

FORM NO. 4  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :  
ORDERSHEET

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 : 7-----/2011 in O.A. No.-----
  5. Review Application No : -----/2011 in O.A. No. 208/2009 + 252/09
  6. Execution Petition No : -----/2011 in O.A. No.-----
- Applicant (S): Sri Binay Kumar Mishra
- Respondent (S): Union of India & Ors
- Advocate for the: In-person  
{Applicant (S)}
- Advocate for the: CASE  
{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
This cp is filed by the applicant, In-person, praying for non-compliance of order dated 31.3.10 passed in OA. 208/2009 and OA. 252/2009.	05.04.2011	Place it before the Division Bench. List on 16.05.2011.
Laid before the Hon'ble court for favour of order.	/bb/	(Madan Kumar Chaturvedi) Member (A)
Section Officer	20.04.2011	Heard the petitioner Mr. Binoy Kr. Mishra, in person and perused the petition. The grievance of the petitioner is that order of this Tribunal dated 31.03.2010 has been disobeyed. This averment is found in para 5 of the petition.
		On hearing the petitioner, prima facie we found that the order dated 31.03.2010 has not been complied with by the respondent no.3. Notice in prescribed form to respondent no.3, returnable on 23.05.2011.
		(M.K. Chaturvedi) Member (A)
		(N.A. Britto) Member (J)

/bb/

68

25-4-11

Notice issued on  
Respt. No. 3 in present  
form. with Regd. A/D.  
vide P. No. 406 dt 25-4-11.

25/4/11

20-5-11

Service Reports is  
awaited

20/5/11

26-5-11

Vakalat nama file  
by Mr A.M. Buzen Baruch,  
Ms. M. Barman,  
Md. M. Islam, Mr. I.F. Ali,  
& Mr. A. Gogoi, Advrs.

24/5/11

C.P. 7 /2011 O.A.Nos. 208/2009 & 252 of 2009)

23.05.2011

Applicant is present in person. Mr.A.M.Bujorbarua, learned counsel appears on behalf of the Respondent No.3 and states that copy of the petition has not been furnished to Respondent No.3. Applicant assured that he will be furnished the copy of the same to the learned counsel for the Respondents.

List the matter on 30.5.2011.

(M. K. Chaturvedi)  
Member (A)

(N.A.Britto)  
Member(J)

Lm

30.05.2011

Heard Mr. B.K. Mishra, Applicant in person. Ms. M. Barman, learned counsel appears on behalf of Respondent No.3 and states that the direction to regularize the period between 21.07.2005 to 21.09.2005 and 07.12.2005 to 06.02.2006 has been complied with. She further states that the proposal to release the annual increment has been sent to the Accountant General. She seeks time for four weeks to comply with the said ~~two~~ directions. Considering the facts, we inclined to give four weeks.

List the matter after four weeks i.e. 30.06.2011. Respondent No.3 should make serious effort <sup>to get</sup> ~~about~~ the proposal approved as expeditiously as possible.

(M. K. Chaturvedi)  
Member (A)

(N.A.Britto)  
Member(J)

pb

30.06.2011

This is a Division Bench matter. Place it before the next available Division Bench. Adjourned sine die.

(Madan Kumar Chaturvedi)  
Member (A)

nkm

27-5-11

Service Report is awaited.

27/5

29-6-11

Service Report is awaited.

29/6

4-7-2011

Wakalatnama filed by Mr. G. Baishya, Adv. for R. NO-4.

My

06.07.2011

The petitioner appeared in person and

5.7.2011

made a prayer in writing for withdrawal of the

C.P. Prayer is granted.

In the result the C.P. stands disposed

of as not pressed.

(Madan Kumar Chaturvedi)  
Member (A)

Laid before the  
Hon'ble court for  
favourable order.

5.7.2011

Sp (5)

Withdrawal application of the  
application placed before  
the court for order.

