

38

FORM NO. 4  
(Sec Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
ORDER SHEET

1. ORIGINAL APPLICATION No. : -----/2011
2. Transfer Application No. : -----/2011 in O.A. No.-----
3. Misc. Petition No. : -----/2011 in O.A. No.-----
4. Contempt Petition No. : -----/2011 in O.A. No.-----
5. Review Application No. : -----/2011 in O.A. No.-----
- ✓ 6. Execution Petition No. : 15 -----/2011 in O.A. No. (208 & 252/2009)

Applicant (S) : Shri Binay Kumar Mishra ;

Respondent (S) : Union of India & Ors

Advocate for the [Applicant (S)] : Im-person

Advocate for the [Respondent (S)] : -----

Notes of the Registry

Date

Order of the Tribunal

This E.P. is filed by 06.07.2011  
Shri Binay Kumar Mishra,  
Petitioner Im-person,  
praying for Execution  
of order dated 31-3-2010  
passed in O.A. 208 &  
252/2009.

Laid before the  
Honble court for  
favor of order.

Section Officer

5-7-2011

By this E.P. the petitioner makes a prayer for the issuance of notice to the respondent authority as regards the implementation of the directions contained in the order dated 31.03.2010 in O.A.Nos.208 & 252/2009.

Mr Binay Kumar Misra, the petitioner, appeared in person. My attention was drawn on the operative portion of the order. It is categorically stated in the said order as follows:

"Charge memorandum dated 11.02.2009 is quashed and set aside with all consequential benefits. Respondents are also required to regularize the period, namely, 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006. He will also be entitled to annual increment. Aforesaid exercise shall be undertaken within a period of two months from the date of receipt of this order."

Contd/-

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The petitioner submitted that after obtaining a certified copy of the order dated 31.03.2010 the same was placed before the respondent No.3, but it has not yet been complied with. The petitioner clarified that respondents have not given full effect of the order dated 31.03.2010 inasmuch as they have only regularized the period. Annual increment has not been<sup>g</sup> which is due since 2005.

In view of the above, issue notice returnable within 19.07.2011.

List on 19.07.2011.

(Madan Kumar Chaturvedi)  
Member (A)

nkm

19.07.2011

Mr A.M.Buzarbarua, learned counsel for respondent No.3 appeared and prayed for four weeks time to file affidavit in reply. Petitioner appeared in person. It is categorically stated in the Tribunal's order dated 31.03.2010 rendered in O.A.208/09 & 252/09 that respondents are required to regularize the period namely, 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006 and applicant is entitled to annual increment. It was made clear that annual increment has not been given which is due since 2005. Respondents are required to clarify on the next date whether they got any stay from the Hon'ble High Court in this regard. If stay is not granted then why the order of the Tribunal is not executed. Mere pendency of Writ Petition before the Hon'ble High Court is not a valid excuse for not implementing the order of the Tribunal. None appeared on behalf of respondents No. 1, 2 and 4.

List on 29.08.2011.

(Madan Kumar Chaturvedi)  
Member (A)

7-7-11  
Issued Notice  
to R.A. 1-4  
along with petition  
to order to be made  
6-7-11 by Regd.  
with A/D.

18-7-11  
1) Service Reports are  
awaited.  
2) W/S has not been  
filed.

26-8-11  
1) Service Reports are  
awaited.  
2) W/S not filed.

26/8

29.08.2011

Mr A.Gogoi, learned counsel for the respondent No.3 appeared and placed before me the order of the Hon'ble Gauhati High Court dated 23.08.2011 rendered in WP(C) No.2988/2011, wherein Hon'ble High Court has held that the impugned judgment and order dated 31.03.2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A.No. 208/2009 and 252/2009 shall remain suspended. Mr G.Baishya, learned counsel for respondent No.4 appeared and submitted that since the operation of the Tribunal's order has been suspended, this E.P may be closed. Shri Binoy Kumar Mishra, the applicant appeared in person and made a request that the Writ Petition is yet to be admitted. The operation of the order has been temporarily suspended, as such E.P may be kept in abeyance till admission of the Writ Petition. Learned counsel for the respondents submitted that the Writ Petition is coming up for admission on 16.09.2011.

List the matter on 29.09.2011.

(Madan Kumar Chaturvedi)  
Member (A)

pg

29.09.2011

On the last occasion Mr.G.Baishya, learned counsel for the respondent no.4 made a prayer that since the operation of the Tribunal's order has been suspended, this EP may be closed. On that the applicant, who appeared in person, made a request that writ petition is yet to be admitted and operation of the order has been temporarily suspended, as such EP may be kept in abeyance till disposal of the writ petition.

Ms.M.Barman, learned counsel for the respondent no.3 appeared and filed a copy of the order of the Hon'ble High Court dated 16.09.2011 in WP (C) No.2988/2011.

As per this order, the writ petition is admitted. As such, EP stands closed.

(Madan Kumar Chaturvedi)  
Member (A)

29-8-2011

① Vakalatnama filed by  
Mr A.M. Buarbaruah, Ms.  
M. Barman and Ms. A. Gogoi  
Adv. for R. No-3.

② Affidavit filed by  
R. No-3 at page-  
15 to 21

30-8-11

1) Order copy dt 29-8-11  
send to Applicant by  
special message &

2) Copy supplied to  
Mr A. Gogoi Adv for  
Respondt.

Received copy

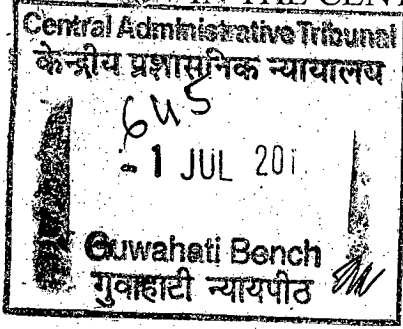
Amarendra Gogoi  
Advocate for OP No.3  
2.11.2011

For Mr  
G. Baishya  
Received copy  
Parineta spencer  
3. 11. 11

/bb/

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Deismay  
copy. order sent  
24-9-11 on behalf of  
J.R. Appleby  
25/12/14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.



