration of cases etc. whereas the other branch officials were given reward & C.C. in the same acts of official duties. The disciplinary authority thus not only misused his discretion but also abused his official position blatantly and arrogantly discriminating me by not recognizing my good works but condemn me by process of fault finding, aggravating them through fiction of his mind and than overwhelm me with explanation, chargesheet etc. to cause injury only.

The doubtful, schizophrenic and psychological imbalance & prejudicial mental condition of disciplinary authority Sri K.C. Kanungo DIG/CBI/NER leading to passing of biased prejudicial and perverse order could also be seen from his observation at SL 17, Page 23 of branch inspection Report by him vide CBI ID No. 0088/215/2000/NER dtd. 11/01/2000 which reads.... "The last but not the least is gross partiality and harassment of departmental staff by deputationist officers, whose career prospects are being systematically damaged/destroyed in well planned manner and creating situation of internal infighting in organization. They are adopting the policy of divide & rule which has caused thorough demoralization among the departmental staff".

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It could thus be seen that the disciplinary authority, a departmental promotee who discover, harbour and propagate such dangerous doctrine and thus adding and abetting schism and disaffection in the police force under him and thus presuming himself to be self appointed champion for the cause of departmental staff, is himself consciously and voluntarily working in a reactionary vein to systematically and deputationist's under him through his arbitrary mischievously harrass unfair, unjust, illegal and perverse orders and colourable exercise of powers.

REASON 8 : The disciplinary authority Sri K.C. Kanungo DIG/CBI/NER vide his impunged order dtd. 2/2/2001 in Para-9 has stated that Sri Mukul Deka, Constable, sri G.R. Das, Constable and Sri Mukut baruah, Constable were present at the scene of the alleged incident and that their statements were also recorded by Sri K.C. Choudhury, Dy. SP and all of whom have testified to the charges made against me, based on which the aforesaid charge sheet was served on me. However, no such copies of said statements so recorded or any inquiry report submitted by Sri K.C. Choudhury Dy. SP in the matter was made available to me in order to enable me to submit my written statement and thereby opportunity to reasonably defend myself has surreptitiously been taken away by the disciplinary authority. In this connection it is pertinent to mention that access to relevant official documents is an essential requirement even in minor penalty case as has been held in Shadi Lal Gupta Vs State of Punjab AIR (1973) SC 1224 but the disciplinary authority though primarily and heavily depended on the statements of the said constables and inquiry report of Sri K.C. Choudhury Dy. SP while imposing penalty, but he obtained my written statement without supplying the copies of the same and inquiry report to me, which is arbitrary, unfair, unjust, unreasonable and colourable exercise of powers. Thus when Sri K.C. Choudhury Dy. SP made the said report of misconduct than unless the said officer is cross-examined, how could his report be relied upon?

Obviously the rule of Audi alteram Partem was complied only in pretence as allegations were communicated without disclosing their basis. This infirmity and defect is such that the impugned order dt. 02.02.2001 ought not be allowed to stand.

REASON 9 : That it is also a fact as confirmed by Dy. SP. Sri K.C. Choudhury that regarding the alleged incident dt. 30/11/99, he submitted a factual correct and true report to

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the disciplinary authority Sri K.C. Kanungo DIG/CBI/NER but later did not agree with the said report and forced him to write another report under his dictation. It is this impugned report extracted from Sri K.C. Choudhury Dy. SP/CBI/R.O. by Sri K.C. Kanungo DIG/CBI/NER under latters dictation which was used in issuing the charge memorandum and passing the impugned order imposing penalty dtd. 02.02.2001. As such a report extracted by disciplinary authority from his junior under his dictation can not be used as a basis for issuance of charge sheet and imposing penalty without holding full fledged inquiry as asked for.

REASON 10 : The statement made by the disciplinary authority Sri K.C. Kanungo in his impugned order dt. 02.02.2001 at Para-10, is weighing heavily in his mind while passing the order imposing penalty of stoppage of three increments with cumulative effect. It is incorrect to state that my complaints against him are false and baseless. I still stand by the said complaints and any other also made by me, which requires proper and independent inquiry to arrive at the truth and until it is done it cannot be stated that said complaints made by me were false baseless and mischievous.

