

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO. 252 of 2009
R.A./CP/NO. 2015
E.P./M.P./NO. 2015

1. Order Sheets..... 2 pg..... 01 to 03 ✓
2. Judgment/ order dtd 31.3.2010 pg..... 1 to 9 ✓
3. Judgment & Order dtd..... received from H.C. /Supreme Court.
4. O.A. 2081/09 page..... 1 to 50 ✓
5. E.P/M.P. 1 page..... to.....
6. R.A./C.P. 1 page..... to.....
7. W.S. 2/leg.R.No.283 Page..... 1 to 7 ✓
8. Rejoinder. 2/leg. by the App. page..... 1 to 5 ✓
W.S. 2/leg on behalf of R.No 283
9. Reply page..... to.....
10. Any other papers 1 page..... to.....

Bdr 01/07/2015
SECTION OFFICER (JUDL.)

67/2015

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

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

Applicant (S) : Sri B.K. Mishra

Respondent (S) : Union of India & Ors

Advocate for the : In person
(Applicant (S))

Advocate for the : CGSC & Govt. advocate (Assam)
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<p>Petition filed on 10.10.2009 F. Regd. No. 0/ Copied vade SP AB No. 390, 425, 634 Dated 8.10.09.</p> <p><i>N. Kumar</i> Dy. Registrar</p> <p>Petitioners copy for issue notices received with envelopes. Copy served to the CGSC and Govt advocate, Assam. Applicant submitted an application for appear in person.</p> <p><i>Di.</i> 9/10/09</p>	12.10.2009	<p>Heard Mr. B. K. Mishra, the Applicant in person. We have also heard Mr. M. K. Boro, learned Addl. Standing Counsel representing the Government of India and Mrs. M. Das, learned counsel appearing for the State of Assam. Copies of this O.A. has already been supplied to Mr. M. K. Boro, learned Addl. Standing Counsel appearing for the Respondents and Mrs. M. Das, learned counsel appearing for the State of Assam. We have also perused the materials placed on record.</p> <p>2. Issue notice to the Respondents requiring them to file their written statement by 01.12.2009.</p> <p>3. Free copies of this order be also sent to the learned counsel appearing for both the parties.</p>

(M. K. Chaturvedi)
Member (A)

(M. R. Mohanty)
Vice-Chairman

14 Days
Issue notice to the
Respondents.

Di. 13/10/09

O.A. No. 208 of 2009

01.12.2009 On the request of Mrs. U. Dutta,
learned counsel for applicant, case is
adjourned to 4th January, 2010.

Received
Muhammed Ali Khan
SAC/CC
26/10/09

Received
Muhammed Ali Khan
SAC/CC
26/10/09

For the
Court
@ Baru

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/-

01.12.2009 Reply has been filed. Applicant who
appears in person in this case seeks time to
file rejoinder.

List on 5th January, 2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/-

5.1.2010 Rejoinder has been filed. Pleadings are
complete.

Admit.

List the matter for hearing on 13.1.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/-

No W/S filed

30/11/09

2/12/09
W/S filed by the
Respondent No 2 and
in the court on
1/12/09. Copy served.

Received

Received order dt. 11/12/09
Muhammed Ali Khan
SAC/CC
8/12/09

No rejoinder filed

2/12/2010

Notes of the Registry | Date | Order of the Tribunal

S. 1-2010
Rejoinder fil'd. Copy
Served.
4th
9/1/2010.

The case is ready
for hearing.

2m
12.1.2010

13.01.2010

On the written request of
applicant that he will be proceeding on
leave from 15.2.2010 to 4.3.2010, the
case is adjourned to 10.3.2010.

D
(Madan Kr. Chaturvedi).
Member (A)

M
(Mukesh Kr. Gupta)
Member (J)

/bg/

The case is ready
for hearing.

2m
10.3.2010

11.03.2010 Being Division Bench matter list on
31.03.2010.

M
(Mukesh Kumar Gupta)
Member (J)

/bb/

31.03.2010 For the reasons recorded separately,
this O.A. is allowed. No costs.

D
(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

Both the judgment
received

P.A. Ranjan Chetri
date-22/4/2010
for 1.G.P.

27-4-2010

Judgment/Final order
dated 31/3/2010 Before
ad. Smt. to the D/Chettri
for issuing the respondents/
applicant by post and
issuing Advocate for the both
sides.

Notes of the Registry	Date	Order of the Tribunal
to register petition no no plaint no. ad. 1000000000000000 ad. 0108.01 of 01.08.2010 10108.01 of 01.08.2010		0108.01.01
(b) qu. 2 of 1000000000000000 1000000000000000	Other qu. 2 of 1000000000000000 (A) 1000000000000000	
no. 1000000000000000 1000000000000000		
1000000000000000 1000000000000000		
no. 1000000000000000 1000000000000000		
1000000000000000 1000000000000000		
for the record of record 1000000000000000		0108.01.01
1000000000000000 1000000000000000		

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A. No. 208 & 252 of 2009

DATE OF DECISION: 31.03.2010

Shri Binay Kumar Mishra

.....Applicant/s.

In person

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr.M.K. Boro for Respondent 1 (in O.A.208/09) & 1 & 4 (in O.A.252/09)

Mrs.M.Das, for Respondents 2 & 3 in both O.A.s

..... Advocate for the
Respondents

CORAM

THE HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

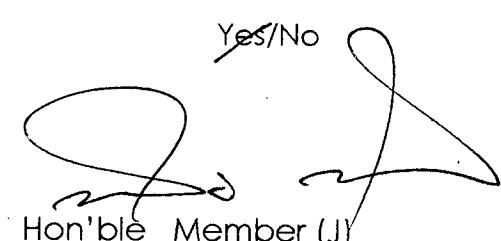
THE HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether Reporters of local newspapers may be allowed to see
the Judgment? Yes/No

2. Whether to be referred to the Reporter or not? Yes/No

3. Whether their Lordships wish to see the fair copy
of the Judgment? Yes/No

Judgment delivered by


Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application Nos. 208 & 252 of 2009

Date of Decision: This, the 31st 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.

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, 5th 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 ~~strange~~ 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 16th 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 16th 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 ¹strange wife along with Sri P.V.Suman, 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 5th 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 ¹strange 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, 5th 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 5th 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.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

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.Radhakrishan (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.

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.

(MADAN KUMAR CHATURVEDI)
MEMBER (A)

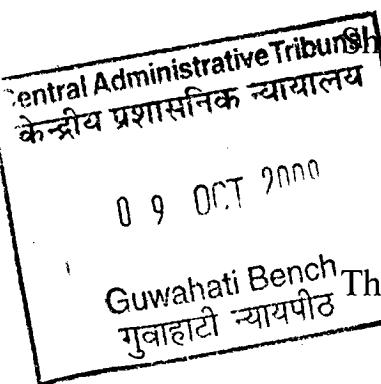
(MUKESH KUMAR GUPTA)
MEMBER (J)

/BB/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH :: GUWAHATI.

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

ORIGINAL APPLICATION NO. 208 OF 2009



Shri Binay Kumar Mishra

.... APPLICANT.

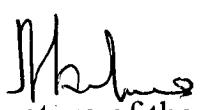
- VERSUS -

The Union of India & Ors.

.... RESPONDENTS.

SYNOPSIS

The applicant is aggrieved by an Order issued by the respondent vide Memo No. HMA(IPS). 145/Pt-V/174 dtd. 11.2.2009 wherein it proposed to hold an enquiry under Rule 8 of AIS (Discipline & Appeal) Rule, 1969. Prior to this applicant while being posted as Commandant 1st ASRF Battalion, Nalbari was promoted to the rank of DIG with retrospective effect by an Order issued by the respondent on 20.12.2008. On the same day by another order he was promoted to the rank of I.G.P. and accordingly he reported his joining in the rank of I.G.P. on 1.1.2009. But he was shocked to learn in February/09 that the Govt. proposed to hold enquiry in respect of certain allegations which were levelled against the applicant while being posted as Commandant, 5th Assam Police Battalion, Haflong in year 2005. The respondents decided to start enquiry after a gap of five long years though facts were known to them earlier. The applicant submitted written statement in defence on 29.3.2009 and again on 6.7.2009 submitted a representation requesting for taking early action in the matter. However, till date nothing has been communicated by the respondents and this is affecting his career adversely thus causing mental agony and harrasment. The respondents have simply ignored the representation filed by applicant and dragging the matter rather endlessly. Moreover, they have also refused to regularise certain period of his past service giving an scope to the Accountant General of Assam to deny him his annual increment and other financial benefits. Being aggrieved, the applicant has approached the Hon'ble Tribunal for issuing directions seting aside the order issued by the respondent on 11.2.2009 initiating a departmental enquiry against the applicant and also for early regularisation of his service in the past.


Signature of the applicant

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH :: GUWAHATI.

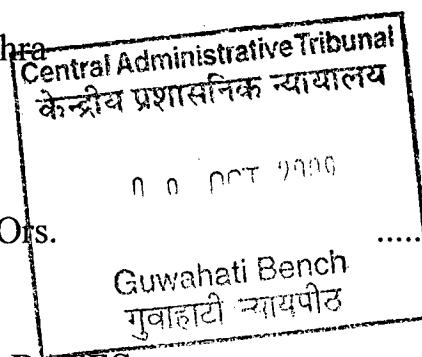
(An application under Section 19 of the Administrative Tribunals Act, 1985)

ORIGINAL APPLICATION NO. 208 OF 2009

Shri Binay Kumar Mishra

- VERSUS -

The Union of India & Ors.



.... APPLICANT.

.... RESPONDENTS.

LIST OF DATES.

Date Particulars

20.12.2008 The applicant was promoted by respondents to the rank of DIG and again to the rank of IGP.

ANNEXURE - A/1 PAGE -

01.01.2009 Applicant in compliance of the orders issued by respondents joined in the rank of IGP

ANNEXURE - A/2 PAGE -

05.02.2009 The respondent issued an order for departmental enquiry against applicant.

ANNEXURE - A/3 PAGE -

10.02.2009 A representation was submitted by the applicant to the respondent.

ANNEXURE - A/4 PAGE -

11.02.2009 The respondent issued another order in cancellation of earlier order dtd. 05.02.09 for initiation of departmental enquiry against the applicant.

ANNEXURE - A/5 PAGE -

29.03.2009 The applicant submitted a written statement in defence to the respondent.

ANNEXURE - A/6 PAGE -

06.07.2009 The applicant submitted another representation before the respondent requesting for early action.

ANNEXURE - A/7 PAGE -

A handwritten signature in black ink, appearing to read 'Binay Kumar Mishra'.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH :: GUWAHATI.

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

ORIGINAL APPLICATION NO. 208 OF 2009

Shri Binay Kumar Mishra

.... APPLICANT.

- VERSUS -

The Union of India & Ors.

NO. CCT 7779

.... RESPONDENTS.

I N D E X.

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

<u>Sl.No.</u>	<u>Particulars of Documents</u>	<u>Annexure No.</u>	<u>Page No.</u>
1.	Original application		1 to 7
2.	Verification		8
3.	The Govt. of Assam's order dt. 20.12.2008 giving promotion to the rank of DIG.	A - 1	— 9
4	The Govt. of Assam's order dt. 20.12.2008 giving promotion to the rank of IGP	A - 2	— 10 — 11
5.	The Govt. of Assam order dtd. 05.02.2009	A - 3	— 12 — 18
6.	Representation by the applicant dtd. 10.02.2009	A - 4	— 19
7.	The Govt. of Assam order dtd. 11.02.2009	A - 5	— 20 — 26
8.	Written statement of defence by the applicant dtd. 29.03.2009	A - 6	— 27 — 49
9.	Representation by the applicant dtd. 06.7.2009	A - 7	— 50
10.	W/S on behalf of Respondent Nos 2013 Re: Respondent —		— 51 to 57 58- 62
11.			

Signature of the applicant.

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH :::: GUWAHATI.

(APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985)

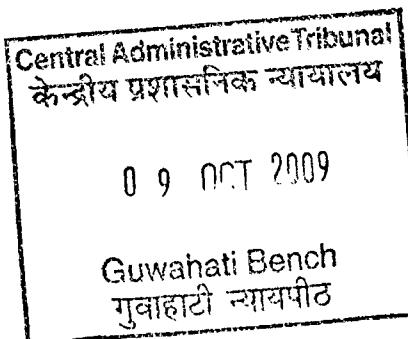
ORIGINAL APPLICATION NO. 208 OF 2009

Shri Binay Kumar Mishra

S/O Shri Jagdish Mishra

Director Prosecution, Assam

Near CID office ,Ulubari, Guwahati - 7



..... APPLICANT

- VERSUS -

1. The Union of India, represented by the Joint Secretary (Police) Ministry of Home Affairs, Govt. of India, New Delhi. - 110001
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.

09 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

DETAILS OF APPLICATION :

1. Particulars of the order against which the application is made :

The applicant is aggrieved by an order by the Govt. of Assam issued on 11.2.2009 proposing to hold an enquiry against the applicant under AIS/(Discipline & Appeal) Rule, 1969

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redress is within the jurisdiction of the Tribunal.

3. Limitation :

The applicant further declares that the application is within the limitation period prescribed under Sec. 21 of Administrative Tribunals Act. 1985.

4. Facts of the case :

4.1 That the applicant is a citizen of India and a resident of Police Housing Colony, Ulubari, Guwahati under dist. of Kamrup, Assam. He belongs to Indian Police Service and serving in Assam since 1988. During this period he served in different capacities including as the Supdt. of Police in districts like Dhemaji, Barpeta, Nalbari, Kamrup etc. In recognition of his services he was awarded Police Special Duty Medal, DGP Commendation Medal and so on by the authorities. Presently he is serving as the Director Prosecution, Assam in the rank of IGP

4.2 That the applicant while being posted as Commandant of 1st A.S.R.F. Battalion, Nalbari was promoted to the rank of DIG with retrospective effect through an order issued by the respondent on 20.12.08.

A copy of order issued by the respondent on 20.12.08 is annexed hereto and marked as **ANNEXURE- A/1**

09 DEC 2009

- 3 -

Guwahati Bench
गुवाहाटी न्यायपीठ

4.3 That the applicant was again promoted to the rank of I.G.P. by the respondents by another order issued on same day (20.12.08)

A copy of the order issued by the respondent on 20.12.08 is annexed hereto and marked as **ANNEXURE- A /2**

4.4 That the applicant in compliance of Govt. order joined in the rank of I.G.P. on 1.1.09, but he was asked to receive a copy of the order issued by respondent on 5.2.09 wherein it proposed to hold an enquiry against applicant under Rule 8 of AIS (Discipline & Appeal) Rule, 1969.

A copy of the order issued by the respondent on 5.2.09 is annexed hereto and marked as **ANNEXURE - A/3**

4.5 That the manner in which copy of the order issued by the respondent on 5.2.09 was handed over to applicant was quite humiliating. Though the memo was marked as 'Confidential' but it was delivered to one of the employee of Home Guard and Civil Defence Beltola, where applicant was earlier posted and the memo was not found in sealed condition. This was pointed out by the applicant through a representation submitted to the respondent on 10.2.09

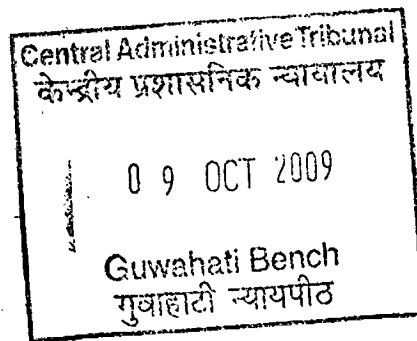
A copy of the representation submitted by the applicant on 10.2.09 is annexed hereto and marked as **ANNEXURE- A/4**

4.6 That the respondent cancelled the earlier order and issued another order on 11.2.09 proposing to hold an enquiry against the applicant under Rule 8 of AIS(D&A) Rule, 1969.

A copy of the order issued by the respondent on 11.2.09 is annexed hereto and marked as **ANNEXURE - A/5**

4.7 That the applicant submitted a written statement of defence on 29.3.09 to the respondent in which he denied all the charges leveled against him by the respondent.

A copy of the representation submitted by the applicant on 29.3.09 is annexed hereto and marked as **ANNEXURE - A/6**



4.8 That the applicant submitted another representation on 6.7.09 requesting the respondent to take early action in the matter as the same was adversely affecting his career.

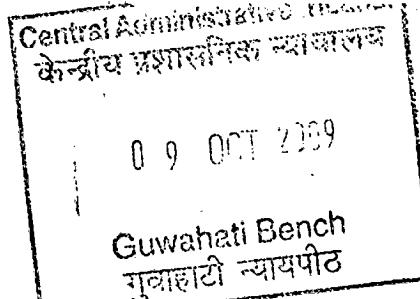
A copy of the representation submitted on 6.7.09 by the applicant is annexed hereto and marked as ANNEXURE - A/7

4.9 That the applicant begs to state that even after expiry of more than six months respondents have failed to take any decision in this matter. It is a source of mental agony and harassment to the applicant and found to be quite demoralising. In past also the respondents initiated departmental enquiry against the applicant on purely false and baseless allegations and in the name of said enquiry he was denied promotion and other service benefits for several years.

4.10. That the applicant begs to state that he moved out of 5th Assam Police Battalion. Sontilla (Haflong) in December 2005 and almost all allegations are pertaining to this tenure, but respondents were keeping silent for five long years and decided to open this matter only in February, 2009. Moreover, this was not held against the applicant while deciding his case for promotion by the Departmental Promotion Committee (D.P.C.) and he was given two step promotion by the respondents through two different orders issued on same day.

4.11. That the applicant beg to state that the respondents have failed to regularise certain past period of service of applicant though it has nothing to do with the proposed enquiry against the applicant as ordered on 11.2.09. Consequently, the applicant has not been given his annual service increments and deprived of many financial benefits by the Accountant General, Assam. This is violative of principles of the natural justice and administrative fairplay under various provisions of Constitution of India.

4.12 That the applicant begs to state that first two allegations as set out in the Memo issued on 11.2.09 are relating to the family dispute in which the applicant was unfortunately embroiled for but the same was already over last year and respondents were duly informed about this by the applicant. The allegations No. 3&4 are pertaining to appointment of grade IV employees which the applicant in the capacity of Commandant was empowered under provisions of Assam Police Manual and the same was done observing all due formalities and ,therefore, no illegality was committed. The last allegation of misappropriation of Govt. money was well established against one Inspector who was allowed to go on retirement by then DGP ,Assam Shri R.N.Mathur for unknown reasons without taking any step to recover the money.



4.13 That the respondent No. 2 & 3 before initiating the enquiry in a matter which was five years old did not bother to seek prior approval from respondent No. 1. In fact once a member the AIS is allotted a particular cadre he is totally left at the mercy of the State Government and for all practical purpose the AIS has been reduced into the State service with no protection whatsoever provided by the respondent No. 1 in the service matters. No doubt, the AIS has lost its past glory and prestige and of late the so called 'creamy layer' of society have stopped joining it.

5. Grounds of challenge with legal provisions :

5.1 That the action of the respondent is illegal and unjust. Once the respondents passed orders dt.20.12.2008 giving the applicant two step promotion it is presumed that his previous service records were very much taken into consideration by the members of the Departmental Promotion Committee (DPC) consisting of the Chief Secretaries and Home Secretaries from both states of Assam and Meghalaya, being a joint cadre.

5.2 That the action of respondent is a clear case of discrimination and thus violating Article 14 & 16 of the Constitution of India. The impugned action on the part of respondent violated the fundamental rights of applicant guaranteed under the Constitution of India as they failed to pass a suitable order in the light of written statement submitted by the applicant on 29.3.09 and another representation on 6.7.09. The respondents are only interested in delaying the matter endlessly thereby causing irreparable harm to the career and reputation of the applicant, as done in the past.

5.3 That the respondents have taken no step to regularise certain past period of service of applicant which were not any way connected with the impugned order issued by the respondent on 11.2.09, thereby causing financial hardship and mental harassment.

09 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

6. Details of the remedies exhausted :-

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

7. Matters not previously filed or pending with any other court:

The applicant declares that he had not previously filed any application, writ petition or suit, regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought :

In the premises aforesaid, it is most respectfully prayed that your Lordships may be graciously pleased to admit this application, issue necessary notices, call for the records of the case and after hearing the cause / causes being shown and upon perusal of the records, Your Lordships may consider the following :

- (1) To set aside the impugned order issued by the respondent on 11.2.09 proposing to hold enquiry against the applicant under AIS(D & A) Rule, 1969

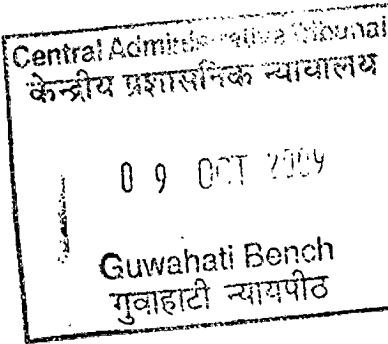
- (2) To direct the respondent to regularise the past period of service of the applicant , not connected with the impugned order dtd. 11.2.09.

- (3.) To direct the respondents No. 2&3 to bear the costs in filing this petition and seeking legal aid etc.

And for this act of kindness, the humble applicant as in duty bound, shall ever pray.

9. Interim order, if any prayed for :

Nill



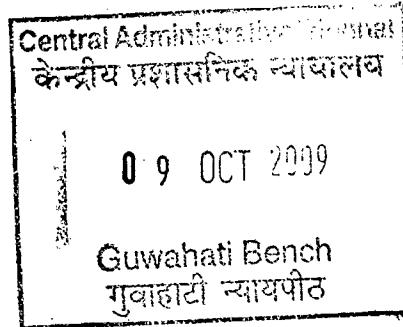
- 7 -

10. Particulars of Bank Draft/Postal Order filed in respect of the application fee.

**I.P.O. No. 39G 425634 Rs. 50.00 Dated 8.10.2009
Payable at Guwahati.**

11. List of enclosures :

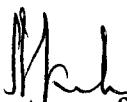
As stated in the index.

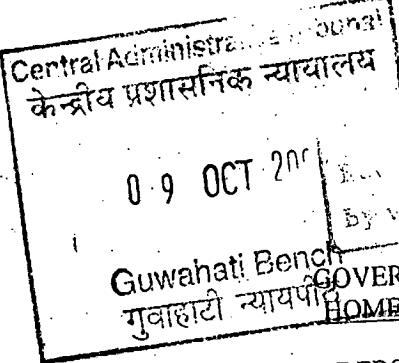


VERIFICATION

I, Binay Kumar Mishra, S/ O Shri Jagdsh Mishra aged about 46 years hereby declare :

- (1) That para No. 1,2,3,6,7& 10 are true to the best of my knowledge.
- (2) That para No. 4 containing 13 sub paras and para 5 having 3 sub paras are my humble submission before the Hon'ble Tribunal. *I have not suppressed any material facts.*


Signature of the applicant.



22/12/08

9
1
A-1

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 20th December, 2008.

No. HMA. 175/87/Pt-II/45: Shri B.K. Mishra, IPS, (RR-88), Commandant 1st ASRF Bn, Barama is promoted to the rank of Deputy Inspector General of Police, in the scale of pay of Rs.16,400 - 450- 20,000/- (pre-revised) with retrospective effect from the date of promotion of his immediate junior Shri Mukesh Agrawal, IPS (RR-1989) as Deputy Inspector General of Police.

Sd/- S.C.Das,
Principal Secretary to the Govt. of Assam,
Home etc. Department.

Dated Dispur, the 20th December, 2008.

