

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 208/2007

R.A/C.P No. 4/08

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SECTION OFFICER (Judl.)

Kanta
 06.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

O R D E R S S H E E T

1. Original Application No. 1018.208/07

2. Misc. Petition No. 1018.208/07

3. Contempt Petition No. 1018.208/07

4. Review Application No. 1018.208/07

Applicant(s) Chandra Mohan Sharma VS. Union of India & Ors

G.N. Saha

Advocate for the Applicants:- M. Chanda, S. Nath, Ms. L. Datta

Advocate for the Respondents:- Sr. CGSC G. Baishya Ms. M. Das, Govt. adv. for Assam for Dept. No. 1203.

Notes of the Registry	Date	Order of the Tribunal

This application is in form
is filed C.F. for Rs. 50/-
deposited vide IPO/BD
No. 346655388
Dated 17.7.07

Registrar

Petitioner's copy for issue
notices are received
with envelopes and exes
Rs. 5/- deposited.
Under Talcing given for
service copy.

2/8/07

2.8.07 The applicant is working as a Conservator of
Forests, Karbi Anglong under the Karbianglong
Autonomous Council (in short KAC). One Jatindra
Sarma, DFO has been placed under suspension on
the basis of a report of the present applicant. The
applicant has been asked to furnish draft charges
of the allegations and he has determining the
actual amount of misappropriation of Govt. money.

The impugned order dated 17.7.07 has been issued
transferring the applicant from Diphu to Guwahati.

By the said notification one Sri S.S. Rao,
Conservator of Forest has been posted at Diphu.

Heard Dr J.L. Sarkar, assisted by Mr
M. Chanda, learned counsel appearing for the
applicant, Mrs M. Das, learned Govt. Advocate
Assam for respondents No.1, 3 and 4 and Mr
M.U. Ahmed, learned Addl. C.G.S.C for respondent
No.6. The main contention of the applicant is
regarding violation of clause H of the O.M. dated
31.12.1996 which was fortified by the decision of
the Hon'ble Gauhati High Court in Jogeswar Barah

2.8.07

vs. State of Assam & Ors., reported in (1999) 3 G.L.R 104, "the State Government shall consult the Council, while posting and transferring the officers of the entrusted subjects" and the transfer order was issued in total violation of clause H of the Annexure-4 O.M. dated 31.12.1996. Learned counsel for the respondents No.1, 3 and 4 wanted to take instruction. She further submitted that it is a routine transfer order.

Considering the issue involved, I direct the registry to issue notice to respondents No.2 and 5 and 6. By way of interim order this Court directs that status quo as on today shall be maintained in so far as the applicant is concerned.

Post on 17.9.2007 for order.

Vice-Chairman

Vide order in M.P.80/07 & M.P.83/07.

the interim order dated 2.8.2007 is vacated. Post the case on 17.9.2007 as already fixed.

Copy of the order shall be furnished

to the learned counsel for the parties forthwith.

Vice-Chairman

Received
exp. 10/8/07
on behalf of
2, 3 and 4
10/8/07

(Mrs. M. Das)
Addl. C.C. & C.

16/8/07
(M. M. Ahmed)
Addl. C.C. & C.

Notice & order sent
to D/Section for
issuing to resp. nos

2, 5 and 6 by regd.

A/D post and resp.

nos 1, 3, 4 received

by hand by Mrs. M. Das,

Addl. C.C. & C. on 3/8/07

Class

16/8/07

D/No- 835 to 837

Dt- 2/8/07

16.8.07

is/ps filed by me

Respondent No. 5 Page 1/bb/

to stop from being

Notice for resp. no-5

received back as unserved

with a postal remark "No

in this

O.A 208/07

- 3 -

20.8.07

Rejoinder submitted 19.07
by the Applicant. ~~Case~~
~~Second~~ Applicant given
under talking for service.

No reply has been filed. Post the
matter on 10.10.07.

Vice-Chairman

W.A.
lm

The case is ready.

W.A.
9.10.07.

10.10.2007

No
in this case
Government
Call

(Khushiram
Member(A)

lm

10.10.2007

No Written Statement has been filed
by the State of Assam nor by the Government
of India in this case.

Call this matter on 20.11.07.

- ① W/S filed by R.No.5,
- ② No W/S filed by R.No.
1404 & 6.
- ③ Rejoinder filed by
The applicant against
W/S R.No-5.

lm

(Khushiram
Member(A)

(M.R.Mohanty)
Vice-Chairman

W.A.
19.5.07

20.11.2007

In this case Respondent No.5 has only
filed a reply and a rejoinder to that has
already been filed. State of Assam has not
filed any reply to the Original Application nor
the Union of India. Mr.M.U.Ahmed, learned
Addl. Standing counsel for the Union of India,
is not present. However, Mrs. Manjula Das,
learned Advocate for the State of Assam, is
present. She undertakes to file her
appearance memo in this case by tomorrow.
She also prays for some time to file reply for
the State of Assam in the Original Application.

Contd....

SA 208/07

Contd...
20.11.2007

Call this matter on 20.12.2007
awaiting reply from the Respondents.

W/s not filed by
R No-1 to 4 & 6.

19.12.07

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

20.12.2007

No written statement has yet been
filed in this case by the Respondents
(excluding Respondent No.5).

Call this matter on 30.01.2008
awaiting written statement from the
Respondents.

Send copies of this order to all the
Respondents; who should file their written
statements well before the next date.

(M.R.Mohanty)
Vice-Chairman

/bb/

No written statement has yet been
filed by the Respondents to the O.A.,
despite several opportunities ~~have been~~
given. It is prayed on behalf of Mrs.M.Das,
learned counsel appearing for the State of
Assam ^{that} she being sick is not in a position
to attend the proceeding of this case to-
day.

Call this matter on 15th February,
2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

Dt. 20.12.07.

Pr. sent order copies
to all the Respondents

20.12.07

Order dt-20/12/07
sent to D/Section
for issuing to
resp. nos. 1 to 6 by
post.

26/12/07. D/No-19154
do 1920
DI=27/12/07.

~~W/s filed by~~
~~R.No 1 to 3 only.~~

14.2.08

W/s filed by the
Regdt. No. 1 and 3.

W/s filed is
14.3.08.

15.02.2008

In this case written statement has already been filed.

Call this matter on 21.02.2008 for hearing.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

The case is ready
for hearing. pg

22.02.2008

Call this matter on 13.03.2008.

Im
21.2.08

(Khushiram)
Member (A)

Lm

The case is ready
for hearing.

Im
12.3.08

13.03.2008

Call this matter on 18.03.2008.

(M.R.Mohanty)
Vice-Chairman

Im

18.03.2008

Call this matter on 1st April, 2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

Im

The case is ready
for hearing.

Im
31.3.08

01.04.2008

Call this matter on 06.05.2008.

lm

W/S filed

220
5.5.08

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

06.05.2008

On the prayer of learned counsel for both parties the case is adjourned and to be taken up on 05.06.2008. It has been clarified by the learned counsel for both parties that status quo order is no more there.

Call this matter on 05.6.2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

Rejoinder filed
by the Applicant
without index.

220
9/5/08

05.06.2008

On the request of Mr.M.Chanda, learned counsel appearing for the Applicant, call this matter on 24.06.2008.

The case is ready
for hearing.

220
4.6.08.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

19.6.08

Rejoinder submitted
with index by the
Applicant, observed.

The case is ready
for hearing.

220
23.6.08.

7 - 04-10-208/2007 with M.P.No.91/2008.

24.06.2008 By filing M.P.No.91/2008 the Applicant has sought to call for the record in which the impugned transfer of the Applicant was proposed and approved and in which consultation by the State Government of Assam with the KAAC/ Diphu was undertaken. A copy of the petition has already been served on the learned Counsel for the State of Assam.

In the aforesaid premises, the Respondents (especially State of Assam) are called upon to cause production of the records specified in M.P.No.91 of 2008/the files, in which the impugned of the Applicant was proposed and approved, at the time of hearing/on the next date.

Call this matter on 10.07.2008, when the records will be produced by the Respondents/learned Counsel for the State of Assam.

A copy of this order be handed over to Mrs M. Das, learned Counsel for the State of Assam.

(M.R. Mohanty)
Vice-Chairman

nkM

10.07.2008

Mr. M. Chanda, learned counsel appearing for the Applicant is present. He has filed a Misc. Petition for production of documents ^{from the} ~~which is in~~ custody of the State of Assam.

Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents is present. None appears for the State of Assam. Mr. D. K. Das and Ms. Lopa Gogoi, learned counsel appearing for the private Respondents ^{are} ~~is~~ absent. It is informed that Mrs. M. Das, learned Addl. Standing Counsel appearing for the State of Assam is on accommodation.

In the aforesaid premises, call this matter on 21st July 2008, for giving consideration to the prayer made in M.P.No.91 of 2008.



(M.R. Mohanty)
Vice-Chairman

Lu

21.07.2008

On the prayer of Mrs. U. Dutta, learned counsel appearing for the Applicant, call this matter on 06.08.2008.

By filing MP 91/2008 Applicant has sought to call for certain records from the custody from the Respondents. Respondents should cause all the records ready with the learned counsel for the Union of India and State of Assam to be produced at the next date of hearing.

Send copies of this order to the Respondents in the address given in the O.A.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

St. 21.7.08

Pl. send copies of this order to the Respondents at the addresses given in OA.

22/7/08

Copies of order dated 21/7/08 send to D/Section for issuing to respondents by post.

D/No-3264 to 6264


DT- 29.7.08 /bb/

The case is ready for hearing.

25.8.08

06.08.2008


Hearing concluded. Order reserved.


(M.R. Mohanty)
Vice-Chairman

lm/

29.08.2008

Order pronounced. The O.A. stands
disposed of.


[M.R. Mohanty]
Vice-Chairman

10.9.08

Copy of the
Judgment sent to
the D/Sec. for
issue the same
to the applicant
as well as to
the Res/D No 1, 2
& C by post.
H.T.

cm

22.1.09

Judgment issued
vide D/No. 3990
to 3996 dt 12.9.08.
ghs.

12

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A. 208 of 2007

Date of order: the 29th August, 2008

Shri Chandra Mohan Sharma,
By Advocate Mr. M. Chanda

Applicant

Versus

The Union of India & others ..
By Advocates Mr. M.U. Ahmed, Addl. C.G.S.C.
Mrs. M. Das for the State of Assam
Mr. D.K. Das for Respondent No.5.

Respondents

CORAM: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman

1. Whether reporters of local newspapers
may be allowed to see the judgment or not? ~~Yes~~/No ✓
2. Whether to be referred to the Reporters
or not ? No
3. Whether to be forwarded for including in
the Digest being compiled at Jodhpur Bench
and other Benches ? ~~Yes~~/No ✓
4. Whether their Lordships wish to see the
fair copy of the judgment ? ~~Yes~~/No ✓


Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 208 of 2007

Guwahati, this the 29th day of August, 2008

Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman

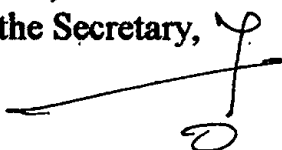
Shri Chandra Mohan Sharma, IFS,
Conservator of Forest,
P.O.-Diphu
Dist-Karbianglong, Assam.

Applicant

By Advocate Mr. M. Chanda

Versus

1. The State of Assam,
Represented by the Secretary to the
Government of Assam,
Department of Environment and Forest
P.O.-Dispur, Guwahati-781 006.
2. Karbianglong Autonomous Council,
Represented by the Principal Secretary,
P.O.-Diphu, Dist-Karbianglong, Assam.
3. Joint Secretary
Govt. of Assam,
Department of Environment and Forest
PO.-Dispur, Guwahati-781 006
4. Sri A.U. Choudhury,
Joint Secretary,
Govt. of Assam,
Department of Environment and Forest,
P.O.-Dispur, Guwahati-781 006
5. Sri S.S.Rao, IFS,
Conservator of Forest,
Office of the Chief Conservator of Forest
Guwahati-8, Assam.
6. The Union of India,
Represented by the Secretary,
Govt. of India



Ministry of Environment and Forest
New Delhi-110 001.

Respondents

By Advocates Mr. M.U.Ahmed, Addl. C.G.S.C.
Mrs. M.Das for the State of Assam
Mr. D.K.Das for Respondent No.5

O.A. No.208 of 2007
ORDER DATED 29.08.2008

Manoranjan Mohanty, Vice-Chairman:

Applicant, a member of Assam Segment of Assam-Meghalaya Joint Cadre of Indian Forest Service, was posted as Conservator of Forests of Karbi Anglong. He having faced the impugned order of Transfer dated 17.07.2007, approached this Tribunal with the present Original Application filed [on 02.08.2007] under Section 19 of the Administrative Tribunals Act, 1985 challenging the said order of transfer on a number of grounds. While issuing notice to the Respondents this Tribunal, by way of granting interim order dated 02.08.2007, directed the parties to maintain status quo of the Applicant as on 02.08.2007 and this case was posted to 17.09.2007.

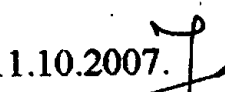
2.. Before the date fixed/17.09.2007, however, the Private Respondent No.5, on 16.08.2007, filed a written statement and also filed a petition [M.P.No.80/2007] seeking vacation/modification of the interim order that was passed on 02.08.2007. The said private Respondent was to replace the Applicant at Karbi Anglong.

3. On behalf of the State Government of Assam, a petition [M.P.No.83/2007] was also filed, on 20.08.2007, seeking vacation/modification of the interim order that was passed on 02.08.2007.

4. Applicant also, on 28.08.2007, filed his Rejoinder to the written statement of the private Respondent No.5 and an objection to the above-said petition M.P.No.83/2007.

5. Upon giving hearing to the Counsel appearing for the parties [on 29.8.2007] an order was delivered on 31.08.2007 [covering and answering all the points that have been taken in this O.A. and those were taken in the Misc. Petitions, objection to the Misc. Petition and Rejoinder etc. and elaborate arguments advanced on behalf of the parties] vacating the interim order that was passed on 02.08.2007.

6. As it appears, the Applicant, after vacation of the interim order [dated 02.08.2007] on 31.08.2007, proceeded to join the new station [pursuant to the impugned order of transfer] and was placed under suspension [by an order dated 11.10.2007] and faced a Departmental charge-sheet dated 22.10.2007 issued by the State Government of Assam. The Applicant has already answered to the said Departmental charge-sheet. It appears, further, that, on consideration of the Appeal of the Applicant, the Central Government [of India] has already passed an order, on 16.06.2008, revoking the order of suspension dated 11.10.2007.



7. On 14.02.2008, a written statement has been filed [on behalf of the State Government of Assam] in this case taking the same stand [that was taken while moving this Tribunal for vacation of stay] that this impugned order of transfer was a routine one having no mala fides intention to penalize the Applicant in any manner.

8. On 09.05.2008 and 19.06.2008 the Applicant filed separate Rejoinders; wherein a copy of the charge-sheet dated 22.10.2007 has been annexed to show that the impugned order of transfer was a punitive one.

9. Heard Mr. Chanda, learned Counsel appearing for the Applicant; Mr. M.U. Ahmed, learned Addl. Standing Counsel representing the Union of India; Mrs. Manjula Das representing the State of Assam and Mr. D.K.Das representing the private Respondent and perused the materials placed on record.

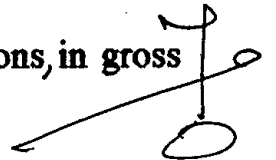
10. The order dated 31.08.2007 [which runs to long 16 pages] having virtually answered all the points raised in the Original Application of the Applicant, there, virtually, remains nothing to be examined and answered now.

11. However, depending on the Rejoinder, Mr. Chanda, learned Counsel appearing for the Applicant, has pointed out that although the Respondent State Government gave an impression to this Tribunal that the impugned order of transfer was an order

simpliciter issued in a routine manner transferring the Applicant after a considerable period of posting at Karbi Anglong; they [Respondents] have disclosed in the Departmental charge-sheet dated 22.10.2007 that 'lot of complaints regarding illegalities, misappropriation of Govt. fund and irregularities having been received against the Applicant, he was transferred under the impugned order and that, thus, the impugned order of transfer is to be held as a punitive one'.

12. The above said factual stand of the Applicant, as taken for the first time in the Rejoinder, is resisted by Mrs. Manjula Das, Advocate representing the State of Assam. In fact such a factual stand taken for the first time in a Rejoinder is of no assistance to the Applicant. He could have taken such factual stand by way of amending the Original Application; which he has not done. Had he done so, the Respondents would have got an opportunity to answer the same by way of exercising their right to file additional written statement.

13. Facing with above obstruction, Mr. Chanda, learned Counsel for the Applicant disclosed at hearing that the Applicant is going to challenge the action of the Respondents by way of filing a fresh Original Application directed against the Departmental charge-sheet. Thus, he abandoned the point [that he faced the punitive transfer order, on the face of some unknown allegations, in gross



violation of the principles of natural justice] for the time-being. (8)

In fact the Applicant has, by now, filed a fresh Original Application challenging the Departmental charge-sheet dated 22.10.2007.

14. In the above premises, since all points, taken in the Original Application, has already been answered in the earlier order dated 31.08.2007; this case is disposed of.


[Manoranjan Mohanty]
Vice-Chairman

cm

ORDER

K.V. SACHIDANANDAN (VICE-CHAIRMAN)

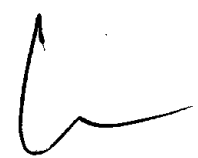
This court had passed the following order in O.A.No.208 of 2007 on 02.08.2007 at the admission stage:

"The applicant is working as a Conservator of Forests, Karbi Anglong under the Karbianglong Autonomous Council (in short KAC). One Jatindra Sarma, DFO has been placed under suspension on the basis of a report of the present applicant. The applicant has been asked to furnish draft charges of the allegations and he has determining the actual amount of misappropriation of Govt. money. The impugned order dated 17.7.07 has been issued transferring the applicant from Diphu to Guwahati. By the said notification one Sri S.S. Rao, Conservator of Forest has been posted at Diphu.

Heard Dr J.L. Sarkar, assisted by Mr M. Chanda, learned counsel appearing for the applicant, Mrs M. Das, learned Govt. Advocate, Assam for respondents No.1, 3 and 4 and Mr M.U. Ahmed, learned Addl. C.G.S.C. for respondent No.6. The main contention of the applicant is regarding violation of clause H of the O.M. dated 31.12.1996 which was fortified by the decision of the Hon'ble Gauhati High Court in Jogeswar Baruah vs. State of Assam & Ors. reported in (1990) 3 G.L.R. 104, "the State Government shall consult the Council, while posting and transferring the officers of the entrusted subjects" and the transfer order was issued in total violation of clause H of the Annexure-4 O.M. dated 31.12.1996. Learned counsel for the respondents No.1, 3 and 4 wanted to take instruction. She further submitted that it is a routine transfer order.

Considering the issue involved, I direct the registry to issue notice to respondents No.2 and 5 and 6. By way of interim order this Court directs that status quo as on today shall be maintained in so far as the applicant is concerned."

2. The official respondent has filed M.P. No.83 of 2007 and the party respondent No.5 has separately filed M.P.No.80 of 2007, both for vacating/modifying the interim order ("status quo") dated 02.08.2007 and in both the M.P.s the following identical prayer has been made:



"In the premises aforesaid it is respectfully prayed that Your Lordships may be pleased to vacate and/or modify and/or alter the interim order dated 02.08.2077 passed in O.A. No.208/2007 and/or pass such further order/orders as Your Lordships may deem fit and proper."

3. Since the reliefs sought in both the M.P.s are same, both the M.P.s are disposed of by a common order by consent of the parties.

4. The original applicant who is working as Conservator of Forests, Karbi Anglong, Diphu under the Karbi Anglong Autonomous Council (KAAC for short) has filed the O.A. By a Government order dated 02.04.2003 (Annexure-1) the applicant was placed at the disposal of the KAAC. By order dated 17.07.2007 respondent No.3 issued the impugned Notification transferring the applicant from Diphu to Guwahati and one Shri S.S. Rao, IFS (respondent No.5), who was working the office of the Chief Conservator of Forests, Assam, Guwahati was sought to be posted at Diphu. The applicant has challenged the said transfer order and sought the following reliefs in the O.A.:

"8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned notification of transfer and posting order bearing letter No.FRE.6/90/272 dated 17.07.2007, letter No.FRE 6/90/272-A dated 17.07.2007 (Annexure-3)."

5. The main ground under which the transfer order was challenged by the original applicant is that the official respondents have violated the guidelines and the conditions in the O.M. dated 31.12.1996 (Annexure-4 in the O.A.) with special reference to Clause H of the same. The preamble of the said O.M. empowers greater autonomy to the Autonomous Councils of Karbi Anglong and North Cachar Hills within the framework of the Sixth Schedule to the



Constitution of India. For better elucidation it is profitable to quote the said Notification/O.M. dated 31.12.1996 issued by the Government of Assam, Hill Areas Department.

"Whereas in pursuance to the Memorandum of Understanding {MoU}, reached between the Chief Minister, Assam and the Autonomous State Demand Committee, Karbi Students' Association, N.C.Hills Students' Federation and Dimas Students' Union on 1st April, 1995 in New Delhi, in the presence of the Union Home Minister, granting greater autonomy to the Autonomous Councils of Karbi Anglong and North Cachar Hills within the framework of the Sixth Schedule to the Constitution of India.

And whereas the Assam Legislative Assembly vide its Resolution, dated 12th April, 1995 adopted and approved the aforesaid Memorandum of Understanding, reached on 1st April, 1995 referred to above and the House resolved further that the jurisdiction of the Karbi Anglong Autonomous Council and North Cachar Hills Autonomous Council for the executive powers would extend to the 30 [thirty] subjects/departments listed in Annexure-1 of the Memorandum of Understanding and to that extent the executive powers of the State shall stand entrusted and delegated to the above mentioned Councils.

6. Clause H which is said to have been not complied with by the respondents reads as follows:

[H] The State Government shall consult the Council, while posting and transferring the Officers of the entrusted subjects/departments in or out of the Council. Under no circumstances, the officers and staff not released by the Council shall be accepted by the State Government. Before deputing any Officer or staff the Government shall provide a panel of names, enabling the Council to select and accept the same. The State Government shall take necessary action under the relevant Rules and procedure against the officers and staff, found involved in any prima facie case of misconduct/dereliction of duty, etc. during the period of deputation to the Council even after they are repatriated to the State Government.

7. It would also be profitable to quote Clause G:

(G) The Chief Executive Member/Executive Member/Principal Secretary/Secretary to the Executive Committee of the Council shall be competent to



initiate/review/accept the annual Confidential Reports [ACRs] of all the Officers and staff placed under the administrative control of the Council. The administrative control of the Council over the Officers and staff and its disposal shall be complete in all matters of intra Council transfer and posting. As regards disciplinary actions, against the Officers and staff of the entrusted subjects/departments, the Council shall exercise the powers as the borrowing Authority and the State Government shall exercise the powers as the lending Authority and both the State Govt. and the Council shall follow the relevant rules, regulations, etc. of the respective service Rules, [IAS/ACS, etc.]."

8. When the matter came up initially the learned counsel for the original applicant contended that Clause H has been totally violated by the respondents and therefore the interim order was granted to maintain status quo, which is under challenge through the M.P.s.

9. The contention of the petitioners in the M.P.s (respondents in the O.A.) is that the impugned order of transfer dated 17.07.2007 which is under challenge in the O.A. was made under administrative exigency and in the interest of public service and the original applicant has been serving as Conservator of Forests, Karbi Anglong since 10.04.2003 and after more than four years of tenure the original applicant was appointed as Conservator of Forests as a matter of routine transfer and the petitioners deny the allegations of malafide and even if such allegations are there it is vague and baseless. The petitioners are also attempting to attribute certain irregularities against the original applicant in attending official duties through a letter (Annexure-C) of the Chief Executive Member, KAAc dated 04.08.2007 (subsequent to the interim order). It is further contended that the transfer order of the original applicant is neither punitive nor malafide. The petitioners also reiterated that transfer



being an incidence of service it is for the authority to decide whom to transfer and where and when. The court should be slow with interfering in such matters.

10. The respondent in the M.P.s (original applicant in the O.A.) has filed a detailed counter statement contending that the impugned Notification of transfer is based on extraneous consideration in order to accommodate respondent No.5 and the transfer of the original applicant is "solitary transfer". The contention of the official respondents that the original applicant has completed his tenure posting does not hold good because at least four of the Conservator of Forests listed in the counter statement have also completed the tenure period and they have not been disturbed. Therefore, it cannot be said that it is a routine transfer. The entire prejudice against the original applicant has started when one Shri Jatindra Sharma, DFO (under suspension) against whom the original applicant has entrusted with the duties of framing draft charge sheet by the Council and who was placed under suspension on the basis of the report of the original applicant. Though there is no specific plea of malafide in the O.A. against any person, the learned counsel for the respondent in the M.P.s argued that the transfer order was passed at the instance of the Minister concerned and the procedure has not been complied with. Therefore, the transfer is vitiated by irregularities.

11. Heard Mr K.N. Chaudhury, ^{learned Addl. A.G., Assam,} associated by Mrs R.S. Chaudhury, learned counsel for the petitioner in M.P.No.83/2007, Mr D.K. Das, learned counsel for the petitioner in M.P.No.80/2007 and Dr




J.L. Sarkar associated by Mr M. Chanda, learned counsel for the respondent (original applicant) in both the M.P.s.

12. I have given due consideration to the arguments, materials and evidence placed on record. It is well settled law that Courts/Tribunals are not sitting as appellate authority in transfer matters, but if any guidelines as notified or service conditions in transfers etc had been violated and irregular transfer has been effected whereby the concerned employee is put on much prejudice, it is always open for the Court/Tribunal to correct the same and set right the procedure. In a celebrated decision in Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 the Hon'ble Supreme Court held that in judicial review Courts/Tribunals are not sitting as Appellate Authority and while exercising the power of judicial review the Courts/Tribunals must be very cautious and ensure that due process of law has not been violated/deviated or flouted.

13. The main contention of the original applicant is that clause H of the O.M. included in the Sixth Schedule of the Constitution has been totally violated. The said Clause H has been quoted above (Supra). The said clause consists of three parts: (1) Consultation of the State Government with the Council; (2) Whether a panel has been constituted by the Government before such transfer has been effected and (3) whether the Council has accepted the transfer and posting.

14. Upon an application M.P.No.88 of 2007, the learned Addl. Advocate General who appeared for the petitioner was good enough



to produce the file pertaining to this transfer and the proceeding dated 12.07.2007 is quoted below:

"Hon'ble Chief Minister

Sri Chandra Mohan, IFS, Conservator of Forests, Karbi Anglong, Diphu, has already completed more than three years in the same place. The Karbi Anglong Autonomous Council Authority also wants withdrawal of his services from there.

He may therefore, be transferred & posted as CF (Border) O/o the CCF(T) vice Sri S.S. Rao, IFS, CF as CF, Karbi Anglong in the interest of public service.