Be that as it may, under the circumstances where said complaints against him by me are weighing heavily and the same are considered as mischievous than imposition of minor penalty by him violates the principle of natural justice which has held to be so in C.S. Manral Vs. U.O.I. 1986 ATC 587 and Arjun Choubey Vs. U.O.I. 1984 SCC 578 by the Hon'ble Supreme court of India.

Further the matter of alleged complaints by me referred to by disciplinary authority cannot be used as a basis for arriving to the conclusion of guilt in the instant charge sheet. Consideration of said extraneous matter by the disciplinary authority Sri K.C. Kanungo has reduced the impugned order as perverse, unreasonable, unjust and colourable exercise of his power in as much as that he is found to be judge in his own case.

REASON 11 : In Para-2 of the impugned order of DIG/CBI/NER Sri K.C. Kanungo, while the material fact of the said complaint and antecedents of Sri A.K. Baruah, which has been elaborately explained in my written statements dtd. 15.12.99, 17.12.2000 & 22.01.2001, are sought to be consciously and mischievously suppressed: the said Sri A.K. Baruah is projected as if he is a monk from Ramkrishna Mission or a nun from Missionaries of charities who was invited for spiritual solace by DIG/CBI/NER Sri K.C. Kanungo.

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The fact in this regard is that it was my misfortune that my wife Smt. Jonali Baruah booked a flat in Dorothy Apartments, constructed by Purbanchal Housing Promotion Development Co-operative Society, a Registered Co-operative Society in 1995, by entering in to a Registered agreement for purchase of a two room flat, with Mrs. Jayanti Baruah, the chair person of the said society, Sri A.K. Baruah is the husband of Mrs. Jayanti Baruah. In July 1998 after payment of full amount as to the cost of the flat we were given No-objection Certificate / No dues certificate (copy enclosed as Annexure-D for reference) and we were given possession of the said booked flat. However after occupying the flat it was found to our chagrin that though we were charged @ Rs. 460/Sq.ft. for 808 Sq.ft. built-up Area, but the actual built up area was found to be only 600 Sq.ft. (approx.) and thus we were cheated by an amount of Rs. 92,000 approx. equivalent to unprovided built up area of 200 Sq.ft. @ Rs. 460/- Sq.ft. Besides it, he also charged Rs. 23,000/- for electricity meter, mutation of municipality no. and Registration deed etc. However till date he did not provide the same. Further in the said flat it was found that certain constructions were made in the ground floor which was shown as parking area in Guwahati Metropolitan development authority approved map design on the basis of which registered agreement was made. Therefore the all Flatowners submitted a complaint under the collective signature on behalf of the flat owners association under presidentship of Mr. Kallolkar and my wife Smt. Jonali Baruah as secretary of the said association (copy enclosed as Annexure 'E') to concerned authority and in response to which concerned GMDA authority demolished the unauthorized construction in Sept/Oct 1998. This incident of demolition of unauthorized construction by concerned authority enraged Sri A.K. Baruah who intimidated few of the said signatories of the complaint particularly Mr. Kallolkar who was under obligation of personal loan from Mr. A.K. Baruah and thus he secured a letter under coercion from Sri Kar disassociating with the said association.

In November 1998 Sri A.K. Baruah again started illegal construction at the same parking place and as such we moved to the court and secured an Ad-interim Injunction against said illegal construction vide title suit No. 214/98 & Misc case No. 199/98 from Civil Judge Senior Divisional Guwahati (copy enclosed as annexure - 'F'). However Sri A.K. Baruah instead of

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of showing cause on the date fixed in said injunction. Obtained stay from District Court but without any direction to resume construction; and than again started construction. Thus we moved to the Hon'ble Guwahati High Court which set aside said illegal & unlawful stay of the District Court vide order in Civil Revn No. 392/1998 and referred the matter to original court of Civil Judge Senior Division-1 to dispose off the matter within 10 days after hearing both the parties. Accordingly the Civil Judge Sr. Division-1 Guwahati after hearing both the parties gave judgement in our favour making the said injunction as absolute (copy enclosed as Annexure-'G').