18.7.11

Order dtd. 6.7.11

issued to the parties  
vide No. 1070-1072

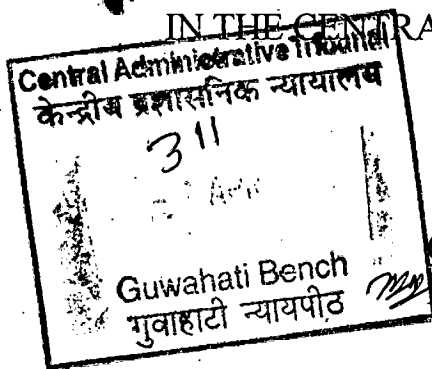
dtd. 19.7.11.

Copy of order dtd. 6.7.2011

on behalf of Cont. No. 2 and 3.

received. to day. on 18.7.2011.

Don't know  
Registration  
Political (C) Dept  
Dispu



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.

Contempt petition No. 7 / 2011  
In original Application No 208 & 252 of 2009

Shri Binay Kumar Mishra

..... APPLICANT

- VERSUS -


The Union of India & Others

.... RESPONDENTS.

I N D E X

<u>Sl. No</u>	<u>Particulars Of Documents</u>	<u>Page No.</u>
1.	Petition	1 - 5
2.	Draft Charge	6
3.	Affidavit	7
4.	A Copy of Hon'ble Tribunal's order dtd. 31-3-2010 in O.A No. 208 & 252 of 2009	A - 1 (8)
5.	A copy of the prayer petition dated 23.4.2010	A - 2 (13)
6.	A copy of petition dtd.12.11.2010 addressed to the Govt. of Assam	A - 3 (14)
7.	A copy of petition dtd. 13.1.2011 addressed to the Govt. of Assam	A - 4 (15)

R 2 Copies of  
the petition  
for and on behalf  
of Mrs. Manjula Das  
Sr. CGSC.

  
Signature of the applicant.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI  
BENCH, GUWAHATI.

Contempt petition No. \_\_\_\_\_ / 2011  
In original Application No 208 & 252 of 2009

Filed by the applicant  
31.3.11

**In the Matter of :-**

A petition under section 17 of the Central Administrative Tribunal Act, 1985 praying for punishment of the Contemnors/ respondents for non- compliance 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 :-**

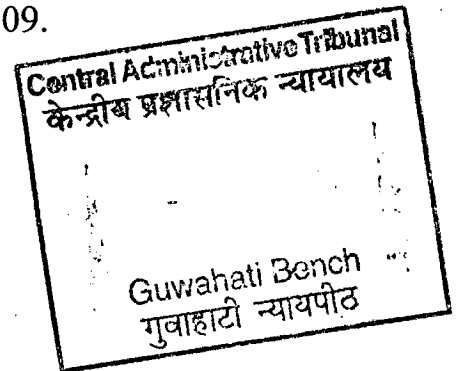
Shri Binay Kumar Mishra

S/O Shri Jagdish Mishra

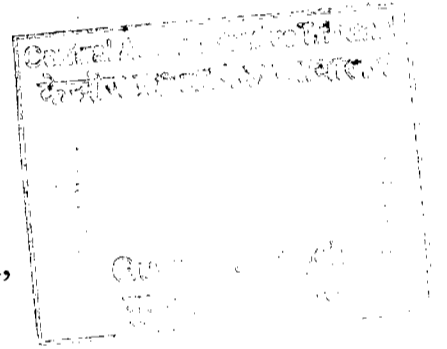
Director Prosecution, Assam

Near CID Office, Ulubari, Guwahati-7

-VS-



1. Mrs. Dipti Vilas, IAS  
Joint Secretary(Police), Ministry of Home affairs,  
Govt. of India, New Delhi
2. Shri N.K. Das, IAS  
Chief Secretary to the Govt. of  
of Assam Dispur, Guwahati-6.
3. Shri J. Baruah, IAS  
Commissioner & Secretary to the Govt. of Assam  
Home Department, Dispur, Guwahati-6.
4. Shri Mahendra Singh  
The Principal Accountant General, Assam,  
Maidamgaon, Guwahati-19.