Execution petition No. 15 / 2011  
In O.A No. 208 & 252 of 2009

Shri Binay Kumar Mishra

...APPLICANT.


- V/S -

The Union of India & Other

...RESPONDENTS.

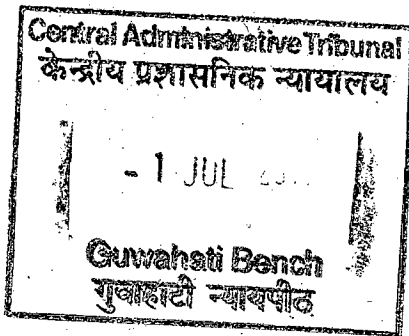
I N D E X

| <u>Sl. No</u> | <u>Particulars of Documents</u>   | <u>Page No.</u> |
|---------------|---|-----------------|
| 1.            | Petition  | 2               |
| 2.            | Verification  | 6               |
| 3.            | A copy of Hon'ble Tribunal's order<br>Dtd. 31-3-2010 in O.A No. 208 &<br>252 of 2009. | ANN - A (7)     |
| 4.            | A copy of the prayer petition dated<br>23-4-2010.                                     | ANN - B (13)    |
| 5.            | A copy of the petition addressed to the<br>Accountant General, Assam dtd. 31.5.2011   | ANN - C (14)    |

  
Signature of the applicant.

For Use in the Tribunal's office  
Date of filing :-  
Registration no.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.



Execution Petition No. 15 / 2011  
(In O. A. No 208 & 252 of 2009)

In the Matter of :-

A petition under section 17 of the Central Administrative Tribunal Act, 1985 praying for execution of order dated 31.3.2010 passed by this Hon'ble Tribunal in O.A. No. 208 & 252 of 2009.

- And -

In the Matter of :-

Shri Binay Kumar Mishra

.....Applicant

-Vs-

The Union of India & others

..... Respondents

- And -

In the Matter of :-

Shri Binay Kumar Mishra

S/O Shri Jagdish Mishra

Director Prosecution, Assam

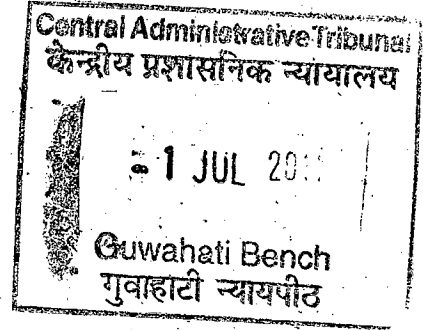
Near CID Office, Ulubari, Guwahati-7

-VS-

1. The Joint Secretary(Police), Ministry of Home affairs,

Govt. of India, New Delhi

2. The Chief Secretary to the Govt. of  
of Assam, Dispur, Guwahati-6.



3. Commissioner & Secretary to the Govt. of Assam  
Home Department, Dispur, Guwahati-6.

4. The Principal Accountant General, Assam,  
Maidamgaon, Guwahati-19.

.....Respondents

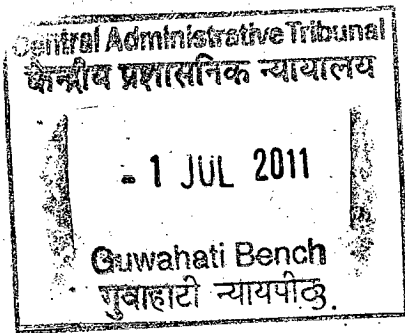
The humble petition of the petitioner above named :

**MOST RESPECTFULLY SHEWETH :-**

1. That the petitioner begs to state that he filed O.A. No. 208/09 challenging the impugned order dated 11.2.2009 issued by the Govt. of Assam under the signature of Principal Secretary, Home & political department etc. thereby initiating disciplinary proceedings against the petitioner. Later, he also filed another O.A. No. 252/09 praying for giving directions to the respondents to regularize some of his past service period. This Hon'ble Tribunal after taking into consideration totality of fact and circumstances of the case set aside the aforesaid impugned order by its order dated 31.3.2010 with all consequential benefits. Moreover, directions were issued to regularize the different periods of service and also to release the annual increments as due within two months from the date of receipt of this Hon'ble Tribunal's order.

A copy of the Order dated 31.3.2010 passed in O.A. No.208 & 252 of 2009 is annexed herewith and marked as **Annexure – A.**

2. That the petitioner begs to state that after obtaining a certified copy of order dated 31.3.2010 he placed the same before Shri J. Baruah, Home Commissioner who is next to respondent No. 3 ( now head of the department) along with a prayer petition dated 23.4.2010 to comply with the Hon'ble Tribunal's order. The good office of the said respondent has acknowledged the receipt of copy of the same on the same day i.e. 23.4.2010.



A copy of the prayer petition dated 23.4.2010 is annexed herewith and marked as

**Annexure – B**

That the petitioner begs to state that more than one year has elapsed from the date of receipt of the copy of the final order dated 31.3.2010. The respondent authority has regularized two periods of 2005 through its order dated 5.5.2011 but respondent No 3&4 have taken no step to release my annual increment due since 1.1.2005 thereby causing tremendous mental agony and harassment to the applicant.

4. That the applicant through a letter dated. 31.5.2011 requested the respondent No. 4 to issue a fresh pay slip showing my annual increment etc. due sine 1.1.2005 but nothing was done in this regard and applicant is facing great financial hardship.

A copy of this letter is annexed hereto and marked as **Annexure- C**



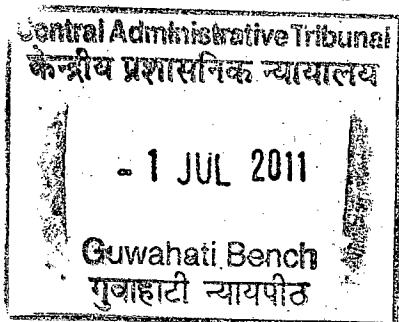
H. H. H.