During aforesaid period we also filed complaint dtd. 23/09/98, 30/09/98, 30/10/98, and 16/11/98 and a case was also registered against Sri A.K. Baruah vide F.I.R. No. 1165 dtd. 20/11/98 U/S 147/148/447/325 I.P.C. (copy enclosed as Annexure-'H').

The aforesaid series of defeats at all the forum of law further enraged him and than though he gave no-objection certificate for separate electricity meter to other flat owners but he declined to give it to us, although he has already realized charges for the same. Thus we approached concerned authorities of electricity board and obtained separate electric connection of our own incurring our own expenditures but the charges realized for the said service by Sri A.K. Baruah remained unreturned.

Further Sri A.K. Baruah with a view to harass us would not give N.O.C. for mutation of Municipality Number in the name of my wife, though he had charged money for the same. Thus we were again forced to petition the Commissioner Guwahati Municipal Corporation who also after hearing both the parties and seeing other legal documents passed Mutation order in our favour.

Further Sri A.K. Baruah gave final registration deed of the flat to other individual flat owner but he would not give it to us to harass us only, though he had already realized charges, registration fee etc. already, and as such we were once again forced to move to the District consumer redressal Forum, Guwahati vide complaint No. CPF 38/2000 for realization of excess charges by Sri Baruah for 200 Sq.ft @ Rs. 460/Sq.ft for providing 200 Sq.ft built-up area less than 808 Sq.ft agreed as

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per registered agreement, deficiency in service and for giving registration/Title deed etc. which is pending in the Hon'ble Forum for disposal.

During this period he also obtained a permission for construction of Flat in parking area by misrepresenting the facts from Guwahati Municipality. When the facts were brought to their notice, their team of town planner visited the site and after full measurement they cancelled the said permission so obtained ~~1~~ fraudulently by Sri A.K. Baruah (Copy enclosed as Annexure -I).

In the aforesaid back ground Sri Baruah forwarded complaint against me to NHRC/AHRC, Director CBI etc. The complaint by NHRC/AHRC was inquired into vide AHRC Case No. 2451/98/2 dtd. 17.03.99 through S.P. City Guwahati and was found to be false and baseless on the inquiry report of Assam Police Dy.SP/Dispur Circle Sri. S.K. Das Gupta. The complaint to Director CBI was forwarded to SP/CBI/ACB Guwahati, Sri B.N. Mishra who asked Dy.SP CBI/ACB Sri. P.K. Deb Kanungo to inquire and submit report. The matter was apprised to him which was communicated to JD/CBI/Calcutta to his satisfaction and the matter was set to rest in 1998 itself.

However in 1999, after arrival of Sri K.C. Kanungo DIG/CBI/NER, the complaint was again entrusted to Sri. D.S. Mann Dy.SP/CBI/Agartala unit, who also recommended for closure and accordingly in agreement with SP/CBI/Silchar branch the JD/CBI/EZ Calcutta Dr. U.N. Biswas ordered for the closure of the complaint on 10.01.2000 during his branch inspection of Silchar.

In october 1999 after grant of stay order over my repatriation by Hon'ble Guwahati Bench of CAT in my OA No 338/99, piqued Sri K.C. Kanungo, the DIG/CBI/NER who started digging up the matter thereafter with sole object to harass and injure me. Thus this closed matter, besides many other, were once again dug up and given to Sri K.C. Choudhury Dy.SP/R.O. to inquire and report. However DY.SP/CBI/R.O. Sri K.C. Choudhury also gave the same report as aforesaid but much to the discomfort of Sri K.C. Kanungo DIG/CBI/NER the later would not agree with it as he was only interested to find out ways and means to cause injury to me and therefore he himself decided to inquire and as such he called Sri. A.K. Baruah to