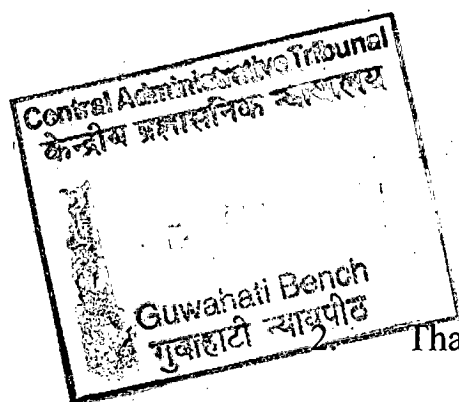
.....Contemner/ Respondents

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.**

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 23.4.10 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. 23.4.10.

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

**Annexure – B**

3. That a reminder was given by the petitioner on 12.11.2010 and again on 13.1.2011 addressed to Shri J. Baruah , the next to respondent No 3 (now head of department) but apparently no

action has been taken in the matter and it amounts to complete defiance of the hon'ble Tribunal's Order dtd. 31.3.2010. The copies of this correspondence are annexed herewith and marked as **Annexure -C & Annexure - D**

4. That the petitioner begs to state that almost one year has elapsed from the date of receipt of the certified copy of the final order dated 31.3.2010. But the respondent authority has till date taken no step to comply with the directions of this Hon'ble Tribunal, to be implemented within a period of two months .

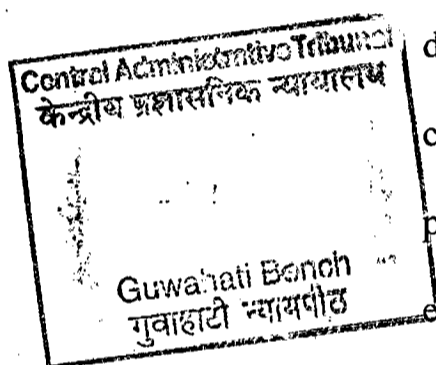
5. That the contemnor/ respondent has willfully and deliberately disobeyed this Hon'ble Tribunal's Order dated 31.3.10 and thus committed contempt of court and hence deserves stringent punishment u/s 17 of the Administrative Tribunals Act, 1985 in exercise of the powers conferred by section 23 of the Contempt of Courts Act, 1971.

6. That the petitioner begs to state that no other contempt petition on the same fact has been filed by him previously.

7. That it is stated that the instant contempt petition is not barred by limitation under section 20 of the Contempt of Court Act, 1971 as is filed within one year from the date of alleged contempt.

8. That this contempt 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 contempt petition, issue notice to show cause as to why a contempt proceeding shall not be drawn up



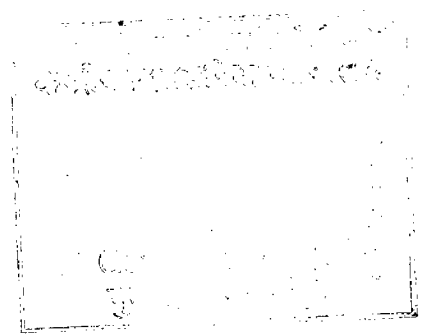
Handwritten signature or initials in the right margin.