Memo No. HMA.175/87/Pt-II/45-A

Copy to:-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29
2. The Under Secy. to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The P.S to Chief Minister, Assam, Dispur, Guwahati-6.
4. The Under Secy. to the Govt. of Meghalaya, Home (P) Department, Shillong.
5. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7
6. The Director General, Civil Defence and Commandant General of Home Guards, Assam, Beltola, Guwahati.
7. The Director General of Police, V&AC BORDER, Assam,
8. The Addl. Director General of Police, Assam,
9. The Inspector General of Police/ Deputy Inspector General of Police.....
10. The Deputy Commissioners,.....
11. The Superintendent of Police/ Commandant
12. The S.O. to Chief Secretary, Assam, Dispur, Guwahati-6.
13. The P.S. to Principal Secretary to the Chief Minister, Assam, Dispur, Guwahati-6.
14. The P.S to Principal Secretary, Home Department, Assam, Dispur, Guwahati-6.
15. The P.S to Commissioner & Secy, Home & Political Dep't. Assam, Dispur, Guwahati
16. The P.A. to Joint Secretary, Home (A) Department, Assam, Dispur, Guwahati-6.
17. The Deputy Director, Assam Govt. Press, Bamunimaidam, Ghy-21 for publication of the above Notification.
18. Officer Concerned.....

By order etc.

J.S.D.
20-12-08
Joint Secretary to the Govt. of Assam,
Home (A) Department.

Attested
by
Inspector General of Police (Prosecution)
Assam, Guwahati

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 20th December, 2008.

No. HMA. 175/87/Pt-II/46 : : Shri B.K. Mishra, IPS, (RR-88), who has been promoted to the rank of Deputy Inspector General of Police vide Notification No. HMA 175/87/Pt.II/45 dtd. 20-12-08, is further promoted to the rank of Inspector General of Police in the scale of pay of Rs. 18400- 500- 22,400 (pre revised) / Revised Pay Band 4 : Rs. 37400- 67000 plus Grade pay Rs. 10,000/- and in the interest of Public Service he is posted as Inspector General of Police (Home Guard & Civil Defence) vice Shri A.K.Jha, IPS transferred.

No. HMA. 175/87/Pt-II/46- a : Shri M. Agrawal, IPS, (RR-89) Deputy Inspector General of Police (MPC), is promoted to the rank of Inspector General of Police in the scale of Rs. 18,400- 500 – 22,400 (pre revised) / Revised Pay Band 4 :Rs. 37400 - 67000 plus Grade pay Rs. 10,000/- and in the interest of Public Service he is posted as Inspector General of Police, APHC, Assam, with effect from the date of taking over charge and until further orders against vacant post. He will also look after works relating to Modernisation of Police Force (MPF) Scheme as ordered earlier vide this office order No HMA 882/2007/48-(C) dtd 29-3-08.

No. HMA. 175/87/Pt-II/46- b : In the interest of public service Shri A.K. Jha, IPS (RR-86), Inspector General of Police, (Home Guards & Civil Defence) is transferred and posted as Inspector General of Police (OSD) with effect from the date of taking over charge and until further orders. He will also look after the works of Logistics in Assam Police Head Quarter as ordered earlier vide this office order No HMA 882/2007/48-C dtd.29-3-08.

No. HMA. 175/87/Pt-II/46- c : Shri D.N. Hazarika, IPS (SPS-93) Special Superintendent of Police (CID), Assam is promoted to the rank of Deputy Inspector General of Police in the scale of pay 16,400- 450- 20,000 (pre revised) / Revised Pay Band 4 :Rs. 37400-67000 plus Grade pay Rs. 8,900/- and in the interest of public service he is posted as Deputy Inspector General of Police (AP) against vacant post with effect from the date of taking over charge and until further orders.

No. HMA. 175/87/Pt-II/46- d : Shri P.K. Das, IPS (SPS-93) Superintendent of Police (BIEO), Assam is promoted to the rank of Deputy Inspector General of Police in the scale of pay 16,400- 450- 20,000 (pre revised) / Revised Pay Band 4 : Rs. 37400- 67000 plus Grade pay Rs. 8,900/- and in the interest of public service he is posted as Deputy Inspector General of Police (MPC) vice Shri M. Agrawal, IPS, transferred on promotion with effect from the date of taking over charge and until further orders.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2008

Guwahati Bench
गुवाहाटी न्यायपीठ

Sd/S.C.Das,
Principal Secretary to the Govt. of Assam,
Home etc. Department.

Attested
Principal Secretary to the Govt. of Assam, Guwahati

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2008

Guwahati Bench
गुवाहाटी न्यायालय

Memo No. HMA.175/87/Pt-II/46 -A
Copy to :-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29
2. The Under Secy. to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The P.S to Chief Minister, Assam, Dispur, Guwahati-6.
4. The Under Secy. to the Govt. of Meghalaya, Home (P) Department, Shillong.
5. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7
6. The Director General, Civil Defence and Commandant General of Home Guards, Assam, Beltola, Guwahati.
7. The Director General of Police, V&AC/ BORDER, Assam,
8. The Addl. Director General of Police, Assam,
9. The Inspector General of Police/ Deputy Inspector General of Police-----
10. The Deputy Commissioners,
11. The Superintendent of Police/ Commandant -----
12. The S.O. to Chief Secretary, Assam, Dispur, Guwahati-6.
13. The P.S. to Principal Secretary to the Chief Minister, Assam, Dispur, Guwahati-6.
14. The P.S to Principal Secretary, Home Department, Assam, Dispur, Guwahati-6.
15. The P.S to Commissioner & Secy, Home & Political Deptt, Assam, Dispur, Guwahati
16. The P.A. to Joint Secretary, Home (A) Department, Assam, Dispur, Guwahati-6.
17. The Deputy Director, Assam Govt. Press, Bamunimaidam, Ghy-21 for publication of the above Notification.
18. Officer Concerned.....

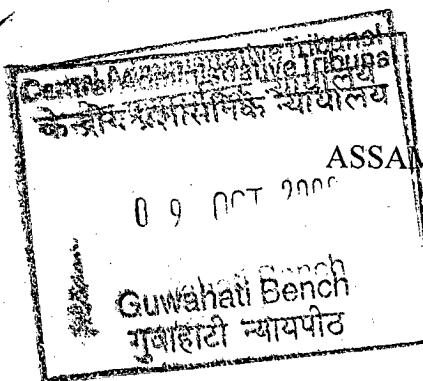
By order etc.

Alul
20.12.08
Joint Secretary to the Govt. of Assam,
Home (A) Department.

NO. HMA(IPS) 145/Pt.V/173

GOVERNMENT OF ASSAM
DEPARTMENT OF HOME (A).

ASSAM SECRETARIAT (CIVIL) DISPUR, GUWAHATI-6

Dated Dispur, the 5th February, 2009.Memorandum

1. The Governor of Assam proposes to hold an enquiry against Sri B.K.Mishra, IPS, under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969. The substance of the imputations of violation of service conduct rule, indiscipline behaviour, insubordination to the Superior officer, moral turpitude, misuse of Govt. machinery, violation of existing Govt. instructions etc. in respect of which enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations as stated above in respect of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).
2. Sri B. K. Mishra, IPS is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an enquiry will be held in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. B.K.Mishra, IPS is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule, 8 of the All India Services (Discipline & Appeal) Rules, 1969 or the orders /directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him ex-parte.
5. Attention of B.K.Mishra, IPS, IPS is invited to Rule 18 of the All India Service (Conduct) Rules, 1968 under which no Government Servant shall bring or attempt to bring any political or out side influence to bear upon any superior authority in service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in this proceedings, it will be presumed that B.K.Mishra, IPS, IPS is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule, 18 of the All India Services (Conduct) Rules, 1968
6. The receipt of this memorandum may be acknowledged.

By order and in the name of the Governor of Assam,



Principal Secretary to the Govt. of Assam,
Home Department.

Attested
Special Assam Guwahati
Prosecution

Central Administrative Tribunal
केन्द्रीय अधिकारिक न्यायालय

13

2

09 OCT 2009

Guwahati Bench

গুৱাহাটী ন্যায়ালয়

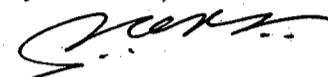
Memo NO. HMA(IPS) 145/Pt-IV/173-A

Dated, Dispur, the 5th February, 2009.

Copy to :

1. Sri B.K.Mishra, IPS , Commandant, 16th AP(IR) Bn, Bormonipur, Morigaon.
2. The Chief Secretary to the govt. of Meghalaya, Shillong.
3. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
4. The Joint Secretary, (Police) Govt. of India, Ministry of Home Affairs, North Block , New Delhi-110001.
5. The Secretary to the Govt. of India Ministry of Personnel, P.G. & Pension, Department of Personnel & Training , North Block, New Delhi-11000.

By order etc,



Principal Secretary to the Govt. of Assam,
Home Department.

09 OCT 2009

14

3

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Annexure-I

Statement of Articles of Charge framed against Sri B.R. Das, IPS the then Commandant 5th APBn,

ARTICLE -I

That Sri Binoy Kr. Mishra, IPS, while holding the post of Commandant, 5th APBn, Sontila left the Head Quarters (i.e. Sontila) on 19.5.2005 for Guwahati without obtaining prior permission from his competent authority and stayed in the Officer's Mess, Ulubari Police Complex, Guwahati on that day and left the Officer's Mess on the next date i.e. on 20.5.2005 (AN). The above action clearly shows the insubordination on the part of Sri Binoy Kumar Mishra, IPS.

He is, therefore, charged with insubordination to his superior authority and also for gross indiscipline.

ARTICLE -II

That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila found to have absented himself from his duties and stayed in Assam House, New Delhi with effect from 23.5.2005 to 28.5.2005 wherein he occupied two seats in double bedded room No. 203 with one lady doubtful character, other than his wife.

The above action of Sri Binoy Kumar Mishra, IPS not only involved in moral turpitude but also violation of rule 3 of All India Services (conduct) Rules, 1968.

ARTICLE -III

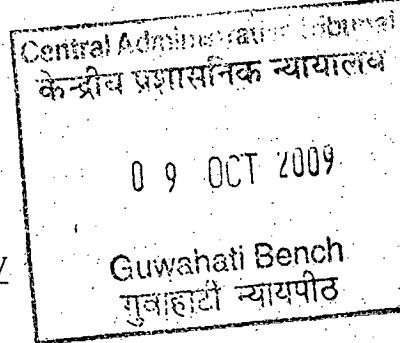
That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila appointed one cook (Grade-IV) against 16th APBn w.e.f. 20.5.2006 without any approval of the Govt. including Finance (SIU) Department which is a gross violation of the existing rules and procedures of Govt.

He is, therefore, charged with arbitrary action and gross violation of rules and procedure of Govt. etc.

ARTICLE -IV

That Sri Binoy Kr. Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila appointed Sri Tufan Singha, an outsider as Duftry in General Branch in his office during the ban period in spite of clear instruction from Director General of Police, Assam not to appoint Duftry which is in disregard to rules and procedures of Government in force at that time and insubordination and breach of power bestowed on him by Govt.

He is, therefore, charged with arbitrary action, disregard to Govt. rules and procedure and insubordination and breach of trust etc.



4

ARTICLE -V

That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila misappropriated Govt. money amounting to Rs. 7,00,000/- during the period from 24.2.2005 to 11.8.2005 causing loss to Govt. which is most unbecoming of a member of the service of his rank and status.

He is, therefore, charged with negligence of duties to maintain financial discipline and violation of rule-3 of the All India Services (Conduct) Rules, 1968.

By order and in the name of Governor of Assam,


Principal Secretary to the Govt. of Assam,
Home Department.

512

09 OCT 2009

16

5

Guwahati Bench
गुवाहाटी न्यायपाठी

Annexure-II

Statement of imputation of misconduct in support of each article of charge framed against
Sri Binoy Kumar Mishra, IPS, the then Commandant, 8th APBn.