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his office from latters residence and surprisingly I was also called by the DIG at the same time on the pretext of discussion in BRC-34(A)/96-SHG and accordingly when I reached unsuspectingly to DIG/CBI/NER office, the two highly hostile and revengful person, i.e. Sri K.C. Kanungo & Sri A.K. Baruah in conspiracy and with common bad motive implicated me into alleged incident. It is pertinent to mention here that had the alleged incident been really occurred on 30/11/1999, Sri Baruah would have lodged the complaint on 30/11/1999 itself in PS latasil Guwahati i.e. on the same day, but he in conspiracy with DIG/CBI/NER Sri K.C. Kanungo and on being egged on by him lodged complaint three days later i.e. on 02/12/99 with a sole motive of giving credence to the alleged incident. It is pertinent to mention however that no inquiry from police has been made as yet as no offence is disclosed from the complaint. Further Sri K.C. Kanungo also obtained from him complaint dt. 04/12/99 addressed to him and Sri Baruah was egged on to forward the copy to the same to Dy SP/CBI/Agartala Unit. Sri D.S. Mann with the sole motive to extract a prejudiced and tailor made report against me. otherwise how could an outsider know that Sri D.S. Mann is entrusted with the said inquiry against me and any complaint addressed to DIG could be marked by him to the concerned.

It is also pertinent & interesting to point out that Memo No. DP SHL/1999/05805/A/20/157/93 dtd. 07/12/99 by Dy. SP Sri K.C. Choudhury did not show the happening of the alleged incident on 30/11/99 but on 02/12/99 when I was not at all present in DIG/CBI/NER office (copy enclosed as Annexure 'C'). The DIG CBI/NER also endorsed the matter vide his endost No. 2347/CR/SIL/99/06 dtd. 02/12/99. It could thus be seen that complaint against me was filed to Latasil P.S. & DIG/CBI/NER only after evil interest shown by DIG/CBI/NER to take action against me on the complaint by Sri A.K. Baruah. It is also evident therefore that Sri A.K. Baruah after his usual and normal departure on 30/11/99 from DIG/CBI/NER office was contacted at the instruction of Sri K.C. Kanungo and than he was egged on to file complaint which was filed on 02/12/99 in Latasil P.S. Guwahati and thereafter under conspiracy of the aforesaid the said chargesheet was issued with common motive of aforesaid to harm and injure me which the DIG/CBI/NER has used to the hilt of misusing & abusing his official position. Not only that Sri Arun Kanti Baruah is a person of criminal nature and dubious character and a case was registered against him on 29/09/95 with P.S. Dispur, Guwahati u/s 324/307/498-A of IPC vide FIR No. 696/95.

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Further he was also chargesheet by our CBI/ACB/Ghy branch u/s 420, 468, 471 & 477-A of IPC and section 13(2) r/w 13(1)(d) of PC Act 1988 in CBI Case No. RC-7(A)/96-Shg for defrauding New Bank of India (Now Punjab National Bank, Fancy Bazar, Guwahati) to the tune of Rs. 10,00,000 (approx.) and for the said criminal misconduct the authorities of PNB dismissed Sri Baruah from service and the charges against him are framed in court of Special Judge Assam, Guwahati and futher trial is on. The case was investigated by Inspector Sri B.R. Roy, now with CBI/ACB Calcutta branch (copy of the FIR annexed as Annexure 'J').

It is important to apprise herein that I was totally unaware of the antecedents of Sri Baruah as he came in our contact as purely a builder and as such in 1995 flat was booked after making payment of Rs. 20,000 and Rs. 25,000 in two instalments. However in 1996, subsequent to the payment, when a case was registered and Sri Baruah was brought arrested to CBI branch by I.O Sri B.R. Roy, it was found that he was involved in aforesaid case. His wife Mrs. Joyanti Baruah also visited my house with the request to use my influence in saving Sri A.K. Baruah. Obviously being a sub-ordinate CBI functionary I did not have the scope, ways & means to indulge in luxury of having helped him. Further my nature as a professional Police Officer innately prohibits me to have any dealings with such charater and invite any controversy.

However as the Booking amount was already paid and as per registered agreement for sale the said amount would stand forfeited, If the purchaser withdraws from the contract. As such we proceeded a-head with the conditions of said contract agreement, chiefly in view of the fact also that agreement for sale was between my wife as a purchaser and Sri A.K. Baruah's wife as chair person of the said co-operative society as promoter/builder of the said apartments and also in view of the fact that I had no official dealings whatsoever with Sri A.K. Baruah.

