

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH;

1. Original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

4 / 08 in O.A 208/07

Applicant(S) Chandra Mohan Sarma VS- Union Of India & Ors

Advocate for the Applicant(S) Ms. U. Dutta

Advocate for the Respondent(S) M. M. Ahmed, Addl. C.S.E.; Ms. M. Das for status
Mr. D. K. Das for Respondent No. 5.

Notes of the Registry	Date	Orders of the Tribunal
<p>The Review application has been filed by the applicant u/s 22(3) of the CAT Act, 1985 read with Rule CAT (Procedure) Rule, 1987 praying for review the order dated 29.8.2008 passed in O.A No. 208/2007 as to expunge the impugned observations in paragraph 13 of the judgement and order dated 29.8.2008 in O.A 208/2007.</p> <p>Laid before the Hon'ble V.C. for pass further orders.</p> <p><u>Section Officer</u> 31/10/08 By Registrar 31.10.08</p>	<p>16.07.2010</p> <p>05.08.2010</p> <p>06.08.2010</p> <p>/bb/</p>	<p>On the request of Ms U.Dutta, learned counsel for the applicant list on 5.8.2010.</p> <p>(Madan Kumar Chaturvedi) Member (A)</p> <p>(Mukesh Kumar Gupta) Member (J)</p> <p>On request, adjourned to 06.08.2010.</p> <p>(Madan Kumar Chaturvedi) Member (A)</p> <p>(Mukesh Kumar Gupta) Member (J)</p> <p>R.A. dismissed as not pressed by Mr.M.Chanda, learned counsel for applicant.</p> <p>(Madan Kumar Chaturvedi) Member (A)</p> <p>(Mukesh Kumar Gupta) Member (J)</p>

88

19.8.2010

Final order sent
to Mr D/S & DLS

For issued void

A - No 2057/6
2062

A 26-8-2010

06.08.2010 R.A. dismissed as not pressed by

Mr. Chandra. (referred counsel for applicant)

(Madan Kumar Chakraborty) (Mukesh Kumar Gupta)
Member (A) Member (L)

1001

185

This RA was registered on 3/10/08 as RA NO. 4/2008 in OA. 208/07, but inadvertently it is pending in the Section without circulating before the then Hon'ble VC/Member and it is seen from the record there is no such remarks for keep pending and it is also shown pending in the Statement.

So the matter may be placed before the Hon'ble Member (J) for His Lordships' kind perusal and orders.

Submitted for favour of orders.

[Signature]
22.6.2010
Section Officer (J)

HON'BLE MEMBER (J).

Present R.A. was registered on 03.10.2008 but had not been listed. The proposal to list it was placed before the undersigned on 22.06.2010. Why there is a delay? and Registry remains irresponsible. Seek the explanation of Shri J.C. Mahan, Section Officer who prima facie is responsible for not listing said R.A.

[Signature]
Member (J)/H.O.D. 9/7/2010

Section Officer (J)

Mr. J.C. Mahan, Section Officer/ Court Officer
please see the above order for explanation

Court Officer/ Section Officer

[Signature]
12/7/2010

126
In reply to the order at page 2 for calling explanation it is submitted that the RA was returned to the D. Asstt. Mr. P. C. Datta after signature for circulation, since no action was taken the matter suffered delay. I am also responsible for the delay. I may kindly be excused this time. I shall not recur such nuisance in future.

N. J. C. Mahan
12/7/2010

Mr. J. C. Mahan, SO/CO, has explained above as asked for which has been placed.

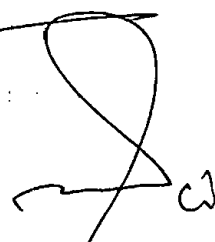
Laid before the Hon'ble Member (J) for favour of kind consideration.