ARTICLE -I

That the said Shri Binoy Kumar Mishra, IPS while serving as Commandant, 5th APBn, Sontila left H.Q. on 19.5.2005 and stay at Officer's Mess, Ulubari, Guwahati-7 on that day and left the Officer's Mess next day on 20.5.2005 (AN) without obtaining prior approval from his superior authority which is found to be gross indiscipline.

ARTICLE-II

That the said Shri Binoy Kumar Mishra, IPS while serving as the Commandant, 5th APBn, Sontila remained absent duties and stayed in Assam House, New Delhi w.e.f. 23.5.2005 to 28.5.2005 by occupying two seats in double beded room No. 203 with one lady of doubtful character (other than his wife) which is violation of the provisions under rule-3 of the All India services (conduct) Rules, 1968.

ARTICLE-III

The said Shri Binoy Kr. Mishra, IPS while serving as Commandant, 5th APBn, Sontila appointed a cook (Grade-IV) against 16th APBn w.e.f. 20.5.2006 without any approval of Govt. which is a disregard to the existing rules and procedures.

ARTICLE-IV

That the said Sri Binoy Kr. Mishra, IPS while erving as the Commandant, 5th APBn, Sontila appointed Sri Tufan Singha, an outsider by violating the Govt. rules and procedures and instructions of his superior authority which tantamounts to disregard of Govt. rules and procedures, insubordination and breach of trust etc.

ARTICLE-V

That the said Shri Binoy Kumar Mishra, IPS while serving as the Commandant, 5th APBn, Sontila misappropriated an amount of Rs. 7,00,000/- from the accounts of the Commandant, 5th APBn during his tenure from 24.2.2003 to 11.8.2005 which not only caused loss to Govt. but also unbecoming of a Govt. servant.

By order and in the name of Governor of Assam,


 Principal Secretary to the Govt. of Assam,
 Home Department.

09 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

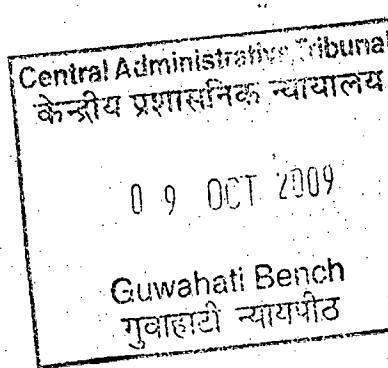
Annexure-III

LIST OF DOCUMENTS

1. DIG (AP), Assam, Guwahati letter No. TAP/C/2005/1848 dtd. 20.5.2005.
2. D.O. No. RC/G(Ascom)05/2046 dtd. 10.6.2005 along with its enclosures received from Shri S. Monoharan, IAS, Principal Resident Commissioner, Assam House, New Delhi.
3. No. C.90/2004/60 dtd. 12.5.2005 from DGP, Assam.
4. DGP's letter No. FB/1/155/97/Pt/176 dtd. 12.5.2005.
5. No. C.90/2004/63 dtd. 21.5.2005 from DGP, Assam.
6. No. C.90/2004/69 dtd. 6.6.2005 from DGP, Assam.
7. No. C.90/2004/Pt dtd. 14.6.2005 from DGP, Assam.
8. Letter No. C.44/2000/274 dtd. 21.7.2006 from IGP (A), Assam.
9. Letter No. No. C.90/2004/Vol-I/73 dtd. 6.9.2006 from IGP (A), Assam.

By order and in the name of Governor of Assam,


Principal Secretary to the Govt. of Assam,
Home Department

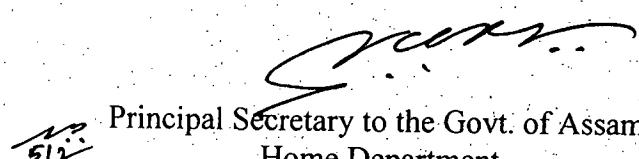


Annexure-IV

LIST OF WITNESSES

1. Shri P. V. Sumant, IPS (Retired), Director General of Police, Assam.
2. Shri A.K. Singha Cassyyap, IPS, Deputy Inspector General of Police (AP), Assam, Ulubari, Guwahati-7.
3. Shri Kuladhar Saikia, IPS, Inspector general of Police (T & AP), Assam, Ulubari, Guwahati-7.
4. Shri S. Monoharan, IAS, Principal Resident Commissioner, Assam House, New Delhi.
5. Shri Joydeep Shukla, EAC, Assam House, New Delhi.
6. Shri D. K. Borah, IPS the then Inspector General of Police (A), Assam, Guwahati.

By order and in the name of Governor of Assam,


Principal Secretary to the Govt. of Assam,
Home Department.

GOVERNMENT OF ASSAM
 OFFICE OF THE DIRECTOR GENERAL OF CIVIL DEFENCE AND
 COMMANDANT GENERAL OF HOME GUARDS, ASSAM, BELTOLA,
GUWAHATI - 781028.

NO.CG.111/2009/

Dated Beltola, the 10th February/09.

To

Shri S. C. Das, IAS
 Principal Secretary to the Govt. of Assam,
 Home Department etc.
 Dispur, Guwahati-6.

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2009

Guwahati Bench
 गुवाहाटी न्यायपीठ

Ref:-

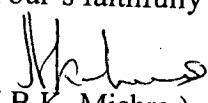
Your memo No. HMA (IPS)/ 145/ Pt.V/173 Dtd. 05-02-09.

Sir,

With reference to the above, I write to inform that in the said letter a copy has been shown marked to me in the capacity of Co. 16th AP (IR) BN, Bormonipur, Morigaon. Though the letter has been treated as "Confidential" it was delivered to me without any sealed cover. It is learnt that two letters including one addressed to Director General of Civil Defence & Commdt. General of Home Guards, Assam were put in the same envelope and given to Mr. Bhupati Roy, Asstt. from CD unit of this Directorate who happened to visit Home Deptt. for some official works, who in turn gave the open envelope containing two letters to Shri Kanak Baruah PA to DGCD. Subsequently, the memo under reference was handed over to me by PA to DGCD.

It is a matter of great surprise that the letter having been marked "Confidential" and a copy of which is shown marked to me by name (though with wrong designation) has been delivered to undersigned in most callous and casual manner with a view to humiliate me. This matter should be enquired into and appropriate action may be taken from your end accordingly.

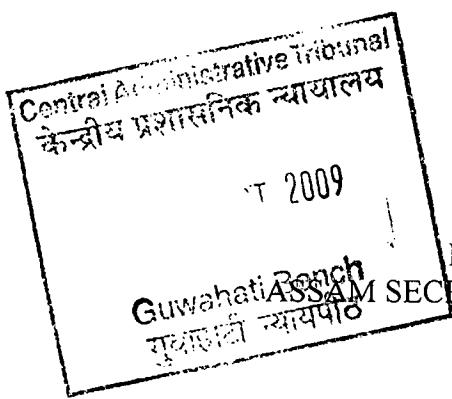
Your's faithfully


 (B.K. Mishra)
 IGP (HG & CD) Assam,
Guwahati-28.

**

Attested





A - 5

Confidential

20

NO. HMA(IPS) 145/Pt.V/174

GOVERNMENT OF ASSAM
DEPARTMENT OF HOME (A).
GUWAHATI SECRETARIAT (CIVIL) DISPUR, GUWAHATI-6

Dated Dispur, the 11th February, 2009.

Memorandum

1. In cancellation of this department earlier memorandum issued vide No.HMA (IPS) 145/PtV/173 dtd. 5-2-2009, the Governor of Assam proposes to hold an enquiry against Sri B.K.Mishra, IPS, under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969 . The substance of the imputations of violation of service conduct rule, indiscipline behaviour, insubordination to the Superior officer, moral turpitude, misuse of Govt. machinery, violation of existing Govt. instructions etc. in respect of which enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I) . A statement of the imputations as stated above in respect of each article of charge is enclosed (Annexure-II). A list of documents by which , and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).
2. Sri B. K. Mishra, IPS is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an enquiry will be held in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. B.K.Mishra, IPS is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule, 8 of the All India Services (Discipline & Appeal) Rules, 1969 or the orders /directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him ex- parte.
5. Attention of B.K.Mishra, IPS, IPS is invited to Rule 18 of the All India Service (Conduct) Rules, 1968 under which no Government Servant shall bring or attempt to bring any political or out side influence to bear upon any superior authority in service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in this proceedings , it will be presumed that B.K.Mishra, IPS , IPS is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule, 18 of the All India Services (Conduct) Rules, 1968
6. The receipt of this memorandum may be acknowledged .

By order and in the name of the Governor of Assam,


Principal Secretary to the Govt. of Assam,
Home Department.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Memo NO. HMA(IPS) 145/Pt-IV/174-A

Dated, Dispur, the 11th February, 2009.

Copy to :-

1. Sri B.K.Mishra, IPS, IGP (HG & CD) Assam, Beltola, Guwahati 29.
2. The Chief Secretary to the govt. of Meghalaya, Shillong.
3. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
4. The Joint Secretary, (Police) Govt. of India, Ministry of Home Affairs, North Block, New Delhi-110001.
5. The Secretary to the Govt. of India Ministry of Personnel, P.G. & Pension, Department of Personnel & Training, North Block, New Delhi-11000.

By order etc,


Principal Secretary to the Govt. of Assam,
Home Department.

Central Control Room Statement of Charge framed against Sri B.K.Mishra, IPS the then Commandant 5th APBn,

ARTICLE -I

That Sri Binoy Kr. Mishra, IPS, while holding the post of Commandant, 5th APBn, Sontila left the Head Quarters (i.e. Sontila) on 19.5.2005 for Guwahati without obtaining prior permission from his competent authority and stayed in the Officer's Mess, Ulubari Police Complex, Guwahati on that day and left the Officer's Mess on the next date i.e. on 20.5.2005 (AN). The above action clearly shows the insubordination on the part of Sri Binoy Kumar Mishra, IPS.

He is, therefore, charged with insubordination to his superior authority and also for gross indiscipline.

ARTICLE -II

That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila found to have absented himself from his duties and stayed in Assam House, New Delhi with effect from 23.5.2005 to 28.5.2005 wherein he occupied two seats in double beded room No. 203 with one lady doubtful character, other than his wife.

The above action of Sri Binoy Kumar Mishra, IPS not only involved in moral turpitude but also violation of rule 3 of All India Services (conduct) Rules, 1968.

ARTICLE -III

That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila appointed one cook (Grade-IV) against 16th APBn w.e.f. 20.5.2006 without any approval of the Govt. including Finance (SIU) Department which is a gross violation of the existing rules and procedures of Govt.

He is, therefore, charged with arbitrary action and gross violation of rules and procedure of Govt. etc.

ARTICLE -IV

That Sri Binoy Kr. Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila appointed Sri Tufan Singha, an outsider as Duftry in General Branch in his office during the ban period in spite of clear instruction from Director General of Police, Assam not to appoint Duftry which is in disregard to rules and procedures of Government in force at that time and insubordination and breach of power bestowed on him by Govt.

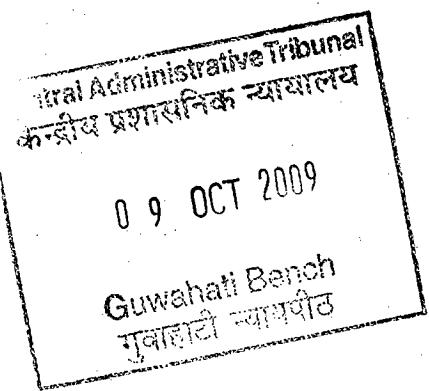
He is, therefore, charged with arbitrary action, disregard to Govt. rules and procedure and insubordination and breach of trust etc.

G. M. M.

ARTICLE -V

That Sri Binoy Kumar Mishra, IPS while holding the post of Commandant, 5th APBn, Sontila misappropriated Govt. money amounting to Rs. 7,00,000/- during the period from 24.2.2005 to 11.8.2005 causing loss to Govt. which is most unbecoming of a member of the service of his rank and status.