Further it was found that Sri A.K. Baruah is so dare devil that he intimidated & assaulted a public servant Smt. Anjali Goswami during discharge of her official duties on 23/09/98 and as such the CEO, GMDA Sri Ashutosh Sengupta, IAS also lodged a complaint with P.S. Dispur, Guwahati vide letter No. GMDA/6/94-95/27 dtd. 24/09/98.

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*Surjyaosha
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Thus is view of the facts and circumstances narrated above, the moot questions that stare any person of ordinary intelligence & prudence are :-

- 1) Why and how the DIG/CBI/NER opened the said complaint closed by his superior i.e. JD/CBI/EZ Calcutta.
- 2) Why the same complaint repeatedly given to different authorities for inquiry and what was the reason for opening the said complaint closed by his predecessor & his senior i.e. JD/CBI on the second occasion.
- 3) Why the DIG/CBI/NER called Mr. A.K. Baruah a CBI chargesheeted person for personal hearing on the said complaint. Whether he calls other complainant for personal hearing; or for examination by the concerned I.O. in his presence. If yes where is his report of examination and why It was not supplied to me to defend myself reasonably.
- 4) When there was any complaint against me which discloses in no way about my official dealings or any corrupt or illegal acts than why and how the DIG/CBI/NER Sri K.C. Kanungo entertained the said complaint and called the complainant for personal hearing and why no explanation was asked from me regarding said allegations but again and again the complaint was marked to different Dy. SP's to give their report ?
- 5) In CBI various types of complaints are received from public, but only those complaints are taken up for inquiry which involves official corruption or misuse and abuse of official position involving Central Govt. Employee, and other frivolous complaints are discarded and filed or forwarded to appropriate authorities for action. In this regard the detailed instructions are given in CBI crime manual. However the said complaint of Sri A.K. Baruah did not complained me for such acts and the said complaint was a private complaint, which has no nexus with my official position or misuse or abuse of official power than why the said complaint was entertained for inquiry and made the same basis for punishment.

Thus whether the CBI has power & authority to entertain any or every complaint. If not, than why this particular complaints as regards to private dispute, and for what extra interest and considerations was endorsed to aforesaid Dy. SP's again & again by DIG/CBI/NER Sri K.C. Kanungo for inquiry

6) Under what provision of law or moral decency Sri K.C. Kanungo gave indulgence to such a CBI chargesheeted accused person & entertained complaint dt 4/12/1999 of said Sri Baruah using most indecent, defamatory & profane language by the complainant against the respected wife of his own sub-ordinate and with what authority he obtained report in this regard from Dy. SP Sri D.S. Mann, which is out-rageous by any standard of ethics and moral conscience, trespass of official power & limit and violation of most sacred privacy and basic human rights.

7) How the DIG/CBI/NER Sri K.C. Kanungo misued and abused his official position in medalling a civil dispute between two parties, which was settled by the Hon'ble courts of law and how & for what consideration the DIG/CBI/NER Sri K.C. Kanungo asked the complainant as stated in the complaint of Sri A.K. Baruah dtd. 04/12/99 as to how could he help him and why DIG's heart was bleeding profusely to help a builder and CBI accused person in his civil disputes outside court. It is better if Sri K.C. Kanungo join the Dawood Ibrahim gang than absusing his powers for rendering private help to such dubious person in the garb of official capacity.

8) Under what provision of law the DIG/CBI/NER has got the power to seek a police report after the inquiry by said Dy.Sp's when the complaint does not relate to my indulgence in any corrupt or illegal act in official capacity and whatever the power and jurisdiction of any authority that might arise in the said complaint was that of local police & civil courts. Thus how the DIG/CBI/NER transgressed his limited police power as CBI official vested in him as per DSPE Act and consent of Govt. of Assam in this regard.