5. - That in Article I of the chargesheet issued on 11.2.2009 it was mentioned that the applicant was absent from duty with effect from 20.5.2005 but the honb'le Tribunal did not accept it and has quashed the chargesheet and hence question of applicant remaining absent from duty does not arise. But the respondent No 4 has refused to implement the said order and has failed to release annual increment etc. accordingly

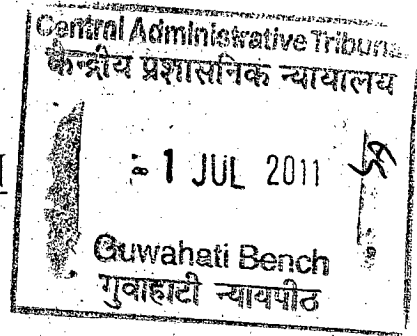
6. That the petitioner begs to state that a contempt petition was filed by the petitioner on same facts but same has now been withdrawn.

7. That this petition is filed bonafide in the interest of justice.

Under the above facts and circumstances it is therefore prayed that your Lordships would be pleased to admit this petition, issue notice to the respondents authority, and pass order as this Hon'ble Tribunal may deem fit and proper,



And for the act of kindness your humble petitioner as in duty bound shall ever pray.

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

I, Binay Kumar Mishra, S/ O Shri Jagdish Mishra aged about 48 years hereby declare :

(1) That paras No. 1, 2, 3, 4, 5 are true to the best of my knowledge.

(2) That paras No. 6 & 7 are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 1st day of July, 2011 at Guwahati.

A handwritten signature in black ink, appearing to be "Binay Kumar Mishra".

Applicant

— 7 —

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application Nos. 208 & 252 of 2009

Date of Decision: This, the 31<sup>st</sup> day of March 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Binay Kumar Mishra  
S/O Shri Jagdish Mishra  
Director Prosecution, Assam  
Near CID Office,  
Ulubari, Guwahati - 7.

...Applicant in both O.A.s

By Advocate: In person

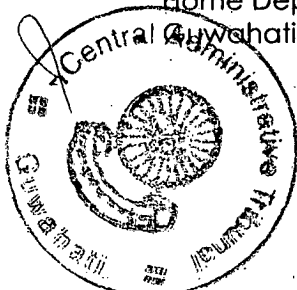
-Versus-

1. The Union of India  
represented by the Joint Secretary (Police)  
Ministry of Home Affairs  
Govt. of India, New Delhi.
2. The Govt. of Assam  
represented by the Chief Secretary  
to the Govt. of Assam  
Dispur, Guwahati - 6.
3. The Principal Secretary  
to the Govt. of Assam  
Home Deptt.  
Dispur, Guwahati - 6.

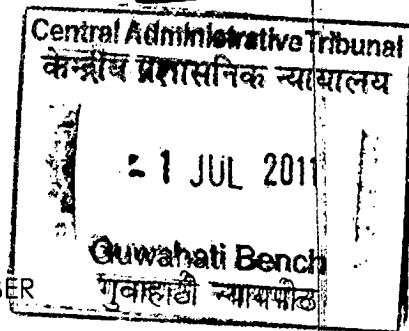
...Respondents in O.A. 208 of 2009

By Advocate: Mr.M.K.Boro, Addl.C.G.S.C. for Respondent No.1 &  
Mrs.M.Das for Respondent Nos.2 & 3

1. The Union of India  
represented by the Joint Secretary (Police)  
Ministry of Home Affairs  
Govt. of India, New Delhi.
2. The Govt. of Assam  
represented by the Chief Secretary  
to the Govt. of Assam  
Dispur, Guwahati - 6.
3. The Principal Secretary  
to the Govt. of Assam  
Home Deptt., Dispur,  
Guwahati - 6.



Affected  
Inspector General of Police (Prosecution)  
Assam, Guwahati



- 29
4. The Accountant General  
Assam, Maidamgaon  
Guwahati - 19.

...Respondents in O.A. 252 of 2009

By Advocate: Mr.M.K.Boro, Addl.C.G.S.C. for Respondent No.1 & 4  
Mrs.M.Das for Respondent Nos.2 & 3

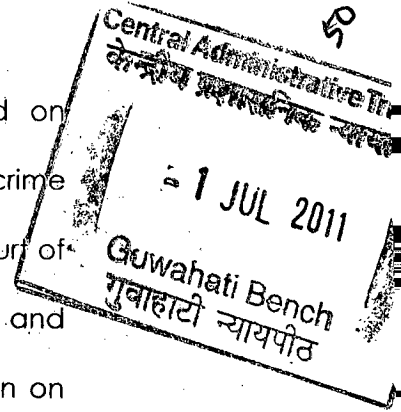
**ORDER (ORAL)**

**MUKESH KUMAR GUPTA, MEMBER (J):**

Vide O.A. No.208/2009, applicant challenges validity of memorandum dated 11.02.2009 issued under Rule 8 of all India (Discipline & Appeal) Rules, 1969 with all consequential benefits. He also seeks regularization of certain period which is not connected with aforesaid memorandum. Vide O.A. No. 252/2009, he seeks direction to respondent nos.2 and 3 to regularize the period between 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006. He also seeks direction to respondent no.4 to issue pay slip for aforesaid period and release annual increment due besides costs.

2. Admitted facts are Sri B.K.Mishra, applicant in these two O.A.s is a member of Indian Police Services. While posted as Commandant, 5<sup>th</sup> AP Battalion, Sontilla, Haflong, he was unfortunately embroiled in family dispute with his wife (Smt Rashmi Mishra). While on central deputation at Delhi, his strange wife allegedly entered the flat occupied by him and some scene was created. He proceeded on 7 days casual leave in anticipation of being sanctioned. He informed this aspect vide letter sent by fax on 20.05.2005. He assumed the duties on 02.06.2005. On assumption of duties he learnt that his prayer for grant of 7 days casual leave had been turned down without assigning any reason. He was also placed under suspension w.e.f. 21.07.2005 i.e., the date of detention in connection with

case No.4721/2001 and C.R. No.2184 of 2002, vide order issued on 11.08.2005. Said suspension was revoked on 19.09.2005. Aforesaid crime cases filed by his wife were later dismissed by the learned Court of Additional Chief Judicial Magistrate, Kamrup, Guwahati on 16.12.2006 and 22.02.2007 respectively. He was once again placed under suspension on 07.12.2005 in contemplation of departmental proceedings. Said suspension was revoked on 07.02.2006 and thereafter vide order dated 13.04.2006 he was posted as Commandant of 16<sup>th</sup> AP (I/R) Bn, Bormonipur, Morigaon.