He is, therefore, charged with negligence of duties to maintain financial discipline and violation of rule-3 of the All India Services (Conduct) Rules, 1968.



By order and in the name of Governor of Assam,

[Signature]
Principal Secretary to the Govt. of Assam,
Home Department.

Statement of imputation of misconduct in support of each article of charge framed against
Sri Binoy Kumar Mishra, IPS, the then Commandant, 8th APBn.

ARTICLE -I

That the said Shri Binoy Kumar Mishra, IPS while serving as Commandant, 5th APBn, Sontila left H.Q. on 19.5.2005 and stay at Officer's Mess, Ulubari, Guwahati-7 on that day and left the Officer's Mess next day on 20.5.2005 (AN) without obtaining prior approval from his superior authority which is found to be gross indiscipline.

ARTICLE-II

That the said Shri Binoy Kumar Mishra, IPS while serving as the Commandant, 5th APBn, Sontila remained absent duties and stayed in Assam House, New Delhi w.e.f. 23.5.2005 to 28.5.2005 by occupying two seats in double beded room No. 203 with one lady of doubtful character (other than his wife) which is violation of the provisions under rule-3 of the All India services (conduct) Rules, 1968.

ARTICLE-III

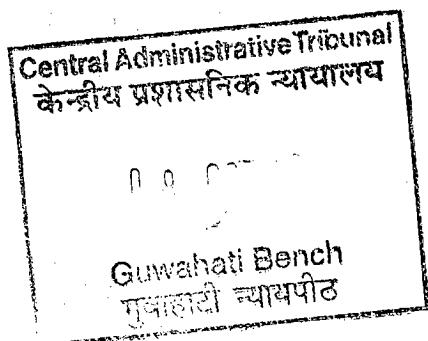
The said Shri Binoy Kr. Mishra, IPS while serving as Commandant, 5th APBn, Sontila appointed a cook (Grade-IV) against 16th APBn w.e.f. 20.5.2006 without any approval of Govt. which is a disregard to the existing rules and procedures.

ARTICLE-IV

That the said Sri Binoy Kr. Mishra, IPS while erving as the Commandant, 5th APBn., Sontila appointed Sri Tufan Singha, an outsider by violating the Govt. rules and procedures and instructions of his superior authority which tantamounts to disregard of Govt. rules and procedures, insubordination and breach of trust etc.

ARTICLE-V

That the said Shri Binoy Kumar Mishra, IPS while serving as the Commandant, 5th APBn, Sontila misappropriated an amount of Rs. 7,00,000/- from the accounts of the Commandant, 5th APBn during his tenure from 24.2.2003 to 11.8.2005 which not only caused loss to Govt. but also unbecoming of a Govt. servant.

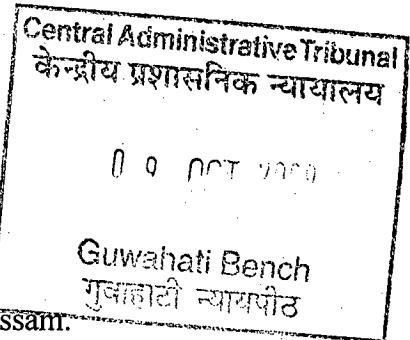


By order and in the name of Governor of Assam,

[Signature]
 Principal Secretary to the Govt. of Assam,
 Home Department.

LIST OF DOCUMENTS.

1. DIG (AP), Assam, Guwahati letter No. TAP/C/2005/1848 dtd. 20.5.2005.
2. D.O. No. RC/G(Ascom)05/2046 dtd. 10.6.2005 along with its enclosures received from Shri S. Monoharan, IAS, Principal Resident Commissioner, Assam House, New Delhi.
3. No. C.90/2004/60 dtd. 12.5.2005 from DGP, Assam.
4. DGP's letter No. FB/1/155/97/Pt/176 dtd. 12.5.2005.
5. No. C.90/2004/63 dtd. 21.5.2005 from DGP, Assam.
6. No. C.90/2004/69 dtd. 6.6.2005 from DGP, Assam.
7. No. C.90/2004/Pt dtd. 14.6.2005 from DGP, Assam.
8. Letter No. C.44/2000/274 dtd. 21.7.2006 from IGP (A), Assam.
9. Letter No. No. C.90/2004/Vol-I/73 dtd. 6.9.2006 from IGP (A), Assam.



By order and in the name of Governor of Assam,

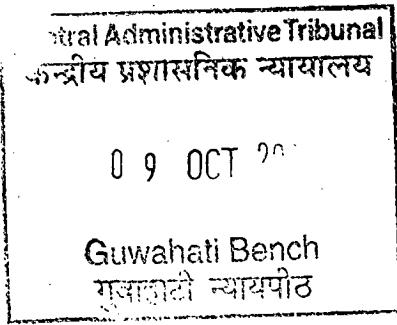

Principal Secretary to the Govt. of Assam,
Home Department

LIST OF WITNESSES

1. Shri P. V. Sumant, IPS (Retired), Director General of Police, Assam.
2. Shri A.K. Singha Cassyyap, IPS, Deputy Inspector General of Police (AP), Assam, Ulubari, Guwahati-7.
3. Shri Kuladhar Saikia, IPS, Inspector general of Police (T & AP), Assam, Ulubari, Guwahati-7.
4. Shri S. Monoharan, IAS, Principal Resident Commissioner, Assam House, New Delhi.
5. Shri Joydeep Shukla, EAC, Assam House, New Delhi.
6. Shri D. K. Borah, IPS the then Inspector General of Police (A), Assam, Guwahati.

By order and in the name of Governor of Assam,

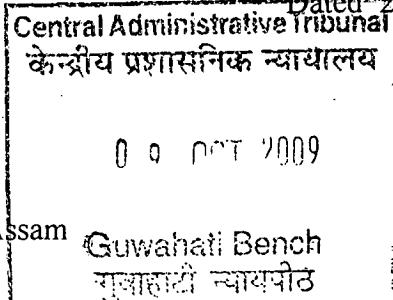

Principal Secretary to the Govt. of Assam,
Home Department.



GOVERNMENT OF ASSAM
 OFFICE OF THE DIRECTOR GENERAL OF CIVIL DEFENCE AND
 COMMANDANT GENERAL OF HOME GUARDS, ASSAM, BELTOLA,
GUWAHATI – 781028.

Letter No.CG. 111/ PF /2009

Dated 29th March/2009.



To,

Shri S.C. Das, IAS

The Principal Secretary to the Govt. of Assam
 Home department, Dispur, Guwahati-6

Ref. : Your Memo No. HMA(IPS)145/Pt.V/174 dtd. 11.2.2009 regarding submission of my written Statement of defence

Sir,

With reference to above, this is to inform that I am from 1988 batch and served in different capacities all over Assam including as the Supdt. of Police in districts like Dhemaji, Barpeta, Nalbari, Kamrup etc. In recognition of my work and sincerity I was awarded DGP Commendation Medal, Special duty medal, several Appreciation/Commendation letters by DPG Assam. I have had highest regard for my higher authorities and was known to be a disciplined member of the force. On my repatriation from GOI, I joined as Commandant, 5th A.P.Bn, Sontila on 24.2.2005 and continued to be so till 6.12. 2005. Almost all the charges framed against undersigned are pertaining to my above tenure. **It is a matter of great surprise that the disciplinary authority viz. the Govt. of Assam proposes to hold enquiry in this matter after expiry of five years . This inordinate delay is beyond comprehension and defies all possible logic of reason. The order of the State Govt. is ,therefore, contrary to the law and unjust.**

2. The Govt. of Assam vide its order dtd. 20.12.2008 had given me two step promotion according to which I was first promoted to the rank of DIG and on the same day by another notification promoted me to the rank of IGP. If the allegations were serious and having substance, the Govt. could have started the enquiry earlier and need not wait for so long. It appears that this enquiry has been started at the behest some of those elements which were not happy with my promotion and wish to humiliate me further by causing a harm to my career.

3. Further, I have no hesitation in admitting that when I returned from the Central deputation in December,2004. I had to deal with two strong opponents- one was Mr. P.V.Sumant, then DGP Assam and another one my ex- wife Rashmi Jha, living separately for past four years in Guwahati. Both of them had joined hands together and did everything possible to cause irreparable damage to my career and reputation. Smt. Jha had filed several false cases against me all of which were later dismissed by the Court of law. As regards Mr. Sumant, he had insatiable urge for money and during his first term as DGP had harassed me on that account while I was posted as Supdt. of Police, Kamrup, Guwahati in year 1998-2000 .

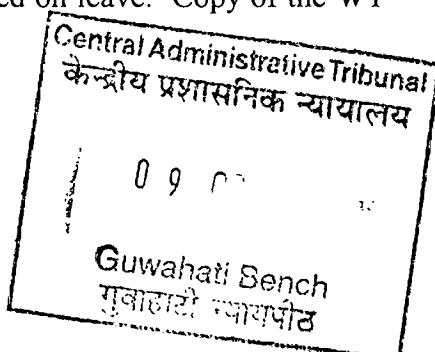
APL
 Inspector General of Police
 Assam

Though I was recommended for awarding Gallantry medal by range DIG in June 1999 but out of prejudices and biasness then DGP didn't forward my case and I was deprived of this honour. On top of it, during his second term he withdrew the DGP Commendation Medal awarded to me by his predecessor without citing any ground. A copy of this order dtd. 22.4.04 is annexed and shown as ANN 'A'. Again on 17.8.05 another order was issued regarding withdrawal of Medal and copies were circulated to all senior officers of Assam Police with a view to humiliate me. A copy of this order is enclosed and marked as ANN- 'B'.

4. That Mr. Sumant was an extremely vindictive person and derived great pleasures by subjecting his juniors to harassment. On 22.2.05 the Govt. of Assam had posted me as Commandant, 5th A.P.Bn, Sontila where other officers had refused to join due to existing insurgency situation. But Mr. Sumant was not happy with this development as would be apparent from his letter addressed to the Chief Secretary on 23.2.05. In this letter it is mentioned that he held discussions with Mr. P.C.Sarma and Mr. B.M.Majumdar, Home Commissioner and suggested that at best I should be posted as FRRO. In his letter dtd 12.5.05 he had written to the Chief Secretary that "**the officer is incorrigible and as he has managed to get a fairly good posting, he will not listen to any instructions. Consequently, he has to be taken to task by the Govt. as otherwise he will continue his defiance and this will not be good for the police department**". This clearly proves the negativity in the person who unfortunately was head of the force and simply misused his status and position to damage career of many junior colleagues in the department, as he believed in keeping '**personal agenda**' over and above the official one.

5. From Annexure- III, it could be seen that as many as five out of nine listed documents were forwarded by Mr. Sumant in capacity of DGP. The concerned file is full of correspondences between him and then Chief Secretary Mr. Kabilan with whom he was having very cordial relations for obvious reasons. In May,2005 a news item appeared in an Assamese daily saying that he was keeping a cook called Hitesh Pathak at his daughter's place in Chennai. On preliminary enquiry this appeared to be true and the cook was placed under suspension in first week of June, 2005 but then DGP immediately revoked the suspension. Thereafter, he started writing all kinds of baseless things against me to the Govt. as his sole intention was to harm my career. Perhaps, he was under false impression that I was instrumental in exposing his misdeeds in the media.