SHAS
12.7.2010

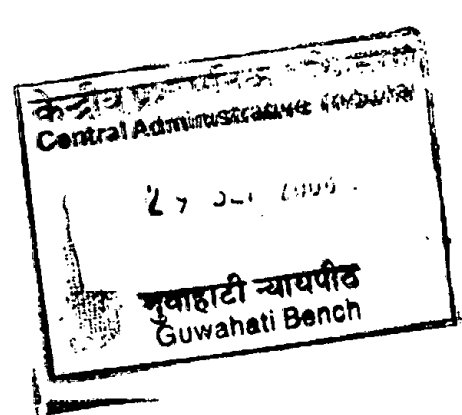
HON'BLE MEMBER (J)

1. In view of admission of lapse (which is serious) by Sh. J. C. Mahan. S.O. issue recordable warning, to be more careful in future.

2. List RA on 15th July 2010


13/7/2010

SO (7)



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

Review Application No. 4/2008
Arising out of O.A. No. 208 of 2007

Shri Chandra Mohan Sharma

-Vs-

Union of India & Ors

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Date: 29.09.08

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

Review Application No. 4 /2008
Arising out of O.A. No. 208 of 2007

In the matter of:-

An application under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 read with the CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES, 1987 framed under the Administrative Tribunals Act, 1985.

-AND-

In the matter of:

Original Application No. 208 of 2007

Shri Chandra Mohan Sharma

... Applicant

-Vs-

Union of India and others

... Respondents

-AND-

In the matter of:-

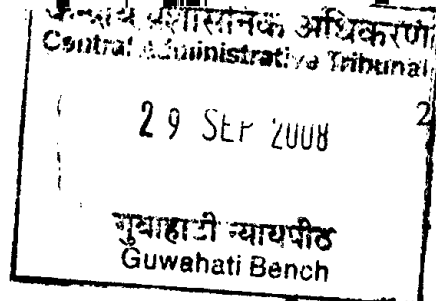
Shri Manik Chanda
Son of Late Naresh Chanda,
House No. 8, Bye-Lane No. 7,
Lachitnagar, Guwahati - 781007

**... Review Applicant/
Counsel of the applicant in
O.A. No. 208/2007.**

-Vs-

1. The State of Assam,
Represented by the Secretary to the
Government of Assam,
Environment and Forest Department
P.O. Dispur, Guwahati - 781006

Central Administrative Tribunal
27 JUL 2008
GUWAHATI BENCH
Filed by the applicant
Through U. Datta, advocate
on 29.09.08



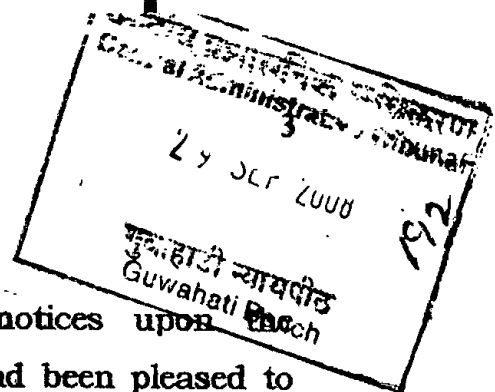
2. Karbianglong Autonomous Council,
Represented by the Principal
Secretary,
P.O. Diphu, District - Karbianglong,
Assam.
3. Joint Secretary
Govt. of Assam,
Environment and Forest Department
P.O. Dispur, Guwahati- 781006
4. Sri A.U. Choudhury,
Joint Secretary,
Govt. of Assam,
Environment and Forest Department
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**

The above named review applicant -

Most Respectfully States:-

1. That this application is being filed by the Counsel of the applicant in Original Application No. 208/2007 seeking review of the Judgment and Order dated 29.08.2008 passed by this Hon'ble Tribunal in the said application wherein certain observations/remarks have been passed in respect of the Counsel who conducted the case.
2. That the review applicant begs to say that the applicant in the O.A No. 208/2007 had approached this Hon'ble Tribunal challenging an order of transfer dated 17.07.2007 issued in respect of him. The said application was filed on a number of grounds.