9) Being a public servant at how many forums and for how many authorities I am liable for the complaint. The Civil Court, Criminal court, CBI, local Police, NHRC/AHRC and than department ? Further whether I am liable collectively to CBI hierarchy as a whole or severally to SP/DLA/DIG/JD/Addl Director & DCBI ?
 It is interesting to point out that no complaint was ever made or any adverse remark made by my immediate controlling authority i.e. SP/CBI, and several official matters were closed in due course by unanimous recommendations of all concerned. Than under what circumstances and for what reason the DIG, Sri K.C. Kanungo got extra administrative power to inquire afresh the matter which were closed by even his superiors and courts.

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*Surjyashree
15/1 Advocate*

REASON 12 : Further the impugned order dt. 02/12/2001 imposing penalty of stoppage of 3 increments with cumulative effect was passed by DIG/CBI/NER on 02/02/2001 under mental hysteria of wrath against me as corroborated by the staff of Regional Office. In fact on Friday 02/02/2001 Mr. Manoj Banerjee S.I. the presenting officer in other 3 major penalty chargesheet against me & Dy. SP Mr. A.K. Saha were called by DIG through Fax message. As Dy. SP Sri Saha was out on duty therefore Manoj Banerjee alone went to the Regional office. In the office he was hauled up as to why he has not prepared list of witnesses & documents so far to be supplied to me in aforesaid charge inquiry. To which he declined politely but firmly that as presenting officer he will not do this illegal act. At this he shouted. "I command you to pick up the pen & prepare said list of witnesses & documents, and if you can not help than get out. But Mr. Manoj Banerjee persisted in his stand which sent him to uncontrollable fit of raze and he remarked that he thought you (Manoj) were different from others but you are also not helping him. This man he is a mere inspector and fighting against DIG. Further he remarked, see this ACR. of S.P. Singh. The branch S.P. has wrote very good comments in ACR and once again he showed lack of courage & shadow the misdeeds and attempting to hush up the case. I will not leave S.P.

Thereafter he himself called his CA Manoj Deb and started giving dictation of list of witnesses and documents etc. which were served on me on 08/02/2001 & 14/02/2001.

Thus it is evident that under aforesaid mental background, Schizophrenic wrath against me and under mental hysteria of raze the said impugned order was passed on 02/02/2001 itself. How biased the Disciplinary Authority is against me and he is devising ways & means to injure me financially and in service carrier could be seen from the daily order sheet No. Disc/3/878-80 dt. 12/02/2001 issued by the inquiry officer Sri Vaibhav Agashe in the aforesaid three inquiries (copy enclosed as Annexure-K) that unable to bear the pressure and unwarranted interference of Sri K.C. Kanungo in the said inquiry he was forced to write to the effect "That it is requested to the DA to refrain from rendering advice to the E.O. regarding the mode of conduct of the inquiry in the interest of justice.

Thus the impugned order was given by a hostile and biased person and hence perverse & defective and unsustainable in law as a hostile and revengful mind can never be a judicious & fair

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mind capable to analyse and asses the fact, circumstances and evidence and pass orders in such proceedings of quasi judicial nature.

REASON13 :That the worthy DIG, wherever he was posted either at Dhanbad, New Delhi, Jammu or North East he was/is bent upon harass and abuse his subordinate irrespective of the rank. Some of the matter was disposed off by your honour in favour of those officials posted at Guwahati during your branch visit. Some other references are made here in below which reflect his biasness towards his subordinates posted in N.E. Region and thus arousing serious doubts in the mind of any reasonable and prudent person to get any justice from him.

I) sri kailash Barman an Inspector CBI/ACB/Guwahati made a complaint of abusive language and behaviour against present DIG/CBI/NER to Director CBI vide letter dt. 16.9.99 seeking premature repatriation.

(Letter dt. 16.9.99 is annexed as Annexure - L)

II) Sri M.V. Ramanaiah Public Prosecutor CBI/ACB/Guwahati also moved a letter dt. 16.2.2001 addressed to Addl. Director/EZ/CBI/Calcutta wherein the bad behaviour of present DIG is highlighted.