For kind approval.

Sd/-

(Roehybul Hussain)
Minister, Env. & Forest, P&S, I&PR etc.,
Dispur, Assam."

15. Admittedly, the Minister of Environment and Forest, P&S, I&PR, Dispur, Assam is the Minister of the Controlling/Parent Department of the original applicant and that of respondent No.5. The Minister has made a forward note to the Hon'ble Chief Minister stating that the original applicant has completed more than three years of service and wants the withdrawal of the original applicant's service from there and the respondent No.5 may be posted in place of the original applicant in the interest of public service. Accordingly a Notification has been issued by the Government on 17.07.2007. The fact remains that the original applicant has completed three years tenure service in the place and this court has to evaluate whether the procedure adopted for transfer of the original applicant to his parent department is justified. There is no dispute for the original applicant that the parent department is always at liberty to withdraw the services of the employee concerned from the borrowing department. The contention of the original applicant is that the procedure should not be considered as an empty formality and the due procedure



should have been complied with. On going through the records I have found that in the transfer order dated 02.08.2007 Annexure-B, the KAAC has already accepted the services of Shri S.S. Rao, respondent No.5 and a Notification has already been issued on 17.07.2007. This order has been passed by the Principal Secretary, KAAC. Therefore, it is quite evident that as per that order the KAAC has already released the services of the original applicant and accepted the services of the respondent No.5, Shri S.S. Rao. The spirit of Clause H of the O.M. dated 31.12.1996 is that the borrowing department, KAAC, should accept the services of the incumbent and release the existing employee. This has been complied with as per the said order. Therefore, it cannot be said that there is no acceptance by the KAAC of the release of the original applicant.


16. Next comes, "the consultation". It is pointed out by the learned counsel for the parties that consultation is the "discussion between the parties which culminate in mutual consent." It need not be in writing. It can also be oral. I take the submission of the learned Addl. Advocate General, Assam to confidence, that such discussion has taken place in this case orally. Though it would have been fair to put it in black and white. The learned counsel for the parties submitted that consultation that has been laid down in this Notification need not be equated to the consultation that is attributed to the Constitutional provisions like "consultation with the Hon'ble Supreme Court, consultation with the Hon'ble High Courts, consultation with UPSC etc". In such matters there would be procedures/correspondence in writing. However, in all fairness the department should take care for better transparency for future guidance that such consultation should be in writing. Since there is no



precedence, as submitted by the learned Addl. Advocate General, I do not find that the provision of Clause H has been violated by the respondents in transferring the original applicant to the parent department. Besides, it is borne out from records that the same procedure was followed when the applicant was deputed to KAAC in 2003.


17. Apart from the above, it is well settled proposition of law in the administrative jurisprudence that if a person is put on deputation his consent should be obtained, but the procedure never mandates that when the services of such an employee after completion of tenure of deputation is withdrawn to the parent department such consent has to be obtained from the employee. In this case the services of the original applicant from KAAC is being withdrawn from the borrowing department by the parent department, which requires no consent. Therefore, the original applicant cannot make out a case that he cannot be withdrawn since his tenure time has already been exhausted. In that respect also the respondents are justified in withdrawing the services of the applicant to the parent department.

18. The learned counsel for the original applicant has submitted that the Annexure-B transfer order is dated 02.08.2007 but the communication is alleged to have been sent on 31.07.2007, which cannot be possible and therefore, the order is tainted. The learned counsel for the petitioners submitted that the date 31.07.2007 is the date of approval of the Principal Secretary, KAAC and the same authority has issued the order on 02.08.2007, which seems to be correct.



19. The learned counsel for the parties have commented upon a certificate issued by one Executive Member of KAAC (Annexure-5 in the O.A.) and also a letter issued by the Chief Executive Member of KAAC dated 04.08.2007, Annexure-C in the M.P.No.83/2007 and I only consider this certificates not germane for the adjudication of the dispute since the first one is only the contents of a character certificate pertaining to the original applicant and the second one is subsequent to the issuance of the interim order. These are not relevant for adjudication.

20. Learned counsel for the original applicant has cited certain decisions, namely Arvind Dattatraya Dhande Vs. State of Maharashtra and others, (1997) 6 SCC 169; Gauhati High Court and Another Vs. Kuladhar Phukan and Another, (2002) 4 SCC 524; Tankeswar Deka Vs. State of Assam and others, 2007 (1) SLR 782; Ramen Talukdar Vs. State of Assam and others, 1998 (2) GLT 82; Jogeswar Borah Vs. State of Assam and others, (1999) 3 GLR 104; Jibeswar Thakuria and others Vs. State of Assam and others, 2004 (1) GLT 347; and Viyishe Sema and another Vs. State of Nagaland, 2006 (Suppl.) GLT 379 and canvassed for the positions that, (a) consultation should not be an empty formality and (b) the interference of the Minister has vitiated the transfer by malafides and is capricious on the colourable exercise of power. I find that these decisions are not squarely applicable in the present case since on going through the records no malafides could be attributed to the proceedings and moreover the consultation that has been cited in the above decisions pertains to the provisions in the Constitution which cannot be equated with that of these proceedings.



Constitutional provisions are mandatory provisions enshrined under the Constitutional provisions. This is only a guideline under the Notification and nowhere it is stated in the Notification that consultation should be in correspondence and/or in writing. Therefore, the above decisions are not helpful to the original applicant. Apart from that no materials could be traced out from the records that extraneous interference of the Minister had taken place. From the file notings it is evident that the concerned Minister has addressed to the Chief Minister being the Head of the Ministry for transferring the original applicant in public interest. What is public interest is a matter of policy, which the Minister alone can decide. Nowhere it could be inferred that it is to prejudice the interest of the original applicant and to favour the respondent No.5, this transfer has been effected. Therefore, the above decisions are on different facts/footing, which are not squarely applicable in this case.

21 The learned counsel for the petitioners have submitted a decision of the Gauhati High Court in Jogeswar Borah Vs. State of Assam and others reported in (1999) 3 GLR 104, the relevant portion of which is quoted below:

"5. Paragraphs 8 and 9 of the affidavit-in-opposition filed on behalf of the respondent nos. 2 and 3 sworn by Shri Karuna Kumar Rajkhowa, Deputy Secretary to the Government of Assam, Education [Higher] Department, are extracted hereinbelow:

"8. That the averments made in paragraphs 9 and 10 of the writ petition are incorrect and as such not admitted by this deponent. It is also stated that the Government as the appointing authority is empowered to transfer its officials including the present petitioner within its jurisdiction."

It is also relevant to state that certain departments including the Education has been transferred entrusted to the Autonomous Hill




District Council so far its territorial jurisdiction is concerned. Although administrative control of the staff of the office of the Additional Director of Education [Hills] has been vested with the Council but the Government as the appointing authority has the power to transfer such official. The entire allegations brought against the Government are baseless and the same are brought only to make out a case in favour of the petitioner.

9. That with regard to the statements made in paragraph 11 and 12 of the writ petition, this deponent begs to state that the contentions made therein are matters of record and the deponent does not admit anything which is not borne out of records. In this connection, the deponent further begs to state that the concerned officer under order of transfer from the post under the control of the District Council should be released with the approval of the District Council to join in his new place of posting.


While in paragraph 8 a stand has been taken by the Government that the Government as the appointing authority has the power to transfer any staff of the office of the Additional Director of Education [Hills], in paragraph 9 of the said affidavit-in-opposition, the Government has conceded that the concerned officer under the order of transfer from the post under the administrative control of the District Council could be released with the approval of the District Council to join in his new place of posting. In my considered opinion, both the posting and the release of officers in any office under the administrative control of the District Council has to be in consultation of the District Council and this would be evident from a bare reading of paragraph H of Office Memorandum dated 31.12.1996 of the Government of Assam, Hills Area Development which is to the following effect:

"[H] The State Government shall consult the Council, while posting and transferring the officers of the entrusted subjects, departments in or out of the Council. Under no circumstances, the officers and staff, not released by the Council shall be accepted by the State Government before deputing any officer or staff the Government shall provide a panel of names enabling the Council to select and accept the same. The State Government shall take necessary action under the relevant rules and procedure against the



officers and staff found involved in any prima facie case of misconduct/dereliction of duty, etc. during the period of deputation to the Council even after they are repatriated to the State Government.

The aforesaid paragraph H of the Office Memorandum dated 31.12.1996 does not in any way take away the power of the State Government to transfer an officer working under the State Government to and from an office under the administrative control of the District Council, but it only puts a limitation on such power by providing that such transfer and posting to and from an office under the administrative control of the District Council will be in consultation with the District Council. It is clear from the copy of the WT Message date 12.8.1997 [Annexure H] that prior to the order of transfer dated 11.9.1997, the office of the Additional Director of Education [Hills] Haflong had been placed under the administrative control of the NC Autonomous District Council. Hence as on 11.9.1997, the respondent no.7 who was working in the office of the Additional Director of Education [Hills], Haflong, could be released only by the District Council and after such release the officer or staff could be accepted by the State Government as per the aforesaid paragraph H of the Office Memorandum dated 31.12.1996. Similarly, as on 11.9.1997, the State Government was required to consult the District Council while posting and transferring the petitioner to the office of the Additional Director of Education [Hills], Haflong. Since admittedly, the NC Hills District Council has not been consulted before the petitioner was transferred and posted in the office of the Additional Director of Education [Hills], Haflong, the transfer of the petitioner was illegal and was liable to be quashed. Similarly, since the respondent no.7 has not been released by the Council, he could not be accepted by the State Government as per the said paragraph H of the Office Memorandum dated 31.12.1996."

22. This is a case where the borrowing department did not accept an employee since the borrowing department was not consulted as per Clause H of the O.M. and therefore the applicant had suffered. The Hon'ble Gauhati High Court has directed for payment of salary to the employee and fresh posting to be given to the applicant. Such a contingency does not arise in the given case where the parent
- 

and borrowing departments have already agreed with to the transfer of the original applicant and respondent No.5. Therefore, it cannot be said that clause H of the O.M. has been violated in this case. Also, through this decision it is settled by the Hon'ble High Court that the powers of the Government has not been taken away by Clause H to transfer an employee in such a situation.

23. Further Mr D.K. Das, learned counsel for the petitioner in M.P.No.80/2007 has taken my attention to a decision of the Hon'ble Supreme Court reported in 1995 (3) SCC 270, State of M.P. and another vs. S.S. Kourav and others and canvassed for a position that Courts/Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous considerations. This proposition is also accepted by various judgments of the Apex Court reported in AIR 1991 SC 532, Shilpi Bose Vs. State of Bihar; (1989) 10 ATC 296, Gujrat Electricity Board and Another Vs. Atmaram Sungomal Poshani; (1993) 4 SCC 357, Union of India and others Vs. S.L. Abbas and in a catena of decisions where the Hon'ble Supreme Court has held that "transfers in exigency of administration and public interest" cannot be interfered in a judicial review by the Courts/Tribunals unless the same is malafide, passed without jurisdiction or is violative of statutory rules and established transfer guidelines.

24. Taking confidence from the above observations and materials, I am of the considered view that transfer is a part of condition of service and is also an incidence of service. The conditions

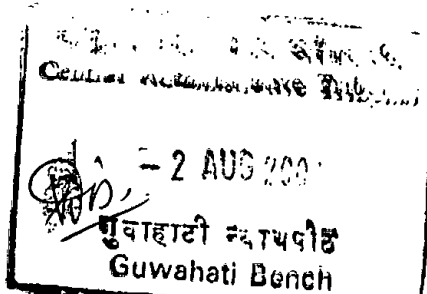


in Clause H of the guidelines under dispute has not been violated by the respondents and no malafides could be traced. The impugned order of transfer of the original applicant vis-à-vis respondent No.5 cannot be interfered with by this court. Therefore, the interim order dated 02.08.2007 is hereby recalled and vacated and the direction to maintain status quo is hereby set aside.

25. In the conspectus of the facts and circumstances of the case both M.P.No.83/2007 and M.P.No.80/2007 are allowed. No order as to costs.



(K. V. SACHIDANANDAN)
VICE-CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 208 /2007

Shri Chandra Mohan Sharma

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant is working as Conservator of Forest, Karbianglong, Diphu under the Karbianglong Autonomous Council (in short KAC), Diphu.

02.04.2003- Applicant's service was placed at the disposal of Karbianglong Autonomous Council vide Govt. order dated 02.04.2003.

(Annexure- 1)

12.06.2007- Sri Jatindra Sharma, Divisional Forest Officer, Silvi Cultural Division, Diphu has been placed under suspension on the basis of report of the present applicant and the applicant has been requested by the KAC Secretariat to furnish draft charges and statement of allegations immediately.

(Annexure- 2)

Accordingly, the applicant started determining the actual amount of misappropriation of Govt. money/fund in the name of execution of work.

17.07.2007- Respondent No. 3 issued impugned notification transferring the applicant from Diphu to Guwahati. By the same notification one Sri S.S. Rao, Conservator of Forest, working in the office of Chief Conservator of Forest, Guwahati is sought to be posted at Diphu.

(Annexure- 3)

31.12.1996- As per clause (H) of the O.M dated 31.12.96, the State Govt. "shall consult" the KAC while posting and transferring the officers of the entrusted subjects/departments in or out of the Council. The impugned notification dated 17.07.07 has been issued in violation of Clause (H) of the notification dated 31.12.96.

(Annexure- 4)

21.07.2007- Executive Member (in charge Forest), KAC, Diphu in his letter dated 21.07.07 addressed to the Principal Secretary, KAC stated that impugned notification dated 17.07.07 has been issued in violation of Clause (H) of O.M dated 21.07.07 and requested him to take up the matter with the Govt. of Assam.

(Annexure- 5)

Hence the Original Application

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned notification of transfer and posting order bearing letter No. FRE. 6/90/272 dated 17.07.2007, letter No. FRE 6/90/272-A dated 17.07.2007 (Annexure-3).
2. Costs of the application.
3. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned notification of transfer and posting order bearing letter No. FRE. 6/90/272 dated 17.07.2007, letter No. FRE 6/90/272-A dated 17.07.2007 (Annexure-3).
 2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 208 /2007

Shri Chandra Mohan Sharma : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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Date:- 02/08/07

Filed By:

S. Nair

Advocate

Chandra Mohan Sharma

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 208 /2007

BETWEEN:

Shri Chandra Mohan Sharma, IFS.
Conservator of Forest,
P.O- Diphu,
Dist- Karbianglong, Assam.

____ Applicant.

-AND-

1. The State of Assam.
Represented by the Secretary to the
Government of Assam,
Department of Environment and Forest
P.O- Dispur, Guwahati- 781006.
2. Karbianglong Autonomous Council,
Represented by the Principal Secretary,
P.O- Diphu. Dist- Karbianglong, Assam.
3. Joint Secretary
Govt. of Assam,
Department of Environment and Forest
P.O- Dispur, Guwahati- 781006.
4. Sri A.U. Choudhury,
Joint Secretary,
Govt. of Assam,
Department of Environment and Forest,
P.O- Dispur, Guwahati- 781006.
5. Sri S.S. Rao, IFS,
Conservator of Forest,
Office of the Chief Conservator of Forest
Guwahati- 8, Assam.
6. The Union of India.
Represented by the Secretary,
Govt. of India
Ministry of Environment and Forest
New Delhi- 110001.

..... Respondents.

Filed by:-
Applicant
Through:-
S. N. S. 45
Advocate
2/8/07

Chandra Mohan Sharma

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made against the impugned notification of transfer and posting dated 17.07.2007, whereby the applicant is sought to be transferred from Diphu, Karbianglong to Guwahati with a malafide intention in total violation of professed norms and also in violation of mandatory provision laid down in O.M bearing letter No. HAD 57/95/316 dated 31.12.1996.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant belongs to the cadre of 1984 batch of Indian Forest Service from Assam-Meghalaya cadre and presently serving as Conservator of Forest, Karbianglong, Diphu under Karbianglong Autonomous Council, Diphu. The services of the applicant was placed at the disposal of Karbianglong Autonomous Council vide Govt. of Assam notification bearing letter No. FRE. 6/90/Pt-180-C dated 02.04.2003. By the said order dated 02.04.2003 inasmuch as 4 IFS officers including the

Chandra Mohan Sharma

applicant were transferred and posted to different places in the State of Assam.

A copy of the notification dated 02.04.03 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1.

- 4.3 That it is stated that pursuant to the notification dated 02.04.03, the applicant taken over charge as Conservator of Forest, Karbianglong w.c.f. 10.04.03, since then the applicant is serving as Conservator of Forest under the administrative control of Karbianglong Autonomous Council (herein after referred to as KAC). It is pertinent to mention here that after his reporting in the Autonomous Council, pursuant to the order dated 02.04.03, the Karbianglong Autonomous Council accepted the joining of the applicant and issued order to that effect vide letter No. KAC/F (P) 99-2000/83 (A) dated 07.04.2003 and pursuant to the said order of the Council, the applicant took over the charge of Conservator of Forest of Karbianglong on 10.04.03.

- 4.4 That it is stated that one Sri Jatindra Sharma, Divisional Forest Officer, Silvi Cultural Division, Diphu has been placed under suspension, following a report of misappropriation of Govt. money, misconduct and gross indiscipline, based on the report of the present applicant, said Sri Jatindra Sharma, D.F.O has been placed under suspension by the KAC vide order bearing letter No. KAAC/Estt. P (B)/2007 dated 12.06.2007.

In the said order dated 12.06.07, the applicant has been requested by the KAC Secretariat to furnish draft charges and statement of allegations immediately.

A copy of the suspension order dated 12.06.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 2.

Chandra Mohan Sharma

4.5 That it is stated that the applicant in pursuant to the direction contained in the order dated 12.06.07 had already started assessment for ascertaining the actual amount of misappropriation of Govt. money in the process of executing works of certain schemes etc. of the Forest department and National Medicinal Plant Board. It is relevant to mention here that when such financial irregularities/misappropriation came to the notice of the applicant, he furnished a report to that effect to the KAC and on the basis of said report of the applicant the KAC was pleased to place Sri J. Sharma, AFS, D.F.O Silvi Cultural Division, Diphu under suspension. However, when the responsibility of framing the draft charges and statement of allegations is vested with the applicant following the order of the KAC Secretariat, the applicant started facing lots of resistance from different corners, in preparing the draft charges and statement of allegations.

4.6 That it is stated that the applicant, on the basis of the order dated 12.06.07 made a detailed scrutiny of the relevant records, allocation of funds, extent of execution of works under the relevant schemes and also started determining the actual amount of misappropriation of Govt. money/fund in the name of execution of work, but surprisingly while the applicant started preparing such draft charges and statement of allegation against Sri J. Sharma, AFS, D.F.O Silvi Cultural Division, Diphu the impugned notification transferring the applicant from Diphu to Guwahati has been issued vide letter bearing No. FRE 6/90/272 dated 17.07.07 by the Joint Secretary to the Govt. of Assam, Environment and Forest Department. By the said impugned notification dated 17.07.07, one Sri S.S. Rao, IFS, Conservator of Forest, who is working in the office of the Chief Conservator of Assam, Guwahati, is also sought to be posted at Karbianglong, Diphu in the same capacity of Conservator of Forest vide letter No. FRE 6/90/272-A. In the impugned notification dated 17.07.07 it has been stated that the order of transfer and posting has been issued in the interest of public service. It is categorically stated that the impugned

Chandra Mohan Sharma

transfer and posting notification dated 17.07.07, neither any public interest nor any administrative exigency is involved rather the said impugned notification of transfer and posting has been issued on extraneous consideration by the respondent No. 3 at the instance of a vested circle with the sole intention to restrain the applicant from preparing draft charges and statement of allegations. The impugned notification dated 17.07.07 is an isolated order of transfer without having any administrative exigency or any public interest.

It is pertinent to mention here that by the notification dated 02.04.03 inasmuch as four IFS officers including the applicant have been transferred at different places in the state of Assam but none of those IFS officers have been disturbed from their place of posting. But the Govt. of Assam, more particularly the respondent No. 1 has approved the transfer and posting of the applicant from Diphu to Guwahati on the basis of the proposal initiated by the respondent No. 3 at the behest of a vested circle, on extraneous consideration. Moreover, the impugned notification transferring the applicant from Diphu to Guwahati has been issued in total violation of mandatory provision laid down in clause (H) of the O.M bearing letter No. HAD 57/95/316 dated 31.12.1996 wherein it has been stated that the State Govt. "shall consult" the council while posting and transferring the officers of the entrusted subjects/departments in or out of the Council. It is further stated that under no circumstances the officers and staff not released by the Council shall be accepted by the State Govt. It is further laid down in the clause (H) that before deputing any officer or staff, the Govt. shall provide a panel of names enabling the Council to select and accept the same. It is also stated that the State Govt. shall take necessary action under the relevant rules and procedure against the officers and staff, found involved in any prima facie case of misconduct, dereliction of duty during the period of deputation to the Council even after they are repatriated to the State Govt. But in the instant case the services of the applicant has been placed at the disposal of the KAC at the instance of the

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State Govt. But surprisingly no prior consultation is made with the KAC before issuing the impugned notification dated 17.07.07, transferring the applicant from Diphu to Guwahati as required under the provision of Clause (H) of the O.M dated 31.12.1996, issued by the Govt. of Assam, Hill Areas Department, Assam. It is needless to mention here that the O.M dated 31.12.1996 has been issued by the Govt. of Assam, pursuance to the Memorandum of Understanding reached between the Chief Minister of Assam and the Autonomous State Demand Committee, Karbi Students Association, N.C. Hills Students Federation and Demassa Students Union on 01.04.1995 in New Delhi, in the presence of the Union Home Minister granting greater autonomy to the Autonomous Councils of Karbianglong and North Cachar Hills within the frame work of 6th Schedule of the Constitution of India, as such it is a mandatory condition and a condition precedent before transferring any official whose services have been placed at the disposal of the KAC and on that score the impugned notification dated 17.07.07 is liable to be set aside and quashed.

Copy of the impugned notification dated 17.07.07 and O.M dated 31.12.96 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3 and 4 respectively.

- 4.7 That it is stated that after issuance of the impugned notification dated 17.07.07 the Executive Member (in charge Forest), KAC, Diphu has issued a letter addressed to Principal Secretary, KAC, Diphu, stating that the transfer notification dated 17.07.07 issued by the Govt. of Assam transferring the applicant from Diphu to Guwahati has been issued without following the provision of Clause (H) of the O.M dated 31.12.96 which requires prior consultation with KAC in respect of transfer of officers from KAC. Therefore, the Executive Member vide his letter dated 21.07.2007 requested the Principal Secretary to take up the matter with the Govt. of

Chandra Mohan Sharma

Assam for cancellation of the said transfer order. The Executive Member (in-charge Forest) has also pointed out in the said letter that the applicant is discharging his duties sincerely and efficiently in all matter and his transfer from Karbianglong at this stage will adversely hamper the execution and progress of various ongoing schemes and new projects which are in the process of finalisation which will also get hampered due to the transfer of the applicant.

Therefore, it is quite evident from the letter of the Executive Member (in-charge Forest) that the impugned notification transferring the applicant has been issued in total violation of mandatory provision laid down in clause (H) of the O.M dated 31.12.1996 and on that score alone the impugned notification dated 17.07.07 is liable to be set aside and quashed.

Copy of the letter dated 21.07.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 5.

- 4.8 That the impugned notification dated 17.07.2007 has been issued without having any administrative exigency or without having any public interest, rather the isolated impugned notification of transfer and posting has been issued at the instance of a vested circle on extraneous consideration, in collusion with respondent No. 1 and 3 that too in violation of mandatory clause (H) of the O.M dated 31.12.1996, therefore the impugned notification dated 17.07.07, which is issued with a malafide intention to remove and restrain the applicant from preparing the draft charges and statement of allegation in respect of suspended Divisional Forest Officer, Shri J. Sharma is liable to be set aside and quashed.

- 4.9 That your applicant further begs to say that he is still working in the same capacity as Conservator of Forest, Diphu and no release order has been issued pursuant to the impugned notification dated 17.07.07, therefore the Hon'ble Court be pleased to pass an interim order staying the operation of

Chandra Mohan Sharma

the impugned notification dated 17.07.2007 till disposal of the Original Application.

4.10 That it is a fit case to interfere with by this Hon'ble Tribunal to protect right and interest of the applicant by passing appropriate order setting aside the impugned notification dated 17.07.2007.

4.11 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

5.1 For that, the impugned notification dated 17.07.2007 has been issued transferring the applicant from the administrative control of the office of the KAC, Diphu to Guwahati in total violation of mandatory provision laid down in Clause (H) of the O.M dated 31.12.1996 that too with a malafide intention to restrain the applicant from preparing draft charges and statement of allegations regarding misappropriation of huge Govt. money against the suspended D.F.O Sri J. Sharma. As such the impugned notification dated 17.07.07 is liable to be set aside and quashed.

5.2 For that, the isolated transfer and posting order issued vide impugned notification dated 17.07.07 has been issued on extraneous consideration by the respondent No. 3 at the interest of a vested circle without any public interest and also without having any administrative exigency but with the sole intention to withdraw the applicant from the office of the KAC, Diphu in order to prevent him to proceed with the preparation of draft charges and statement of allegation in respect of suspended D.F.O, Sri J. Sharma.

5.3 For that, the State Government did not make any prior consultation with the Karbi Anglong Autonomous Council, which is mandatory provision laid down in Clause (H) of the O.M dated 31.12.1996, which was issued by

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the Govt. of Assam in terms of Memorandum of Understanding reached between the Chief Minister of Assam and the Autonomous State Demand Committee, Karbi Students Association, N.C. Hills Students Federation and Demassa Students Union on 01.04.1995 in New Delhi, in the presence of the Union Home Minister granting greater autonomy to the Autonomous Councils of Karbianglong and North Cachar Hills within the frame work of 6th Schedule of the Constitution of India.

- 5.4 For that, the transfer and posting issued under impugned notification dated 17.07.07 is not a routine transfer and posting order rather it is a isolated order of transfer and posting issued at the instance of a vested circle and as such the said order of transfer is arbitrary and the same is passed in colourable exercise of power that too in violation of professed norms.
- 5.5 For that, the impugned notification of transfer and posting dated 17.07.07 is an isolated order of posting but none of the I.F.S. officers who were transferred and posted along with the applicant pursuant to the notification dated 02.04.2003 is disturbed from their present place of posting till date, therefore the impugned isolated transfer and posting order dated 17.07.07 is highly discriminatory and in violation of Article 14 of the Constitution of India without having any reasonable administrative exigency, therefore the impugned notification dated 17.07.07 is liable to be set aside and quashed.
- 5.6 For that, the Executive Member (in charge Forest), KAC, Diphu vide his letter dated 21.07.2007 requested the Principal Secretary to take up the matter with the Govt. of Assam for cancellation of the transfer order dated 17.07.07 pointing out in the said letter that the applicant is discharging his duties sincerely and efficiently in all matter and his transfer from Karbianglong at this stage will adversely hamper the execution and progress of various ongoing schemes and new projects, which are in the

Chandra Mohan Sharma

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process of finalisation will also get hampered due to the transfer of the applicant. Moreover, it is also pointed out that the impugned notification date 17.07.07 has been issued in violation of Clause (H) of the O.M dated 31.12.1996.