3. That the Hon'ble Tribunal, while issuing notices upon respondents in the said original application, had been pleased to grant an ad-interim order dated 02.08.2007 directing the parties to maintain status quo as on that day.
4. That the private respondent No. 5 as well as the respondent State of Assam thereafter filed an application seeking modification/vacation of the interim order dated 02.08.2007 and the Hon'ble Tribunal, after hearing the parties on 29.08.2007, had been pleased to vacate the interim order on 31.08.2007.
5. That the said O.A. came up for hearing on 06.08.2008, when the review applicant advanced elaborate arguments in support of the grounds raised in the O.A. as well as the rejoinder submitted by the applicant. The hearing concluded on that day and Judgment was reserved.
6. That this Hon'ble Tribunal had been pleased to deliver the Judgment on 29.08.2008 and did not interfere with the impugned order of transfer.

Copy of the impugned judgment dated 29.08.08 is enclosed herewith as **Annexure - A.**

7. That the review applicant states that in paragraph 13 of the impugned Judgment dated 29.08.2008 the Hon'ble Tribunal has made the following observation:

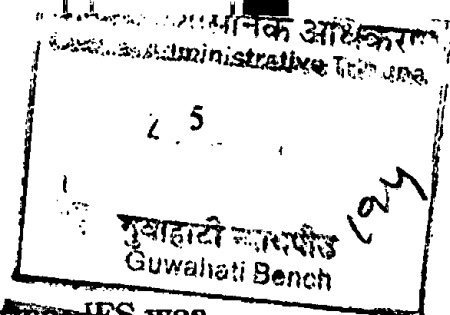
"13. Facing with above obstruction, Mr. Chanda, learned Counsel for the applicant disclosed at hearing that the applicant is going to challenge the action of the respondents by way of filing a fresh Original Application directed against the Departmental charge-sheet. Thus, he abandoned the point [that he faced the punitive transfer order, on the face of some unknown allegations, in gross violation of principles of natural justice] for the time-being. In fact the Applicant has, by now, filed a fresh Original Application, challenging the Departmental charge-sheet dated 22.10.2007."

8. That the review applicant states that on a careful reading of Para 13 of the Judgment dated 29.08.2008, it appears that the Counsel of the applicant (i.e., the review applicant) had "abandoned" the ground of "punitive transfer" in the course of the argument. It is emphatically stated that at no point of time the review applicant had abandoned the ground of punitive transfer. Therefore, the observation recorded by the Hon'ble Tribunal in the Judgment dated 29.08.2008 to the extent "Thus, he abandoned the point [that he faced the punitive transfer order, on the face of some unknown allegations, in gross violation of principles of natural justice] for the time-being" is not factually correct rather, the same is erroneous which is apparent on the face of the record and as such, liable to be reviewed and expunged of the records.
9. That the review applicant states that when the Original Application was filed by the applicant on 02.08.2007, he challenged the validity and legality of the impugned transfer order dated 17.07.2007 and also alleged malafide in the O.A.
10. That in the written statement filed by the State of Assam, it was stated that the impugned transfer order has been issued on the ground that he has completed 4 years as Conservator of Forest at Diphu, Karbi Anglong. Significantly, in the memorandum of charge sheet dated 22.10.2007, which was served upon the original applicant during pendency of the O.A. (and was enclosed vide Annexure-A to the rejoinder), the Charge No. 1 has been elaborated as follows: -

"ARTICLE OF CHARGES

Charge No. 1 : Gross mis-conduct and
 unauthorized 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, misappropriation 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 Pensional 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."