3. Vide order dated 20.12.2008 he was promoted to the rank of Deputy Inspector General of Police (DIG in short) with retrospective effect i.e. from the date his junior Sri M. Agarwal was promoted. Vide another order of even date he was further promoted to the rank of Inspector General of Police (IGP in short) in the pay scale of Rs.18400-22400/-. Thereafter memorandum dated 05.02.2009 was issued under Rule 8 of aforesaid rules, which contained 5 articles of charges. In supercession of aforesaid memorandum, another memorandum dated 11.02.2009 was issued which contained the identical charges. Vide first article of charges it was alleged that he left the headquarter i.e., Sontilla on 19.05.2005 without obtaining prior permission. Second article of charges alleges that he absented himself from duties and stayed at Assam House, New Delhi from 23.05.2005 to 28.05.2005 with one lady of doubtful character, other than his wife. Vide articles III and IV it was alleged that he appointed one cook (Grade IV) against 16<sup>th</sup> APBn w.e.f. 20.05.2006 and Sri Tufan Singha an outsider as Daftry in General Branch despite ban on appointment respectively. Article V alleges that he misappropriated Govt. money amounting to Rs.7 lacs. 9 documents and 6 witnesses were listed to support



*Attested*  
*M. K. Singh*  
 Inspector General of Police (Prosecution)  
 Assam, Guwahati

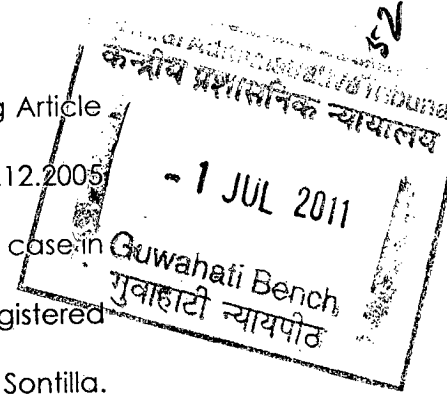
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aforesaid allegations. Detailed written statement of defence had been submitted on 29.03.2001 whereby aforesaid allegations were denied stating that there was inordinate delay in initiating the departmental proceedings. Furthermore, vide orders dated 20.12.2008 he had been promoted twice, namely, to the post DIG and IGP from an earlier date, and therefore, misconduct, if any, stood condoned. Even on merits it was pointed out that his <sup>e</sup>strange wife along with Sri P.V.Sumant, the then Director General of Police (DGP in short) joined hands together and did everything possible to cause irreparable damage to his career and reputation. The then DGP because of his vindictive attitude towards him posted him as Commandant of 5<sup>th</sup> APBn where other officials had refused to join due to existing insurgency situation. Vide letter dated 12.05.005, said official in a communication addressed to the Chief Secretary made sarcastic and derogatory remarks against him. On 19.05.2005 he had informed to DIG (AP) Mr.A.K.S.Cassyap who in turn asked him to inform IGP Mr.K.Saikia, as ADG was out of station, and therefore, he contacted Mr.K. Saikia and informed him seriousness of the matter and urgency to proceed on leave immediately. Thereafter he had applied for 7 days of casual leave after intimating all concerned. Attention of the authority was drawn to W.T. Message addressed to IGP concerned. His leave was rejected without assigning any reason. In fact he never absented as alleged. He was staying with Smti. Maya Sinha, who is his second wife as first <sup>e</sup>strange wife had already been divorced. Regarding Articles III & IV, it was pointed out that a ban on filling up the Grade-IV posts had been withdrawn vide order dated 02.05.2005, copy of which had been endorsed by IGP (Admn) to Commandant, 5<sup>th</sup> APBn on 21.02.2005. It was reiterated that appointments were made after following all formalities and there was no iota of evidence

1/12/12  
1/12/12  
Inspector General of Police (P. & C)  
Assam, Guwahati



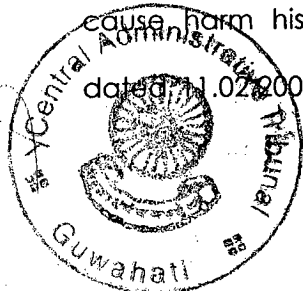
that any violation of rules and law had been committed. Regarding Article of charge V, it was pointed out that a FIR was lodged by him on 20.12.2005 for misappropriation of Govt. Money and after investigation criminal case in the police station of Haflong being case No.108 U/S 408 was registered against Sri Phanibhusan Acharjee, Inspector I/C of 5<sup>th</sup> APBn, Sontilla. Criminal proceeding is still pending against him. The said official was also proceeded with departmental proceedings. During internal audit, it was noticed that misappropriation was to the tune of Rs.5,23,000/- and not Rs.7 lacs. Vide order dated 20.04.2007, the then DGP, Assam inflicted a penalty of compulsory retirement upon Sri S.P.Acharjee, though it has been established that the delinquent had not refunded Rs.5,23,000/- misappropriated by him, and therefore, a loss was caused to the Govt., yet no recovery was made from said delinquent official.



In the backdrop of aforesaid aspects, he had prayed that the charge memorandum dated 11.02.2009 be dropped as the proceedings were initiated with sole intention to defame him, causing agony and harassment as well as humiliating him in public life.