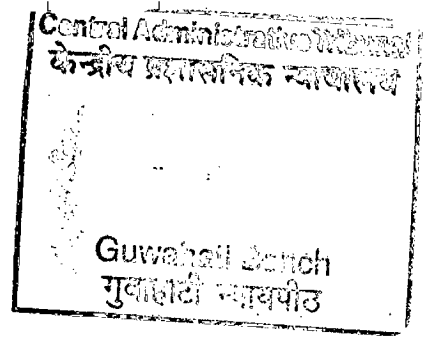
against the respondent authority/ contemnor for committing contempt of court for willful and deliberate disobedience of this Hon'ble Tribunal's order and shall not be punished under section 17 of the Central Administrative Tribunal Act, 1985 or pass such any other order or order as this Hon'ble Tribunal may deem fit and proper,

- And -

Further, it is also prayed that in view of the deliberate disrespect and disobedience to this Hon'ble Tribunal's order dated 31.3.2010 passed O.A. No. 208 & 252 of 2009, the respondents/ contemnors may be asked to appear in person before this Hon'ble Tribunal to explain as to why they should not be punished under the contempt of Court proceeding.

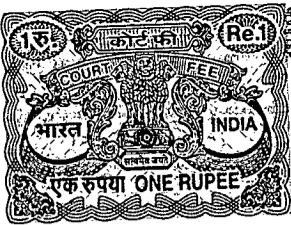
And for the act of kindness your humble petitioner as in duty bound shall ever pray.



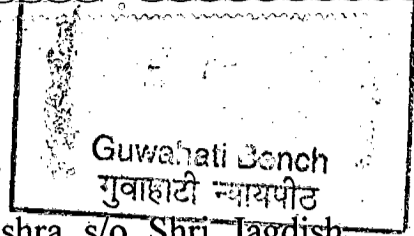
**Draft Charge**

The applicant/ petitioner is aggrieved for non- compliance of order dated 31.3. 2010 passed by this Hon'ble Tribunal in O.A. No. 208 & 252 of 2009. The contemnors/ respondents have willfully and deliberately violated this Hon'ble Tribunal's order by not dropping the disciplinary proceedings drawn against the petitioner. They have neither regularized his past periods of service nor released the annual increments despite several reminders. Accordingly, the respondent/contemnors are liable for prosecution under the Contempt of Court Act, 1971 and severe punishment thereof as provided and also to appear in person before this Hon'ble Tribunal to reply the charges leveled against them.

Wk



## AFFIDAVIT



I, Shri Binay kumar Mishra s/o Shri Jagdish

Mishra , Aged 49 Years, Director Prosecution, Assam, Near CID office ,

Ulubari, Guwahati-7 do solemnly affirm and state as follows.

1. That I am the petitioner in the instant contempt petition and as such I am acquainted with the facts and circumstances of this case. I am competent to swear this affidavit.

2. That the statement made in this affidavit in paragraphs

4, 5, 6, 7 are true to my knowledge and those made in paragraphs 1, 2, 3

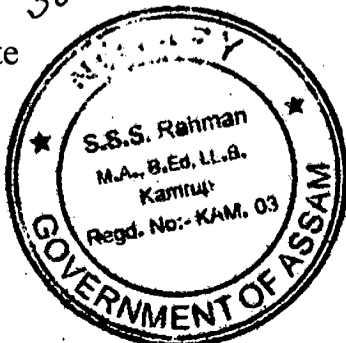
being matter of record are true to my information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 30<sup>th</sup> day of March, 2011 at Guwahati.

Identified by :

*[Signature]*  
C.N. H. Jh 57  
30-3-2011

Advocate



*[Signature]*  
DEPONENT

*[Signature]*  
SHAH SYED SAMADUR RAHMAN  
M.A., B.Ed., LL.B  
NOTARY  
Guwahati, Kamrup.  
Regd. No:- KAM. 03

13  
30-3-11

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

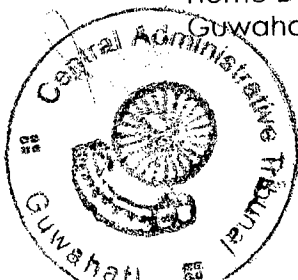
-Versus-

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.