11. That after receipt of the memorandum of charge sheet dated 22.10.2007, the applicant could come to learn that the impugned transfer order dated 17.07.2007 had been issued due to complaints regarding alleged illegalities, misappropriation of Government funds and irregularities. In such circumstances, the applicant brought it to the notice of the learned Tribunal through rejoinder enclosing therewith the copy of the memorandum of charge sheet dated 22.10.2007.
12. That the review applicant states that in the aforesaid premises, therefore, the applicant contended in his rejoinder that the impugned transfer and posting notification dated 17.07.2007 was "punitive in nature" and such ground was accordingly taken in the rejoinder.

29 SEP 2008 6

गुवाहाटी न्यायपीठ
Guwahati Bench

13. That the review applicant states that the question of surrendering such a ground in course of argument of the case did not arise at all and in fact, the counsel of the applicant (i.e., the review applicant) did not abandon such plea. The contrary observation of the Hon'ble Tribunal as in Para 13 of the Judgment dated 29.08.2008 is not factually correct rather, the same is highly prejudicial to the reputation of the review applicant as a Counsel and it is likely to cause irreparable loss and injury to him in his professional conduct. The above said observation of the Hon'ble Tribunal in the Judgment under reference may be, therefore, kindly expunged.

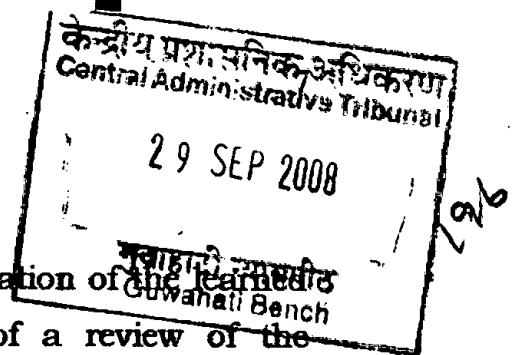
14. That the review applicant states that as per The New International Webster's Student Dictionary of the English Language, the word "abandoned" means as follows:

"1. To desert; forsake. 2. To surrender or give up 3. To yield (oneself) without restraint, as to a feeling or pastime- n. Utter surrender to one's feelings or natural impulses."

Again, in Blacks Law Dictionary, "abandoned" means:

"To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. It includes the intention, and also the external act by which it is carried into effect."

15. That the review applicant states that going by the meaning of the word abandon/abandonment, the observation of the Hon'ble Tribunal in Para 13 of the Judgment under reference would thus mean that the review applicant had voluntarily surrendered the ground of punitive transfer while arguing the case before the learned Tribunal on 06.08.2008. In view of the fact that such observation of the Hon'ble Tribunal has not been recorded



correctly, it is a fit case where aforesaid observation of the learned Tribunal is liable to be expunged by way of a review of the Judgment under reference.

16. That it is respectfully submitted that it is a fit case where the Hon'ble Tribunal may be pleased to exercise the power of review so as to expunge the above quoted observation as in Para 13 of the Judgment and Order dated 29.08.2008 passed in O.A No. 208/2007 .
17. That this application is made bonafide and for the ends of justice.

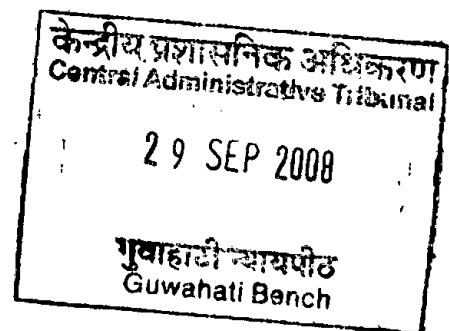
GROUND FOR REVIEW

1. For that, the observations of the learned Tribunal in Para 13 of the Judgment and order dated 29.08.2008 to the extent that "Thus, he abandoned the point [that he faced the punitive transfer order, on the face of some unknown allegations, in gross violation of principles of natural justice] for the time-being" is not factually correct .
2. For that, the review applicant had never abandoned the ground of punitive transfer in course of his arguments in O.A. No. 208/2007.
3. For that, in view of the fact that the transfer of the applicant was by way of punishment, a ground was accordingly taken in support of the challenge to the order of transfer, there arose no occasion to abandon such ground and as such, the contrary observation of this Hon'ble Tribunal in Para 13 of the Judgment and order dated 29.08.2008 is erroneous which being apparent on the face of the record is liable to be reviewed and expunged.
4. For that, the observation of the Hon'ble Tribunal that 'the review applicant had abandoned the point of punitive transfer order for the time being', is factually not correct rather such observation is highly prejudicial to the reputation of the review applicant as a