- 5.7 For that, the proposal of the transfer and posting of the applicant has been initiated at the instance of a vested circle with a mala fide intention to remove the applicant from the office of the KAC, Diphu to defeat the proceeding sought to be initiated against Sri J. Sharma, AFS, Divisional Forest Officer, who has misappropriated huge Govt. money in the process of execution of various Forest Schemes.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

Chandra Mohan Sharma

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned notification of transfer and posting order bearing letter No. FRE. 6/90/272 dated 17.07.2007, letter No. FRE 6/90/272-A dated 17.07.2007 (Annexure-3).
- 8.2 Costs of the application.
- 8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned notification of transfer and posting order bearing letter No. FRE. 6/90/272 dated 17.07.2007, letter No. FRE 6/90/272-A dated 17.07.2007 (Annexure-3).
- 9.2 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10.

11. Particulars of the I.P.O

- | | | |
|------|---------------|---------------------|
| i) | IP.O No. | : 346655388 - |
| ii) | Date of issue | : 17.7.07. |
| iii) | Issued from | : G.P.O., Guwahati. |
| iv) | Payable at | : G.P.O., Guwahati. |

12. List of enclosures:

As given in the index.

Chandra Mohan Sharma.

VERIFICATION

I, Shri Chandra Mohan Sharma, IFS, S/o- Late Raghubir Singh, aged about 51 years, working as Conservator of Forest, P.O- Diphu, Dist- Karbianglong, Assam, applicant in the instant Original Application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 2nd day of August, 2007.

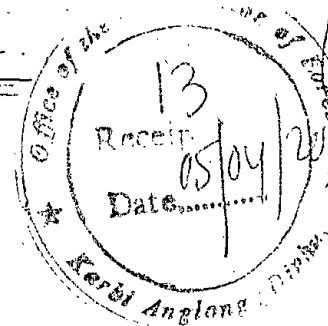
Chandra Mohan Sharma

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ANNEXURE 1

GOVERNMENT OF ASSAM
ENVIRONMENT AND FORESTS DEPARTMENT

ORDERS BY THE GOVERNOR
NOTIFICATION



Dated Dispur, the 02nd April/2003.

ND.FRE-6/90/Pt/120 : Transfer and posting order issued vide Notification No. FRE.6/90/Pt/147-G, dated 3-2-2003 in respect of Shri A. Rabha, IFS, Field Director, Manas Tiger Reserve, Barpeta Road is hereby stayed until further orders.

ND.FRE.6/90/Pt/180-A, : In modification of Govt. Notification No. FRE.6/90/Pt/147-F, dtd. 3-2-2003, Shri D. Haraprasad, IFS, Conservator of Forests, Central Assam Circle, Guwahati is transferred and posted as Conservator of Forests, Southern Assam Circle, Silchar with effect from the date he takes over charge vice Shri R.D.S. Tanwar, IFS, Conservator of Forests transferred.

ND.FRE.6/90/Pt/180-B :- In modification of Govt. Notification No. FRE.6/90/Pt/147-I, dated 3-2-2003 the services of Shri B. Brahma, Conservator of Forests, Eastern Assam Circle, Jorhat are placed at the disposal of N.C. Hills Autonomous Council, Haplong for his posting as Conservator of Forests, Hills, vice Shri P. Roy, IFS promoted to Chief Conservator of Forests.

✓ ND.FRE.6/90/Pt/180-C :- In modification of Govt. Notification No. FRE.6/90/Pt/147-C, dated 3-2-2003, the services of Shri Chandra Mohan, IFS are placed at the disposal of Karbi Anglong Autonomous Council, Diphu for his posting as Conservator of Forests, Karbi Anglong, Diphu vice Shri B.S. Dhar, IFS, Conservator of Forests transferred.

Sd/- H. N. Sarma,
Under Secretary to the Govt. of Assam
Environment and Forests Department

Memo No. FRE.6/90/Pt/180-D, Dated Dispur, the 02nd April, 2003.
Copy to :-

1. The Accountant General (A&E), Assam, Beltola, Maldamgaon, Guwahati-29.
2. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8.
3. The Chief Conservator of Forests (Territorial) Assam, Panbazar, Guwahati-1.
4. The Chief Conservator of Forests (Social Forestry) Assam, Guwahati-24.
5. The Chief Conservator of Forests (Wild Life) Assam, Guwahati-24.
6. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati-24.
7. All Conservator of Forests.

Contd...P/2...

Attested
Sub.
Advocate

- (2) -

8. Shri A. Rabha, IFS, Field Director, Tiger Project, Barpeta Road.
9. Shri D. Haraprasad, IFS, Conservator of Forests, Central Assam Circle, Guwahati-1.
10. Shri R.D.S. Tanwar, IFS, Conservator of Forests, Southern Assam Circle, Silchar.
11. Shri B. Brahma, IFS, Conservator of Forests, Eastern Assam Circle, Jorhat.
12. Shri Chandra Mohan, IFS, C/O P.C.C.F., Assam, Rehabari, Guwahati-8.
13. The Principal Secretary, N.C. Hills Autonomous Council, Haflong.
14. The Principal Secretary, Karbi Anglong Autonomous Council, Diphu.
15. The Director, Project Tiger, Govt. of India, Ministry of Environment and Forests, Bikaner House, Shahjahan Road, New Delhi-110011.
16. All Divisional Forest Officers concerned.
17. P.S. to the Minister of State (Independent) Forests, Assam, Dispur for information of the Minister.
18. P.S. to the Chief Secretary, Assam, Dispur for information of the Chief Secretary.
19. The Treasury Officer concerned.
20. Personal file of the officers.
21. The Deputy Director, Assam Govt. Press, Bamunimaidam, Guwahati-21 for publication of the Notification in the next issue of the Assam Gazette.

By order etc.,

Handwritten signature 12.003

Under Secretary to the Govt. of Assam,
Environment and Forests Department

OFFICE OF THE KARBI ANGLONG AUTONOMOUS COUNCIL
KAAC SECRETARIAT
DIPHU

No. KAAC/Esst(P(B)/2007/

Dated : ____/____/2007.

O R D E R

In exercise of Power conferred by Rule 6 of the Assam Services (Discipline & Appeal) Rules 1964, read with Rule 11 of the said rules and pending drawal of departmental proceeding the authority of Karbi Anglong Autonomous Council is pleased to place Sri J. Sharma, AFS, DFO Silvicultural Division, Diphu under suspension with immediate effect for his involvement in financial irregularities/misappropriation of Govt. fund, in-subordination, misconduct, gross indiscipline and negligence of duty.

During the suspension period his head quarters is fixed at the office of the Conservator of Forests, Karbi Anglong, Diphu. The officer shall not leave the headquarter without prior permission/approval of the competent authority.

Sri J. Sharma, AFS, is allowed to draw subsistence allowances as admissible under the rule F.R. 53 (1) (ii) (a) subject to production of non-employment certificate.

Further, Sri N. Moral, AFS, WPO, Hills, Diphu is allowed to hold additional Charge of Silvicultural Division, Diphu until further order.

Sd/-
Dy. Secretary,
Environment & Forests Department,
Karbi Anglong Autonomous Council,
DIPHU

Memo No. KAAC/Esst(P(B)/2007/ 6191-(B)
Copy to :-

Dated : 12/6/2007.

1. The Commissioner & Secretary to the Govt. of Assam, Environment & Forests, Dispur, for information and necessary action. A copy of draft charges and statement of allegations will be furnished in due course of time.
2. The Accountant General (A&E), Assam, Beltola, Guwahati - 29.
3. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati.
4. The Conservator of Forest, Karbi Anglong, Diphu. He is requested to furnish draft charges and statement of allegations immediately.
5. Sri N. Moral, AFS, WPO, Hills, Diphu for information and necessary action. He is directed to take over the charge of Silvicultural Division Hills, Diphu immediately in addition to his own duties.
6. Sri J. Sharma, AFS, DFO, Silvicultural Division Hills, Diphu. He is directed to hand over the charges of Silvicultural Division, Diphu to Sri N. Moral, AFS, immediately.
7. PA to the Hon'ble CEM, KAAC, Diphu.
8. PA to Hon'ble E.M., Department of Environment & Forests, KAAC, Diphu.
9. The Sr. F&AO (I), KAAC, Diphu.
10. The Treasury Officer, Karbi Anglong, Diphu.
11. Office file.

Sd/-
Asst. Secy.
Advocate

Sd/-
Dy. Secretary,
Environment & Forests Department,
Karbi Anglong Autonomous Council,
DIPHU

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ANNEXURE → 3

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GOVERNMENT OF ASSAM
DEPARTMENT OF ENVIRONMENT AND FORESTS
DISPUR ::: GUWAHATI

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 17th July '07.

No. FRE. 6/90/272 : In the interest of public service Sri Chandra Mohan, IFS, Conservator of Forest, Karbi Anglong, Diphu is hereby transferred and posted as Conservator of Forest (Border) Office of the Chief Conservator of Forest (Territorial) against Shri S.S. Rao, IFS transferred.

No. FRE. 6/90/272-A : In the interest of public service Shri S.S. Rao, IFS, Conservator of Forest is hereby transferred and posted as Conservator of Forest, Karbi Anglong, Diphu vice Shri Chandra Mohan, IFS, Conservator of Forest transferred.

*Val
Vang
for*

Sd/- A.U. Choudhury,
Joint Secretary to the Govt. of Assam,
Environment & Forest Department.

Memo No. FRE. 6/90/272-B

Dated Dispur, the 17th July '07.

Copy to :-

1. The Accountant General (A&E), Assam, Beltola, Maidamgaon, Guwahati-29.
2. The Principal Chief Conservator of Forests, Assam, Guwahati - 8.
3. The P.S. to Hon'ble Minister, Environment and Forest for kind information to Hon'ble Minister.
4. Shri C. Mohan, IFS, Conservator of Forest, Karbi Anglong, Diphu.
5. Shri S.S. Rao, IFS, Conservator of Forest.
6. Personal file.
7. The Deputy Director, Assam Government Press, Bamunimaidan, Guwahati - 21. He is requested to publish the notification next issue of Assam Gazette.

By order etc.,

Joint Secretary to the Govt. of Assam,
Environment and Forest Department.

*Attended
Sd/-
Advocate*

Malabar in law

NO.HAD.57/95/316,

Dated Dispur, the 31st Dec, 1996.

OFFICE MEMORANDUM

Whereas in pursuance to the Memorandum of Understanding (MoU), reached between the Chief Minister, Assam and the Autonomous State Demand Committee, Karbi Students' Association, N.C.Hills Students' Federation and Dimasa Students' Union on 1st April, 1995 in New Delhi, in the presence of the Union Home Minister, granting greater autonomy to the Autonomous Councils of Karbi Anglong and North Cachar Hills within the framework of the Sixth Schedule to the Constitution of India.

And whereas the Assam Legislative Assembly vide its Resolution, dated 12th April, 1995 adopted and approved the aforesaid Memorandum of Understanding, reached on 1st April, 1995 referred to above and the House resolved further that the jurisdiction of the Karbi Anglong Autonomous Council and North Cachar Hills Autonomous Council for the executive powers would extend to the 30 (thirty) subjects/departments listed in Annexure-I of the Memorandum of Understanding and to that extent the executive powers of the State shall stand entrusted and delegated to the above mentioned Councils.

And whereas the Governor of Assam has been pleased to entrust and delegate the functions relating to thirty subjects/departments to which the executive powers of the State of Assam extends with the consent of the Karbi Anglong Autonomous Council and in exercise of the powers conferred under sub-para (2) of paragraph 6 of the Sixth Schedule to the Constitution, as listed in Annexure-I of the Memorandum of Understanding vide Notification No.HAD.57/95/63-64 dated 29-6-1995 and published in the Official Gazette of the Government of Assam.

The following administrative changes and modalities are adopted for observance by the State Government and the Karbi Anglong Autonomous Council for management of the subjects mentioned in the MoU dated 1.4.1995. The work Council, wherever it occurs in this Memorandum shall mean "The Karbi Anglong Autonomous Council, Diphu".

Conts.P/...2....

*Attested
for
Signature*

The modalities and administrative changes.

are:-

- (A) In order to enable the Karbi Anglong Autonomous Council to finance the expenditure of the entrusted and delegated functions of the thirty subjects/departments without difficulty, the State Government shall make funds available as advance under the Head-"K-Deposits Advances, Part-III Advance not bearing interest Departmental Advance not bearing interest Departmental Advance-Special Advance". The Administrative Departments of the State Government shall release the funds on a six monthly basis in April and October of each financial year. It shall be the duty of the Council to submit separate detailed accounts every month to the Accountant General, Assam to make necessary adjustment by debit to the appropriate Head of Account of the State Budget.
- (B) It shall be the responsibility of the Council to ensure that the existing Rules, instructions, norms guidelines, etc. of the Government of India and the State Government, governing the implementation of the plan schemes relating to the entrusted subjects/departments and other matters including the non-plan matters relating to the entrusted subjects/departments are followed strictly till the Council frames Rules on the same in terms of the provisions of the Sixth Schedule to the Constitution of India, it being understood that the Rules directions, etc., of the Government of India, Comptroller & Auditor General of India and other sound financial managements/principles shall always be followed.
- (C) The Council shall be competent to sanction reappropriation of funds from one scheme to another within the same Major Head of Account. The State Government shall move for transfer of funds from one Major Head of Account to another Major Head of Account. In respect of any of the thirty entrusted subjects/departments only on receipt of proposal to this effect from the Council.
- (D) The Council shall be fully responsible to the State Legislature in all matters relating to the funds transferred to the Council and for this purpose, the Principal Secretary and other Secretaries to the Executive Committee of the Council shall be made available for examination by the Public Accounts Committee and other Committees of the State Legislature.

Contd.P/.3..

Registrar, Co-operative Societies is requested to make an Award within eight weeks from the date of entering into the reference. We furthermore direct that irrespective of the result of the dispute between the appellant and the 3rd respondent, no recovery shall be effected from the 3rd respondent in respect of any salary or emoluments paid to him during the period from 1.10.2005 to 30.6.2006 when he joined his services pursuant to the order of the High Court and date of his superannuation.

37. This appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs.

Appeal allowed.

GAUHATI HIGH COURT
Before :- I.A. Ansari, J.
W.P. (C) No. 6316 of 2005
Decided on 27.9.2005

Tankeswar Deka

State of Assam and others

Versus

Petitioner

Respondents

For the Petitioner : Mr. M.K. Choudhury, Sr. Advocate.

For the Respondents : Mr. A.K. Goswami, Sr. Advocate and Mr. I. Choudhury, Advocate.

Constitution of India, Articles 16 and 226—Transfer—Respondent could not show any material on record for making transfer of petitioner—Nor any element of public interest shown for making such transfer order—Moreover, such transfer order mooted at the behest of some political persons—Held, transfer order held to be arbitrary, mala fide and irrational and hence liable to be set aside. (Paras 9, 14 and 15)

Cases referred :

1. Dayal Das v. State of Assam, 2002(2) GLT 109 [Para 10]
2. State of Assam v. Dilip Kumar Das, 2003(2) GLT 151 [Para 13]

ORDER

I.A. Ansari, J.—By making the present writ petition, the writ petitioner, who is currently working as an Assistant Engineer, PWD, Mayong Rural Road Sub-Division, has prayed for setting aside and quashing the order, dated 3.9.2005, whereby the petitioner is sought to be transferred from the said Road Sub-Division to Silchar Building Circle, PWD, and commanding the State respondents/authorities concerned to let the petitioner continue at the said Road Sub-Division.

2. In a narrow compass, the case of the petitioner may be described as follows :-

While serving as an Assistant Engineer at Tongla Road Sub-Division, the petitioner was on 10.3.2000, posted, on deputation, to Snowyee Mountains Engineering Corporation at Mangaldoi. On his return from deputation, the petitioner was posted, on 11.1.2004, at North Lakhimpur Road Division and the petitioner was transferred therefrom within barely eight months i.e. on 2.9.2004, to Mangaldoi Road Division and within a year, the petitioner, again, vide the impugned order, dated 3.9.2005,

aforementioned, stands transferred to Silchar. The petitioner, has thus, been subjected to frequent transfers. The petitioner's transfer, vide the impugned order, to Silchar was not in the public interest, but to accommodate the private respondent, namely, respondent No.5, who on his return back to the PWD from deputation, is sought to be accommodated as per his convenience at Mayong. There is, in fact, no element of public interest involved in the said impugned transfer, the same is arbitrary, illegal and motivated by vested interest. The petitioner's present transfer is the outcome of political influence inasmuch as one MLA and one Minister had recommended the private respondent's transfer to Mayong. The impugned order of transfer is vitiated by malice, caprice and colourable exercise of power. The impugned order of transfer is, thus, illegal and contrary to the policy of transfer holding the field.

3. When the writ petition was moved, on 7.9.2005, the Court, as the record reveals, directed on 7.9.2005, that the parties shall maintain status quo as on date as regard their places of posting and when the matter came up, on 19.9.2005, for orders the Court noticed that the original file relating to the transfer of the petitioner had become untraceable and a new file had been opened in this regard. The Court, therefore, directed, on 19.9.2005, as the case record reveals, that the State respondents shall explain as to how the proposal of transfer could be mooted in the present file on the basis of the earlier file, which is said to have been missing.

4. The State respondents have resisted the writ petition by filing their affidavit in opposition, their case being, in brief, thus: The impugned order has been passed in public interest and in administrative exigencies. It is for the proper authority to decide as to who will be posted where and at what point of time. The Petitioner's personal inconvenience, can under no circumstances, override public interest and administrative exigencies, for transfer is an incidence of service. The impugned transfer order has been issued with the approval of the Minister of State, PWD, who is the competent authority. The petitioner's allegation that his transfer is contrary to the relevant transfer policy is vague. The petitioner's allegations with regard to political persons having interfered in the making of the impugned transfer orders are vague and deserve to be ignored. No question of mala fide in transferring the petitioner could be shown by the petitioner. The proposal for transfer of the petitioner was processed; but as the file was misplaced and could not be located, the proposal was recommended in the present file and the same has been approved by Minister of State, PWD. In the face of these facts, the transfer order cannot be said to be in colourable exercise of powers and the present writ petition may, therefore, be dismissed.

5. The private respondent has resisted the writ petition by filing his affidavit in opposition the case of the private respondents being, in brief, that on his return from deputation, he had applied, on 16.5.2005, to the authorities concerned for providing him with posting in his parent department, i.e., PWD and accordingly, he has been posted, vide the impugned order, dated 3.9.2005, as Assistant Engineer, PWD, Mayong Rural Sub Division. The petitioner's transfer was not at the behest of political persons and this respondent has not

used political influence for obtaining his transfer to Mayong. The allegation regarding involvement of one MLA and one Minister in pursuing of the present order of transfer was not within the knowledge of this respondent and when this respondent enquired into the contents of the letter of recommendation, he was surprised to learn that his posting, at Mayong, was recommended in the interest of local public. It is, thus, a mere co-incidence that this respondent applied for posting in PWD and the MLA and the Minister, on the pressure of the local public, recommended the respondent's name for posting at Mayong.

6. I have heard Mr. M.K. Choudhury, learned Senior counsel for the petitioner, and Mr. I. Choudhury, learned Standing Counsel, for the State respondents. I have also heard Mr. A.K. Goswami, learned Senior Counsel, appearing on behalf of the respondent No.5.

7. Upon hearing the learned counsel for the parties and on perusal of the pleadings of the parties concerned and the relevant materials on record, what attracts my attention, most prominently, is that despite a clear direction given by this court, on 19.9.2005, the State respondents have not been able to convincingly explain as to why and how the file in which the petitioner's transfer to Mayong was, at first, initiated got misplaced. In fact, the State respondents are completely silent that any action has been initiated against anyone for misplacement of the original file.

8. Bearing in mind the above aspect of the matter, when I look at the affidavit filed by the State respondents, what transpires is that the State respondents have emphatically denied the writ petitioner's allegation that the records pertaining to the present transfer would reveal that one MLA and one Minister had recommended the petitioner's transfer to accommodate the private respondent at his choiced place of posting. Not contended with such a denial, the State respondents/authorities concerned have gone further and sworn an affidavit to the effect that the allegations of use of influence by the political persons to obtain transfer are vague and unsubstantiated. The cat, however, comes out of the bag, when one closely scrutinizes, as against the averments so made by the State respondents, the affidavit of respondent No.5. Reacting to the allegations of use of political influence in the making of the impugned order of transfer of the petitioner and the recommendations made in favour of the respondent No.5 by one MLA and one Minister, the private respondent has this to say. "That with regard to the allegation regarding involvement of the MLA and one Minister in the present transfer, your deponent begs to state that the said fact was totally out of the knowledge of your deponent. When the deponent enquired into the contents of the letter of recommendation he was taken by surprise that his posting at Mayong was recommended in the interest of the local public which was accordingly consented by the Hon'ble Chief Minister. It was a mere co-incidence that your deponent applied for posting in PWD and the MLA/Minister on the pressure of local public recommended his name, the fact which was totally out of your deponent's knowledge."

9. The above averments made by the private respondent leave no room for doubt that the present impugned order was, indeed, initiated on the

recommendations of the one MLA and one Minister. It, thus, becomes transparent that the State respondents have tried to hoodwink the Court by opening a new file and their denial that no political influence played any role in the background of the passing of the impugned transfer order is completely false. I was tempted to take penal action against the State respondents for making false averments, yet I restrain myself from doing so and rest the matter with a warning to the State respondents to be careful in future and any such lapse, if noticed, in future, will lead to serious consequences.

10. What is also impossible to ignore is the fact that the records pertaining to the transfer of the petitioner, produced by the State respondents, give no reason whatsoever as to why the petitioner has been transferred from Mayong and the private respondent has been posted there. True it is that there is no legal obligation, on the part of the State respondents, to disclose, while transferring a person, as to why the respondents/authorities concerned deemed it necessary to transfer the person concerned in public interest. However, when an order of transfer is impugned and when the order is under challenge before the writ Court, obligatory it was, on the part of the State respondents, to disclose to the Court the reason(s), which had led to the passing of the order of transfer. A mere rural use of the expression, such as, "in the interest of public notice," while passing the transfer order, is really of no consequence in a case of the present nature, for records reveal that without assigning any reason or even stating that the proposal for transfer of the petitioner from Mayong was in public interest, proposal was initiated, file moved and the Minister of State, PWD, approved the proposal. It was only, while the formal transfer/posting order was issued on 3.9.2005, that the words "in the interest of public service" have been imported into the order of transfer. Use of such words "in the interest of public service" in the case of a public servant has really no meaning if not even a semblance of public interest could be disclosed by the respondents. In fact, to a pointed query made by this Court, Mr. I Choudhury, learned Standing Counsel, could assign no reason as to why the petitioner has been transferred to Silchar from Mayong within a period of one year. Though the petitioner has not referred to the date of the Circular, which governs the policy of transfer in the State necessary it is to remind the State respondents that in Dayal Das v. State of Assam, reported in 2002(2) GLT 109, this Court, while in seisin of the policy of transfer of officials in terms of the Office Memorandum, dated 19.9.92, of the Government of Assam, Department of Personnel (B), observed that when the public interest demands that an officer be transferred from a place before completion of three years, proper and justifiable grounds may be recorded, in writing for the transfer and the orders are issued only after receiving the approval of the Chief Minister for such a transfer. In fact, faced with the same kind of situation, as the present one, the Court, in Dayal Das (supra), observed as follows:-

"4..... The records produced before this Court show that no reasons whatsoever have been recorded justifying the transfer of the petitioner from Kohora Soil Conservation Division, Kohora or from Karbi Anglong Autonomous Council where he had not completed the period of three years. The records produced before the Court also do not indicate that the

aforesaid transfer of the petitioner before completion of three years service from his place of posting was placed for approval of the Chief Minister. The guidelines for transfer of officers in the office memorandum dated 19th September, 92 may not have statutory force, but are checks against arbitrary transfers and deviations from the said guidelines may result in an arbitrary transfers. For these reasons, I am of the view that the transfer of the petitioner by the impugned notification dated 27.7.2001 should not be given effect to till the justification of his transfer with grounds are recorded in writing and these are placed before the Chief Minister for approval."

11. Following the decision in Dayal Das (supra), the Department of Personnel (B), Government of Assam, has issued memorandum No. ABP 116/04/4 dated 4.2.2002, reiterating that the guidelines issued vide O.M. dated 19.9.2002, aforementioned, should be strictly followed.

12. The writ petitioner was therefore, not wrong when he agitated, in the present writ petition, that he had been transferred without expiry of a period of three years from his present place of posting without taking consent of the Chief Minister and, hence, the transfer order could only be made by recording proper and justifiable grounds.

13. I may also point out that Mr. Choudhury has referred to State of Assam v. Dilip Kumar Das, reported in 2003(2) GLT 151, wherein a Division Bench of this Court observed to the effect that while considering transfer orders, writ Court does not sit over the judgment of the authority concerned and that the Court will be extremely slow in interfering with the discretion exercised by the authorities concerned. The case of Dilip Kumar Das (supra) was a case in which having stated as to what the settled principle of law, on the subject of transfer is, the Division Bench observed, "the main bone of contention of the respondent/writ petitioner is that his transfer is being effected without there being any administrative exigency and thus it takes the shape of favour, given to a particular individual without there being any rhyme or reason. To get over our doubts about the exercise of the powers of transfer of the petitioner we directed the counsel for the appellants to produce the record wherein the decision for transfer has been taken."

14. From the observations made in Dilip Kumar Das (supra), it is more than abundantly clear that the Division Bench, to get over its doubt, did look into the records and satisfied itself that the transfer was in the interest of public interest. In the case at hand, I have already indicated above, that there is not even an iota of material on record to show as to why the impugned transfer has been made. Far from this, the accepted position is that the impugned transfer has been mooted at the behest of political persons, who were unconnected with the Department concerned. There can, therefore be no escape from the conclusion that the impugned transfer has been made in colourable exercise of powers and it is for this reason that the records are absolutely silent as to why the proposal for transfer of the petitioner from Mayong to Silchar was mooted without assigning any reason whatsoever and as to why the proposal was approved without making any query or without assigning any reason for the approval.

15. What, thus, crystallizes from the above discussion is that no element of public interest could be shown in passing the impugned order, rather the impugned transfer order suffers from colourable exercise of power, mala fide, arbitrary and irrational. Such an order shall, if allowed to stand good on record, cause serious miscarriage of justice and the confidence of the general public in the ability of the writ Courts to check arbitrary, irrational and illegal use of powers by the State and its functionaries would be vigorously shaken if this Court does not step in. It is, therefore, in the larger public interest that this Court interferes with the present transfer order.