4. Applicant appearing in person strongly canvassed that there remains no justification in initiating departmental proceedings against him. Charges leveled are baseless, unjustified, concocted and un-called for. It was further contended that annual increment due has not been released; pay-slips for the periods: July to September, 2005 as well as December, 2005 to February, 2006 had not been issued which is causing him serious financial difficulties. The action taken by the respondents is malicious and only to cause harm his career and reputation. Even otherwise, memorandum dated 11.02.2009 did not include aforesaid period, namely, 21.07.2005 to

Inspector General of Police (Provisional)  
Assam, Guwahati

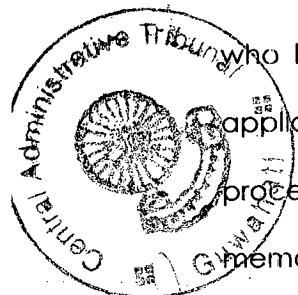


Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायाधीश  
53  
1 JUL 2011  
Guwahati Bench  
गुवाहाटी न्यायपीठ

21.09.2005 and 07.12.2005 to 06.02.2006. Applicant also canvassed that because of strained relationship between the then DGP and applicant, he was posted to a non-cadre post (SP, FRRO), Barpeta. Strong reliance was placed on **AIR 1967 MP 284, Laj Audhraj Singh vs. State of Madhya Pradesh through Secretary to Forest Department** to contend that master cannot impose any punishment on a servant for a misconduct which he has condoned and if the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion and if the authority concerned knowing of this lapse or misconduct promotes the Civil Servant without any reservations, then it must be taken that the lapse or misconduct has been condoned, and therefore, the servant cannot be punished for his lapse or misconduct. Reliance was also placed on **AIR 1925 Calcutta 87, L.W.Middleton vs. Harry Playfair** to contend that if a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue in service, he cannot subsequently dismiss him on account of that when he had waived or condoned. To contend that there had been inordinate delay in initiating departmental proceedings, reliance was placed on **2010(1)AISLJ (CAT) 147, R.V.Bansal vs. The Commissioner, MCD**, whereby reliance was placed on Hon'ble Supreme Court judgment in the case of **State of A.P. v. N.Radhakrishan, 1993 (3) SLJ 162 (SC) = JT 1998(3) SC 123**. It was emphasized that delay remained unexplained causes prejudice to delinquent official if it is not he who has to be blamed for the delay. It has been further urged by the applicant that neither Enquiry Officer has been appointed nor any proceeding has been conducted till date except issuance of charge memorandum dated 11.02.2009, which would establish the seriousness on

*Affected  
MKS*

Inspector General of Police (Prosecution)





the part of respondents. Thus, there is no necessity either for issuing belated proceeding or keeping said proceeding pending.

5. At the outset we may note that no reply has been filed in O.A. No.252/2009. Sri M.K.Boro, learned Addl. Standing counsel appears for respondent Nos. 1 & 4 in said O.A. while he appears for respondent No.1 in O.A. 208/2009. He had brought to our notice that respondent no.4 has no objection to regularize the leave period from 20.05.2005 to 01.06.2007 and suspension period from 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006. Said respondent also requested the respondent no.3 i.e., Govt. of Assam, Home Department to sanction the leave and regularize suspension period, but till date nothing has been heard from said respondent.

Vide reply filed in O.A. 208/2009, it has been stated that his written statement of defence dated 29.03.2009 was received by the department on 30.03.2009 and thereafter on consideration of the matter it was decided to obtain views of the DGP, Assam and vide letter dated 31.03.2009 DGP, Assam was requested to offer his view. Though he was placed under suspension on 07.12.2005, it was revoked and he was reinstated on 07.02.2006. Said period could not be regularized as the departmental proceedings were drawn on 11.02.2009.

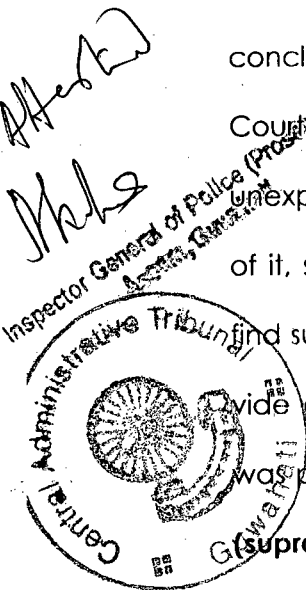
On merits of the allegations, no comments were offered except to state that O.A. has no merits.

6. We have heard applicant in person; Mrs.M.Das, learned counsel for the State of Assam and Mr.M.K.Boro, learned Addl. C.G.S.C.



5  
appearing for respondent no.1 in O.A. 208/2009 and respondent nos.1 & 4 in O.A. 252/2009.

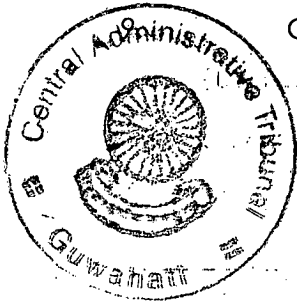
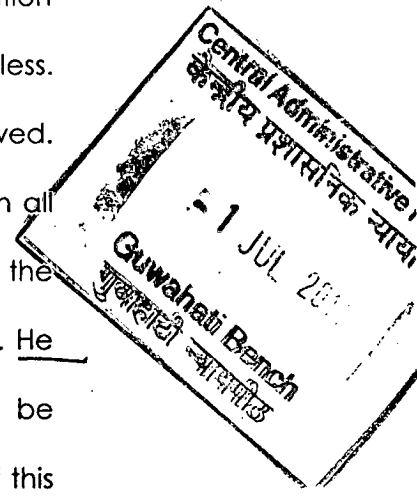
7. As already noticed hereinabove, there is no explanation offered for the belated charge sheet. Furthermore, no explanation had been offered as to why no step has been taken in finalizing aforesaid departmental proceedings. It is well settled law that "prosecution" should not become "persecution". Right of speedy trial available to a delinquent is applicable in departmental proceedings too. It is further not in dispute that allegations made against applicant vide memorandum dated 11.02.2009 were for the year 2005-2006, yet he has been promoted to the post of DIG as well as IGP vide order dated 20.12.2008 respectively. We may note that at no stage, respondents were restrained from proceeding in aforesaid departmental proceedings against the applicant. Even if there was delay in initiating the departmental proceedings, the delay in concluding said proceedings has not been explained. Hon'ble Supreme Court in **N.Radhakrishnan (supra)** has clearly observed that if delay in unexplained prejudice to the delinquent employee is writ large on the face of it, such initiation of proceeding cannot be accepted. Furthermore, we find substance in the contention raised by the applicant that his promotion vide orders dated 20.12.2008 misconduct, if any, stood condoned as he was promoted without any reservation. Law laid down in **Laj Audhraj Singh (supra)** is clearly attracted in the given facts and circumstances. Furthermore, the period, namely, 21.07.2005 to 21.09.2005 and 07.12.2005 and 06.02.2006 have not been regularized. As per communication of Accountant General (A&E), Assam dated 15.03.2009, said period requires to be regularized.