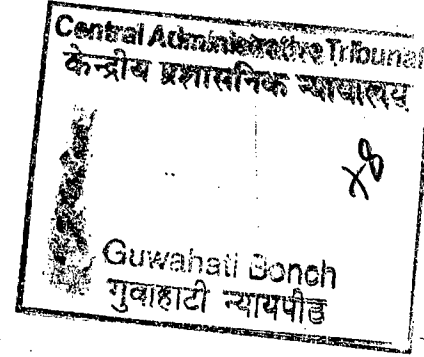
...Respondents in O.A. 208 of 2009

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  
H.K.M.



4. The Accountant General  
Assam, Maidamgaon  
Guwahati Borsah - 19.  
गुवाहाटी न्यायपीठ

...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):**

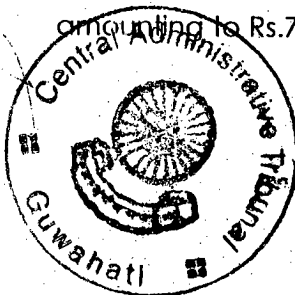
Vide O.A. No.208/2009, applicant challenges validity of memorandum dated 11.02.2009 issued under Rule 8 of all India (Discipline & Appeal) Rules, 1969 with all consequential benefits. He also seeks regularization of certain period which is not connected with aforesaid memorandum. Vide O.A. No. 252/2009, 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 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

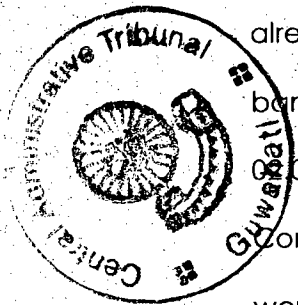
case No.4721/2001 and C.R. No.2184 of 2002, vide order issued on 11.08.2005. Said suspension was revoked on 19.09.2005. Aforesaid crime cases filed by his strange wife were later dismissed by the learned Court of Addl. Chief Judicial Magistrate, Kamrup, Guwahati on 16.12.2006 and 22.02.2007 respectively. 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.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय  
Guwahati Bench  
गुवाहाटी न्यायपीठ

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



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>1</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 Smtl. Maya Sinha, who is his second wife as first <sup>1</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 08.05.2005, 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



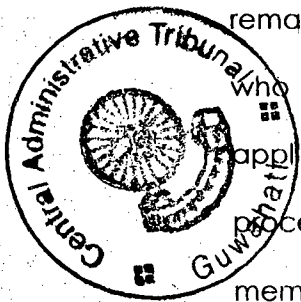
that any violation of rules and law had been committed. Regarding Article of charge V, it was pointed out that a FIR was lodged by him on 20.12.2005 for misappropriation of Govt. Money and after investigation criminal case in the police station of Haflong being case No.108 U/S 408 was registered against 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



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.Radhakrishnan, 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



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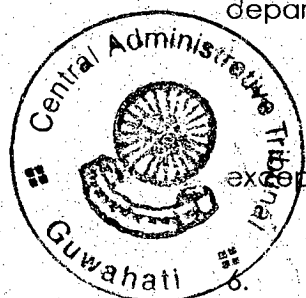
the part of respondents. Thus, there is no necessity either for issuing belated proceeding or keeping said proceeding pending.

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.



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

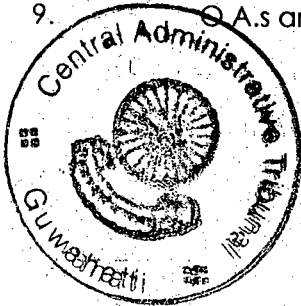
7. As already noticed hereinabove, there is no explanation offered for the belated charge sheet. Furthermore, no explanation had been offered as to why no step has been taken in finalizing aforesaid departmental proceedings. It is well settled law that "prosecution" should not become "persecution". Right 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 require to be regularized.



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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.

9. 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 (Judl)  
Central Administrative Tribunal  
गुवाहाटी न्यायपीठ  
Guwahati Bench  
गुवाहाटी/गुवाहाटी-८

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.

Attended  
J.K.M.