Counsel and it is likely to cause irreparable loss and injury to him in his professional conduct and hence, such observation of this Hon'ble Tribunal is liable to be expunged by way of review of the Judgment and order dated 29.08.2008 passed in O.A No. 208/2007.

Upon the premises aforesaid, it is humbly prayed that the Hon'ble Tribunal be pleased to consider this petition, admit the same and issue notice to the opposite parties/respondents to show cause as to why the Judgment and order dated 29.08.2008 passed in O.A. No. 208/2007 should not be reviewed as prayed for in this petition and cause or causes being shown and upon hearing the parties be pleased to review the order dated 29.08.2008 passed in O.A. No. 208/2007 so as to expunge the impugned observations in paragraph 13 of the Judgment and order dated 29.08.2008 in O.A. No. 208/2007 and/or pass such other order (s) as this Hon'ble Tribunal may deem fit and proper.

Act for this kindness the review applicant petitioner shall ever pray.



AFFIDAVIT

I, Shri Manik Chanda, Son of Late Naresh Chanda, aged about 51 years, by caste Hindu, resident of Lachit Nagar, By lane No. 7, House No. 8, Guwahati-781007, Kamrup, Assam do hereby solemnly affirm and declare as follows:

1. That I am the applicant in the instant review application and as such conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made in this affidavit and in paragraphs 1, 2, 5, 8, 9, 12, 13, 14 and 15 of the accompanying petition are true to my knowledge and those made in paragraphs 3, 4, 6, 7, 10, 11 and 12 are true to the records of the case and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this affidavit on the 29th day of September 2008.

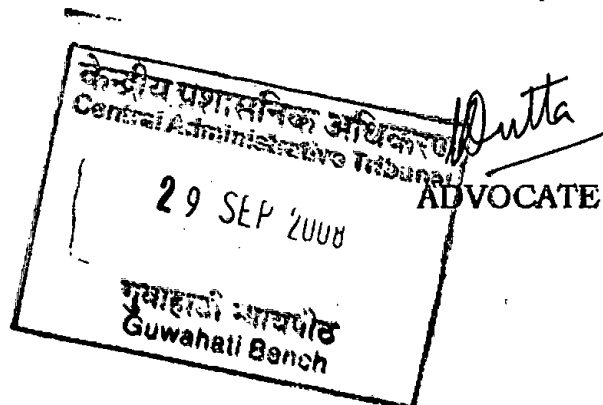
Identified by:

Hidip K. D. M.

Advocate

Manik Chanda
Deponent

Solemnly declared and affirmed before me:

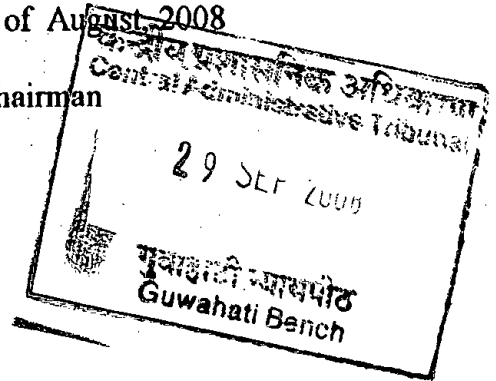


CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 208 of 2007

Guwahati, this the 29th day of August, 2008

Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman

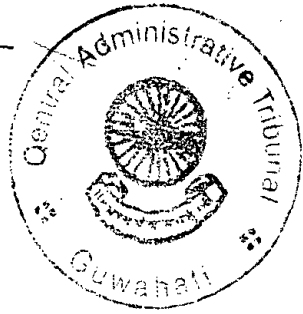
Shri Chandra Mohan Sharma, IFS,
Conservator of Forest,
P.O.-Diphu
Dist-Karbianglong, Assam.