- 12 -

56

8. Taking a cumulative view of the matter, we find no justification in the contention raised by the respondents that O.A.s are meritless. Consequently, for the reasons discussed hereinabove, O.A.s are allowed. Charge memorandum dated 11.02.2009 is quashed and set aside with all consequential benefits. Respondents are also required to regularize the period, namely, 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006. He will also be entitled to annual increment. Aforesaid exercise shall be undertaken within a period of two months from the date of receipt of this order.



O.A.s are allowed accordingly. No costs.

Sd/- M.K. Gupta  
Member (J)  
Sd/- M.K. Chaturvedi  
Member (A)

TRUE COPY

प्रतिलिपि

अनुभाग अधिकारी

Section Officer (Judicial)

Central Administrative Tribunal

गुवाहाटी न्यायपीठ

Guwahati Bench

गुवाहाटी/Guwahati

Inspector General of Police (Prosecution)  
Assam, Guwahati

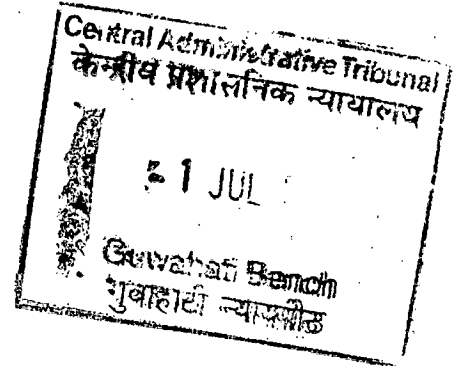
OFFICE OF THE INSPECTOR GENERAL OF POLICE (PROSECUTION)  
ASSAM :: ULUBARI :: GUWAHATI.

Letter No. IGP(P)/PF/10/65

Date 23.04.2010

From : Shri B.K. Mishra, IPS  
 Inspector General of Police (Prosecution)  
 Assam, Ulubari, Guwahati

To : Shri J. Baruah, I.A.S.  
 Home Commissioner, Govt. of Assam  
 Dispur, Guwahati - 6



Ref : This office letter No. IGP (P)/PF/10/34 Dtd. 05.04.2010.

Sir,


Kindly find enclosed herewith a copy of the Order passed by Central Administrative Tribunal, Guwahati bench on 31.03.2010 in O.A. No. 208/252 of 2009 for taking necessary action from your end accordingly.

Enclo : As above.

Your's faithfully

  
 (B.K.Mishra,IPS)

I.G.P.(Prosecution)Assam  
Ulubari, Guwahati.

  
 Inspector General of Police (Prosecution)  
 Assam, Guwahati

**MOST URGENT**

**OFFICE OF THE INSPECTOR GENERAL OF POLICE (PROSECUTION),  
ASSAM:::ULUBARI::: GUWAHATI.**

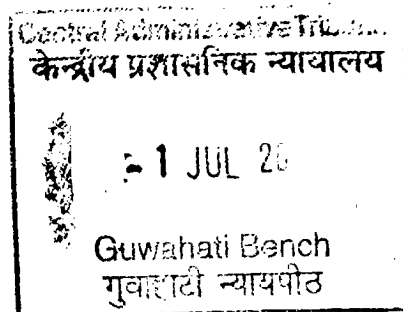
Letter No. IGP(P)/ PF/11/81

Dated :- 31-05-2011

To,

The Accountant General of Assam  
Maidamgaon, Beltola, Guwahati .

Sub :- Issuing of new pay slip.



Sir,

With reference to above, I would like to inform that on repatriation from Central deputation I had joined Assam Police on 01-12-2004. In Feb/2005 I was posted as Commandant, 5<sup>th</sup> A.P.BN (Sontilla) Haflong and continued to be there till Dec/ 2005. However my annual increment has not been released since 01-01-2005.

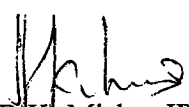
2. In this connection I filed O.A. No. 208 & 252 in year 2009 in the Central Administrative Tribunal, Guwahati bench wherein A.G Assam was also impleaded as a party. On 31-03-2010 the Hon'ble Tribunal set aside Government of Assam's order dated 11-02-2009 and gave directions for regularization of service period pertaining to my tenure as Commandant 5<sup>th</sup> A.P.BN Sontilla. A copy of the said order is annexed hereto and shown as ANNEXURE - A.

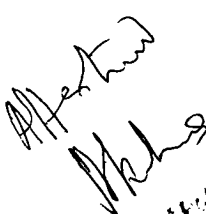
3. Again, the State Government through its order dated 05-05-2011 regularised the period w.e.f. 21-07-2005 to 21-09-2005 and from 7-12-2005 to 6-02-2006 as on duty for all purposes. A copy of said order is annexed herewith and shown as ANNEXURE - B.