16. In the result and for the foregoing reasons, this writ petition succeeds and the impugned transfer order, dated 3.9.2005, aforementioned is hereby set aside and quashed. The respondents/authorities concerned are, however, left at liberty to pass necessary order(s) as regards the transfer of the respondent No.5.

17. Let the records produced by the State respondents be returned.

18. With the above observations and directions, this writ petition shall stand disposed of.

19. No order as to costs.

Petition allowed.

SUPREME COURT OF INDIA

Before :- Dr. AR. Lakshmanan and A.K. Mathur, JJ.

Civil Transfer Case No. 73 of 2002

Decided on 31.10.2006

All India ITDC Workers Union and Ors.

Appellants

Versus

ITDC and Ors.

Respondents

With Civil Transfer Case No. 76 of 2002

In T.C. No. 73 of 2002

For the Appellants : Mr. M.L. Bhat, Sr. Advocate with Ms. Purnima Bhat, Advocates.

In T.C. No. 76 of 2002

For the Appellants : Mr. Jayant Nath, Sr. Advocate with Mr. Suresh Tripathy, Mr. Subhash Mishra and Mr. Rakesh K. Sharma, Advocates.

In T.C. No. 76 of 2002

For the Respondent No. 3 : Mr. Rakesh Dwivedi, Sr. Advocate with Mr. Arvind Kumar Shukla, Mr. Alok Shukla, Mr. Sriparna Chatterjee and Mr. Irshad Ahmed, Advocates.

In T.C. No. 76 of 2002

For the Respondent No. 2 : Mr. Ashok Bhan, Ms. Varuna Bhandari and Mr. D.S. Mahra, Advocates.

For the Respondents : Mr. Gaurav Agarwal, Mr. B. Krishna Prasad, Mr. Praveen Jain and Mr. Suresh Chandra Tripathy, Advocates.

A. Constitution of India, Articles 14 and 21—Abolition of post—Transfer of establishment—Government employees have no right to the post and the Government can abolish the posts—If the Government takes a

(E) The Council shall appoint a Principal Secretary of it in the rank of Commissioner & Secretary to the Government of Assam and for this purpose, the Government of Assam will place the services of the IAS Officer of Assam cadre of this rank at the disposal of the Council. The State Government will make available the services of two Officers in the rank of Secretary to the Government of Assam (one of whom will be from a Technical Deptt.) for appointment as Secretaries of the Council. The State Government will also make available three Deputy Secretaries (one of whom will be from a Technical Department and remaining ones from the Assam Civil Services) for appointment as Deputy Secretaries of the Council. All these Officers shall on deputation from the State Government to the Council as per usual terms and conditions and their services shall be placed at the disposal of the Council with prior consultation with Council.

(F) The Zonal Heads of Departments from Hill Areas shall be withdrawn by the State Government Officers in the rank of Additional Chief Engineer, PWD and its equivalent in all the entrusted departments with all administrative, financial and technical powers of the Head of Department delegated by the State Government shall be posted and placed under the administrative control of the Karbi Anglong Autonomous Council. The Additional Chief Engineer, P.W.D. and its equivalent Officers as mentioned above shall be posted within 31st January, 1997. During the interim period, the existing Zonal Heads of Department stationed in Karbi Anglong District shall be placed under the administrative control of the Karbi Anglong Autonomous Council.

(G) The Chief Executive Member/Executive Member/Principal Secretary/Secretary to the Executive Committee of the Council shall be competent to initiate/review/accept the Annual Confidential Reports (ACRS) of all the Officers and staff placed under the administrative control of the Council. The administrative control of Council over the Officers and staff at its disposal shall be complete in all matters of intra Council transfer and posting. As regards disciplinary actions, against the Officers and staff of the entrusted subjects/departments, the Council shall exercise the powers as the Borrowing Authority and the State Government shall exercise the powers as the lending Authority and both the State Govt. and the Council shall follow the relevant rules,

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regulations etc. of the respective service Rules, (IAS/ACS, etc.,).

(H) The State Government shall consult the Council, while posting and transferring the Officers of the entrusted subjects/ departments in or out of the Council. Under no circumstances, the officers and staff not released by the Council shall be accepted by the State Government. Before deputing any Officer or staff the Government shall provide a panel of names, enabling the Council to select and accept the same. The State Government shall take necessary action under the relevant Rules and procedure against the officers and staff, found involved in any prima facie case of misconduct/dereliction of duty etc. during the period of deputation to the Council even after they are repatriated to the State Government.

(I) The salary and allowances of the Principal Secretary and other Secretaries/Deputy Secretaries as well as the Officers and staff of the entrusted subjects/departments who are on deputation to the Council shall be paid by the Council and necessary funds for this purpose shall be made available to the Council by the State Government. In respect of provident fund, Group Insurance and other related matters, these Officers and staff shall continue to be controlled by the State Government. The Council shall not be liable to pay any leave salary, pension contribution, etc. in respect of these officers and staff of the entrusted subjects/departments placed under the administrative control.

(J) The Karbi Anglong Autonomous Council shall prepare the estimates receipts and expenditure pertaining to Karbi Anglong Autonomous District in respect of entrusted subjects/departments as per the allocations, norms etc. communicated by the State Government.

The State Government shall prepare the estimated receipts and expenditures, pertaining to Karbi Anglong Autonomous District in respect of non-entrusted subjects/departments and forward the same to the Karbi Anglong Autonomous Council.

The Karbi Anglong Autonomous Council in their Council session shall consider the estimated receipts and expenditure pertaining to Karbi Anglong Autonomous District in respect of both entrusted and non-entrusted subjects/departments and send the same along with the synopsis of their consideration to the State Government within the stipulated time as provided for

as provided for in the paragraph 13 of Sixth Schedule to the Constitution of India.

Ordinarily no change will be made in the estimated receipts and expenditures as considered by the Karbi-Anglong Autonomous Council, in respect of the entrusted subjects/Departments. However, for any reasons, if it becomes necessary to do so, the Council, shall be consulted and reasons for the proposed changes shall be explained.

The State Govt. shall then place the estimated receipts and expenditures as considered by the Karbi Anglong Autonomous Council, alongwith the synopsis before the State Legislature, as provided for in the paragraph 13 of the Sixth Schedule to the Constitution of India.

(K) In respect of the entrusted subjects/departments, the Council shall prepare the Annual Plan by taking into account the special needs, physical resources, priorities, etc. as per the Annual Plan allocation against each sector/sub-sector, etc. by following the norms and guidelines of the Planning Commission of the Government of India. The Council shall send the Annual plan in respect of the entrusted subjects/departments to the Development Commissioner for Hill Areas of the State Government for inclusion in the Hill Areas Sub-Plan of the State. The other plan activities such as evaluation, monitoring, compilation, quarterly review, etc. of the Hill Areas Sub-Plan shall be performed by the Development Commissioner for Hill Areas as usual. In the finalisation of the Hill Areas sub-plan of the State of Assam by the Planning Commission of the Government of India, the Officials of the Council shall be included in the State delegation.

(L) There shall not be any common outlay in respect of Karbi Anglong District. The existing schemes under 'common outlay' shall be transferred to the Council as per their geographical locations.

(M) All Centrally sponsored schemes/Central Sector Schemes/NEC Schemes/Externally Aided Schemes, etc. in respect of the entrusted subjects/departments for which fund will be released by the State Government to the Council as per sanction and release by the Government of India to the State Govt. shall be implemented by the Council as per the norms and guidelines of the Government of India and communicated by the State Government.

- (M) All
- (N) In case of any confusion//doubt/interpretation of any clause/clauses of the MoU, etc. arising out of any matter in exercise of the aforesaid delegated and entrusted powers, the matter shall be referred to the Governor for final decision.

This Office, memorandum is issued after due consultation and with the consent of the Karbi Anglong Autonomous Council and it supersedes the Office Memoranda issued earlier from time to time on this subject in so far as they relate to the Karbi Anglong Autonomous Council. However, all actions taken acts done under the office Memoranda, so superseded shall be deemed to have been validly taken or done

This Office Memorandum comes into force with immediate effect,

Sd/-
(T.K. Kamilla) dt.31.12.96.
Chief Secretary to the Govt. of Assam,

Memo No.HAD.57/95/316-A, Dated Dispur, the 31st December, 1996.
Copy for information & necessary action to:-

1. Secretary to the Governor of Assam, Dispur.
2. Commissioner & Secretary to Chief Minister, Assam, Dispur.
3. P.S. to all Ministers/Ministers of State, Assam, Dispur.
4. P.P.S to Chief Minister, Assam, Dispur.
5. P.S. to Chief Secretary to the Govt. of Assam, Dispur
6. Chairman, Assam Board of Revenue, Guwahati.
7. Chairman Assam Administrative Tribunal, Guwahati.
8. Chairman, Assam State Electricity Board, Guwahati.
9. P.S. to All Additional Chief Secretaries to the Govt. of Assam, Dispur.
10. Joint Secretary to the Govt. of India (NE), Ministry of Home Affairs, North Block, New Delhi.
11. All Principal Secretaries/Commissioner & Secretaries/ Secretaries to the Government of Assam.
12. All Heads of Department.
13. All Zonal Heads of Departments for the Hill Areas, Diphu/ Haflong.
14. All Administrative Departments
15. The Principal Accountant General (Audit), Assam, Shillong/ Guwahati.
16. Accountant General (A&E), Assam, Shillong/Guwahati.

: 7 :

17. The Development Commissioner-for Hill Areas, Assam, Housefed Complex, Dispur, Guwahati-6.
18. All Commissioners of Division.
19. The Principal Secretary, Karbi Anglong Autonomous Council Diphu.
20. The Principal Secretary, North Cachar Hill Autonomous Council, Haflong.
21. All Deputy Commissioners.
22. All Sub-Divisional Officers.
23. The Principal Secretary, Rabha Hasong Autonomous Council, Dudhnoi.
24. The Principal Secretary, Bololand Autonomous Council Kokrajhar.
25. The Principal Secretary, Mishing Autonomous Council, Gogamukh. North Lakhimpur.
26. The Principal Secretary, Lalung (Tiwa) Autonomous Council Morigaon.
27. Deputy Secretary, Political (Cabinet Cell) Department, Dispur, Guwahati-6.

By order etc.,
Sd/-

(A. MALIK) dt. 31.12.96
Secretary to the Govt. of Assam
Hill Areas Department

....

4 years

15. The Principal Accountant General (Audit), Assam, Shillong/Guwahati.
16. Accountant General (A&E), Assam, Shillong/Guwahati.
17. The Development Commissioner for Hill Areas, Assam, Housefed Complex, Dispur, Guwahati-6.
18. All Commissioners of Division.
19. The Principal Secretary, Karbi Anglong Autonomous Council, Diphu.
20. The Principal Secretary, N.C. Hills Autonomous Council, Marol.
21. All Deputy Commissioners.
22. All Sub-Divisional Officers.
23. The Principal Secretary, Rabha Hasong Autonomous Council, Dudhnoi.
24. The Principal Secretary, Bodoland Autonomous Council, Jorhat.
25. The Principal Secretary, Mishing Autonomous Council, Jorhat.
26. The Principal Secretary, Jalung (Tima) Awar, Morigaon.
27. Deputy Secretary, Political (Cabinet Cell) Department, Dispur.

By order, etc.

(A. MALIK)

Secretary to the Govt. of Assam,
Hill Areas Department.

25-
ANNEXURE → 5

EXECUTIVE MEMBER

Karbi Anglong Autonomous Council
Diphu



DO KAAC/F/APPT/2007
16-10-07
Date 21.7.07

Principal Secretary,
Karbi Anglong Autonomous Council, Diphu.

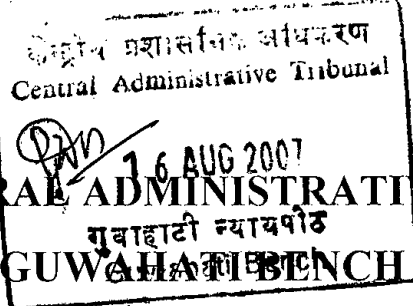
It is learnt that Shri Chandra Mohan Sharma, I.F.S., Conservator of Forests, Karbi Anglong under Karbi Anglong Autonomous Council has been transferred by Govt. of Assam vide No.FRE.6/90/272, Dated 17/07/2007 without following the Provision of Clause (H) of Govt. M.O. No.HAD/57/95/316, Dated 31/12/96 which require prior consultation with the Karbi Anglong Autonomous Council in respect of transfer of officers of the transferred subject. Further, Shri Chandra Mohan Sharma, I.F.S. is discharging his duties sincerely and efficiently in all matter and his transfer from Karbi Anglong at this stage will adversely hamper the execution and progress of various on going schemes. Also, new projects are in the process of finalization which will also get hampered due to his transfer.

In view of the above, please take up the matter with Govt. of Assam for cancellation of the said transfer order of Shri Chandra Mohan Sharma, I.F.S., Conservator of Forests immediately.

*Alfred
Sis
Advocate*

Hemari
Sri Hemari Teron
Executive Member
Karbi Anglong Autonomous Council
Diphu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL



ORIGINAL APPLICATION NO. 208 OF 2007

Filed by the Respondent nos
through L. Gogoi Akneel
Advocate 16/8/07 23

IN THE MATTER OF:

O.A No. 208/2007

Sri Chandra Mohan Sharma

..... Applicant

-Vs-

Union of India & Ors.

..... Respondents

-AND-

IN THE MATTER OF:

A Written Statement filed on behalf
of the Respondent No. 5 in the
aforesaid Original Application.

WRITTEN STATEMENT

I, Sri S. S. Rao, aged about 44 years, son of S. R. K. A. Ssarma, resident of Six Mile, Jayanagar, Khanapara, Guwahati – 781 022 in the district of Kamrup, Assam, presently posted as Conservator of Forest, Diphu, Karbi Anglong, do hereby solemnly affirm and state as follows :-

1. That, I have been impleaded as the Respondent No.5 in the aforesaid Original Application No. 208 of 2007, a copy of which has been served upon me through my Counsel and as such, I am competent to and have been duly authorized to swear this affidavit.
2. That, I have gone through the Original Application and understood the contents thereof. Save and except the statements made in the Original Application, which have been specifically admitted herein below, the rest shall be deemed to have been denied by the answering Respondent.

3. That, with regard to the statements made in paragraph 1 of the Original Application, the answering Respondent states that the Original Application has not been filed for bonafide and the Applicant has approached this Hon'ble Tribunal by suppressing material facts.
4. That, with regard to the statements made in paragraphs 2, 3, 4.1 and 4.2 and 4.3 of the Original Application, the answering Respondent has no comments to offer since the facts narrated therein relate to the Applicant.
5. That, with regard to the statements made in paragraphs 4.4 and 4.5 of the Original Application, the answering Respondent states that the duties performed by an Officer in a post are taken over by the incumbent, who replaces him on transfer / promotion etc. As such, the answering Respondent in his official capacity as Conservator of Forest, Diphu would naturally have to take over the duties and functions of the said post. Hence, the statements made contrary thereto are denied in seriatim.
6. That, with regard to the statements made in paragraph 4.6 of the Original Application, the answering Respondent states that it is a fact that vide Order No. FRE.6/90/272 dated 17.07.2007 issued by the Government of Assam, Department of Environment and Forest, the answering Respondent was posted as the Conservator of Forest, Karbi Anglong in the interest of public service and the same was like any other routine transfer order. The answering Respondent further states that the very fact that the Karbi Anglong Autonomous Council, vide their order under memo No. KAAC/Esstt/23/Pt.II/89-90/6840 dated 02.08.2007, had accepted the services of the answering Respondent in the Council by releasing the Applicant with immediate effect clearly reveals that the Government of Assam had transferred the answering Respondent to Karbi Anglong only after prior consultation with and after taking the due consent of the Council. In the said order, it has been specifically directed that the Applicant should hand over charge to the answering Respondent immediately. It is also pertinent to mention herein that the processing for the release of the Applicant from the said post had started long back, which culminated in the issuance of the order dated 02.08.2007. Considering the fact that the Government of Assam does not transfer its officers to the area of the Council, without prior concurrence and consultation with the Council authority, it is evident that the vice-versa transfer of the Applicant and the answering Respondent has been effected with the prior consultation of the Council. Be it further stated herein that in the absence of concurrence being granted by the

*presumption
of the fact* →

Council, the Council does not accept such officers on transfer from the State Government.

A copy of the said Order dated 02.08.2007 issued by the Principal Secretary, Karbi Anglong Autonomous Council is annexed herewith and marked as ANNEXURE - 1.

7. That, with regard to the statements made in paragraph 4.7 of the Original Application, the answering Respondent reiterates the statements made herein above.
8. That, with regard to the statements made in paragraph 4.8 of the Original Application, the answering Respondent states that, the notification dated 17.07.2007 has been issued in public interest by the authorities concerned.
9. That, the statements made in paragraph 4.9 of the Original Application are denied by the answering Respondent in as much as the Applicant has already being released by the Council authority as stated in paragraph 6 herein above. Further, the Council has also directed the Applicant to hand over charge to the answering Respondent positively by 01.08.2007. However, in view of the interim order dated 02.08.2007 passed by this Hon'ble Tribunal in the instant case, the answering Respondent has been unable to take over charge as Conservator of Forest, Diphu, Karbi Anglong.
10. That, the answering Respondent humbly submits the grounds so averred to in the Original Application are flimsy, misleading and baseless. The instant Original Application has been filed by suppressing material facts and fabricating a case of malafide. As such, in the facts and circumstances narrated herein above, it is humbly stated that the Applicant has failed to make out a prima facie case for any relief in equity and this Hon'ble Tribunal may be pleased to dismiss the Original Application by vacating the interim order of Status quo dated 02.08.2007 passed in the instant Original Application.

Verification...

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

I, Shri S. S. Rao, aged about 44 years, son of S. R. K. A. Sharma, resident of Six Mile, Jayanagar, Khanapara, Guwahati – 781 022 in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the Respondent No. 5 in the instant Original Application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in Paragraphs..... 1 6 10 are true to my knowledge and those made in Paragraphs..... being matters of records are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this Verification on this the 16th day of August, 2007 at Guwahati.

S. Srinivasa Rao
SIGNATURE OF THE APPLICANT

- 5 -
OFFICE OF THE KARBI ANGLONG AUTONOMOUS COUNCIL
KAAC SECRETARIAT
DIPHU

No. KAAC/Esstt-23/Pt-II/89-90/ 6840

Dated: 2/8/2007.

O R D E R

In pursuance to Govt. Notification No. FRE.6/90/272 Dtd. 17th July'2007, the authority of Karbi Anglong Autonomous Council (KAAC) is pleased to release Shri Chandra Mohan, IFS, Conservator of Forests, Karbi Anglong, Diphu from the disposal of KAAC with immediate effect to enable him to join at his new place of posting.

No. KAAC/Esstt-23/Pt-II/89-90/ 6840 - : On his services being placed at the disposal of KAAC by Govt. vide Notification No. FRE.6/90/272 Dtd. 17th July'2007, the authority of KAAC is pleased to accept the services of Shri S.S. Rao, IFS as Conservator of Forests, Karbi Anglong, Diphu with effect from the date of taking over charge vice Sri Chandra Mohan, IFS, Conservator of Forests released.

Principal Secretary,
Karbi Anglong Autonomous Council,
DIPHU

Memo No. KAAC/Esstt-23/Pt-II/89-90/ 6841-A Dated: 2/8/2007.

Copy to:-

- 1) PA to Hon'ble Chief Executive Member, KAAC, Diphu.
- 2) PA to Hon'ble Executive Member, Department of Forests, KAAC, Diphu.
- 3) The Jt. Secretary to the Govt. of Assam, Environment & Forests Department, Dispur, Guwahati - 6.
- 4) The Accountant General (A&E), Assam, Beltola, Guwahati - 29.
- 5) The Principal Chief Conservator of Forests, Assam, Guwahati - 8.
- 6) Sri C. Mohan, IFS, Conservator of Forests for information and necessary action. He is directed to hand over charge of the office of the Conservator of Forests, Karbi Anglong, Diphu to Sri S.S. Rao, IFS immediately i.e. on 01-08-07.
- 7) Shri S.S. Rao, IFS, for information and necessary action. He is directed to take over the charge of the office of the Conservator of Forests, Karbi Anglong, Diphu from Shri C. Mohan, IFS on 01-08-07 positively.
- 8) The Sr. Finance & Account Officer (I), KAAC, Diphu.
- 9) The Treasury Officer, Diphu Treasury, Diphu.
- 10) Office file.

Principal Secretary,
Karbi Anglong Autonomous Council,
DIPHU

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

28 AUG 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH GUWAHATI

Filed by me applicant
through:- S. Nath
Advocate
28/08/07

In the matter of:-

O.A.No. 208/2007

Sri Chandra Mohan Sharma.

..Applicant

-Versus-

Union of India and others.

.... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant
against the written statement submitted
by the respondent no.5.

The above named applicant most respectfully begs to state as under:-

1. That with regard to the statements made in para 3, 5 and 6, the applicant denies the correctness of the statement made therein and further beg to say that the O.A preferred by the present applicant is bonafide. Since the impugned order of transfer has been issued without any public interest and administrative exigency but in colourable exercise of power with a malafide intention. Hence the applicant has a legal right to challenge the validity and legality of the isolated impugned notification dated 17.07.2007, transferring the applicant from Diphu to Guwahati, and it is categorically denied that the respondent no. 5 have been transferred as Conservator of Forest, Karbianglong in the public interest, and it is further denied that the impugned order of transfer is a routine nature. The applicant further categorically denies the contention of the respondent no.

5 that mere issuing of release order by the council amounts to acceptance of the services of respondent no. 5. It is pertinent to mention here that prior consultation provided in clause (H), while posting and transferring the officers of the entrusted subjects/departments in or out of the council, in the O.M dated 31.12.1996, before deputing any officers or staffs, the Govt. shall also provide a panel of name enabling the council to select and accept the same, but in the instant case, no such procedures has been adopted by the Govt. of Assam, which was a mandatory requirement before issuing the notification dated 17.07.2007 and the same is already indicated by the Executive Member (Forest-in-charge) of the council in his letter dated 21.07.2007 addressed to Principal Secretary, KAAC, Diphu. Therefore, the contention of the respondent no. 5, that the impugned transfer notification has been issued only after "prior consultation" with the council is a deliberate false and misleading statement and respondent no. 5 is put to strictest proof of his claim that the prior consultation was held before issuing the impugned notification dated 17.07.2007. Therefore, perusal of the relevant record of consultation in terms of the clause (H) provided in O.M dated 31.12.1996 is necessary for proper adjudication of the issues involved in the instant O.A. Acceptance of services of respondent no. 5 by the Council, in violation of clause (H) of O.M dated 31.12.1996 on extraneous consideration is not sustainable in the eye of law and the KAAC, Diphu falls within the definition of 'State' within the meaning of Article 12 of Constitution of India, as such cannot act contrary to the provision laid down in O.M dated 31.12.1996 in order to accommodate respondent no. 5 in the KAAC on extraneous consideration or under any political influence. The issuing of impugned order of release itself is contradictory as because in para 6 of the written statement, the impugned order of release shown to have been issued on 02.08.2007 but it has been instructed in the said order that the present applicant should hand over the charge to respondent no. 5 on 01.08.2007, if the impugned release order has been issued bearing memo no. KAAC/Estt-23/Pt-II/89-

90/684 A dated 02.08.2007 in that event how the present applicant could hand over the charge immediately on 01.08.2007 to the respondent no. 5. It further appears that in the bottom of the impugned letter dated 02.08.2007, the Principal Secretary signed the impugned order of release on 31.07.2007. But the said order of release was never communicated to the applicant although a copy was marked for the applicant. Therefore it appears that the Principal Secretary have issued the impugned order of release deliberately with back date on extraneous consideration or under political influence and surprisingly the said copy of the order dated 02.08.2007, has already been served upon the respondent no. 5, who is working at Guwahati since he has annexed a copy of the impugned release order in the Misc. petition indicating the date of issue of the order on 02.08.2007, whereas in the misc. petition filed by the State of Assam, the impugned release order stated to have been issued on 31.07.2007 and communicated on 02.08.2007, but the instruction contained in the impugned release order in respect of the applicant to hand over the charge on 01.08.2007. Therefore it appears that the impugned order dated 02.08.2007 has been issued with back date with a mala fide intention even then the date of instructions does not tally with the date of issue and the same has been issued in order to invalidate the interim order passed by the learned Tribunal on 02.08.2007. The contention of the respondent no. 5 that the order of transfer has been issued with prior consultation of the council is categorically denied, when it is categorically stated in the O.M dated 31.12.1996 that the "State Government shall consult the council", while posting and transferring the officers of the entrusted subjects/departments in or out of the council. Therefore the word consult means that there must be an effective consultation and the same is not an empty formalities. It is categorically stated that the Govt. of Assam never consulted the council before transferring the applicant from Diphu to Guwahati, in other words, no approval was taken from the council before issuing impugned notification dated 17.07.2007, moreover no panel was

sent to the council for approval before the posting of respondent no. 5 as provided under clause (H).

It is further submitted that the Principal Secretary of the council vide memo no. KAAC/Estt/P(B)/CAT/07/5 (A) dated 03.08.2007, has been informed to the respondent no. 3 that the release/transfer of the applicant could not be implemented in view of the status-quo order passed by the Hon'ble Tribunal in O.A.No. 208/2007. It is pertinent to mention here that the Karbi Anglong Autonomous Council, Diphu in WP © No. 8456/2005 filed by the Sri Apurba Kumar Das and Others, -vs- State of Assam and Others, which is now pending before the Hon'ble High Court submitted an affidavit in opposition for and on behalf of the Secretary, Karbi Anglong Autonomous Council, Diphu, Assam and the said affidavit -in-opposition is swear by the Dy. Secretary, Fishery, Karbi Anglong Autonomous Council, Diphu, wherein it has been stated in para 8 of the affidavit that procedures laid down in clause (H) of the memorandum of understanding dated 31.12.1996 is a mandatory clause and prior approval of council is necessary even before deputing any officer or staff in the council and when such procedures having been bypassed by the authorities of the State Government, while posting or deputing any officer in the council, the joining reports of such officers are not acceptable. It is relevant to mention here that the said writ petitioners who were posted on appointment under Karbi Anglong Autonomous Council after being selected through the A.P.S.C, but the joining report of those writ petitioners were not accepted by the council on the ground that prior approval or procedure laid down in clause (H) has not been followed and ultimately those writ petitioner were not allowed to join under the council inspite of repeated requests and correspondences made by the Govt. of Assam and finally under such compelling circumstances Govt. of Assam modified the posting order of 3 fishery extension officer namely Sri Apurba Kr. Das, Bhaskar Jyoti Nath and Sri Himangshu Doley. Therefore contention of the respondent no. 5 is that since the release order

has been issued in respect of the applicant by the Council, so such action implies acceptance of the services of the respondent no.5 in terms of the clause (H) of the O.M dated 31.12.1996 is categorically denied. Moreover, the autonomous council, falls within the definition of Article 12, therefore council is not permitted to take different stand on different occasion and as such action of the Principal Secretary in passing the impugned release order dated 02.08.2007, smacks malafide.