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
P.O.-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

Collected
Muta
Adw

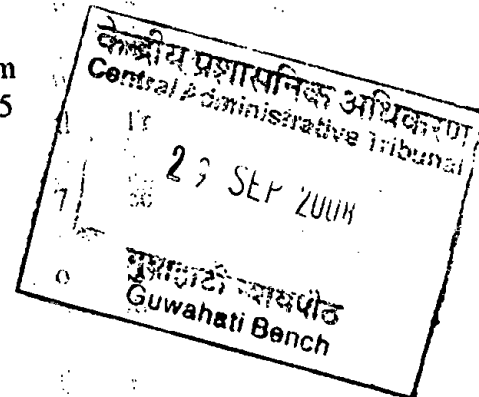
Ministry of Environment and Forest
New Delhi-110 001.

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:

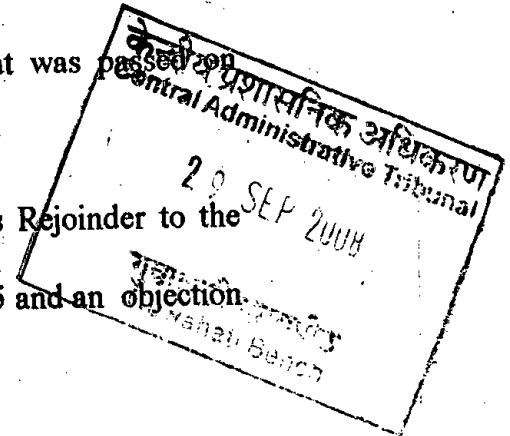


Applicant, a member of Assam Segment of Assam-Meghalaya Joint Cadre of Indian Forest Service, was posted as Conservator of Forests of Karbi Anglong. He having faced the impugned order of Transfer dated 17.07.2007, approached this Tribunal with the present Original Application filed [on 02.08.2007] under 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.

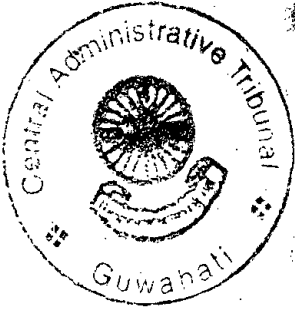
2. Before the date fixed/17.09.2007, however, the Private Respondent No.5, on 16.08.2007, filed a written statement and also filed a petition [M.P.No.80/2007] seeking vacation/modification of the interim order that was passed on 02.08.2007. The said private Respondent was to replace the Applicant at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

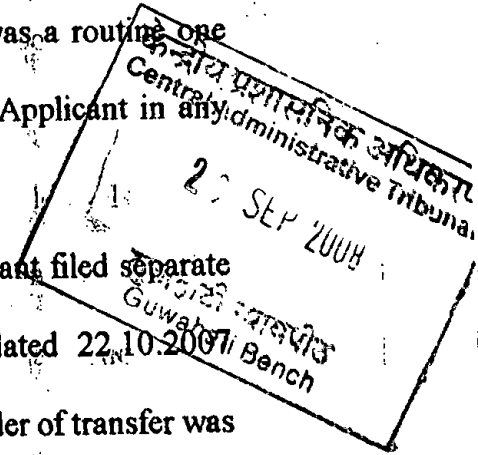
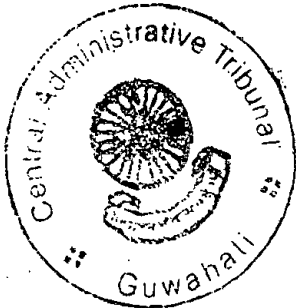
7. On 14.02.2008, a written statement has been filed [on behalf of the State Government of Assam] in this case taking the same stand [that was taken while moving this Tribunal for vacation of stay] that this impugned order of transfer was a routine one having no mala fides intention to penalize the Applicant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