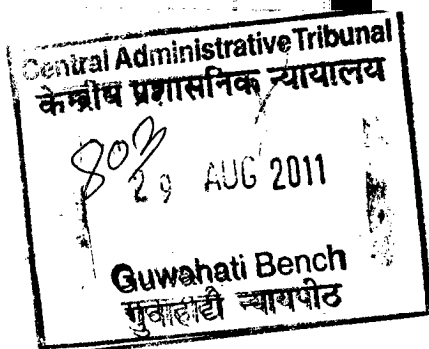
4. In view of above, you are requested to kindly issue new pay slip thereby releasing my annual increment/arrear etc from 01-01-2005 accordingly and oblige.

Enclo :- As above.

Your's faithfully

  
 (B.K. Mishra, IPS)  
 I.G.P (Prosecution) Assam,  
 Ulubari::: Guwahati

  
 A. H. Mishra  
 General Manager (P & S) Assam  
 31-05-2011



-16-

Filed by  
Sri. Anand Kumar  
Advocate for  
Respondent No. 2.  
29.8.2011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

GUWAHATI

IN THE MATTER OF

Execution Petition No-15/2011

Shri Binoy Kumar Mishra

.....Applicant.

-Versus-

The Union of India and others

.....Respondents.

-AND-

IN THE MATTER OF

An affidavit by the respondent No- 3 bringing on record that by the order dated 23-08-2011 in W.P. (C) No- 2988/2011 the Hon'ble High Court had been pleased to provide that the impugned Judgment and Order dated 31-03-2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No- 208/2009 and 252/2009 shall remain suspended.

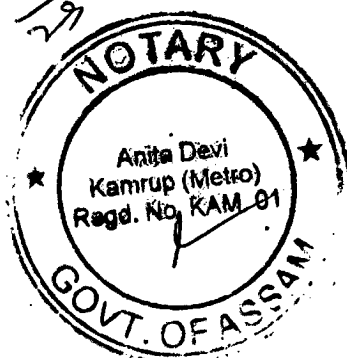
AFFIDAVIT

I, Sri Jishnu Barua, Son of Late D.N. Barua, aged about 48 years, resident of Khandapara, Guwahati, in the District of Kamrup, Assam, do hereby solemnly affirm and state as follows:



01  
28 AUG 2011

Received  
Mishra  
29.8.11



1. That I have been impleaded as the respondent No- 3 in the present application and I am well aware and conversant with the facts and circumstances of the case. A copy of the application has been served upon me and I have gone through the same and understood the contents thereof.

2. That the present application for execution came up for consideration before the Hon'ble Tribunal on 19-07-2011. BY the order dated 19-07-2011 the Hon'ble Tribunal provided that the respondents are required to clarify on next date whether they got any stay from the Hon'ble High Court. It was further provided that if stay is not granted, the respondents are required to clarify as to why the order of the Tribunal is not executed and that mere pendency of the writ petition before Hon'ble High Court is not a valid excuse for not implementing the order of the Tribunal.

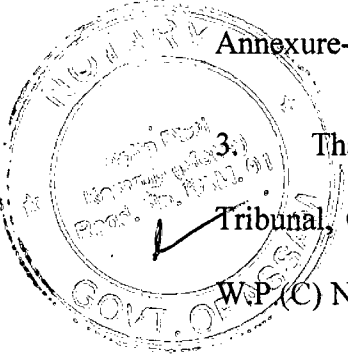
A copy of the order dated 19-07-2011 is annexed herewith and marked as

Annexure-1.

3. That against the Order dated 31-03-2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No- 208/2009 and 252/2009, a writ petition being W.P.(C) No- 2988/2011 was preferred by the State Government of Assam. The said writ petition, W.P.(C) No- 2988/2011 came up for consideration before the Hon'ble High Court, amongst others, on 09-08-2011, 17-08-2011 and 23-08-2011.

4. That by the order dated 23-08-2011 the Hon'ble High Court provided that the notice of the writ petition was tendered to the applicant (Respondent No-1 in the writ petition) and the same was served on the private secretary of the applicant who accepted the same and furnished the acknowledgement receipt. The Hon'ble Court further provided that in addition to the said personal service, it will be appropriate for petitioner to serve notice on the Respondent No-1 by registered post. It was submitted on behalf of the writ petitioner that Contempt of Court proceeding in the Tribunal has been initiated and the matter is fixed on 26-08-2011.

17-  
J. K. Deka



18- 81

5. That accordingly, it was provided that the impugned Order dated 31-03-2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No- 208/2009 and 252/2009 shall remain suspended. By the same order the Hon'ble Court fixed the matter for admission hearing on 16-09-2011.

A copy of the order dated 23-08-2011 in W.P.(C) No- 2988/2011 is annexed herewith and marked as Annexure-2.

6. That <sup>this</sup> ~~it~~ affidavit is being filed to bring it on record that the order dated 31-03-2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No- 208/2009 and 252/2009 is kept under suspension by the Hon'ble High Court by its order dated 23-08-2011 in W.P.(C) No- 2988/2011.

7. That the statements made in this affidavit in paragraphs 2 (pt), 3, 4 (pt) ..... are true to my knowledge, those made in paragraphs 2 (pt), 4 (pt) ..... being matters of records are true to my information derived there from, and the rest are my humble submissions before the Hon'ble Tribunal which I believe to be true.

I swear that my this declaration is true, that it conceals nothing and that no part of it is false, so help me God.

I hereunto set my hand to this affidavit on this <sup>11</sup> 28 day of August, 2011, at Guwahati.