(Letter dt. 16.02.2001 is annexed as Annexure - M)

III) Sri H.K. Yadav constable on deputation from Arunachal Pradesh Police also made a complaint against present DIG for perpetrating mental torture and extracting illegal works at his residence and thus unable to bear it forcing him to resign from the service itself, and after the incident, the present DIG in order to cover up his misdeeds passed order of stoppage of two increments with cumulative effect (a Major Penalty) against said Sri Yadav in his absentia without any explanation or formal inquiry.

(The copy of the registered letter dt. 11.11.2000 is annexed as Annexure - N for reference)

IV) Sri Mukut Das is being victimised and harassed by present DIG, who has implicated him in a false and cooked up charges and issued charge sheet for major penalty to settle his personal scores only because aforesaid Sri Kailash Barman Insp. cited his name as witness to the abusive and bad behaviour of DIG in his complaint dtd. 16.9.99 referred above.

V) H.C. Rajendra Sinha was issued charge sheet for minor penalty on false and cooked up charges. However the fact is that Sri Rajendra Sinha was sent to New Delhi on the orders of DIG by showing him on Govt. duty but actually to bring his T.V. Set from his official residence at New Delhi, which was declined to be handed over to Sri Rajendra Sinha by the son of DIG/CBI. This inability of Rajendra Sinha to bring the T.V. Set of DIG/CBI earned him laters wrath culminating into issuance of charge sheet.

VI) Inspector Adani Mao and Inspector Ng. Khamrang were issued charge sheet on the allegation that they failed to receive the present DIG at New Delhi Air Port and thus later was unable to discuss cases with the aforesaid Inspectors in car during journey from Delhi Airport to Guest House.

Thus while the aforesaid Inspectors were hauled up for said heinous allegations by the present DIG but later will not respond to his seniors in the same spirit,. In this regards reference is made to the visit of AD (A) and JD (A)/CBI New Delhi to Guwahati and their stay here for more than a week but worthy DIG/CBI/NER would not care to pay a courtsey call to them.

VII) similarly Sri K.C. choudhury Dy.SP/CBI/R.O. who was serving in CBI Guwahati on deputation from last 19 years and who was posted to CBI/EZ/Calcutta on his own request also sought repatriation to Assam Police in view of the abusive and bad behaviour of present DIG.

VIII) Reference could also please be made to the daily order sheet dt. 10/2/2001 issued by the Inquiry Authority Sri Vaibhav Agashe Dy.SP/CBI/Shillong Unit requesting the present DIG to refrain from interference in the conduct of Inquiry. (Copy of the daily order sheet dt. 10/2/2001 is annexed as Annexure - K for reference)

It is also interesting to mention herein that this matter of awarding the punishment was referred by DIG to branch SP Sri. Om Prakash who declined to do so commenting interalia in file that "this matter was closed at the branch level however DIG/CBI/NER has taken up the matter of his own calling for the records from branch and issuing chargesheet etc. Though SP is also competent to award punishment but as I am not aware of the facts and circumstances of the case therefore DIG himself may pass the order as he is aware of it ". Responding to above comments of SP, DIG/CBI sri K.C. Kanungo appended his note that "earlier I thought but now it is confirmed that the branch SP

lacks courage to discipline his subordinates and award punishment. Let the file be sent to Regional Office flagging charge memo, written statements etc for passing the punishment order". It is thus obvious that how fair and judicious mind the disciplinary authority has ^{who} considers the punishment order and ACR's of subordinates as battle field to show his so called exemplary courage against the army of subordinates enemies in butchering their service career and earn self given Param Vir Chakra while sitting in his own ivory tower.

REASON 14 : That it will not be out of place and imprudent to asses and analyze the gravity of alleged abuse and utterances of so called filthy words as 'tu chor' 'yahan kaise aaya' 'tujhako nahin chroonga', 'you cheat' etc. against Sri A.K. Baruah by me. In fact any prudent person could see as to what filthiness there are in the said words as to warrant major penalty punishment in using those words. From aforesaid it is evident that a case u/s 420, 468, 471, 477A of IPC & sec 13(2) r/w 13(1)(d) of PC Act 1988, i.e. cheating and other related offences in defrauding public money to the tune of Rs.10,00,000 is registered by none other than CBI itself and trial is on and therefore said Sri A.K. Baruah is and should indeed be a 'chor' & 'cheat' in the eye of every CBI personnel to be avoided his company.