(A copy of the affidavit-in-opposition filed by the Karbi Anglong Autonomous Council and copy of the memo dated 03.08.2007 is enclosed herewith and marked as Annexure-A and B respectively).

2. That the statements made in para 7, 8, 9 and 10 are categorically denied save and except which are specifically admitted herein below;
So, far impugned release order dated 02.08.2007 is concerned, it is stated that the same has been issued by the Principal Secretary on extraneous consideration and also without having any jurisdiction under the law as because the transfer order has been issued without any consultation and in violation of the terms of the provision laid down in clause (H) of the O.M dated 31.12.1996. Moreover the impugned notification of transfer and posting dated 17.07.2007 is void-ab-initio since the same has been issued in total violation of clause (H) of the O.M dated 31.12.1996, which is further confirmed and clarified by the council in their affidavit-in-opposition filed before the Gauhati High Court in WP(C) No. 8456/2005 (Apurba Kumar Das-Vs- State of Assam and Others.) with regard to the statement made in paragraph 10 of the written statement filed by the respondent no.5, the applicant further beg to say that the impugned notification dated 17.07.2007 transferring the applicant and respondent no.5 is an isolated and unprecedented order passed with a malafide intention. As because in much as 4 officers in the rank of Conservator of Forests, who were posted in different places in the State of Assam and completed more than 3 to 4

years of tenure have been allowed to continue in the same place of posting till date without causing any disturbance. The particulars of the officers in the rank of Conservator of Forests, who have completed more than 3 to 4 years of service but allowed to continue in the same places of posting till dates are given hereunder:-

	<u>Name of the C.O.F</u>	<u>Period of Stay</u>
1.	Sri R.D.S.Tanwar, I.F.S. Conservator of Forest Central Assam Circle, Guwahati.	Since 08.04.2003 till date (more than 4 years)
2.	Sri Bikash Brahma, I.F.S Conservator of Forest, Hills Haflong.	Since April, 2003 till date More than 3 years.
3.	Sri G..Basumatary, IFS Conservator of Forest, Kokrajhar.	More than 3 years.
4.	Sri. M.K.Yadav, IFS Conservator of Forest, Guwahati	More than 3 years

But in the case of the applicant, he has been picked up for transfer on extraneous consideration being influenced by respondent no.5 as well as by Sri J.Sharma, D.F.O, KAAC (under suspension).

The contention of the applicant further gets support of the decision rendered by the Hon'ble High Court in the case of Sri J.Bora-vs-State of Assam and Ors. Reported in (1999) 3 GLT, 104.

In the facts and circumstances stated above, the application deserves to be allowed with costs.

VERIFICATION

I, Shri Chandra Mohan Sharma, IFS, S/o- Late Raghubir Singh, aged about 51 years, working as Conservator of Forest, P.O- Diphu, Dist- Karbianglong, Assam, applicant in the instant Application, do hereby verify that the statements made in Paragraph 1 and 2 are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26th day of August, 2007.

Chandra Mohan Sharma

DISTRICT : KARBI ANGLONG

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
CIVIL EXTRA ORDINARY JURISDICTION
WP (C) No. 8456/2005

Filed by

The Secretary, Karbi
Anglong Autonomous
Council, Diphu

Respondent no.6

Through

Mr. M. J. Bork
Advocate
8/9/05/07

IN THE MATTER OF :

WP (C) No. 8456/2005

Sri Apurba Kumar Das & Others

.....Petitioner

-Vs-

State of Assam & Others.

.....Respondents

-AND-

IN THE MATTER OF :

An affidavit-in-opposition filed by
respondent no.6 in W.P (C)
No.8456/2005.

AFFIDAVIT-IN-OPPOSITION

I, Smtl Jayashree Daulagappu, wife of Brautam Terang
,aged about 44 years, presently serving as the Deputy Secretary, Fisheries,
Karbi Anglong Autonomous Council, Diphu, District- Karbi Anglong, Assam,
do hereby solemnly affirm and say as follows :

1. That I being the Deputy Secretary, Fisheries, Karbi Anglong Autonomous Council, am fully conversant with the facts and circumstances of the aforementioned writ application i.e. W.P (C) No. 8456/2005, for short 'writ application'. On being authorised ,I am competent to swear this affidavit on behalf of respondent no.6.
2. That a copy of the writ application was served upon the Standing Counsel ,Karbi Anglong Autonomous Council, for short 'the council' and I having gone through the same, have understood the contents thereof.
3. That all statements of facts which are categorically not admitted herein below and those which are contrary to records shall be deemed to have been denied by the answering deponent.

Attested
by
Advocate

4. That with reference to the statements made in paragraphs 2 and 3 of the writ application, the deponent denies and disputes the correctness of the same which are contrary to records.

5. That with reference to the statements made in paragraph 4 of the writ application, the deponent states that it is not correct as alleged that the joining reports of the petitioners have not been accepted by Council due to non-approval of the appointment of 3 nos. of Assistant Fishery Officers of Karbi Anglong. The deponent states that although the names of 3 Assistant Fishery Officers were proposed earlier, till date the Council did not promote the said Assistant Fishery Officers to the post of Fishery Extension Officers. The deponent states that the joining reports of the petitioners were not accepted as prior to such posting of the petitioners in the Council, there was no consultation by the State Government with the Council by providing a panel of names enabling the Council to select and accept the same as per Clause (H) of the Office Memorandum dated 31/12/1996.

The deponent craves the leave of this Hon'ble Court to produce a copy of the said Office Memorandum at the time of hearing, if need be.

6. That with reference to the statements made in paragraphs 5 to 13 of the writ application, the deponent denies and disputes the correctness of the statements which are contrary to records. At any rate, as the Council had not accepted the joining reports of the petitioners, the Council is not responsible for payment of salaries of the petitioners for the period of August, 1998 to their respective dates of joining in April, 1999. The deponent states that during such period the services of the petitioners were not utilised by the Council.

7. That with reference to the statements made in paragraphs 14 to 18 of the writ application, the deponent states that the deponent is not competent to comment on the same.

8. That as regards the statements and submissions made in paragraphs 19 and 20 of the writ application, the deponent does not admit anything beyond record. It is not correct that there has been any surpassing of the authority of the Assam Public Service Commission for short, 'APSC'

as well as of the Government of Assam by the Council, as alleged. It is not correct as contended that the Council lacks jurisdiction not to accept joining reports and the same is denied. The deponent states that as per Office Memorandum dated 31/12/1996 it is mandatory that a panel list of Officers be submitted to the Council before deputing any officer or staff in the Council such procedure having been bypassed by the Authorities of the State Government while posting the petitioners under the Council, the joining reports of the petitioners were not accepted. While re-iterating the statements made in paragraph 5 of the instant affidavit, the deponent re-iterates that the posting of the petitioners being not in conformity with the Office Memorandum dated 31/12/1996, the joining reports of the petitioners were not accepted.

9. That with reference to the submissions made in paragraph 21 of the writ petition, the deponent states that the posting of the petitioners being not in conformity to the mandatory procedure as laid down in Clause (H) of the Memorandum of Understanding dated 31/12/1996, their joining reports were not accepted. It is denied that the Council does not have jurisdiction to exercise their choice in selecting the candidates once they are selected and recommended by the A. P.S. C. It is denied as alleged that prior approval of Council before appointing the selected candidates is superfluous, extraneous and/or illegal. It is denied that such a condition in the Office Memorandum dated 31/12/1996 is ultra vires the Constitution and opposed to law. It is denied that the said Office Memorandum is liable to be declared as void ab-initio. The deponent states that the Memorandum of Understanding dated 31/12/1996 which holds the field till date is clear and transparent and the allegations and submissions to the contrary are denied. It is denied that there has been any extraneous, malafide, unfair and/or illegal exercise of choice in selecting candidates from select list by the Council.

It is further stated that collateral challenge made in respect of the Office Memorandum dated 31/12/96 in the instant writ application is not permissible under the law.

10. That with reference to the statements made in paragraphs 22 of the writ application, so far as the non-efforcement of the order dated 31/7/98 by the Council, the deponent begs to re-iterate and re-affirm the statements made in the preceeding paragraphs of this instant affidavit. It is denied that

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there is any controversy from the Council's stand point as the Office Memorandum dated 31/12/1996 which still holds the field is clear, transparent, and unambiguous. It is denied that so far as the answering respondents are concerned, there has been any arbitrary, illegal and/or unfair act and/or any act which is violative of the principles of natural justice. The rest of the statements being matters of record, the deponent does not admit anything beyond record.

11. That with reference to the statements made in paragraphs 23 and 24 of the writ application, while re-iterating the statements made in this instant affidavit, the deponent states that the Council was justified in refusing to accept the joining report of the petitioners for the reasons stated in the preceeding paragraphs.

12. That the statements made in paragraphs 1 to 11 are true to my knowledge, those made in paragraphs being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on the 28th day of February, 2007, at Guwahati.

Identified by :

DEPONENT

Advocate's Clerk

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ANNEXURE 7 B

89

OFFICE OF THE KARBI ANGLONG AUTONOMOUS COUNCIL
SECRETARIAT
DIPHU

No: KAAC/Esstt/ P(B)/ CAT/07/

Dtd,

To,

The Joint Secy. to the Govt. of Assam,
Environment and Forest Dept.
Dispur, Guwahati-6.

Sub: Regarding transfer/ release of Sri CM Sharma, IFS.

Ref: Govt. Notification No.FRE.6/90/272 Dtd. 17th July/07.

Sir,

In inviting a reference to the subject and Govt. notification no. cited above, I am directed to inform you that on receipt of court's order passed by the Hon'ble Central Administrative Tribunal, Guwahati dtd 02/03/07 the release/ transfer of Sri Chandra Mohan Sharma, IFS, Conservator of Forest, Karbi Anglong, Diphu, from the disposal of KAAC, Diphu remained unimplemented as status quo had to be maintained as on 02/08/07.

This is for favour of your kind information.

Your Faithfully,

Sd/-

Principal Secretary, i/c,
Karbi Anglong Autonomous Council,
Diphu

Memo No: KAAC/Esstt/ P(B)/ CAT/07/

5(A)

Dtd. 3-08-07

Copy to:-

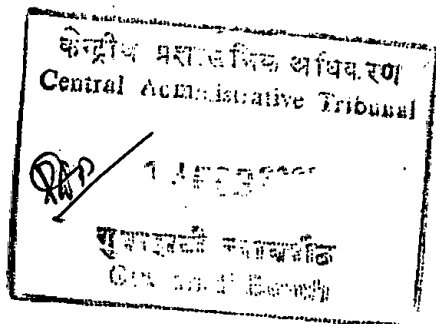
- (1) PA to Hon'ble EM, Deptt of Forest, KAAC, Diphu.
- (2) The CF, Karbi Anglong, Diphu for information with ref. to his letter No:CF/KA/Esstt/ 151/2004-05/749 dtd 02/08/07.
- (3) Office File.

Sd/-

Principal Secretary, i/c,
Karbi Anglong Autonomous Council,
Diphu

*Alfred
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



IN THE MATTER OF:

O.A.No.208/07
Sri Chandra Mohan Sharma
...Applicant

-Vs-

Union of India and ors.
...Respondent.

-AND-

IN THE MATTER OF:

Written statement on behalf of
the respondent no.1. and 3

(WRITTEN STATEMENT ON BEHALF OF THE RESPONDENT NO.1 and 3)

I, Smt. Monalisa Goswami daughter of Sri Niren Baruah presently serving as the Joint Secretary to the Government of Assam, Department of Environment and Forest, Dispur-781006, do hereby solemnly affirm and state as follows:-

1. That, I am Joint Secretary to the Government of Assam, Department of Environment and Forest, Dispur-781006 . Copies of the aforesaid application have been served upon the respondents including me where I am as party respondent no.3. I have gone through the application and being the Joint Secretary to the Government of Assam am conversant with the facts and circumstances of the case there of. I have been authorized to file this written statement on behalf of respondent no.1.

2. That, I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.

3. Reply to the facts of the case :

3.1. That with regards to the statements made in paragraphs 4.1 to 4.4 of the application, the humble answering respondent has

Filed by:-
The State of Assam
Respondent No.1 & 2
Monalisa Goswami
Joint Secy, Govt. of Assam
Dispur, 14/03/08
Monalisa Goswami
20

Received
Joint Secy
Assam
14/03/08

14 FEB 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

nothing to make comment on it, however it does not admit any statements which are contrary to records.

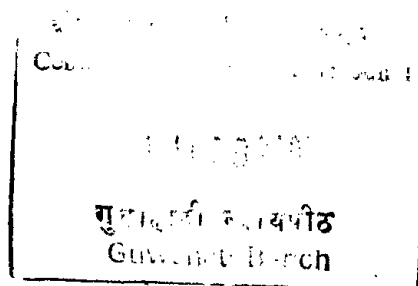
3.2. That with regards to the statements made in paragraph 4.5 of the application, the humble answering respondent begs to state that the drafts charges and statements of allegation which have been referred by the applicant of Sri J.Sarma are to be prepared by the applicant in his official capacity on the basis of records available and not in his personal capacity.

3.3. That with regards to the statements made in paragraph 4.6 of the application, the humble answering respondent begs to state that the applicant who joined the service as Conservator of Forest on 02.04.2003 has been completed more than 4 years of service, thus the order was issued without violating any office memorandum.

Moreover as regards to the provision of Office Memorandum dated 31.12.96, the Karbi Anglong Autonomous Council (KAAC) ~~it is stated that the body~~ did not raise any objection to it. Infact the KAAC has given their acceptance to the transfer of the applicant ordered by the Government of Assam vide their acceptance letter dated 02.08.07. It may be mentioned here that it is the KAAC who has the authority to raise objection, if any, and not by the applicant.

Further, the Chief Executive Member of KAAC who heads the Council has personally written a letter dated 04.08.07 to the Government of Assam, Ministry of Environment and Forest mentioning the direction issued to the applicant for handing over the charge. Hence, the question of State Government of violating the Office Memorandum does not arise at all.

3.4. That with regards to the statements made in paragraph 4.7 of the application, the humble answering respondent begs to state that the letter dated 21.07.07 issued by the Executive Member In-



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M. K. Das

Charge, Forest, KAAC, to the Principal Secretary, KAAC, has no relevance and got no significance.

3.5. That with regards to the statements made in paragraphs 4.8 of the application, the humble answering respondent reiterates and reaffirms the statements made in paragraph 3.3 of this written statements.

3.6. That with regards to the statements made in paragraphs 4.9 and 4.10 of the application, the humble answering respondent has nothing to make comment on it.

4. That it is to be stated here that the applicant as well as Respondent no.5 has already joined in their respective place of posting and accordingly handing over and taking over the charges have already been completed.

5. That it is stated that the impugned transfer order dated 17.07.07, of the applicant, was issued in the public interest and purely on administrative reason having no violation of any office memorandum and there is no malafide on the part of the respondent authority having no legal force for interference by this Hon'ble Tribunal and thus this Original Application is liable to be dismissed.

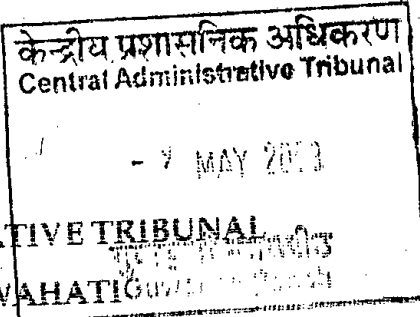
6. That is to be stated that law relating to transfer matter is well settled and the Apex Court has, time and again, held that transfer being exigency of service, it is for the authorities to decide whom to transfer where and when and the Court should be slow in interfering in such matter. The transfer order of the applicant is in no way punitive or malafide and hence, the applicant is not entitled to any relief in equity.

14 FEB 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION.

I, Smt. Monalisa Goswami daughter of Sri Niren Baruah presently serving as the Joint Secretary to the Government of Assam, Department of Environment and Forest, Dispur-781006, aged about 45 years do hereby verify that the statements made in paragraphs 1, 2, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, 3.26, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34, 3.35, 3.36, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42, 3.43, 3.44, 3.45, 3.46, 3.47, 3.48, 3.49, 3.50, 3.51, 3.52, 3.53, 3.54, 3.55, 3.56, 3.57, 3.58, 3.59, 3.60, 3.61, 3.62, 3.63, 3.64, 3.65, 3.66, 3.67, 3.68, 3.69, 3.70, 3.71, 3.72, 3.73, 3.74, 3.75, 3.76, 3.77, 3.78, 3.79, 3.80, 3.81, 3.82, 3.83, 3.84, 3.85, 3.86, 3.87, 3.88, 3.89, 3.90, 3.91, 3.92, 3.93, 3.94, 3.95, 3.96, 3.97, 3.98, 3.99, 4.00, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 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Filed by the applicant
through M. Dutta, advocate
on 06.05.08

O.A.No. 208/2007

Sri Chandra Mohan Sharma.

..Applicant

-Versus-

Union of India and others.

.... Respondents.

-And-

In the matter of: -

Rejoinder submitted by the applicant
against the written statement submitted
by the respondents.

The above named applicant most respectfully begs to state as under: -

1. That your applicant duly received a copy of the written statement submitted on behalf of the respondent no. 1 and 3 and carefully gone through the same and understood the contents made therein. The applicant specifically denies all the statements made in the written statement save and except the statements borne on records.
2. That your applicant while denying the statements made in paragraph 3.2, 3.3, 3.4 and 3.5 and further beg to say that it appears that although the impugned transfer order dated 17.07.2007 has been issued without any public interest but on extraneous consideration as because there are other Conservator of Forests, who were transferred and posted along with the applicant and in the meanwhile have already completed more than 4 (four) years of service in their particular station but they were not disturbed till date, whereas the applicant has been transferred on pick and choose basis and also on extraneous consideration without the approval of KAAC as required under the provision of office memorandum dated 31.12.1996, which is statutory in nature, mere silence of the KAAC on the issue and the alleged acceptance as well as the letter dated 04.08.2007 of the CEM, instructing the applicant to

Chandra Mohan Sharma

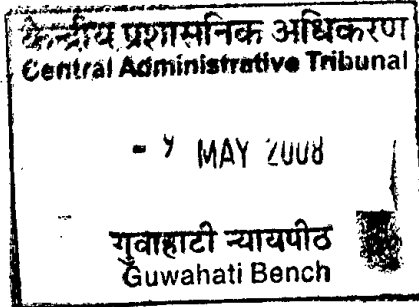
hand over the charge, does not give any liberty to any of the authorities to violate the statutory provision contained in the O.M dated 31.12.1996 under any Political pressure. Moreover the memorandum of chargesheet bearing no. FRS-74/2007/125 dated 22.10.2007, which is served upon the applicant since he has approached the Learned Tribunal against the impugned transfer order dated 17.07.2007, wherein it is revealed that the transfer order has been issued on the alleged ground of receipt of lots of complaints regarding illegalities, misappropriation of Govt. fund and also on the ground of commission of irregularities. As such it appears that the impugned transfer order dated 17.07.2007 is punitive in nature that too without providing any opportunity to the applicant, hence the statement made in para 3.3 is a misleading statement. It is relevant to mention here that the memorandum of chargesheet has been issued to the applicant with a malafide intention and all the charges are contrary to the records available with the Government. A separate detailed reply denying the charges has been submitted by the applicant before the competent authority.

(A copy of the memorandum dtd. 22.10.2007 is enclosed as Annexure-A), and the reply submitted by the applicant is enclosed as Annexure-B.

3. That your applicant further begs to say that mere handing over the charge in view of the vacation of interim order passed in O.A.No. 208/2007 cannot be a ground to make the original application as infructuous as stated in para 4 of the written statement.
4. That your applicant specifically deny the correctness of the statements made in paragraph 5 and 6 of the written statement and reiterates the statements made in the original application.

In the facts and circumstances stated above, the original application is deserves to be allowed with costs.

Chandra Mohan Sharma



VERIFICATION

I, Shri Chandra Mohan Sharma, IFS, S/o- Late Raghubir Singh, aged about 52 years, working as Conservator of Forest (under suspension), Border, office of the Chief Conservator of Forest (Territorial), presently resident of Caneshguri, Guwahati, Assam, applicant in the instant application, do hereby verify that the statements made in Paragraph 1 to 4 are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 6th day of May, 2008.

Chandra Mohan Sharma

Confidential

GOVERNMENT OF ASSAM
ENVIRONMENT & FOREST DEPARTMENT :: DISPUR

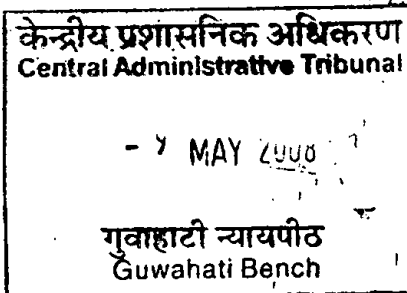
NO. FRS-74/2007/ 125

22
Dated 17th October 2007

MEMORANDUM

1. The Governor of Assam proposes to hold an enquiry against Shri Chandra Mohan Sharma, IFS (under suspension), c/o Chief Conservator of Forests (Territorial), Guwahati, under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. The substance of the imputations of misconduct or misbehaviour, and misappropriation of fund in respect of which the enquiry is proposed to be held is set-out in the enclosed Statement of Charges (Annexure 1). A statement of imputations of misconduct or misbehaviour and misappropriation of fund in support of each article of charges is enclosed (Annexure 2). A list of exhibits, documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained are also enclosed (Annexures).
2. Shri Chandra Mohan Sharma, IFS is directed under Rule 8 (5) of All India Services (Discipline and Appeal) Rules, 1969 to submit within 15 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. Shri Chandra Mohan Sharma, IFS is informed that an enquiry will be held in respect of those articles of charges which are not admitted. He should, therefore, specifically admit or deny each article of charges.
4. Shri Chandra Mohan Sharma, IFS is further informed that if he does not submit the written statement of defence on or before the date specified in Para 2 or does not appear in person before the Enquiry Authority or otherwise fails to or refuses to comply with the provisions of the Rules of the All India Services (Discipline and Appeal) Rules, 1969, or the orders / directions issued in pursuance of the said rules, the Enquiry Authority may hold the enquiry against him ex-parte.
5. Attention of Shri Chandra Mohan Sharma, IFS is invited to Rule 18 of the All India Services (Conduct) Rules, 1968, under which no member of the services shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to service under the Government.
6. Receipt of this memorandum may be acknowledged.

By Order in the name of the Governor of Assam



541 -
Comm. & Secretary to the Govt. of Assam,
Environment & Forest Department

Cont'd to p. 2

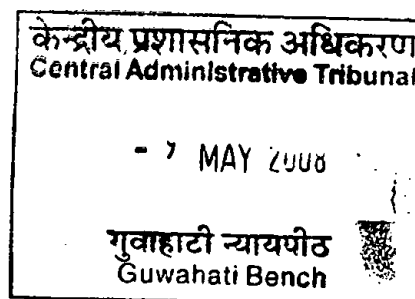
Attended
Mita
Advocate

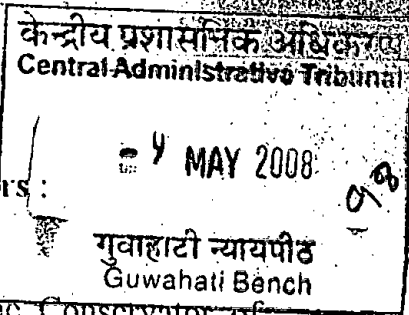
ARTICLE OF CHARGES

Charge No. 1 : Gross mis-conduct and un-authorized Communication of information :

That while Shri C.M. Sharma, IFS was the Conservator of Forests, in-charge of Karbi Anglong Circle from 10.04.03 to 31.08.07 lot of complaints regarding illegalities, mis-appropriation of Govt. fund, and irregularities have been received by the Govt. Accordingly Shri C.M. Sharma, IFS was transferred vide Govt. order No. FRE.6/90/272 dated 17.7.07, with a direction to hand over charge to Shri S.S. Rao. Though Shri Sharma IFS had completed more than 4 years in the same post but he refused to obey the Govt. order and in violation of Rule 17 of All India Services (Conduct) Rules, 1968 and without any prior sanction of the Govt. approached the Court for cancellation of transfer order issued by the Govt. of Assam. To vindicate his stand and to keep the court in dark he annexed a confidential letter (classified as a secret document) dated 27.09.2004 issued by Shri Semson Surin, the then Executive Member i/c Forests, Karbi Anglong Autonomous Council to Shri P. Bordoloi the then Minister i/c Forests, Govt. of Assam in violation of Rule 9 of All India Services (Conduct) Rules, 1968. It is not known how Shri C.M. Sharma, IFS could lay hand on such a secret document and produced in the Hon'ble Court for Personal gain. Accordingly Shri C.M. Sharma, IFS Conservator of Forests was, asked to explain his conduct within 15 days vide Govt. letter No. FRE.105/07/21 dated 20.09.07, but he failed to submit any reply till date.

Therefore, Shri C.M. Sharma, IFS is charged with gross mis-conduct and unauthorized communication of information.





Charge No. 2 : Insubordination and flouting of Govt. orders :

That while Sri C.M. Sharma, IFS was posted as the Conservator of Forests, Border, office of the Chief Conservator of Forests, Territorial, Assam he was asked to appear before Shri B.B. Dhar, IFS, C.C.F., H.R.D. & Vigilance, Assam vide letter No. PG.258/8/2007 dtd. 28.09.07 in connection with preliminary vigilance enquiry instituted by the Govt. into the allegations against him for irregular appointments, defalcation and mis-appropriation of Govt. funds, non-implementation of Plan Schemes and other irregularities during his tenure as the Conservator of Forests, Karbi Anglong Circle, Shri C.M. Sharma, IFS failed to appear before Shri B.B. Dhar, IFS, CCF, HRD & Vigilance, Assam on 03.10.07 but instead sent letter No. CM/Allegation/2007-08 dtd. 01.10.07 where-in he asked Shri B.B. Dhar, IFS, CCF, HRD & Vigilance, Assam "not to proceed with the matter till Council takes any decision in this".

Shri C.M. Sharma, IFS Conservator of Forests, Border Office of the CCF (Territorial) Assam was asked to appear vide letter dtd. 28.9.07 pursuant to the Govt. letter No. FRE-89/2007/82 dtd. 17.09.07 but he willfully abstained from appearance before the CCF, HRD & Vigilance, Assam on 03.10.07.

Therefore, Shri C.M. Sharma, IFS is charged with insubordination and flouting of Govt. order.