Identified by:

*Amrinder Singh*

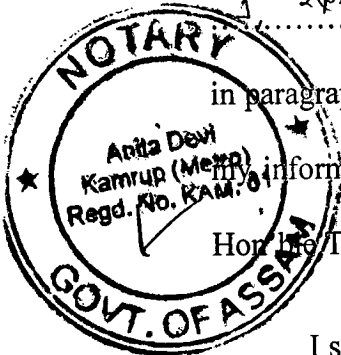
Advocate's Clerk

*Amrinder Singh*  
DEPONENT

SOLEMNLY AFFIRMED AND DECLARED BEFORE ME BY THE DEPONENT WHO IS IDENTIFIED BY *Amrinder Singh* ADVOCATE AT GUWAHATI

*Amrinder Singh*

(A. Devi)  
NOTARY  
KAMRUP (Metro) GUWAHATI  
28 AUG 2011

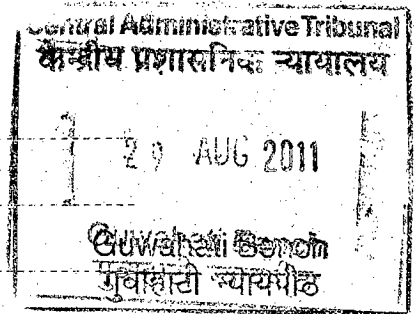




(Sec Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
ORDER SHEET

ANNEXURE - 1

1. ORIGINAL APPLICATION No. : -----/2011
2. Transfer Application No. : -----/2011 in O.A. No. -----
3. Misc. Petition No. : -----/2011 in O.A. No. -----
4. Contempt Petition No. : -----/2011 in O.A. No. -----
5. Review Application No. : -----/2011 in O.A. No. -----
6. Execution Petition No. : 15 /2011 in O.A. No. (208 & 252/2009)



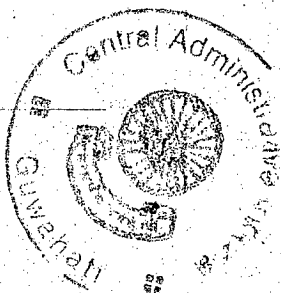
Applicant (S) : Shri Binay Kumar Mishra ;  
Respondent (S) : Union of India & Ors  
Advocate for the [Applicant (S)] : fm-person  
Advocate for the [Respondent (S)] : \_\_\_\_\_

Notes of the Registry

Date

Order of the Tribunal

19.07.2011



Date of Application : 27-7-2011  
Date on which copy is ready : 27-7-2011  
Date on which copy is delivered : 27-7-2011  
Certified to be true copy

Section Officer (Judl)

C. A. T. Guwahati Bench  
Guwahati-5.

Mr. A.M.Buzarbarua, learned counsel for respondent No.3 appeared and prayed for four weeks time to file affidavit in reply. Petitioner appeared in person. It is categorically stated in the Tribunal's order dated 31.03.2010 rendered in O.A.208/09 & 252/09 that respondents are required to regularize the period namely, 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006 and applicant is entitled to annual increment. It was made clear that annual increment has not been given which is due since 2005. Respondents are required to clarify on the next date whether they got any stay from the Hon'ble High Court in this regard. If stay is not granted then why the order of the Tribunal is not executed. Mere pendency of Writ Petition before the Hon'ble High Court is not a valid excuse for not implementing the order of the Tribunal. None appeared on behalf of respondents No. 1, 2 and 4.

List on 29.08.2011

Sd/-  
M.K. CHATURVEDI  
MEMBER (A)



# THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : WP(C) 2988/2011

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority. )

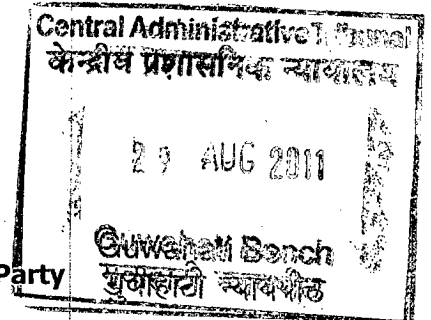
- 1 THE STATE GOVERNMENT OF ASSAM  
REP. BY THE COMMISSIONER AND SECY., DEPTT. OF  
HOME, DISPUR, GUWAHATI.

Petitioner/appellant/applicant.

Versus

- 1 BINAY KUMAR MISRA & ORS.  
S/O JAGDISH MISRA, DIRECTOR, PROSECUTION,  
ASSAM, NEAR CID OFFIE, ULUBARI, GUWAHATI.
- 2 UNION OF INDIA,  
REP. BY THE JT. SECRETARY [POLICE], MINISTRY OF  
HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI
- 3 THE ACCOUNTANT GENERAL,  
ASSAM, MAIDAMGAON, GUWAHATI-19

Respondent/Opp. Party



Advocates on record for Petitioner/ap

- 1 MS. B S GOYAL  
2 JR. GA, ASSAM

Advocates on record for Respondents

- 1 ASSTT.S.G.I.  
2 SC, AG  
3 MR. D BARUAH

Summary Of Case And Prayer In Brief.

CERTIFIED COPY OF JUDGEMENT / ORDER

|                            |                          |                  |
|----------------------------|--------------------------|------------------|
| DATE OF FILING APPLICATION | DATE WHEN COPY WAS READY | DATE OF DELIVERY |
| 24/08/2011                 | 24/08/2011               | 24/08/2011       |

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA

THE HON'BLE MR. JUSTICE C.R. SARMA

DATE OF ORDER : 23/08/2011

It is submitted by Ms. B. Goel, learned State Counsel that notice was tendered to the respondent No. 1, but he declined to accept. On such a situation, the notice was served on the Private Secretary to the IGP, Prosecution, who accepted the same and furnished acknowledgement receipt. Be that as it may in addition to the said personal service, it will be appropriate for the petitioner to serve notice on the respondent No. 1 by registered post. Steps within three

days.

Ms. Goel, learned counsel for the petitioner also submits that alleging non-compliance of the impugned judgment, the respondent has already initiated Contempt of Court proceeding in the Tribunal and the matter is now fixed on 26.8.2011.

In view of the above, the impugned judgment and order dated 31.3.2010 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No. 208/2009 and 252/2009 shall remain suspended.

List on 16.9.2011 for admission hearing.

SD/- C. R. Sarma  
Judge

SD/- B. K. Sharma  
Judge

SL. NO. 175550  
A. 24/8/11

CERTIFIED TO BE TRUE COPY  
Bichitra Narayan Chakraborty  
Date: 24/8/2011  
Superintendent (Copying Section)  
Gauhati High Court  
Authorised U/S 76, Act 1, 1872  
Gha.  
24/8/11