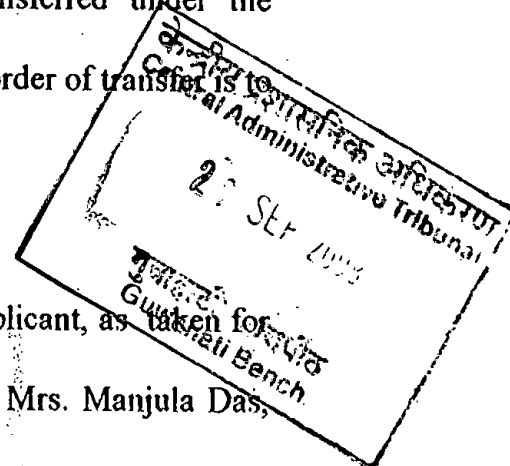
9. Heard Mr. Chanda, learned Counsel appearing for the Applicant; Mr. M.U. Ahmed, learned Addl. Standing Counsel representing the Union of India; Mrs. Manjula Das representing the State of Assam and Mr. D.K.Das representing the private Respondent and perused the materials placed on record.

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

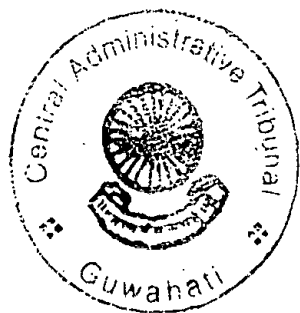


simpliciter issued in a routine manner transferring the Applicant after a considerable period of posting at Karbi Anglong; they [Respondents] have disclosed in the Departmental charge-sheet dated 22.10.2007 that 'lot of complaints regarding illegalities, misappropriation of Govt. fund and irregularities 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.

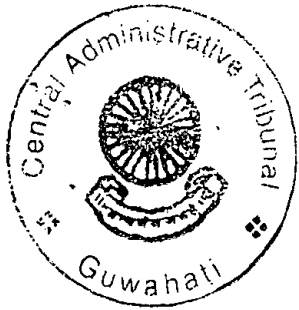
13. Facing with above obstruction, Mr. Chanda, learned Counsel for the Applicant disclosed at hearing that the Applicant is going to challenge the action of the Respondents by way of filing a fresh Original Application directed against the Departmental charge-sheet. Thus, he abandoned the point [that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



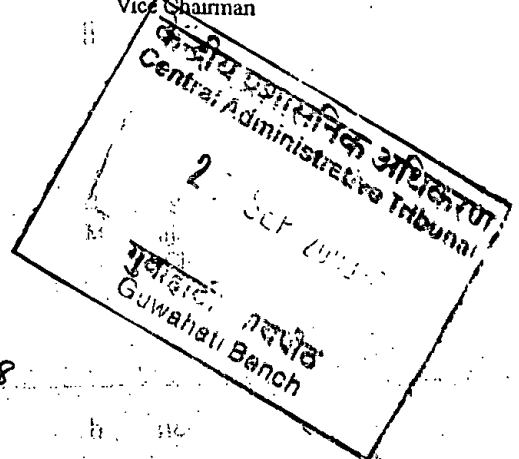
violation of the principles of natural justice] for the time-being.
In fact the Applicant has, by now, filed a fresh Original Application challenging the Departmental charge-sheet dated 22.10.2007.

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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.



Sd/-
Manoranjan Mohanty
Vice Chairman



Date of Application : 27.8.08
Date on which copy is ready : 8.9.08
Date on which copy is delivered : 8.9.08
Certified to be true copy

Section Officer (Judl)
C. A. T. Guwahati Bench
Guwahati-5.

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