**MOST IMMEDIATE**

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

Letter No. IGP(P)/PF/10/236

Date 12.11.2010

From : Shri B.K.Mishra,IPS  
Inspector General of Police (Prosecution)  
Assam, Ulubari, Guwahati-7

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

Sub : Regularisation.

Sir,

With reference to above, I write to inform that Hon'ble Central Administrative Tribunal, Guwahati bench vide its Order dtd. 31.3.2010 in O.A. Nos. 208 & 252 of 2009 had given directions for regularization of some of my past period of service in 2005, while being posted as Commandant 5<sup>th</sup> A.P. Battalion, Sontilla. However, no intimation has been received so far in this connection thereby causing tremendous mental harassment and agony to undersigned as Accountant General, Assam has refused to release annual increment etc. accordingly. Moreover, it is affecting my service career adversely.

2. In view of the forgoing, you are requested to kindly give suitable directions for regularization of my past period of service and implementation of Hon'ble Tribunal's order at an early date.

Your's faithfully



(B.K.Mishra,IPS)  
IGP (Prosecution)Assam  
Ulubari, Guwahati-7  
Date

Letter No. IGP(P)/PF/10/237

Copy forwarded for kind information to :-

- 1) Shri N.K. Das, Chief Secretary, Govt. of Assam, Dispur, Guwahati-6
- ✓ 2) The joint Secretary, Ministry of Home Affairs (MHA), Govt. of India, North Block, New Delhi - 110001.



(B.K.Mishra,IPS)  
IGP (Prosecution)Assam  
Ulubari, Guwahati-7

Attested  
Mishra

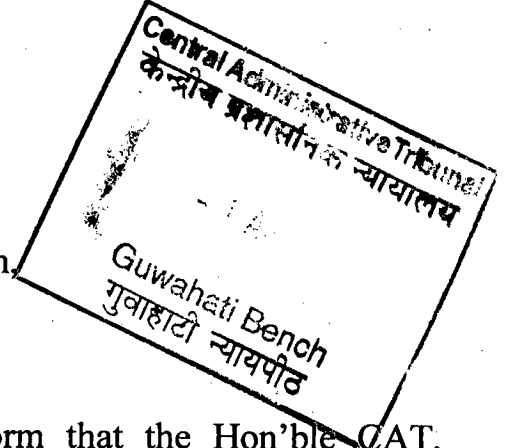
OFFICE OF THE INSPECTOR GENERAL OF POLICE (PROSECUTION) ASSAM  
ULUBARI, GUWAHATI

Letter No. IGP(F)/PF/10/07

Dated 13.01.2011

From : Shri B.K. Mishra, IPS  
Inspector General of Police (Prosecution)  
Assam, Ulubari, Guwahati-7

To : Shri J. Baruah, IAS  
Home Commissioner, Government of Assam,  
Dispur, Guwahati - 6.



Sir,

With reference to above, I write to inform that the Hon'ble CAT, Guwahati bench vide its order dtd. 31.3.2010 had quashed the disciplinary proceedings initiated by the Govt. of Assam through its order dtd. 11.2.2009. The Hon'ble Tribunal had also given directions for regularization of different service periods pertaining to my tenure as Commandant 5<sup>th</sup> A.P.Bn., Sontilla in 2005.

2. Further, it may be stated that Hon'ble Tribunal had given only two months time for execution of the above order, but till date nothing has been communicated to the undersigned thereby causing tremendous mental agony and harassment. Moreover, my annual increments have not been released since Jan/2006 leading to financial hardship.

3. In view of the above, it is once again requested to kindly take necessary action at the earliest.

Your's faithfully

(B.K.Mishra,IPS)

I.G.P.(Prosecution) Assam

Ulubari, Guwahati-7

Date

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

Copy forwarded to :

- 1) The Chief Secretary, Government of Assam, Dispur, Guwahati-6 for kind information and needful.

Attested  
[Handwritten signature]

(B.K.Mishra,IPS)

I.G.P.(Prosecution) Assam

Ulubari, Guwahati-7