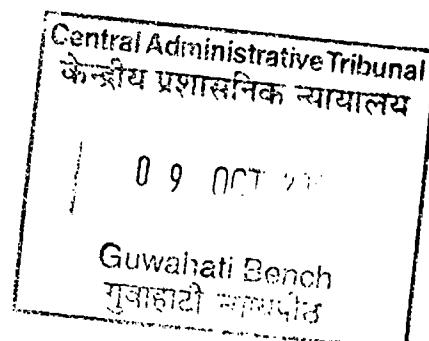
6. Now after dealing with the genesis of the problem I would like to deal with the individual charges specifically. When I returned back to Assam after repatriation, my personal effects continued to be in the flat in Vasant Kunj, New Delhi which was given to me on rental basis. On 18.5.2005 Smt. Rashmi Jha along with her father and some miscreants forcibly entered the said flat and took all my belongings which included electronic items, wooden furnitures, clothings, important papers/documents etc. under their illegal possession. They had also mercilessly beaten my servant, who was taken from Bihar just few months back and threw him out on the street. On the following day viz. 19.5.2005 I informed this matter to DIG (AP) Mr. A.K.S. Casshyap who in turn asked me to inform IGP Mr. K. Saikia, as ADG was out of station. I contacted Mr. Saikia and told him that in view of seriousness of the matter I was required to proceed to Delhi immediately. Thereafter I forwarded a petition seeking seven days casual leave and after giving intimation to all concerned proceeded on leave. Copy of the WT



message addressed to IGP (T&AP) is annexed hereto and shown as ANN 'C'. On the same day I also telephonically apprised then Home Commissioner Mr. Pyarelal which was followed by a letter on 20.5.05 which is available at page 56 of the concerned file. After having learnt these developments DGP, Mr. Sumant sent a WT message on 19.5.05 asking to return the DGP Commendation medal which was awarded to me during the tenure of his predecessor (available on page 71). On reaching Delhi I found to my horror that an amount of Rs. 40,000/- was fraudulently withdrawn from my SBI account No. 01190012765 in Vasant Kunj, New Delhi on the previous day(available at page 69). The extracts of the passbook were forwarded to the Govt. alongwith my explanation sometime in Aug,05 and still available in the relevant file. On 25.5.2005 I sent another petition to ADG (TAP) through fax narrating above developments, copy of which is enclosed and marked as ANN 'D'. Finally, I resumed my duties on 2.6.2005 without wasting any time and after taking necessary steps in the matter. Later I learnt that my prayer for leave was rejected without citing any ground and this was done at the behest of then DGP. The copy of the WT message sent from ADG (TAP) in this connection is appended and shown as ANN- 'E'. My personal effects worth Rs. 5 lacs were taken into illegal possession, Rs. 40,000/- siphoned off from my bank account and my servant was simply thrown out on road and he remained without food or shelter for three days- if one can't avail CL in such circumstances then perhaps authorities may list out the instances when one can do so. As the name suggests casual leave means 'AKASMIK AVAKASH' and it can be availed by an officer at short notice in case of exigencies. In fact many times officers avail the leave first on simple intimation and send the petition afterwards for sanction and invariably it is accepted. The charge No. 1 is, therefore, not true and has no basis at all.

7. It is not a fact that I absented from duties as alleged, rather I had left battalion hqr with proper intimation under circumstances already narrated above. It is true that during my stay in Assam house, New Delhi in May, 2005 one lady called Smt. Maya Sinha came to meet me. My wife had deserted me since Nov, 2000 and refused to join me despite all possible efforts. During my stay in Delhi I had developed some acquaintances with Smt. Maya and now after divorce from my first wife we are married and staying together. The false complaint was lodged by Smt. Rashmi Jha, my first wife (available on page 86). The first two charges have emanated from the ongoing family dispute which finally is now over. Hence charge No.2 is in correct and has no substance in it.

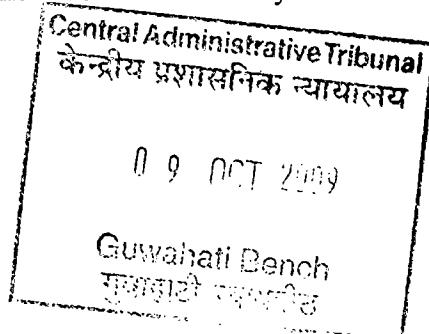
8. The allegation as spelt under Article-III is full of contradictions. It is just not possible to appoint someone against vacancy of another unit. It says that **while holding post of Commandant 5th A.P.Bn, Sontila self appointed one cook against 16th A.P.Bn which is beyond realm of possibility.** A Commandant can't appoint someone against vacancy of another unit. Even the statement of imputation of misconduct in support of various charges mentioned same thing, but this is just not possible. It doesn't mention the name and particulars of the person so appointed and after lapse of so many years neither I am not in a position to recollect the details of the case. However, if some appointment was given in 16th A.P.Bn in grade IV rank during my tenure, I am sure this must have been done observing all formalities and certainly not in disregard to existing rules and procedures. The charge is quite vague, unclear and should be dropped forthwith.



9. As regards the allegation spelt as Article IV, it is requested to kindly refer the letter from IGP(Admn), Assam to all SPs/COs on 21.2.05 informing about lifting of ban on appointment of grade IV staff. A copy of this letter is annexed and marked as ANN- 'F'. Nowhere in said letter it is mentioned that the post of Duftry was not to be filled up, nor there was any specific direction from A.P.Hqr to keep the post vacant. This was very much a grade IV post and a board was constituted with undersigned as president and Addl. SP (Hqr), Haflong/ Asstt. Commandant from the unit as members for this purpose as we were facing acute problems in running the general and accounts branch of the office smoothly. Once the post was filled up, then only A.P.Hqr clarified the matter and asked to cancel said appointment but it was not possible to cancel it at this stage, lest it would lead to various kinds of litigation. The matter was given altogether a different colour by Mr. Sumant, then DGP out of sheer biasness and prejudices against me. **It may be reiterated that neither any illegality was committed nor any Govt. rules or procedures were violated, as alleged. As per the provisions of Assam Police Manual, the Commandant of a unit is the appointing/ disciplinary authority in case of a grade IV employee, and those provisions are yet to be amended.** Therefore, charge No. 3 is totally false and should be discarded completely.

10. In regard to Article V it is submitted that as DDO I never handled cash directly and the cashier Mr. L. Hmar was responsible for keeping the cash and maintenance of cash register etc. Insp. Phanibhusan Acharjee at the time of my joining was holding three key posts in the battalion- Subedar Major(SM), QMI, and MTI. He was immediately relieved of the responsibilities of SM on my joining but he continued to hold other two posts for some time. In October, 2005 he was relieved of the post of QMI but on one plea or other he did not hand over charge of 'Q' branch. As MTI he faced problem in getting POL on credit from the local service station. For its purchase, he requested for some cash which the cashier was asked to give him on loan basis on the condition that same would be refunded back on receipt of monthly ceiling. This is a very common practice in almost all the offices of Assam police including the Directorate where presently I am posted. Now after lapse of so many years I don't remember the exact amount sanctioned for this purpose but it was very much within manageable limit. **In December, 2005 Sri J.K.Doley unilaterally took over charge in gross violation of the Court's Order which had given a direction for maintaining a status quo in regard to my transfer. This again was done at the behest of then DGP Mr. Sumant who was holding a grudge against me as his misdeeds were exposed by the media and got me transferred and posted as SP(FRRO), Barpeta.** I made several requests to the cashier to produce the cash as per cash book records but he refused to do so on instructions of Mr. Doley.

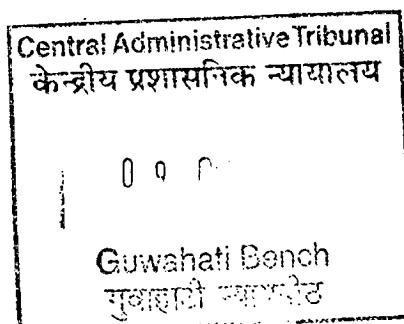
11. Finding no alternative I lodged a FIR with Haflong P.S. on 20.12.2005 which registered case No. 108 U/S 408 IPC The copy of the FIR is annexed hereto and shown as ANN 'G'. Later, an audit team consisting of Sri D.Das, Internal auditor and two others namely Sri N.Baruah and Sri S.R. Nath from A.P. Hqr visited the unit and submitted its report on 7.7.06 according to which Mr. Acharjee was under obligation to refund an amount of Rs. 5,23,000. In fact in para 3 at page 5 the audit committee recommended that the misappropriated amount should be refunded within a period of 15 days. A copy of this findings is annexed and marked as ANN-'H' Based on this, departmental proceedings were drawn up against Mr. Acharjee and the charges were found well established. But surprisingly then DGP Mr. R.N. Mathur simply passed an order for his compulsorily retirement when he was left with only two months of



service and took no steps to recover the Govt. money misappropriated by him. The copy of said order is enclosed and marked as ANN- 'I'. Now it is learnt that Mr. Phanibhusan Acharjee ex- QMI of 5th A.P.Bn has been charge sheeted in aforesaid case vide C.S. No. 27 dtd. 23.7.07 on charges of misappropriation and so on. The charge No. 5 is, therefore, absolutely baseless and concocted.

12. Lastly, the charges have been framed after a long gap of five years. This delay in framing charges is simply not understandable. An officer's memory doesn't remain fresh and he tends to forget the details of a case once he moves from one station to another. As said earlier, the charges are vague, unclear and having no substance. For instance, at page 5 of above Memo it mentions- Statement of imputation of misconduct in support of each article of charge framed against Sri Binoy Kumar Mishra, IPS, the then Commandant, 8th A P Bn "which is just not true and clearly shows the complete lack of seriousness and callousness while dealing with a matter affecting the career of a senior IPS officer. Even my name is not spelt correctly on various pages of the Memo. Perhaps this enquiry was initiated with sole intention of subjecting me to further mental agony/ harassment and with a view to humiliate me. The manner in which the first chargesheet dtd. 5.2.09 was served upon me with wrong address etc. was already pointed out and the authorities perhaps on realizing the mistakes cancelled the earlier order. I once again deny all the above charges and hope that the disciplinary authority after having accepted the above submissions will drop the departmental proceedings drawn up against undersigned at the earliest.

Encl.- as above



Your's faithfully

(B.K. Mishra, IPS)
Inspector General of Police(HG&CD)
Assam, Beltola, Guwahati-28.

CONFIDENTIAL

ASSAM POLICE HEADQUARTERS :::: ULUBARI :::: GUWAHATI-7.

Memo No.C. 82/2000/Pt/293, Dated Ghyt., the 17th August'05.

To

The Inspector General of Police, (L&O),
Assam, Guwahati.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

Guwahati Bench
गुवाहाटी न्यायालय

(All Addl.Ds.G.P./ All Is.G.P./ All DIsP(Ranges)/
Director S.F.S.O./ All Supdts. of Police / All
Commandants(A.P.Bn/ IR Bn/ APTFBn/CDO Bn/ R.T.S./
B.T.C./ A.P.T.C./ Principal P.T.C./ S.R.P./
All A.I.G.P) :

Subject : DGP'S COMMENDATION MEDAL .

Sir,

I am directed to refer to this office memo No.
C. 82/2000/123 dtd. 4-2-2001 on the above mentioned subject
and to say that the DGP's Commendation Medal for the year-2001
~~has been~~ awarded to Shri R K. Mishra,IPS, the then Supdt. of
Police Kamrup now Comdt., 5th A.P.Battalion, Sontila U/S is
withdrawn with immediate affect.

This is for Information of all concerned .

Yours faithfully,

Borah 17/8/05
(D.K. Borah),
Inspector General of Police, (A),
Assam :::: Guwahati.

Attested

W.T. CRASH

TO :: IGP (TAP) ASSAM, GHTY (.)
 W :: SHRI B.K. MISHRA, IPS, CO. 5 APBN. STL (.)
 NO.BN.5/G/V-2/3/2005/ 1897 DT. 19.5.05 (.)

REF. TELE TALK OF DATE (.) AS I HAVE SOME
 VERY URGENT WORKS TO ATTEND SELF PROCEED ON 7 DAYS C.L.
 W.E.F. 20.5.05 IN ANTICIPATION OF YOUR KIND APPROVAL (.)
 FORMAL PETITION IS BEING FORWARDED TODAY FOR KIND
 CONSIDERATION (.)

TO : O/C. PR. STL TO TRANSMIT PSE.

M. K. H.
 Commandant,
 5th A.P. Battalion, Sontilla,
 N.C. Hills. 19/5

R. B. S.
 19/5

.....