Further any straight forward and conscientious police officer will definitely be surprised and express the words in astonishment as to 'tu yaha kaise aaya' seeing such dubious person, Bank dismissed and CBI chargesheeted accused person like Sri A.K. Baruah finding him in the company of a person occupying the post of such exalted position as DIG/CBI/NER and being offered Tea snacks etc. and being asked by the DIG most benignly (totally lacking for even a single of his subordinate) as to how he could help him.

So, far as the alleged filthy words as to 'tujhako nahin choroonga' alleged to be used by me against said Sri A.K. Baruah are concerned it should be the chorus in Unison of all the police professionals against such dubious character like Sri A.K. Baruah and not me alone and indeed so long I am a police professional and also even as a civilian, where ever their is a violation of the law of the land, illegality, arbitrariness, unfairness by any man, I most humbly but firmly would like to reiterate that remaining with in the parameters

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Churbayashtha
15/3/2022

of law. Fairness, Judiciousness and reasonableness, "Mein usko nahiin choroonga" and I will remain ever unrelenting in pursuit of justice in this regard, even though I am very much conscious of the fact that it is easier to face unfairness and injustice but it is the pursuit for justice which is full of stings.

I, therefore, most humbly solicit the indulgence of your benign self to examine the present matter and render justice and be further pleased to set aside the order imposing penalty with all consequential benefit.

Yours faithfully,

SPW / 13/4/2001
(SURESH PAL SINGH YADAV)
INSP/CBI/ACB/(U/S)
Guwahati.

Certified to be true Copy

Parleyosha
1/23 Advocate

To

The Additional Director
CBI/E2/CALCUTTA
NIZAM PALACE, AJC BOSE ROAD
CALCUTTA

[THROUGH PROPER CHANNEL]

Sub : Appeal under Rule 15 of DSPE Subordinate Ranks (Discipline & Appeal Rules) 1961. against penalty imposed by DIG/CBI/NER Sri K.C. Kanongo vide order No. 357/A/20/157/93 dtd 02/02/2001 in the matter of Memo No, DPSHL/2001/0021/A/20/157/93 dtd. 10.01/2000.

Ref : My representation dt. 13.4.2001.

Sir,

In reference to above I have the honour to state that almost three and half month have elapsed since my submission of representation referred to hereinabove but without communication of any decision or information if the matter is in the process of consideration.

As the matter is delaying and limitation period under the circumstances for filing appeal/application in CAT is nearing to be over. It is therefore requested that an early decision may please be communicated or else this humble subordinate of yours will be left as no course but to file O.A. against the impugned order of the DIG soon within limitation period submitted.

Yours faithfully

31.7.01
S P SINGH YADAV
INSP/CBI/ACB (U/S) GHY.

Certified to be true Copy

*Shubhayogtha
193
Advocate*

ANNEXURE - A/9

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OFFICE ORDER NO. 214

DATE 2/8/01

Extract of the letter No. CBI.ID.No.2045/A/20/157/93-
NER of DIG, CBI, NER, Guwahati is reproduced below :

"Shri S.P. Singh Yadav, Inspector, CBI, Guwahati (under suspension) was punished with stoppage of 3(three) increments with cumulative effect vide office order No. 39 dated 15.2.2001 communicated vide No. A/20/157/93/01066-70 dated 15.2.2001 of SP CBI, Guwahati. He has appealed before Addl. Director, CBI, Kolkata against the said order and ADCBI has ordered that punishment imposed be kept suspended till further orders."

Superintendent of Police
CBI/ACB/Guwahati

Memo No. DPSHL.2001/22290-91/2A/20/157/93 date 2/8/01

Copy to :-

1. Account Section, CBI, ACB, Guwahati for necessary action
2. Person concerned.

Superintendent of Police
CBI/ACB/Guwahati

&&&

Certified to be true Copy

Shubhagastha
15/3