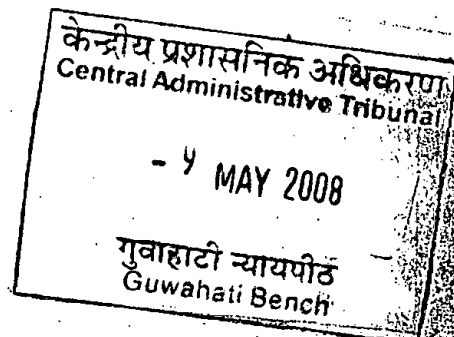
Charge No. - 3 : Connivance in illegalities in Violation of the orders of the Hon'ble Supreme Court.

That while Shri C.M. Sharma, IFS, Conservator of Forests was in-charge of Karbi Anglong Circle illegal sawn timbers were detected by the Hon'ble Executive Member i/c Forests etc. along with local Senior Forests Officers in the premises of M/s Rajendra Saw Mill, Diphu on 05.01.06 and the

Saw mill was found running without a saw mill Licence. Hon'ble Executive Member, i/c Forests, directed the staff to take immediate action as per law. Keeping in view the gravity of the illegalities, as per the orders of the Hon'ble Executive Member, i/c Forests, Shri C.M. Sharma, IFS, Conservator of Forests was asked to enquire into the alleged irregularities observed by the Hon'ble Executive Member, i/c Forests, Karbi Anglong Autonomous Council at M/s. Rajendra Saw Mill, Diphu on 05.01.06, vide letter No. KAAC/F/Enquiry/1/2005-06/2959 dtd. 16.01.06. Shri C.M. Sharma, IFS, did not enquire into these illegalities but without any orders from the Council authority entrusted this enquiry to Shri J.S. Bey, DFO, N.A. Division and Shri J.N. Hazarika, DFO, Karbi Anglong East Division. It is not known why no report on illegalities and measures for cancellation of saw mill licence were taken by Shri C.M. Sharma, IFS despite the directives of the Hon'ble Executive Member, i/c Forests.

Shri C.M. Sharma, IFS on 30.08.07 convened a meeting as per the minutes of the meeting issued vide his Memo No. CF/KA/Saw Mill/Licence/5/2005-06/1008-12 dtd. 30.08.07 he allowed renewal the Saw Mill Licence based on the enquiry report dated 22.08.07 given by Shri J.N. Hazarika, DFO, Karbi Anglong East Division and Shri J.S. Bey, DFO N.A. Division, Diphu without any permission from the Council Authority. Shri C.M. Sharma IFS, Conservator of Forests did not conduct the enquiry regarding detection of illicit timbers being Sawn illegally within the saw mill without the licence for 2006 in utter dis-regard to the orders of the Hon'ble Executive Member, i/c Forests, Karbi Anglong Autonomous Council nor he submitted any report to the Council Authority.

Therefore, Shri C.M. Sharma, IFS, is charged with connivance in illegalities in violation of the orders of the Hon'ble Supreme Court.



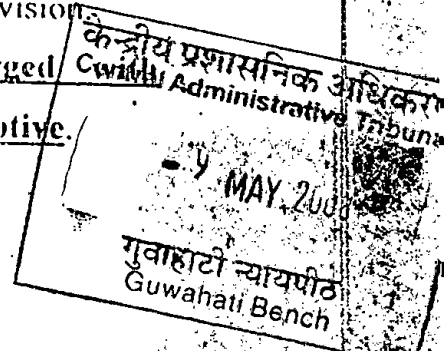
Charge No. 4 :

Defalcation and mis-appropriation of Govt. fund with
ulterior motive.

That while Shri C.M. Sharma, IFS, Conservator of Forests, was in-charge of Karbi Anglong Circle, he submitted a Bill to the Chief Engineer (Hydro), ASEB vide letter No. CA/KA/Power/2/99-2005/418 dtd. 01.07.2005, surreptitiously without any information to the State Nodal Officer, Govt. of Assam asking for deposition of Rs. 3,68,62,042 which had been assessed and informed to the State Nodal Officer on account of diversion of 582.899 Ha of U.S.F. area, 3.888 Ha of Plantations and 529 Nos. of trees valued at Rs. 12,10,713.00 by the Principal Secretary, Karbi Anglong Autonomous Council, Diphu vide letter NO. KAAC/P-29/(Misc)95/1223 dtd. 17.8.2001. This amount of Rs. 3,68,62,042.00 was send to Shri C.M. Sharma IFS by the Project Manager, ASEB, vide his letter No. PM/KLIIEP/A-I(Forest)/05/1447 dtd. 06.01.06 without any information to the State Nodal Officer and the State Govt. Shri C.M. Sharma, IFS deposited the amount in the PH. Account operated by him.

Shri C.M. Sharma, IFS without any information to the State Nodal Officer and the State Govt. started expending the fund from 22.03.2006 through the DFO, Hamren Division. The matter was taken up by Dr. U.P. Upadhyaya, Additional Director, North Eastern Regional Office, MoEF, Govt. of India, Shillong vide his letter NO. RONE/E/IA/AS/IIIEP/4/4931-32 dtd. 01.03.06 wherein he specifically mentioned that the Project Area falls within the USF category and attracts the provisions of the F.C. Act 1980. Further, the State Nodal Officer also requested Shri C.M. Sharma, IFS to deposit the fund in the CAMPA immediately within two weeks as per directions of the Hon'ble Supreme Court and the Director General of Forests and Special Secretary, MoEF, Govt. of India vide letter No. FG.27/Nodal/KEIIE Project dated 31.05.06. But Shri C.M. Sharma IFS in total dis-regard had failed to deposit the fund and continued to expend the fund through the DFO, Hamren Division.

Therefore, Shri C.M. Sharma, IFS is charged
defalcation and mis-appropriation of Govt. fund with ulterior motive.



Charge No.5 :

Connivance in illegalities in Violation of the F.C.
Act'1980 and the Supreme Court's orders.

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That while Shri C.M. Sharma, IFS Conservator of Forests was in-charge of Karbi Anglong Circle large-scale illicit felling in the Matipung Reserve Forests, Daldoli Reserve Forests & Dhansiri Reserve Forests had taken place and illegal construction of road through the Reserve Forests of Matipung upto Dhansiri leading to clearance of Teak and Bamboo plantations and encroachment of Forest areas took place. The matter was taken up by Shri Jotson Bey, Hon'ble Member of Autonomous Council and Ex-Chief Executive Member, Karbi Anglong Autonomous Council with the Chief Conservator of Forests, Central, Govt. of India, Shillong who in turn took up the matter with the Principal Chief Conservator Forests of Assam. Shri C.M. Sharma IFS was directed to take immediate action and to submit detailed report after personal enquiry vide letter No. FG.16/illegalities/KA/06 dtd. 10.08.06. But Shri C.M. Sharma, IFS did not take any action and instead connived in the illegalities by allowing encroachment, illicit fellings and non-forestry activities of construction within the Reserve Forests in violation of the provisions of the F.C. Act'1980.

Therefore, Shri C.M. Sharma, IFS is charged with connivance in
illegalities in violation of the F.C. Act 1980 and orders of the Hon'ble
Supreme Court.

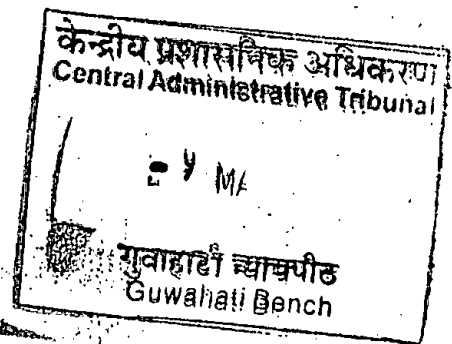
*Attested
Advocate*

Commissioner & Secretary to the
Govt. of Assam
Environment & Forest Deptt., Dispur

प्रशासनिक अधिकरण
Central Administrative Tribunal
- 4 MAY 2008
गुवाहाटी ब्याचपीठ
Guwahati Bench

To,

The Commissioner & Secretary
Government of Assam,
Environment & Forest Department,
Dispur, Guwahati - 6.



Ref:- Memorandum of charges issued vide Communication bearing
No. FRS-74/ 2007/ 125 dated 22.10.07.

Sub:- Written Statement of defence.

Sir,

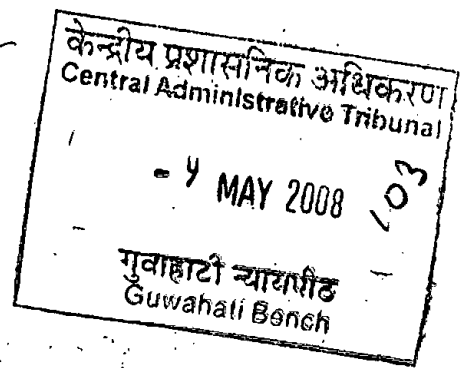
With due deference and profound submission, I beg to lay before your honour the following few lines for kind consideration and necessary action;

That I am an IFS Officer of the 1984 batch belonging to the Assam Segment of the Assam Meghalaya Joint Cadre. I have had a blemishless service career which is now being sought to be undone by way of issuance of the memorandum of charge, under reference.

On a perusal of the charges levelled against me vide the memorandum of charges under reference it is clear that the charges pertain to my tenure of service with the Karbi Anglong Autonomous District Council. My services were placed at the disposal of the said Council by the Government of Assam vide order dated 02.04.03 and I continued to serve under the said Council till 01.09.07. The charges levelled against me having purportedly arisen in course of my service with the said Council and the Council having not preferring to bring any charges against me and also having not made any request to the Government of Assam for having any such charges, the Government of Assam cannot suo-motto proceed to frame charge against me on this count.

That in the back ground of the said factual matrix, I would like to raise before your honour the following preliminary objections with regard to the memorandum of charges under reference;

*Attested
Mulla
Advocate*



PRELIMINARY OBJECTIONS:-

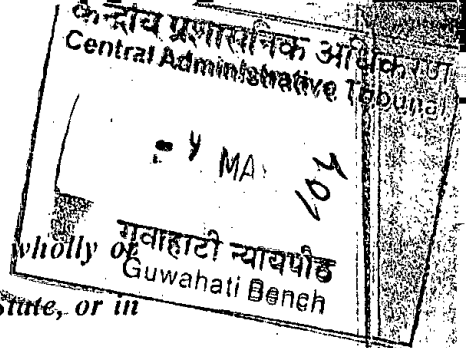
1. That a mere perusal of the memorandum of charge under reference, would reveal that all the five charges as framed against me therein, pertain to the services rendered by me with the Karbi Anglong Autonomous Council. It is further revealed that the Council has never preferred to bring any charge against me. The Council vide letter dated 26.09.07 (Annexure - 1) informed the Government of Assam that allegation, if any, may be referred to the Council as Forests is a transferred subject to the Council. In this view of the matter, the Government of Assam cannot suo-motto institute a disciplinary proceeding against me and as such the memorandum of charges under reference has been issued without any locus-standi. The memorandum of charges under reference, therefore, requires to be withdrawn.

The nature of charges levelled against me vide the memorandum of charge, under reference, clearly reflects the malafide behind the issuance of the same. It is feared that the memorandum of charge under reference is nothing but a ploy to get back to me for the initiative taken by me for having my grievance with regard to an order of transfer dated 17.07.07 redressed by assailing the same before the Hon'ble Central Administrative Tribunal. This contention is proved to be correct merely on perusal of the ingredients of charge no. 1 wherein an allegation has been levelled that I had approached the Hon'ble Tribunal without prior sanction of the Government.

2. That the manner and method in which a disciplinary proceeding is to be instituted against an All India Services Officer and the authority competent to institute such proceeding has been prescribed under the provisions of the All India Services (Discipline and Appeal) Rules, 1969. The provisions of Rule 7 (b) of the said Rules of 1969 are quoted below;

"...If such act or omission was committed after his appointment to the service:-

(i) While he was serving in connection with the affairs of a State, or is deputed for service under any company, association or



body of individuals, whether incorporated or not, which is wholly or subsequently owned or controlled by the Government of a State, or in a local authority set-up by an Act of the Legislature of that State, the Government of that State.

(ii) While he was on training, the Central Government unless the selection for the training was done by the State Government and the cost of the Training was entirely borne by the State Government.

(iii) While he was on leave, the Government which sanctioned him the leave; or

(iv) While he was under suspension, the Government which placed him or is deemed to have placed him under suspension; or

(v) If such act or omission is willful absence from duty after the expiry of leave, the Government which sanctioned the leave; or

(vi) While he was absent from duty otherwise than on leave, the Government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty; or

(vii) The Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company associations, body of individuals, or local authority, as the case may be under whom he is serving at the time of institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings."

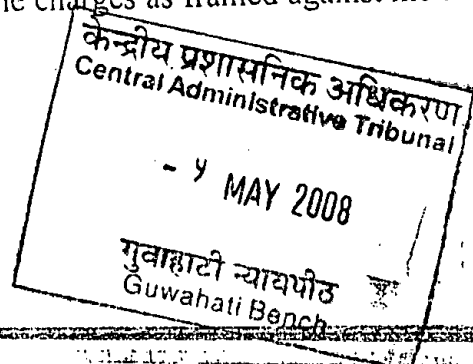
In my case the charges framed against me pertain to the period of service rendered by me with the Karbi Anglong Autonomous Council. The

Karbi Anglong Autonomous Council figuring in the Sixth Schedule of the Constitution of India is governed by the Provisions of Article 244-A of the Constitution of India. In terms of the provisions of Article 244-A of the Constitution of India, it is the Parliament who by law may form an Autonomous State, within the State of Assam comprising all or any of the tribal areas specified in Part - I of the table appended to Paragraph - 20 of the Sixth Schedule. The Parliament can also create a body to function as a legislature for the Autonomous State. In this view of the matter, it is the Central Government who under above quoted Rule 7 (b) (vii) is competent to institute the disciplinary proceedings and Government of Assam is not empowered to institute proceeding and thereby put me under suspension under the provisions of the All India Services (Discipline and Appeal) Rules, 1969. As such, the memorandum of charges under reference and suspension order dated 11.10.07 are clearly without jurisdiction. The very initiation of the proceeding against me being in clear violation of the provisions of the All India Services (Discipline and Appeal) Rules, 1969, the continuance of the same is not called for and the memorandum of charges under reference and suspension order are required to be withdrawn.

That the above noted preliminary objections may be closely perused by your Honour and I may be granted justice by dropping the proceeding being sought to be initiated vide issuance of the memorandum of charge under reference.

Without prejudice to the preliminary objections taken by me with regard to the maintainability of the memorandum of charge under reference and also without prejudice to my right to prefer an effective and detailed reply on getting relevant records etc as prayed for vide my communications dated 27.11.07 and 06.12.07 and inspection of documents and files concerning my transfer dated 17.07.07, licencing committee for wood based industries for Karbi Anglong, eviction of encroachment of Forests land (Karbi Anglong) and Karbi Langpi Hydro Electric Project etc., I prefer my reply to the charges framed against me vide the memorandum of charge under reference as under.

At the very outset I deny all the charge levelled against me vide the memorandum of charge under reference. The charges as framed against me are



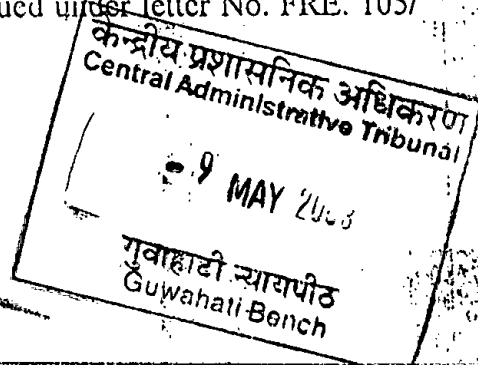
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all perverse, vague and indefinite. The allegations, as levelled against me, are all baseless and have been so levelled without first appreciating the actual facts as existing in the matter. The charges framed against me and the material relied thereon do not disclose any misconduct on my part.

A. That with regard to the charge no. 1 as framed against me vide the memorandum of charge under reference, I categorically deny the same and state that the allegation as levelled against me therein are vague to the core of it and the same does not reflect any misconduct on my part. While it is true that I was subjected to transfer vide issuance of order dated 17.07.07 and I deemed it fit and proper to have the matter looked into by a court of law. Further, my stand was vindicated by the Hon'ble Central Administrative Tribunal by taking cognizance of my application against my said transfer and was pleased to order for maintaining status-quo. That I was transferred by Government of Assam due to some so called complaints against me and I refused to handover the charge to Sri S.S. Rao, IFS, is not based on facts and the same is categorically denied by me. The Rules governing me and also the Central Administrative Tribunal Act, 1995, nowhere specifies that an All India Services Officer cannot approach a court of law without obtaining prior sanction from the Government concerned in this regard. In this context the charge levelled against me that I had approached the court for cancellation of my transfer order without prior sanction of the Government in purported violation of the provisions of Rule 17 of the All India Services (Conduct) Rules, 1968, is clearly unsustainable and the same does not disclose any misconduct on my part. The provisions of Rule 17 of the All India Services (Conduct) Rules, 1968, has got no application in the present facts and circumstances and the same is applicable only in the event when the official act has been the subject matter of adverse criticism or attack of a defamatory character.

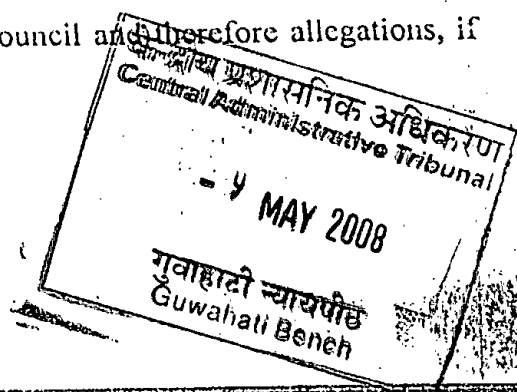
The charge that I had sought to keep the court in dark and had annexed a confidential letter dated 27.09.04 issued by the then Executive Member I/C Forest, Karbi Anglong Autonomous Council and that I had failed to disclose as to how I could lay my hand on such a document and produced the same before the court for personal gain, is categorically denied by me. It is stated that in response to the Government communication issued under letter No. FRE. 105/



07/ 21 dated 20.09.07, I had vide my communication dated 09.10.07, (Annexure - 2), replied within the time period so specified, to the said allegation and had therein clearly stated as to how the said document came to my knowledge and possession. Reiterating the stand taken by me in my said communication dated 09.10.07, I state that the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council had vide his communication dated 30.09.04 forwarded to me a copy of the communication dated 27.09.04. The copy of the communication dated 27.09.04 as produced by me before the Hon'ble Tribunal is in fact a copy of the said communication as forwarded to me by the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council. Moreover, the said communication dated 27.09.04 was never treated as a classified secret document and the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council had forwarded to me a copy of the said communication dated 27.09.04. As such, the allegation as levelled against me of violating Rule 9 of AIS (Conduct) Rule, 1968 in this connection is without any basis whatsoever.

In view of the above, it is clear that the charge no. 1 are all perverse and do not disclose any misconduct on my part. The charge no. 1 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

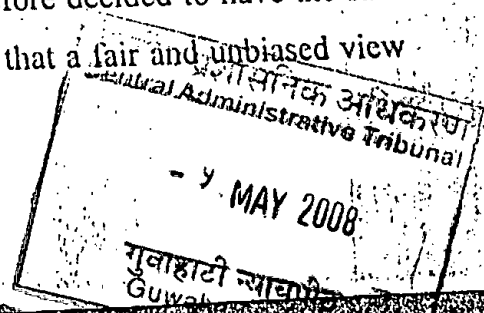
B. That with regard to the charge no. 2 framed against me vide the memorandum of charge under reference I categorically deny the same and state that I had in no way even contemplated to disregard or dishonour the enquiry that was proposed to be carried out by Sri B.B. Dhar, IFS, C.C.F. I categorically deny that I had willfully abstained from appearing before the said enquiry officer. The communications forming the basis of the said charge would show that the enquiry that was sought to be held was in relation to the purported anomalies alleged against me, to have been committed by me during the period of my service with the Karbi Anglong Autonomous Council. In view of the said purported allegation, it was the authorities of the said Council who had the jurisdiction in the matter. The Council authorities had vide communication dated 26.09.07 informed the Joint Secretary, Forest, Assam that Forest is an entrusted subject to the Council and therefore allegations, if



any, against me, may be referred to the Council. The Council being the appropriate authority to look into the matter, the Government of Assam could not have proceeded suo-motto. Further, Sri B. B. Dhar, IFS, CCF had already approached the authority of Karbi Anglong Autonomous Council in this connection on 31.08.07 and met the Forest Official including the undersigned at Diphu. Sri B.B. Dhar IFS, CCF informed that Council assured to look into the matter and decision if any will be communicated later. As such I had only requested Sri Dhar, IFS, CCF vide my communication dated 01.10.07 (Annexure - 3) to keep the enquiry in abeyance till a decision in the matter is arrived at by the Karbi Anglong Autonomous Council. My said request in the fact and circumstances of the matter cannot be in any manner be construed to be an act of insubordination and/ or of flouting Government order. My above contentions were reinforced by the Council's decision asking Government of Assam to refer the allegation, if any to the Council as forest is a transferred subject to the Council. It is pertinent to mention here that after the said development, there was no further proceeding in the matter involving me and I was never communicated with any decision towards rejecting the prayer made by me vide my communication dated 01.10.07. The said facts and circumstances clearly reflect that the charge no. 2 is perverse and no misconduct can be attributed to me basing on the same.

In view of the above, it is clear that the charge no. 2 are all perverse and do not disclose any misconduct on my part. The charge no. 2 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

C. That with regard to the charge no. 3 framed against me vide the memorandum of charge, under reference, I categorically deny the same and state that on receipt of Council's communication dated 16.01.06 an enquiry was ordered by me, with intimation to the Karbi Anglong Autonomous Council, with regard to the alleged irregularities as observed by the then E.M, Forests, Karbi Anglong Autonomous Council. Being the Chairman of the licencing committee for Karbi Anglong, I had deemed it fit and proper not to have the said enquiry conducted by me and therefore decided to have the said allegations enquired into by a team of DFO's so that a fair and unbiased view



24 MAY 1999

गुवाहाटी न्यायपीठ
Guwahati Bench

can be taken by the licencing committee. A team of senior DFO's i.e. Sri J.S. Bey, AFS and Sri J.N. Hazarika AFS so constituted, ^{with intimation to the Council} examined the matter and checked the said saw mill thoroughly. As per the enquiry report submitted by them, no irregularities were found, as sought for in the above inquiry. A separate report was also called for by me from Sri R.P. Singh, IFS, DFO concerned and he had submitted the report highlighting that no irregularity was found and the said mill was not running since January 2006. The licencing committee on consideration of the said enquiry report proceeded to arrive at a decision to renew the licence of said saw mill. The said steps were taken by me strictly in accordance with the procedure prescribed and licencing Committee had for the purpose considered the enquiry report available on records. It is pertinent to mention here that the licencing committee as per rule is empowered to take a final decision for renewal of licence for saw mills and there is no requirement for seeking permission/ approval of Council in this regard. However, the Council was kept informed about the matter in this regard (Annexure - 4). I categorically state that no direction of the Hon'ble Supreme Court has been violated inasmuch as the licence of the said saw mill was renewed by the licencing committee on the basis of finding of enquiry committee and by following the procedure prescribed.

The charge that there was violation of the directives passed by the Hon'ble Supreme Court in the matter is clearly unsustainable and the directions of the Apex Court have been sought to be applied out of context which is uncalled for.

In view of the above, it is clear that the charge no. 3 are all perverse and do not disclose any misconduct on my part. The charge no. 3 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

D. That with regard to the charge no. 4 framed against me vide the memorandum of charge under reference, I categorically deny the same and state that K.L.H.E Project was given Environmental Clearance by the Department of Science and Technology, GOI, vide dated 30.01.79 and 642.628 Hectare of sarkari and patta land were handed over to the ASEB on 27.03.80

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by the Assistant Revenue Officer prior to the enactment of Forest (Conservation) Act, 1980 (Annexure - 5, 6 & 7). As such provisions of Forest (Conservation) Act, 1980 are not applicable for K.L.H.E Project. Accordingly, Forest clearance for K.L.H.E project was issued vide dated 04.02.05 by me to ASEB (Annexure -8) with intimation to PCCF, Assam and MOEF, Govt. of India along with relevant documents which enabled the ASEB to draw NEC fund of Rs. 100 Crores. While clearing the said project in 1979, the Department of Science and Technology, GOI, stipulated for safeguarding all Environmental aspects which necessitated the release of fund by the ASEB to CF, Karbi Anglong under Karbi Anglong Autonomous Council vide dated 06.01.06.

With regard to the show cause notice dated 01.03.06 (Exhibit - XV) issued to ASEB by CCF (Central), GOI, Shillong for clearance of said project under Forest (Conservation) Act, 1980 and compliance of measures as stipulated by the Science and Technology Department, the matter was clarified by Sri A.C. Bhuyan, Chief Engineer (Hydro), ASEB (Annexure - 9) in the meeting held on 24.03.06 at Shillong, The said meeting was attended by Sri A. Swargiary, IFS, then Nodal Officer, Dr. V.P. Upadhyay, Addl. Director, Sri M.K. Dhar, DFO Hamren and the undersigned. On being satisfied that the said show-cause notice had no substance, the same came to be withdrawn on 31.05.06 by the CCF (Central), Government of India, Shillong (Annexure - 10). As mentioned in the charge that information regarding release of money by ASEB was not given to the State Nodal Officer is factually in-correct as the same was clearly mentioned in the above meeting at Shillong and subsequently ASEB vide No., ASEB/ CEH. 76/ 94/ Pt-II/ 45, dated 25.04.06 (Annexure- 9) informed the PCCF, Assam about the same. Mode of expenditure of money as well as detailed approved plan with total area to be covered were specifically mentioned in the said Annexure - 9 and was in the knowledge of PCCF, Assam. Hence the charge that the fund was being spent without information to the said Nodal officer is without any substance.

Pursuant to the decision of withdrawing the show cause notice it was clear that the said project was not attracting the provisions of Forest (Conservation) Act, 1980. It is surprising that the same Nodal Officer who was

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one of the participant in the above stated meeting held on 24.03.06 at Shillong shot a letter dated 31.05.06 (Annexure - 11) asking to deposit money with CAMPA as released by the ASEB. Accordingly, it was again clarified to the Nodal Officer by me vide letter dated 04.07.06 (Annexure - 12) that ASEB had released the funds for safe guarding of Environmental aspects as stipulated by the Department of Science & Technology, Government of India while issuing Environmental Clearance in 1979 for the said project and ASEB had acquired the revenue/ Patta land for construction of the said Hydro Electric Project on 27.03.80 prior to the enactment of the Forest (Conservation) Act, 1980. Therefore, the fund received from ASEB need not be deposited with CAMPA inasmuch as the directives of the Hon'ble Supreme Court of India and the Government of India have got no application in the said matter.