DR

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
09 NOV
Guwahati Bench गुवाहाटी न्यायालय

Attested

MOST IMMEDIATE25.05.05Through Fax

To
 The Addl. Director General Of Police(T& A.P)
 Assam , Guwahati

Sub: Leave

Sir,

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2005

Guwahati Bench
 गुवाहाटी बैचन्स

This is my honour to inform that I received an intimation on 18.05.05 to the effect that some miscreants had forcibly entered my house in Delhi ,ransacked it completely and took possession of my belongings including documents relating to bank, Car etc. They also took into possession my car , bashed up my servant and driven him out of my house. As my presence was urgently required for lodging complaint etc, I applied for seven days casual leave and proceeded after informing all concerned authorities .

2. On reaching Delhi , I found that my belonging's have been taken away from the flat by some goonda elements hired by Smt. Rashmi Jha and her father . On 19.05.05. an amount of Rs. 40,000/- (Forty thousand) has been siphoned off from my S.B.I Account No.01190012765 .They have also taken away some valuables including cash, Jewelleries , Electronic Items and have refused to return back and and have not vacated the premises till now. A complaint has been lodged with Vasant Kunj P.S. in this connection. Today at seven P.M. concerned parties have been called by local police to sort out the matter.

3. That after fulfilling all necessary legal formalities and when my presence here is no longer required here, I shall return back my place of posting for resuming duties without any delay .

Submitted for kind information and needful

Yours faithfully,


 (B.K. Mishra, I.P.S.)
 Comandent 5th APBN
 Sontila ,
 Camp: New Delhi.

Copy to:

1. The Commissioner of Home
 Gov.t of Assam, Dispur
 for kind information.

Attested

W.T./O.E.

TO : SHRI B.K.MISHRA, IPS, COMDT, 5TH A.P.BN SONTILLA (.)

W : APHQRS GHTY (BH) (.)

FROM : ADGP (T&AP)ASSAM, GHTY (.)

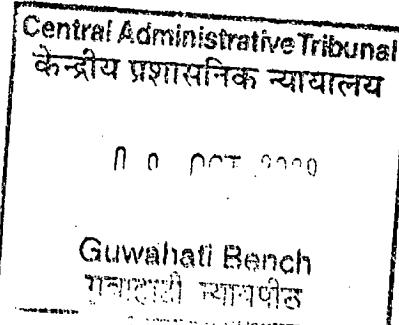
NO. TAP/C/LEAVE/05/PT/1884 DATED 21.05.2005 (.)

REF YOUR APPLICATION TO DIGP (AP)ASSAM NO NIL DATED 19.05.2005
REGARDING GRANT OF 7(SEVEN) DAYS CASUAL LEAVE (.) YOUR PETITION
FOR 7 (SEVEN) DAYS C.L. IS REJECTED AND LEAVE NOT GRANTED (.)
FOR INFORMATION AND NECESSARY ACTION (.)

21.5.05

Asstt. Inspector General of Police(I) Assam,
Ulubari, Guwahati.

Attested



K 840
25/2/05
36
ASAM POLICE HEADQUARTERS
ULUBAKI :::::: GUWAHATI
Dated Guwahati, the 21st Feb/2005.

Memo No.FB/I/155/97/Pt/83.

The Co. STH A.P. Bn.
Sonalle

Dist. Supdt. of Police/
Comdts. of APNs. /APTF
Bn. / (IR) Bns / CLO Bn. / BTC/
RTS / APTC, Dergaon.

Sub. ; ; FILLING-UP OF VACANT POSTS OF GRADE-IV ST. FF.

Ref. ; ; This Office Memo No.FB/I/155/97/360, dtd. 22/1/04
and FB/I/155/97/Pt/80, dtd. 8/2/05.

I am directed to send herewith copy of Govt. letter
No.HMA.522/2003/30, dtd. 2/2/05 and HMA 522/2003/31 /std.5/2/05
regarding withdrawal of Ban imposed in filling up of Grade-IV posts
for your information and necessary action.

The information sought for vide Govt. letter No.
HMA.522/2003/30 /std.2/2/05 should be furnished alongwith list of
Candidates to be recruited.

A.O. 10/10/05

Inspector General of Police, (Admn.),
Assam :::: Guwahati

Memo No.FB/I/155/97/Pt/83-A, Dated Guwahati, the 21st Feb/2005.

As directed, copy forwarded to :-

- (1) The Deputy Secretary to the Govt. of Assam, Home (A) Deptt.,
Dispur for information with reference to your letter Nos.HMA
522/2003/30, dtd. 2/2/05 and HMA.522/2003/31, dtd.5/2/05.
- (2) The Addl. Directors General of Police, (CID)/(Borde)/(T&AP)/
Assam, Guwahati.
- (3) The Inspectors General of Police, (SB)/BI(EO)/(V&AC)/(Comrn.),
Assam, Guwahati.
- (4) The Directors Prosecution / State Fire Service Orgn., Assam.
Guwahati.
- (5) The Deputy Inspectors General of Police, (CVR) Guwahati/(SK),
Silchar/(WK), Kokrajhar/(CR), Diphu/(ER), Jorhat/(NR), Tezpur.
- (6) The Asstt. Inspector General of Police, (A), Assam, Guwahati.
- (7) The Supdt. of Rly. Police, Pandu/ SP, CM: S. SVC, Assam.
- (8) The Guard file for record.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

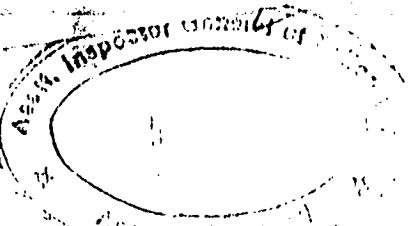
A.O. 21/02/05

Inspector General of Police, (Admn.),
Assam :::: Guwahati

19 OCT '05

Guwahati Bench
गुवाहाटी न्यायपीठ

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT



Dated Dispur the 5th February 2005

NO HIMA 522/2003/31

FROM :

SHRI B.C. BORAI, ACS,
DEPUTY SECRETARY TO THE GOVT. OF ASSAM,
HOME (A) DEPARTMENT.

To :

The Director General & Inspector General of Police, Assam, Jorhat
Guwahati-7.

Sub :

FILLING OF VACANT POST OF GRADE IV UND'R THE
CONTROL OF DIRECTOR GENERAL OF POLICE.

Ref :

SL. 7.9
No. HIMA 522/2003/30 dtd. 2.2.2005.

Sir,

In continuation of this Department's letter no cited above, I am pleased to
say that Govt. have withdrawn the ban imposed in filling up of Grade IV post issued via
No PLA 285/2002/pt-1, 633 dtd. 9.6.04.

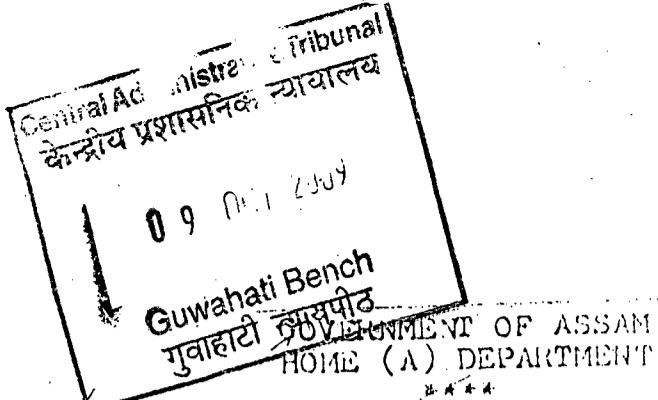
Other information as sought for vide aforesaid letter stands.

Yours faithfully,

.....
Deputy Secretary to the Govt. of Assam
Home (A) Department

Staffing Scale of Pay Rs. 2530 - 40 - 2770 - 60 - 3130 - EB -
- 60 - 34190 - 90 - 4390 PM.

Attested



38

NO. HMA. 522/2003/30/

Dated Dibrur, the 2nd Feb/05

From : SHRI B.C. BORAI, ACS,
DEPUTY SECY. TO THE GOVT. OF ASSAM
HOME (A) DEPTT.To : The Director General & Inspector General of
Police, Assam, Ulubari, Guwahati-7.

Sub : FILLING UP OF VACANT POSTS OF GRADE IV STAFF.

Ref : Letter No. FB/155/97/pt/38 dtd. 9.11.04.

Sir,

In inviting a reference to your letter on the subject cited above, I am directed to request you kindly to furnish the following information in respect of appointment of functional posts (Grade IV) within 30 days.

(a) You are requested kindly to inform the procedure followed in appointing the different category of posts i.e (a) whether advertisement was published showing the vacancy position of different category of posts or whether lists of candidates were obtained from employment exchange of Labour Deptt. and (b) Whether at the time of appointment roster points were maintained. You are also requested kindly to furnish list of persons appointed category wise, Position regarding vacancy & strength of Grade IV with roster point.

Further, You are requested to submit to proposal for Govt. Approval for filling up Grade IV urgently for taking up with SLEC.

Yours faithfully,

Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Abdullah

FIRST INFORMATION REPORT

(Under Section 154 Cr. P.C.)

20/12/05
 Officer-in-Charge,
 Taflong Police Station
 N. C. Hills, Assam

1. Dist. NTC. Hills P.S. Taflong Year 2005 FIR No. 108Date 20-12-052. (i) Act: IPC Section 408

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

(ii) Act: _____ Section _____

X 39 ACT 2009

(iii) Act: _____ Section _____

Guwahati Bench
 गुवाहाटी न्यायपीठ

(iv) Other Acts & Section: _____

3. (a) General Diary Reference: Entry No. _____ Time _____

(b) Occurrence of Offence: Day _____ Date _____ Time 9 in between Feb/05to 12-12-05(c) Information Received Date 20-12-05 Time 12-30 Pm G.D. No. _____

4. Type of Information: Written/ Oral.

5. Place of occurrence: (a) Direction and Distance from P.S. at 5th A.P. Bn.Santilla, Taflong, about 15 Km. North.

(b) Address: _____

Beat No. _____

(c) In case outside limit of this Police Station, then

the name of P.S. _____ Beat No. _____

6. Complainant / Informant:

(a) Name: Steji B.K. Mishra I.P.S.

(b) Father's / Husband's Name: _____

(c) Date/ Year of Birth: _____

(d) Nationality: Indian(e) Address: Santilla, Taflong.

7. Details of Known/ Suspected/ Unknown/ accused with full particulars: _____

Head Ass'tt. of 5th A.P. Bn, Santilla, Taflong.

Attested

Reason for delay in reporting by the Complainant/ Informant: _____

9. Particulars of properties stolen/ involved: (Attach separate sheet, If required)

Missappropriation the Govt. money (nearly Seven lacs rupees).

10. Total value of the properties stolen/ involved _____

11. Inquest report/ U.D. case No. if any: _____

12. F.I.R. Contents: (Attach separate sheet, if required)

The written report of the Compl. received at P.S. and treated as F.I.R. which is enclosed herewith.

13. Action taken: Since the above report reveals commission of offence(s) _____

u/s 408 I.P.C.

registered the case and took up the investigation directed S.I. SWAPAN KR. Dey

O.C. HPG. P.S.

to take up the investigation

transferred to P.S. _____ on point jurisdiction.

F.I.R. read over the Complainant / Informant admitted to be correctly recorded and a copy given to the Complainant/ Informant free of cost.

Attested
Sd/- Swapna Kr. Dey S.I.
Signature of Officer-in-Charge

Police Station with

Name: _____

Rank: S.I. of Police

Number, if any O.C. HPG. P.S.

Dt. 20-12-05.

Signature/ Thump impression of the
Complainant/ Informant.

41

IMMEDIATE
Dtd. 20.12.2005

To,

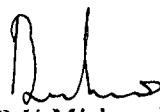
The Officer-in-Charge
Haflong police station
Haflong.