Thus, it is evident that there is no defalcation and no misappropriation of fund as alleged and the matter has been twisted so as to hoist a charge against me. I categorically state that a proper examination of the matter would have brought to the forefront the hollowness of the charge No. 4.

The action plan for Catchment Area Treatment Plan (CATP) was prepared in consultation with CCF (Central), Government of India, Shillong and was approved by the authority of Karbi Anglong Autonomous Council (Annexure - 13). A part of the fund earmarked for the purpose was released to the DFO Hamren, who is the implementing authority, as per approved plan, so as to ensure that the compliance report on environmental stipulations with requisite data could be submitted to the Government of India, as directed by the CCF (Central), Government of India, Shillong. The said work of CATP executed by DFO Hamren was verified in the field and monitored by an independent monitoring committee and a copy of monitoring report reveals that the said project is being implemented as per the plan (Annexure - 14).

In view of the above, it is clear that the charge no. 4 are all perverse and do not disclose any misconduct on my part. The charge no. 4 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

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24 MAYगुवाहाटी न्यायपीठ
Guwahati Bench

E. That with regard to the charge no. 5 framed against me vide memorandum of charge, under reference, I categorically deny the same and state that action for evicting of encroachers in Matipung DCRF who are mainly victims of ethnic clashes of 2005, had been initiated much prior to the receipt of complaint sent by the PCCF, Assam and efforts were being made continuously in this regard (Annexure - 15, 16 & 17). Prompt action was being taken by the DFO concerned by intensifying patrolling, lodging of FIR's, seizure of timber, arrest of culprits etc. (Annexure - 18, 19 & 20)

The road through Matipung to Dhansiri via Matipung DCRF is a District Council road recognized in the Assam Gazette dated July 1st 1979 (Annexure - 21) and is being maintained by the Council since its inception prior to the promulgation of the Forest (Conservation) Act, 1980. Hence, question of violation of Forest (Conservation) Act, 1980 as alleged does not arise.

It may be mentioned that prompt & proactive actions were taken to control illegal felling of trees in Doldali and Dhansiri Reserved Forest by the DFO concerned seeking co-operation from the Police and Civil authorities. The steps taken in the matter was being closely monitored by me and I was involved in the matter by co-ordinating with all concerned. (Annexure - 22, 23, 24 & 25). Public meetings were held involving civil and police official and public representative including local E.M, KAAC for creating public awareness and seeking their co-operation for preventing illegal felling etc. On my initiatives, Section 144 banning illegal felling and movement of any kind of timber in the Matipung, Doldali, Dhansiri etc were imposed time to time by the District Magistrate, Karbi Anglong.

Further, it is stated that designated camp of cease fire cadres of DHD were established in the said Doldoli R.F. in the year 2002 in violation of Forest (Conservation) Act, 1980 and orders of the Hon'ble Supreme Court which specifically prohibit the use of Forest land for non forestry activities. The said violations occasioned during the tenure of Sri B. B. Dhar, IFS the then Conservator of Forests, Karbi Anglong. Sri B. B. Dhar, IFS, took no action neither informed the concerned authorities against such blatant violation of the

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केन्द्रीय प्रशासनिक न्यायाधीश
Central Administrative Tribunal
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गुवाहाटी न्यायाधीश
Guwahati Bench

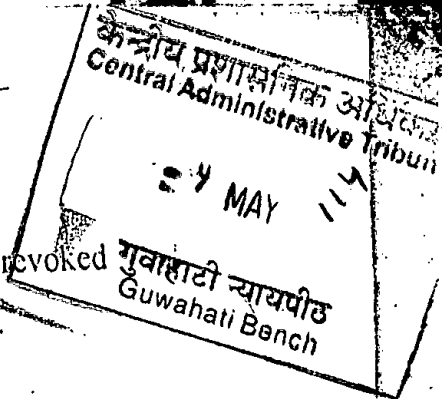
Forest (Conservation) Act, 1980 and also the orders of the Hon'ble Supreme Court of India issued in this connection. However, the undersigned on joining under the Council, immediately took initiative in the matter and with due intimation to the Council as well as Government of Assam, requested for taking necessary action for shifting of designated campus from Doldali Reserve Forest (Annexure - 26, 27 & 28). The activities undertaken by the said activists of DHD in their said camps existing within the Doldali Reserve Forest is the main reason behind illegal felling and other illegal activities taking place within the said Reserve Forests. The ground rules for these designated camps prohibit even the security forces to patrol within the radius of one K.M of the designated camp and the said Rule now has the effect of encouraging illegal activities in the said Reserve Forest. All the efforts undertaken by the Forest Department with active co-operation from the police and the civil administration to evict the encroachers and also to apprehend the culprits involved in the illegal activities within the said Reserve Forest were met with stiff armed resistance resulting in one case of death of one Magistrate.

In spite of several request made to the Government of Assam no action was taken and thereafter the Council having no alternative preferred a petition which will speak for itself, before Central Empowered Committee Constituted by the Hon'ble Supreme Court of India against the State of Assam and the Government of India for violation of the Forest (Conservation) Act, 1980 and destruction of forests (Annexure - 29).

It is learnt that recently eight trucks loaded with illegal timber from Doldali Reserve Forest were intercepted and seized by Police and Forest Staff of Karbi Anglong. The said action led to the miscreants taking revenge by killing a Police Havildar Late Praful Kajyung who was involved in the said operation. This shows their continued impunity to destruct forest wealth and other illegal activities inside the Doldali and Dhansiri Reserve Forest.

In view of the above, it is most respectfully prayed that your honour would be pleased to dispassionately consider the contentions as raised by me herein above and also examine the connected records and be pleased to drop the charges framed against me vide the show cause under reference,

exonerating me from the same. Further, the order of my suspension be revoked and I be reinstated in my service with all consequential service benefits.



That as I have been deprived of the documents relevant to the charges brought against me and also statement of allegation and list of documents which have not been served on me, I am handicapped from preferring an effective reply. Accordingly, I reserve my right to prefer an effective reply in the matter after I have been given access to the documents and records mentioned herein above. I also reserve my right to produce the documents supporting my contentions at a later stage after I have been given access to the said documents and records.

That in the event of your Honor being pleased not to accept the contentions made by me herein above in defence of the charges framed against me and besides to have an enquiry initiated against me, I pray that I be given a personal hearing in the matter and I be permitted to produce documents and witnesses in support of my defence during the enquiry.

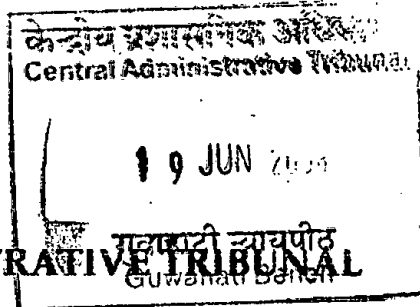
I hope and trust that your honour would be pleased to revoke my suspension and reinstate me in my service forthwith and the memorandum of charge under reference, would be dropped and thereby I would be afforded an opportunity to continue to serve the State with the same vigour and enthusiasm as before. I assure your Honour that on being reinstated I will continue to work to the satisfaction of your Honour and my services would be meritorious as before.

Yours faithfully,

Encl:- As stated above

Chandra
Chandra Mohan Sharma, IFS
Conservator of Forest, (u/s)
O/o- Chief Conservator of Forests, (T)
Guwahati - 1.

*Attended
Advocate*



115
Filed by the applicant
through U. Dutta, advocate
on 18.06.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Rejoinder in O.A. No. 208/2007

Shri Chandra Mohan Sharma : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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4.	B	Copy of reply dated 08.02.08	13-25

Received
M. A. Assam.
18/6/08

18/6/08

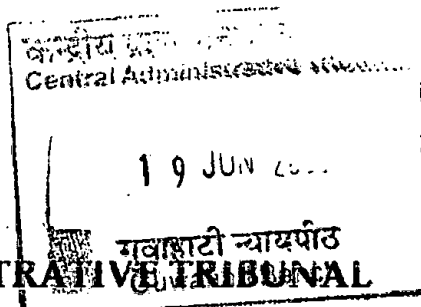
Date: - 18.06.08

Filed By:

U. Dutta

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI



11/6
Filed by the applicant
through U. Dutta, Advocate
On 18.06.08

In the matter of:-

O.A. No. 208/2007

Sri Chandra Mohan Sharma.

....Applicant

-Versus-

Union of India and others.

.... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant
against the written statement submitted
by the respondent No. 1 and 3.

The above named applicant most respectfully begs to state as under:-

1. That your applicant carefully gone through the written statement submitted by the respondent State of Assam and understood the contents thereof.
2. That with regard to the statements made in para 3.2, 3.3, 3.4 and 3.5, the applicant specifically denies the contents therein and further beg to say that 4 years service has been completed by all other Conservator of Forest who were transferred and posted in different district of State of Assam along with the applicant, but none of them were disturbed from their existing place of posting in spite of the fact that all those Conservator of Forest have already completed more than 5 years of service in the present place of posting but the applicant have been picked up for transfer and posting on extraneous consideration without any public interest, which is confirmed from the records placed earlier before the Ld. Tribunal at the

Chandra Mohan Sharma

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1/2

Chander Mohan Sharma

time of vacating the interim order passed by the Ld. Tribunal on 02.08.2007 at the admission stage. It reveals from the official record that at the instance of a vested circle a proposal for transfer and posting of the applicant was initiated by the Hon'ble Minister of environment and P&S, I& PR, Dispur, Assam and the same was placed before the Hon'ble Chief Minister, Assam as appeared from the order dated 31.08.2007 passed by the Hon'ble Tribunal in M.P. No. 83/2007 and M.P No. 80/2007 in O.A No. 208/2007 and accordingly obtained the approval of the Hon'ble Chief Minister of Assam. In the said proposal of transfer and posting of the applicant, the Hon'ble Minister of Environment and Forest, Assam also proposed posting of respondent No. 5 in place of the applicant and accordingly the impugned notification dated 17.07.2007 has been issued by the Govt. of Assam without any consultation with the KAAC as required under clause (H) of the O.M dated 31.12.1996.

It is categorically stated that the KAAC has raised specific objection, which is evident from the letter dated 21.07.2007 (Annexure- 5) issued by the Executive Member, KAAC, Dispur (Forest in charge) addressed to the Principal Secretary of the council. But ultimately, because of political pressure the council was compelled to release the applicant without raising any further objection. As such it appears that the impugned notification dtd. 17.07.2007 transferring the applicant from Diphu to Guwahati is malafide and the same has been done without any public interest. It is also relevant to mention here that the KAAC also cannot act contrary to the provision laid down in O.M dtd. 31.12.1991 and the council is also not entitled to raise their objection for enforcement of the provision of O.M dtd. 31.12.1996 in a selective manner as it appeared from some of the decision of Hon'ble Gauhati Court that in some cases the council is raising objection when Govt. employee are placed or withdrawn from their disposal without any formal consultation but in the instant case the council lodged the complain for violation of clause 'H' of O.M dtd. 31.12.1996, while passing the impugned notification dtd. 17.07.2007.

It is specifically denied that letter dated 21.07.2007 has no relevancy as alleged in para 3.4 of the written statement. The respondent No. 1 and 3 have no jurisdiction to pass comments on a letter issued by the Executive

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गुवाहाटी न्यायाधीश
Guwahati Bench

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Chandra Mohan Sharma

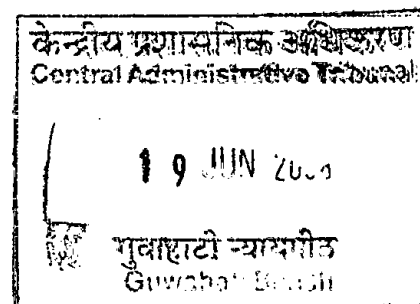
Member of KAAC. The applicant reiterates the statement made in the original application.

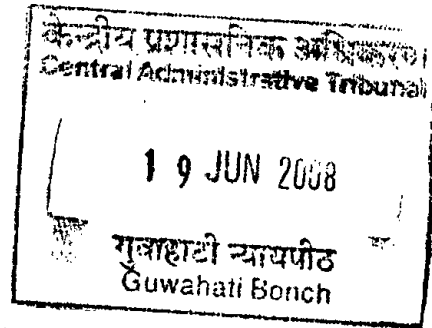
3. That with regard to the statements made in paragraph 4, 5 and 6 the applicant categorically denies the statements of the respondents made therein and further begs to say that it appears from the memorandum of charge sheet served upon the applicant while placing him under suspension on 11.10.2007, issued by the Govt. of Assam vide letter bearing no. FRS-74/2007/125 dtd. 22.10.2007, wherein it has been alleged in the article of charge No. 1 that there are lot of complains received against the applicant while he is serving as Conservator of Forest under KAAC alleging illegalities, misappropriation of Govt. fund and irregularities has been received by the Govt. of Assam and accordingly he was transferred and posted vide impugned notification dtd. 17.07.2007. Therefore, it appears that the impugned transfer order dtd. 17.07.2007 is punitive in nature. It is relevant to mention here that if the complaint were received against the applicant from 10.04.2003 to 31.08.2007 for a period of more than 3 years but surprisingly no explanation show cause or warning issued the applicant even no comments were asked from the applicant as required under the instruction issued by the Govt. of India from time to time. It is a settled position of law that once a complain is received against the Govt. officer then the same must be forwarded to the delinquent officer for his comments and thereafter if the comments are not satisfactory then only a preliminary or fact finding inquiry may be conducted against the officer concerned providing reasonable opportunity to the officer concerned against whom the government decided to proceed with. But no such procedure has been followed in the instant case. Therefore, the vindictive attitude of the respondent State of Assam is abundantly clear from the memorandum of charge sheet dated 22.10.2007.
4. That it is stated that none of the alleged article of charges brought against the applicant are based on record, rather, the article of charges are quite imaginary and contrary to the records, but the said charges brought against the applicant by the respondents State of Assam only in order to justify the placement of the applicant under suspension. Be it stated that

the applicant is placed under suspension with the malafide intention as because he had approached the Ld. Tribunal against the impugned order of transfer and posting passed by the notification dated 17.07.2007. The applicant after receipt of the memorandum of charge sheet dated 22.10.2007 submitted a detailed reply through his representation dated 08.02.2008 which does not disclose commission of any sort of misconduct as alleged in the memorandum of charge sheet dated 22.10.2007. On a mere reading of the reply dated 08.02.2008 submitted by the applicant against the memorandum of charge sheet dated 22.10.2007, it would be evident that article of charges brought against the applicant with an ulterior motive to cause injury to the applicant and his reputation.

(A copy of the memorandum of charge sheet dated 22.10.2007 and reply dated 08.02.2008 are enclosed as Annexure-A and B for perusal of the Hon'ble Court.).

5. In the facts and circumstances stated above, the applicant most humbly and respectfully prays that the application deserves to be allowed with costs.





VERIFICATION

I, Shri Chandra Mohan Sharma, IFS, S/o- Late Raghubir Singh, aged about 52 years, Conservator of Forest (under suspension), Office of C.C.F (T), Assam, Guwahati, applicant in the instant Application, do hereby verify that the statements made in Paragraph 1 and 5 of the rejoinder are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 17th day of June, 2008.

Chandra Mohan Sharma

B-
19 JUN 2008
Annexure-A
CONFIDENTIAL
GOVERNMENT OF ASSAM
ENVIRONMENT & FOREST DEPARTMENT:: DISPUR

NO. FRS-74/2007/ 125

22
Dated 17th October 2007

MEMORANDUM

1. The Governor of Assam proposes to hold an enquiry against Shri Chandra Mohan Sharma, IFS (under suspension), c/o Chief Conservator of Forests (Territorial), Guwahati, under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. The substance of the imputations of misconduct or misbehaviour, and misappropriation of fund in respect of which the enquiry is proposed to be held is set-out in the enclosed Statement of Charges (Annexure 1). A statement of imputations of misconduct or misbehaviour and misappropriation of fund in support of each article of charges is enclosed (Annexure 2). A list of exhibits, documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained are also enclosed (Annexures).
2. Shri Chandra Mohan Sharma, IFS is directed under Rule 8 (5) of All India Services (Discipline and Appeal) Rules, 1969 to submit within 15 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. Shri Chandra Mohan Sharma, IFS is informed that an enquiry will be held in respect of those articles of charges which are not admitted. He should, therefore, specifically admit or deny each article of charges.
4. Shri Chandra Mohan Sharma, IFS is further informed that if he does not submit the written statement of defence on or before the date specified in Para 2 or does not appear in person before the Enquiry Authority or otherwise fails to or refuses to comply with the provisions of the Rules of the All India Services (Discipline and Appeal) Rules, 1969, or the orders / directions issued in pursuance of the said rules, the Enquiry Authority may hold the enquiry against him ex-parte.
5. Attention of Shri Chandra Mohan Sharma, IFS is invited to Rule 18 of the All India Services (Conduct) Rules, 1968, under which no member of the services shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to service under the Government.
6. Receipt of this memorandum may be acknowledged.

By Order in the name of the Governor of Assam

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Comm. & Secretary to the Govt. of Assam,
Environment & Forest Department

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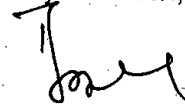
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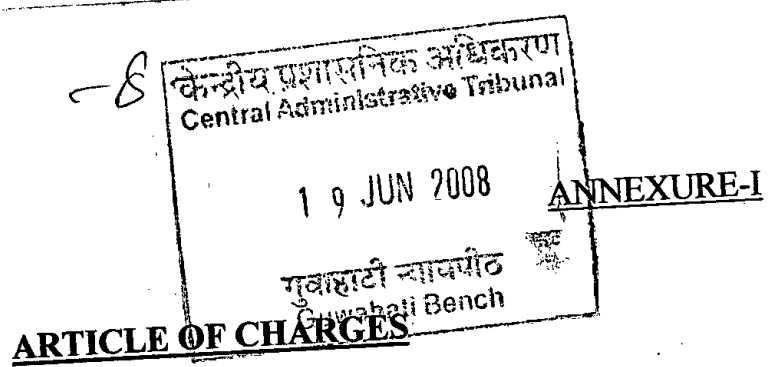
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Memo NO. FRS-74/2007/¹²⁵ / -A, dtd. ²² 17th October 2007

- ✓ 1. Shri Chandra Mohan Sharma, IFS (under suspension), c/o Chief Conservator of Forests (Territorial), Guwahati - 1.
2. The Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi - 110 003.
3. The Principal Chief Conservator of Forests, Assam, Guwahati - 8.
4. Chief Conservator of Forests (Territorial), Guwahati - 1.

By order etc.,



Comm. & Secretary to the Govt. of Assam,
Environment & Forest Department



Charge No. 1 :Gross mis-conduct and un-authorised Communication of information :

That while Shri C.M. Sharma, IFS was the Conservator of Forests, in-charge of Karbi Anglong Circle from 10.04.03 to 31.08.07 lot of complaints regarding illegalities, mis-appropriation of Govt. fund, and irregularities have been received by the Govt. Accordingly Shri C.M. Sharma, IFS was transferred vide Govt. order No. FRE.6/90/272 dated 17.7.07, with a direction to hand over charge to Shri S.S. Rao. Though Shri Sharma IFS had completed more than 4 years in the same post but he refused to obey the Govt. order and in violation of Rule 17 of All India Services (Conduct) Rules, 1968 and without any prior sanction of the Govt. approached the Court for cancellation of transfer order issued by the Govt. of Assam. To vindicate his stand and to keep the court in dark he annexed a confidential letter (classified as a secret document) dated 27.09.2004 issued by Shri Semson Surin, the then Executive Member i/c Forests, Karbi Anglong Autonomous Council to Shri P. Bordoloi the then Minister i/c Forests, Govt. of Assam in violation of Rule 9 of All India Services (Conduct) Rules, 1968. It is not known how Shri C.M. Sharma, IFS could lay hand on such a secret document and produced in the Hon'ble Court for Personal gain. Accordingly Shri C.M. Sharma, IFS Conservator of Forests was asked to explain his conduct within 15 days vide Govt. letter No. FRE.105/07/ 21 dated 20.09.07 but he failed to submit any reply till date.

Therefore, Shri C.M. Sharma, IFS is charged with gross mis-conduct and unauthorized communication of information.

Charge No. 2 : Insubordination and flouting of Govt. orders

That while Sri C.M. Sharma, IFS was posted as the Conservator of Forests, Border, office of the Chief Conservator of Forests, Territorial, Assam he was asked to appear before Shri B.B. Dhar, IFS, C.C.F., H.R.D. & Vigilance, Assam vide letter No. PG.258/8/2007 dtd. 28.09.07 in connection with preliminary vigilance enquiry instituted by the Govt. into the allegations against him for irregular appointments, defalcation and mis-appropriation of Govt. funds, non-implementation of Plan Schemes and other irregularities during his tenure as the Conservator of Forests, Karbi Anglong Circle, Shri C.M. Sharma, IFS failed to appear before Shri B.B. Dhar, IFS, CCF, HRD & Vigilance, Assam on 03.10.07 but instead sent letter No. CM/Allegation/2007-08 dtd. 01.10.07 where-in he asked Shri B.B. Dhar, IFS, CCF, HRD & Vigilance, Assam "not to proceed with the matter till Council takes any decision in this".

Shri C.M. Sharma, IFS Conservator of Forests, Border Office of the CCF (Territorial) Assam was asked to appear vide letter dtd. 28.9.07 pursuant to the Govt. letter No. FRE-89/2007/82 dtd. 17.09.07 but he willfully abstained from appearance before the CCF, HRD & Vigilance, Assam on 03.10.07.

Therefore, Shri C.M. Sharma, IFS is charged with insubordination and flouting of Govt. order.

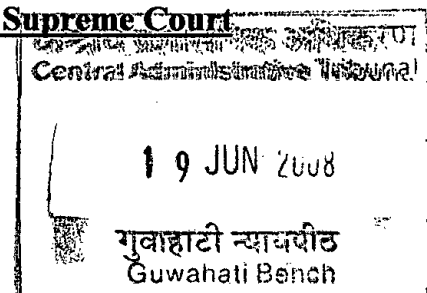
Charge No. - 3 : Connivance in illegalities in Violation of the orders of the Hon'ble Supreme Court.

That while Shri C.M. Sharma, IFS, Conservator of Forests was in-charge of Karbi Anglong Circle illegal sawn timbers were detected by the Hon'ble Executive Member i/c Forests etc. along with local Senior Forests Officers in the premises of M/s Rajendra Saw Mill, Diphu on 05.01.06 and the

Saw mill was found running without a saw mill Licence. Hon'ble Executive Member, i/c Forests, directed the staff to take immediate action as per law. Keeping in view the gravity of the illegalities, as per the orders of the Hon'ble Executive Member, i/c Forests, Shri C.M. Sharma, IFS, Conservator of Forests was asked to enquire into the alleged irregularities observed by the Hon'ble Executive Member, i/c Forests, Karbi Anglong Autonomous Council at M/s Rajendra Saw Mill, Diphu on 05.01.06, vide letter No. KAAC/F/Enquiry/1/2005-06/2959 dtd. 16.01.06. Shri C.M. Sharma, IFS, did not enquire into these illegalities but without any orders from the Council authority entrusted this enquiry to Shri J.S. Bey, DFO, N.A. Division and Shri J.N. Hazarika, DFO, Karbi Anglong East Division. It is not known why no report on illegalities and measures for cancellation of saw mill licence were taken by Shri C.M. Sharma, IFS despite the directives of the Hon'ble Executive Member, i/c Forests.

Shri C.M. Sharma, IFS on 30.08.07 convened a meeting as per the minutes of the meeting issued vide his Memo No. CF/KA/Saw Mill/Licence/5/2005-06/1008-12 dtd. 30.08.07 he allowed renewal the Saw Mill Licence based on the enquiry report dated 22.08.07 given by Shri J.N. Hazarika, DFO, Karbi Anglong East Division and Shri J.S. Bey, DFO N.A. Division, Diphu without any permission from the Council Authority. Shri C.M. Sharma IFS, Conservator of Forests did not conduct the enquiry regarding detection of illicit timbers being Sawn illegally within the saw mill without the licence for 2006 in utter dis-regard to the orders of the Hon'ble Executive Member, i/c Forests, Karbi Anglong Autonomous Council nor he submitted any report to the Council Authority.

Therefore, Shri C.M. Sharma, IFS, is charged with connivance in illegalities in violation of the orders of the Hon'ble Supreme Court



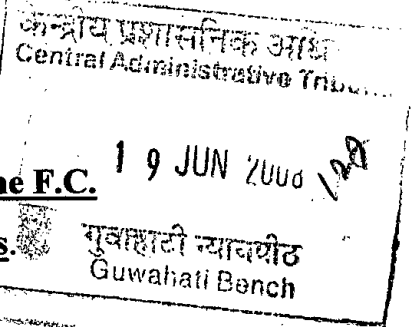
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 19 JUN 2006
 Central Administrative Tribunal
 Guwahati Bench

Charge No. 4 : Defalcation and mis-appropriation of Govt. fund with ulterior motive.

That while Shri C.M. Sharma, IFS, Conservator of Forests, was in charge of Karbi Anglong Circle, he submitted a Bill to the Chief Engineer (Hydro), ASEB vide letter No. CA/KA/Power/2/99-2005/418 dtd. 01.07.2005, surreptitiously without any information to the State Nodal Officer, Govt. of Assam asking for deposition of Rs. 3,68,62,042 which had been assessed and informed to the State Nodal Officer on account of diversion of 582.899 Ha of U.S.F. area, 3.888 Ha of Plantations and 529 Nos. of trees valued at Rs. 12,10,718.00 by the Principal Secretary, Karbi Anglong Autonomous Council, Diphu vide letter NO. KAAC/P-29/(Misc)95/1223 dtd. 17.8.2001. This amount of Rs. 3,68,62,042.00 was send to Shri C.M. Sharma IFS by the Project Manager, ASEB, vide his letter No. PM/KLHEP/A-I(Forest)/05/1447 dtd. 06.01.06 without any information to the State Nodal Officer and the State Govt. Shri C.M. Sharma, IFS deposited the amount in the PIL Account operated by him.

Shri C.M. Sharma, IFS without any information to the State Nodal Officer and the State Govt. started expending the fund from 22.03.2006 through the DFO, Hamren Division. The matter was taken up by Dr. U.P. Upadhyaya, Additional Director, North Eastern Regional Office, MoEF, Govt. of India, Shillong vide his letter NO. RONE/E/IA/AS/HEP/4/4931-32 dtd. 01.03.06 wherein he specifically mentioned that the Project Area falls within the USF category and attracts the provisions of the F.C. Act'1980. Further, the State Nodal Officer also requested Shri C.M. Sharma, IFS to deposit the fund in the CAMPA immediately within two weeks as per directions of the Hon'ble Supreme Court and the Director General of Forests and Special Secretary, MoEF, Govt. of India vide letter No. FG.27/Nodal/KEHE Project dated 31.05.06. But Shri C.M. Sharma IFS in total dis-regard had failed to deposit the fund and continued to expend the fund through the DFO, Hamren Division.

Therefore, Shri C.M. Sharma, IFS is charged with defalcation and mis-appropriation of Govt. fund with ulterior motive.

Charge No.5 :**Connivance in illegalities in Violation of the F.C.****Act'1980 and the Supreme Court's orders.**

That while Shri C.M. Sharma, IFS Conservator of Forests was in-charge of Karbi Anglong Circle large-scale illicit felling in the Matipung Reserve Forests, Daldoli Reserve Forests & Dhansiri Reserve Forests had taken place and illegal construction of road through the Reserve Forests of Matipung upto Dhansiri leading to clearance of Teak and Bamboo plantations and encroachment of Forest areas took place. The matter was taken up by Shri Jotson Bey, Hon'ble Member of Autonomous Council and Ex-Chief Executive Member, Karbi Anglong Autonomous Council with the Chief Conservator of Forests, Central, Govt. of India, Shillong who in turn took up the matter with the Principal Chief Conservator Forests of Assam. Shri C.M. Sharma IFS was directed to take immediate action and to submit detailed report after personal enquiry vide letter No. FG.16/illegalities/KA/06 dtd. 10.08.06. But Shri C.M. Sharma, IFS did not take any action and instead connived in the illegalities by allowing encroachment, illicit fellings and non-forestry activities of construction within the Reserve Forests in violation of the provisions of the F.C. Act'1980.

Therefore, Shri C.M. Sharma, IFS is charged with connivance in illegalities in violation of the F.C. Act 1980 and orders of the Hon'ble Supreme Court.

A handwritten signature in black ink, appearing to be 'T. Singh'.

Commissioner & Secretary to the
Govt. of Assam
Environment & Forest Deptt., Dispur

*Attested
Mulla
Adh*

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To,

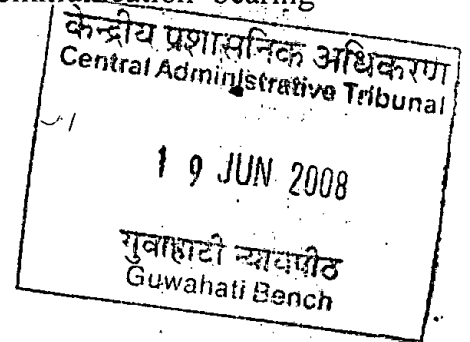
The Commissioner & Secretary
Government of Assam,
Environment & Forest Department,
Dispur, Guwahati - 6.

Annexure-B

Dt 8.2.08.

Ref:- Memorandum of charges issued vide Communication bearing
No. FRS-74/ 2007/ 125 dated 22.10.07.

Sub:- Written Statement of defence.



Sir,

With due deference and profound submission, I beg to lay before your honour the following few lines for kind consideration and necessary action;

That I am an IFS Officer of the 1984 batch belonging to the Assam Segment of the Assam Meghalaya Joint Cadre. I have had a blemishless service career which is now being sought to be undone by way of issuance of the memorandum of charge, under reference.

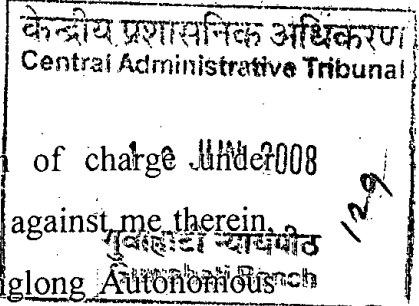
On a perusal of the charges levelled against me vide the memorandum of charges under reference it is clear that the charges pertain to my tenure of service with the Karbi Anglong Autonomous District Council. My services were placed at the disposal of the said Council by the Government of Assam vide order dated 02.04.03 and I continued to serve under the said Council till 01.09.07. The charges levelled against me having purportedly arisen in course of my service with the said Council and the Council having not preferring to bring any charges against me and also having not made any request to the Government of Assam for having any such charges, the Government of Assam cannot suo-motto proceed to frame charge against me on this count.

That in the back ground of the said factual matrix, I would like to raise before your honour the following preliminary objections with regard to the memorandum of charges under reference;

Attested
By
[Signature]

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PRELIMINARY OBJECTIONS:-



1. That a mere perusal of the memorandum of charge under reference, would reveal that all the five charges as framed against me therein, pertain to the services rendered by me with the Karbi Anglong Autonomous Council. It is further revealed that the Council has never preferred to bring any charge against me. The Council vide letter dated 26.09.07 (Annexure - 1) informed the Government of Assam that allegation, if any, may be referred to the Council as Forests is a transferred subject to the Council. In this view of the matter, the Government of Assam cannot suo-motto institute a disciplinary proceeding against me and as such the memorandum of charges under reference has been issued without any locus-standi. The memorandum of charges under reference, therefore, requires to be withdrawn.

The nature of charges levelled against me vide the memorandum of charge, under reference, clearly reflects the malafide behind the issuance of the same. It is feared that the memorandum of charge under reference is nothing but a ploy to get back to me for the initiative taken by me for having my grievance with regard to an order of transfer dated 17.07.07 redressed by assailing the same before the Hon'ble Central Administrative Tribunal. This contention is proved to be correct merely on perusal of the ingredients of charge no. 1 wherein an allegation has been levelled that I had approached the Hon'ble Tribunal without prior sanction of the Government.

2. That the manner and method in which a disciplinary proceeding is to be instituted against an All India Services Officer and the authority competent to institute such proceeding has been prescribed under the provisions of the All India Services (Discipline and Appeal) Rules, 1969. The provisions of Rule 7 (b) of the said Rules of 1969 are quoted below;

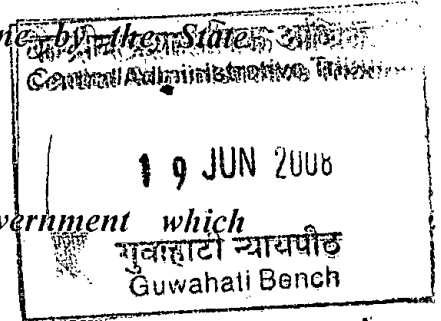
"...If such act or omission was committed after his appointment to the service:-

(i) While he was serving in connection with the affairs of a State, or is deputed for service under any company, association or

body of individuals, whether incorporated or not, which is wholly or subsequently owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of that State.

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(ii) While he was on training, the Central Government unless the selection for the training was done by the State Government and the cost of the Training was entirely borne by the State Government.



(iii) While he was on leave, the Government which sanctioned him the leave; or

(iv) While he was under suspension, the Government which placed him or is deemed to have placed him under suspension; or

(v) If such act or omission is willful absence from duty after the expiry of leave, the Government which sanctioned the leave; or

(vi) While he was absent from duty otherwise than on leave, the Government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty; or

(vii) The Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company associations, body of individuals, or local authority, as the case may be under whom he is serving at the time of institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings."

In my case the charges framed against me pertain to the period of service rendered by me with the Karbi Anglong Autonomous Council. The

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Karbi Anglong Autonomous Council figuring in the Sixth Schedule of the Constitution of India is governed by the Provisions of Article 244-A of the Constitution of India. In terms of the provisions of Article 244-A of the Constitution of India, it is the Parliament who by law may form an Autonomous State, within the State of Assam comprising all or any tribal areas specified in Part - I of the table appended to Paragraph - 20 of the Sixth Schedule. The Parliament can also create a body to function as a legislature for the Autonomous State. In this view of the matter, it is the Central Government who under above quoted Rule 7 (b) (vii) is competent to institute the disciplinary proceedings and Government of Assam is not empowered to institute proceeding and thereby put me under suspension under the provisions of the All India Services (Discipline and Appeal) Rules, 1969. As such, the memorandum of charges under reference and suspension order dated 11.10.07 are clearly without jurisdiction. The very initiation of the proceeding against me being in clear violation of the provisions of the All India Services (Discipline and Appeal) Rules, 1969, the continuance of the same is not called for and the memorandum of charges under reference and suspension order are required to be withdrawn.

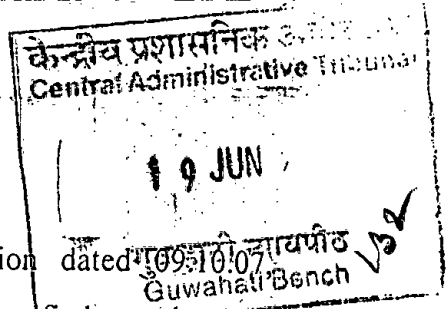
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Central Administrative Tribunal
Guwahati Bench

That the above noted preliminary objections may be closely perused by your Honour and I may be granted justice by dropping the proceeding being sought to be initiated vide issuance of the memorandum of charge under reference.

Without prejudice to the preliminary objections taken by me with regard to the maintainability of the memorandum of charge under reference and also without prejudice to my right to prefer an effective and detailed reply on getting relevant records etc as prayed for vide my communications dated 27.11.07 and 06.12.07 and inspection of documents and files concerning my transfer dated 17.07.07, licencing committee for wood based industries for Karbi Anglong, eviction of encroachment of Forests land (Karbi Anglong) and Karbi Langpi Hydro Electric Project etc., I prefer my reply to the charges framed against me vide the memorandum of charge under reference as under.

At the very outset I deny all the charge levelled against me vide the memorandum of charge under reference. The charges as framed against me are



07/ 21 dated 20.09.07, I had vide my communication dated 09.10.07 (Annexure - 2) replied within the time period so specified, to the said allegation and had therein clearly stated as to how the said document came to my knowledge and possession. Reiterating the stand taken by me in my said communication dated 09.10.07, I state that the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council had vide his communication dated 30.09.04 forwarded to me a copy of the communication dated 27.09.04. The copy of the communication dated 27.09.04 as produced by me before the Hon'ble Tribunal is in fact a copy of the said communication as forwarded to me by the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council. Moreover, the said communication dated 27.09.04 was never treated as a classified secret document and the then Executive Member, i/c Forest, Karbi Anglong Autonomous Council had forwarded to me a copy of the said communication dated 27.09.04. As such, the allegation as levelled against me of violating Rule 9 of AIS (Conduct) Rule, 1968 in this connection is without any basis whatsoever.

In view of the above, it is clear that the charge no. 1 are all perverse and do not disclose any misconduct on my part. The charge no. 1 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

B. That with regard to the charge no. 2 framed against me vide the memorandum of charge under reference I categorically deny the same and state that I had in no way even contemplated to disregard or dishonour the enquiry that was proposed to be carried out by Sri B.B. Dhar, IFS, C.C.F. I categorically deny that I had willfully abstained from appearing before the said enquiry officer. The communications forming the basis of the said charge would show that the enquiry that was sought to be held was in relation to the purported anomalies alleged against me, to have been committed by me during the period of my service with the Karbi Anglong Autonomous Council. In view of the said purported allegation, it was the authorities of the said Council who had the jurisdiction in the matter. The Council authorities had vide communication dated 26.09.07 informed the Joint Secretary, Forest, Assam that Forest is an entrusted subject to the Council and therefore allegations, if

केन्द्रीय प्रशासनिक न्यायाधीश
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गुवाहाटी न्यायाधीश
Guwahati Bench

all perverse, vague and indefinite. The allegations, as levelled against me, are all baseless and have been so levelled without first appreciating the actual facts as existing in the matter. The charges framed against me and the material relied thereon do not disclose any misconduct on my part.

A. That with regard to the charge no. 1 as framed against me vide the memorandum of charge under reference, I categorically deny the same and state that the allegation as levelled against me therein are vague to the core of it and the same does not reflect any misconduct on my part. While it is true that I was subjected to transfer vide issuance of order dated 17.07.07 and I deemed it fit and proper to have the matter looked into by a court of law. Further, my stand was vindicated by the Hon'ble Central Administrative Tribunal by taking cognizance of my application against my said transfer and was pleased to order for maintaining status-quo. That I was transferred by Government of Assam due to some so called complaints against me and I refused to handover the charge to Sri S.S. Rao, IFS, is not based on facts and the same is categorically denied by me. The Rules governing me and also the Central Administrative Tribunal Act, 1995, nowhere specifies that an All India Services Officer cannot approach a court of law without obtaining prior sanction from the Government concerned in this regard. In this context the charge levelled against me that I had approached the court for cancellation of my transfer order without prior sanction of the Government in purported violation of the provisions of Rule 17 of the All India Services (Conduct) Rules, 1968, is clearly unsustainable and the same does not disclose any misconduct on my part. The provisions of Rule 17 of the All India Services (Conduct) Rules, 1968, has got no application in the present facts and circumstances and the same is applicable only in the event when the official act has been the subject matter of adverse criticism or attack of a defamatory character.

The charge that I had sought to keep the court in dark and had annexed a confidential letter dated 27.09.04 issued by the then Executive Member I/C Forest, Karbi Anglong Autonomous Council and that I had failed to disclose as to how I could lay my hand on such a document and produced the same before the court for personal gain, is categorically denied by me. It is stated that in response to the Government communication issued under letter No. FRE. 105/

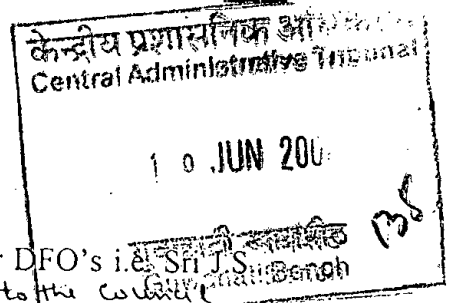
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any, against me, may be referred to the Council. The Council being the appropriate authority to look into the matter, the Government of Assam could not have proceeded suo-motto. Further, Sri B. B. Dhar, IFS, CCF had already approached the authority of Karbi Anglong Autonomous Council in this connection on 31.08.07 and met the Forest Official including the undersigned at Diphu. Sri B.B. Dhar IFS, CCF informed that Council assured to look into the matter and decision if any will be communicated later. As such I had only requested Sri Dhar, IFS, CCF vide my communication dated 01.10.07 (Annexure - 3) to keep the enquiry in abeyance till a decision in the matter is arrived at by the Karbi Anglong Autonomous Council. My said request in the fact and circumstances of the matter cannot be in any manner be construed to be an act of insubordination and/ or of flouting Government order. My above contentions were reinforced by the Council's decision asking Government of Assam to refer the allegation, if any to the Council as forest is a transferred subject to the Council. It is pertinent to mention here that after the said development, there was no further proceeding in the matter involving me and I was never communicated with any decision towards rejecting the prayer made by me vide my communication dated 01.10.07. The said facts and circumstances clearly reflect that the charge no. 2 is perverse and no misconduct can be attributed to me basing on the same.

In view of the above, it is clear that the charge no. 2 are all perverse and do not disclose any misconduct on my part. The charge no. 2 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

C. That with regard to the charge no. 3 framed against me vide the memorandum of charge, under reference, I categorically deny the same and state that on receipt of Council's communication dated 16.01.06 an enquiry was ordered by me, with intimation to the Karbi Anglong Autonomous Council, with regard to the alleged irregularities as observed by the then E.M, Forests, Karbi Anglong Autonomous Council. Being the Chairman of the licencing committee for Karbi Anglong, I had deemed it fit and proper not to have the said enquiry conducted by me and therefore decided to have the said allegations enquired into by a team of DFO's so that a fair and unbiased view



can be taken by the licencing committee. A team of senior DFO's i.e. Sri J.N. Hazarika AFS and Sri J.N. Hazarika AFS ^{with intimation to the Council} so constituted examined the matter and checked the said saw mill thoroughly. As per the enquiry report submitted by them, no irregularities were found, as sought for in the above inquiry. A separate report was also called for by me from Sri R.P. Singh, IFS, DFO concerned and he had submitted the report highlighting that no irregularity was found and the said mill was not running since January 2006. The licencing committee on consideration of the said enquiry report proceeded to arrive at a decision to renew the licence of said saw mill. The said steps were taken by me strictly in accordance with the procedure prescribed and licencing Committee had for the purpose considered the enquiry report available on records. It is pertinent to mention here that the licencing committee as per rule is empowered to take a final decision for renewal of licence for saw mills and there is no requirement for seeking permission/ approval of Council in this regard. However, the Council was kept informed about the matter in this regard (Annexure - 4). I categorically state that no direction of the Hon'ble Supreme Court has been violated inasmuch as the licence of the said saw mill was renewed by the licencing committee on the basis of finding of enquiry committee and by following the procedure prescribed.

The charge that there was violation of the directives passed by the Hon'ble Supreme Court in the matter is clearly unsustainable and the directions of the Apex Court have been sought to be applied out of context which is uncalled for.

In view of the above, it is clear that the charge no. 3 are all perverse and do not disclose any misconduct on my part. The charge no. 3 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

D. That with regard to the charge no. 4 framed against me vide the memorandum of charge under reference, I categorically deny the same and state that K.L.H.E Project was given Environmental Clearance by the Department of Science and Technology, GOI, vide dated 30.01.79 and 642.628 Hectare of sarkari and patta land were handed over to the ASEB on 27.03.80

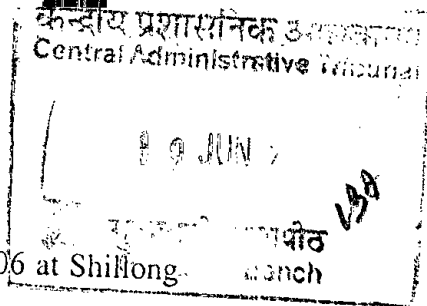
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Forest Deptt. Banch

by the Assistant Revenue Officer prior to the enactment of Forest (Conservation) Act, 1980 (Annexure - 5, 6 & 7). As such provisions of Forest (Conservation) Act, 1980 are not applicable for K.L.H.E Project. Accordingly, Forest clearance for K.L.H.E project was issued vide dated 04.02.05 by me to ASEB (Annexure -8) with intimation to PCCF, Assam and MOEF, Govt. of India along with relevant documents which enabled the ASEB to draw NEC fund of Rs. 100 Crores. While clearing the said project in 1979, the Department of Science and Technology, GOI, stipulated for safeguarding all Environmental aspects which necessitated the release of fund by the ASEB to CF, Karbi Anglong under Karbi Anglong Autonomous Council vide dated 06.01.06.

With regard to the show cause notice dated 01.03.06 (Exhibit - XV) issued to ASEB by CCF (Central), GOI, Shillong for clearance of said project under Forest (Conservation) Act, 1980 and compliance of measures as stipulated by the Science and Technology Department, the matter was clarified by Sri A.C. Bhuyan, Chief Engineer (Hydro), ASEB (Annexure - 9) in the meeting held on 24.03.06 at Shillong, The said meeting was attended by Sri A. Swargiary, IFS, then Nodal Officer, Dr. V.P. Upadhyay, Addl. Director, Sri M.K. Dhar, DFO Hamren and the undersigned. On being satisfied that the said show-cause notice had no substance, the same came to be withdrawn on 31.05.06 by the CCF (Central), Government of India, Shillong (Annexure - 10). As mentioned in the charge that information regarding release of money by ASEB was not given to the State Nodal Officer is factually in-correct as the same was clearly mentioned in the above meeting at Shillong and subsequently ASEB vide No., ASEB/ CEH. 76/ 94/ Pt-II/ 45, dated 25.04.06 (Annexure- 9) informed the PCCF, Assam about the same. Mode of expenditure of money as well as detailed approved plan with total area to be covered were specifically mentioned in the said Annexure - 9 and was in the knowledge of PCCF, Assam. Hence the charge that the fund was being spent without information to the said Nodal officer is without any substance.

Pursuant to the decision of withdrawing the show cause notice it was clear that the said project was not attracting the provisions of Forest (Conservation) Act, 1980. It is surprising that the same Nodal Officer who was



one of the participant in the above stated meeting held on 24.03.06 at Shillong. shot a letter dated 31.05.06 (Annexure - 11) asking to deposit money with CAMPA as released by the ASEB. Accordingly, it was again clarified to the Nodal Officer by me vide letter dated 04.07.06 (Annexure - 12) that ASEB had released the funds for safe guarding of Environmental aspects as stipulated by the Department of Science & Technology, Government of India while issuing Environmental Clearance in 1979 for the said project and ASEB had acquired the revenue/ Patta land for construction of the said Hydro Electric Project on 27.03.80 prior to the enactment of the Forest (Conservation) Act, 1980. Therefore, the fund received from ASEB need not be deposited with CAMPA inasmuch as the directives of the Hon'ble Supreme Court of India and the Government of India have got no application in the said matter.

Thus, it is evident that there is no defalcation and no misappropriation of fund as alleged and the matter has been twisted so as to hoist a charge against me. I categorically state that a proper examination of the matter would have brought to the forefront the hollowness of the charge No. 4.

The action plan for Catchment Area Treatment Plan (CATP) was prepared in consultation with CCF (Central), Government of India, Shillong and was approved by the authority of Karbi Anglong Autonomous Council (Annexure - 13). A part of the fund earmarked for the purpose was released to the DFO Hamren, who is the implementing authority, as per approved plan, so as to ensure that the compliance report on environmental stipulations with requisite data could be submitted to the Government of India, as directed by the CCF (Central), Government of India, Shillong. The said work of CATP executed by DFO Hamren was verified in the field and monitored by an independent monitoring committee and a copy of monitoring report reveals that the said project is being implemented as per the plan (Annexure - 14).

In view of the above, it is clear that the charge no. 4 are all perverse and do not disclose any misconduct on my part. The charge no. 4 as such is without any basis and has been levelled against me without appreciating the matter in its proper perspective.

E. That with regard to the charge no. 5 framed against me vide memorandum of charge, under reference, I categorically deny the same and state that action for evicting of encroachers in Matipung DCRF who are mainly victims of ethnic clashes of 2005, had been initiated much prior to the receipt of complaint sent by the PCCF, Assam and efforts were being made continuously in this regard (Annexure - 15, 16 & 17). Prompt action was being taken by the DFO concerned by intensifying patrolling, lodging of FIR's, seizure of timber, arrest of culprits etc. (Annexure - 18, 19 & 20)

The road through Matipung to Dhansiri via Matipung DCRF is a District Council road recognized in the Assam Gazette dated July 1st, 1979 (Annexure - 21) and is being maintained by the Council since its inception prior to the promulgation of the Forest (Conservation) Act, 1980. Hence, question of violation of Forest (Conservation) Act, 1980 as alleged does not arise.

It may be mentioned that prompt & proactive actions were taken to control illegal felling of trees in Doldali and Dhansiri Reserved Forest by the DFO concerned seeking co-operation from the Police and Civil authorities. The steps taken in the matter was being closely monitored by me and I was involved in the matter by co-ordinating with all concerned. (Annexure - 22, 23, 24 & 25). Public meetings were held involving civil and police official and public representative including local E.M, KAAC for creating public awareness and seeking their co-operation for preventing illegal felling etc. On my initiatives, Section 144 banning illegal felling and movement of any kind of timber in the Matipung, Doldali, Dhansiri etc were imposed time to time by the District Magistrate, Karbi Anglong.

Further, it is stated that designated camp of cease fire cadres of DHD were established in the said Doldoli R.F. in the year 2002 in violation of Forest (Conservation) Act, 1980 and orders of the Hon'ble Supreme Court which specifically prohibit the use of Forest land for non forestry activities. The said violations occasioned during the tenure of Sri B. B. Dhar, IFS the then Conservator of Forests, Karbi Angl. Sri B. B. Dhar, IFS, took no action neither informed the concerned authorities against such blatant violation of the

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सुप्रीम न्यायापीठ
Guwahati Bench

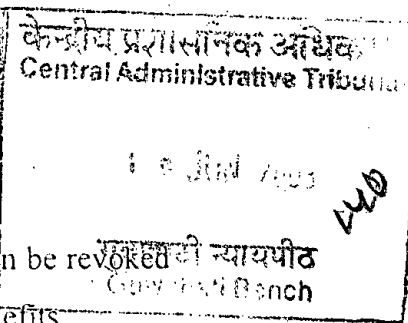
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Forest (Conservation) Act, 1980 and also the orders of the Hon'ble Supreme Court of India issued in this connection. However, the undersigned on joining under the Council, immediately took initiative in the matter and with due intimation to the Council as well as Government of Assam, requested for taking necessary action for shifting of designated campus from Doldali Reserve Forest (Annexure - 26, 27 & 28). The activities undertaken by the said activists of DHD in their said camps existing within the Doldali Reserve Forest is the main reason behind illegal felling and other illegal activities taking place within the said Reserve Forests. The ground rules for these designated camps prohibit even the security forces to patrol within the radius of one K.M of the designated camp and the said Rule now has the effect of encouraging illegal activities in the said Reserve Forest. All the efforts undertaken by the Forest Department with active co-operation from the police and the civil administration to evict the encroachers and also to apprehend the culprits involved in the illegal activities within the said Reserve Forest were met with stiff armed resistance resulting in one case of death of one Magistrate.

In spite of several request made to the Government of Assam no action was taken and thereafter the Council having no alternative preferred a petition which will speak for itself, before Central Empowered Committee Constituted by the Hon'ble Supreme Court of India against the State of Assam and the Government of India for violation of the Forest (Conservation) Act, 1980 and destruction of forests (Annexure - 29).

It is learnt that recently eight trucks loaded with illegal timber from Doldali Reserve Forest were intercepted and seized by Police and Forest Staff of Karbi Anglong. The said action led to the miscreants taking revenge by killing a Police Havildar Late Praful Kajyung who was involved in the said operation. This shows their continued impunity to destruct forest wealth and other illegal activities inside the Doldoli and Dhansiri Reserve Forest.

In view of the above, it is most respectfully prayed that your honour would be pleased to dispassionately consider the contentions as raised by me herein above and also examine the connected records and be pleased to drop the charges framed against me vide the show cause under reference,



exonerating me from the same. Further, the order of my suspension be revoked and I be reinstated in my service with all consequential service benefits.

That as I have been deprived of the documents relevant to the charges brought against me and also statement of allegation and list of documents which have not been served on me, I am handicapped from preferring an effective reply. Accordingly, I reserve my right to prefer an effective reply in the matter after I have been given access to the documents and records mentioned herein above. I also reserve my right to produce the documents supporting my contentions at a later stage after I have been given access to the said documents and records.

That in the event of your Honor being pleased not to accept the contentions made by me herein above in defence of the charges framed against me and besides to have an enquiry initiated against me, I pray that I be given a personal hearing in the matter and I be permitted to produce documents and witnesses in support of my defence during the enquiry.

I hope and trust that your honour would be pleased to revoke my suspension and reinstate me in my service forthwith and the memorandum of charge under reference, would be dropped and thereby I would be afforded an opportunity to continue to serve the State with the same vigour and enthusiasm as before. I assure your Honour that on being reinstated I will continue to work to the satisfaction of your Honour and my services would be meritorious as before.

Yours faithfully,

Encl:- As stated above

Chandra Mohan Sharma
Chandra Mohan Sharma, IFS
Conservator of Forest, (u/s)
O/o- Chief Conservator of Forests, (T)
Guwahati - 1.

*Accepted
10/6/03
Adm*