Sub : First information report(FIR)

This is to inform that I took charge of the office of the Commandant, 5th Assam police battalion in February,05. While taking over charge, as per rule I personally received the amount as per cash book and asked the Head assistant Mr. L.Hmar to keep it temporarily with the condition that he would produce the cash as and when called for verification as per the balance shown in the cash book.

2. On last occasion, he brought the cash book before me on 9.12.05 for signature etc. As I was leaving for Guwahati on next day, I asked him to bring it to my bungalow. I returned back to Bn. Headquarter on 13.12.05 and sent several messages for him. But he has not shown his face for quite sometime. He has neither updated the cash register nor produced the cash for verification before me. Now, I am having strong apprehension that perhaps he has misappropriated the Govt. money(Nearly seven lacs rupees) which I had received personally and allowed him to keep it as a custodian purely on temporary basis.

3. In view of the above, you are requested to please register a case under appropriate provisions of law against Mr. L.Hmar and take early steps for recovery of the Govt. money, to be handed over back to the undersigned for further necessary action.


(B.K.Mishra, IPS)
Sontilla, Haflong.

Copy to :

The Supdt. of Police, N C Hills, Haflong for information & needful.

Received and registered
Haflong B.S. Case No 108/05
dt. 20.12.05 u/s 408 IPC

Attested
Swapan Kr. Dey 61
Officer-in-Charge
Haflong Police Station
N.C. Hills, Assam,
20.12.05

42

Haflong P.S. Case No. 108 | 05 or 3 ADG 2 P.

The Case is determined in Charge
Sheat ride Haflong P.S. C.S.N.D. 2 P
H. 23-7-07 ab 408 are against
Shri Phoni Bhushan Dehargee (Ex.
Q.M.I/M.T.I) of 5th A.P.Bn. Santilla,
N.C. Hills.

20/10/09
Officer-in-Charge
Haflong Police Station
N.C. Hills, Assam

Attested

43

INTERNAL AUDIT FINDINGS ON THE ALLEGED MIS APPROPRIATION
OF GOVT. MONEY TO THE TUNE OF Rs. 7,00,000/- ON THE ACCOUNTS OF THE
COMMANDANT, 5TH APBN, SONTILA, HAFLONG.

INTRODUCTORY :- The accounts of the Commandant, 5th APBn, Sontila, Haflong on the alleged misappropriation of Govt. money to the extent of Rs. 7,00,000/- was audited for the period from 24-2-2005 to 9-12-2005 by the Internal Auditors of A.P.Hq. Viz. S/Sri D.Das, Sri N.Baruah and Sri S.R.Nath w.e.f. 26-6-2006 to 01-07-06 the audit findings are recorded as follows :-

INCUMBENCY :- The following officers held the respective post during the period covered by the audit.

1. Commandant, Sri B.K.Misra, IPS	w.e.f. 24-2-05 to 11-8-2005.
2. 2nd In Commandant, Sri Hitesh Ch.Roy, APS	w.e.f. 12.8.05 to 26.8.2005.
3. Commandant, Sri B.K.Misra, IPS	w.e.f. 27.9.05 to 9.12.2005.
4. H/A Sri L.Hmar.	w.e.f. 24.2.05 to 9.12.2005.

DOCUMENTS :- The following documents were produced before the Internal Audit party of A.P.Hq. by the office of the Commandant, 5th APBn, Sontila for their scrutiny.

1. Cash Book	w.e.f. 24.2.2005 to 9.12.2005
2. Bill Register	w.e.f. 24.2.05 to 9.12.2005
3. Receipt Cheque	w.e.f. 24.2.2005 to 9.12.2005
4. Pay Cheque	w.e.f. 24.2.2005 to 9.12.2005.
5. A/Roll	w.e.f. 7/04 to 3/05 (Undisbursed).
6. Treasury transit Register	w.e.f. 24.2.05 to 9.12.2005.
7. Documents/file (In Connection with transactions).	w.e.f. 24.2.05 to 9.12.2005.
8. Statement showing the A.C.Bills for the purchase of Pol. and submission of DCC bills for the period from 5/04 to 2/06.	

Arrested

The above official documents of Commandant, 5th APBn, Sontila, Haflong seized by the Inspector Sri P.C.Kalita, Circle Inspector, Haflong in Connection with P.S. Case No.108/2005 u/s 408 IPC which was given by the than Commandant, Sri B.K.Misra, IPS against Sri L.Hmar, H/A of Commandant, 5th APBn, Sontila, Haflong in Connection with the alleged misappropriation of Govt. money to the tune of Rs. 7,00,000/-. However all the official documents were produced before Internal Audit party for their scrutiny.

09 OCT

- 2 -

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Cash balance from 24.2.2005 to 9.12.2005.

On 9.12.2005 there was a cash balance of Rs. 6,07,767'00, after disbursement of Rs. 5,12,243'00 out of progressive total of Rs. 11,20,010'00 on transaction of 9.12.2005, the closing balance comes to Rs. 6,07,767'00. The break up of which are as follows :-

Esstt.	Rs. 8,816'00
Permanent advance	Rs. 150'00
Mise	Rs. 3,20,761'00
T.A.	Rs. 22,495'00
Contingency	Rs. 2,55,545'00
	<hr/>
	Rs. 6,07,767'00

In course of Scrutiny i.e. receipt Cheque, pay Cheque, A/Roll and allied documents relating to the closing balance in hand as per cash Book as on 9.12.2005, actual cash was of Rs. 74,767'00 which are seized by Sri P.C.Kalita, Circle Inspector of Haflong at the time of investigation of alleged mis appropriation case against Sri L.Hmar, H/A of Commandant, 5th APBn, Sontila. The investigation officer stated that Rs. 74,767'00 was again handed over to the H/A to kept the above money to his own custody. As a result (Rs. 6,07,767'00 - Rs. 74,767'00) = Rs. 5,23,000'00 undisbursed amount are not available in cash. The undisbursed amount under the head of accounts are as follows:-

Esstt.	Rs. 8,816'00
Permanent advance	Rs. 150'00
Mise	Rs. 3,20,761'00
T.A.	Rs. 22,495'00
Contingency	Rs. 2,55,545'00
	<hr/>
Less T.A. advance	Rs. 6,07,767'00
less cash in hand	Rs. 10,000'00
Net undisbursement amount.	Rs. 74,767'00
	<hr/>
Net undisbursement amount.	Rs. 5,23,000'00

The details of the undisbursement amount under the above head of accounts from 3/04 to 9/12/05 on the accounts of the Commandant, 5th APBn, Sontila, Haflong are shown at enclosed annexure - "I".

09 OCT

- 3 -

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

On scrutiny of the records relating to the drawal of A.C.Bills for purchase of POL of Departmental vehicle from 4/04 to 2/06 it reavels that 27 Nos of A.C.bill amounting to Rs. 22,35,000/- were drawn by the D.D.O. of 5th APBn, Sontila, Haflong. The DCC bills for the above amounts were submitted by the D.D.O. to the higher authority for counter signature. A statement showing the D.C.C.bills against A.C.bills submitted w.e.f. 4/04 to 2/06 alongwith T.V.No. and date shown at enclosed annexure - II.

Scrutiny reaveled that a sum of Rs. 11,15,000/- (Rupees eleven lakhs fifteen thousand) was received by the QMI/MTI of the 5th APBn, Sontila as advance for POL expenditure due to exhausted ceiling for the respective months. Like this way he received 20 (twenty) Nos of advance amounting to Rs. 11,15,000/- from Sri L.Hmar H/A of 5th APBn, Sontila during the period from 4/05 to 12/05. The details of which shown at annexure -III, alongwith 20 Nos money receipt given by the QMI/MTI which received by the H/A.

On scrutiny of records relating to the drawal of T.A.bill and advance it is noticed that a sum of Rs. 10,000/- has been paid to the 3 (three) Police personnels as advance which are shown below :-

1. Nk Zoilienthei Hrangkholi	Rs. 2,000*00
2. Sri Hitesh Ch.Roy, 2 I/C	Rs. 3,000*00
3. C/76 Prachurya Mahanta of 5th APBn.	Rs. 5,000*00
Rs. 10,000*00	

The money receipt of the above T.A. advance given by the above Police Personnel to the H/A Sri L.Hmar are shown at annexure IV enclosed ". The necessary action may please be taken to adjust the above amount of Rs. 10,000/- from their final bill or necessary order may kindly be passed to recover the above T.A.advance from their present pay bill with a suitable instalments.

The QMI/MTI of 5th APBn, Sontila time to time refund the advance money to the H/A in a pice manner way, during the period from 5/05 to 11/05. The total refund money by the QMI/MTI of 5th APBn, Sontila, Haflong comes to Rs. 5,92,000/- i.e. Rs. 11,15,000*00 - Rs. 5,92,000 = Rs. 5,23,000*00 leaving a balance. The detail of which shown at Annexure .V.

Condt 4/-

Attested

45

19 NFT 2009

- 4 -

Guwahati Bench

On further scrutiny it is found that the prayer given by the QMI/MTI of 5th APBn, Sontila for advance of POL.expenditure in a file of note sheet which was put-up to H/A of 5th APBn, Sontila. Then the H/A put-up the file with a note to the, the then Commandant, Sri B.K. Misra, IPS that POL money could not be paid from cash in advance. But the Commandant ordered in the note sheet allowed to give[/] the advance loan money to the QMI/MTI of 5th APBn, Sontila. It was ascertained from the note sheet that Sri B.K. Misra, IPS the then Commandant, 5th APBn, was on leave during the period from 11.8.2005 to 26.9.2005 Sri Hitesh Ch. Roy, APS 2nd In Commandant, 5th APBn, Sontila have taken the charge as D.D.O. for the above period. During his period as a D.D.O. he also approved for Rs. 40,000/- as advance loan from the cash for the same purpose. The details of note sheet orders are shown at annexure-VI enclosed 12 (Twelve) nos of note sheet copies and the approve note sheet order of 2 I/C 5th APBn, Shown at serial Note Sheet No. 9.

Signature of Cash Book.

After going through the scrutiny of Cash Book it is found that the Cash Book was not signed by the then Commandant, Sri B.K. Misra, IPS, 5th APBn, Sontila, Haflong (the photo Copy of the Cash Book are shown at Annexure-VII.)

On querry the H/A Sri L.Hmar of 5th APBn, Sontila stated that on 9.12.2005 Sri B.K. Misra, IPS called him in his office Chember and ordered him to hand over the cash Book to Hav. Abdul Hakim. The H/A do not comply his order with an objection that there is no such rule to given cash Book to other incumbents. The Commandant, had signed only R.C. and P.C. and did not signed the cash Book. After that in the evening while the then Commandant, Sri B.K. Misra, IPS sat in his car to go to his bunglo, again called the H/A to keep the cash Book in his car, he obey the order and kept the cash Book in the Commandant's car in fron of all the office staff at 5.30 P.M. Then the Commandant left for his bunglo.

On 12.12.2005 the H/A submitted a written report to the present Commandant, Sri J.K. Doley, APS for his kind information stating that the Cash Book has been taken by the then Commandant, Sri B.K. Misra, IPS.

On 15.12.2005 at 2.30 P.M. the then Commandant, Sri B.K. Misra, IPS returned the said cash Book to the H/A of the 5th APBn, Sontila. On 17.12.2005 at 4.15 P.M. the than Commandant called the H/A and accordingly H/A met Sri B.K. Misra, IPS alongwith the cash Book for putting his signature upto 9.12.2005, but instead of signing the cash Book

09/07

= 5 =

Guwahati Bench
गুৱাহাটী ন্যায়পীঠ

He ordered the H/A to hand over all the cash balances to him. The H/A objected that there was no such rule to hand over the cash to the D.D.O. at the time of transferred from 5th APBn, Sontilla, Haflong.

From the above it is ascertain that sri B.K.Misra, IPS of the Commandant, 5th APBn, Sontilla was trying to implicate him in the alleged mis appropriation of Govt. money. As a result he filed FIR against the H/A in the Haflong P.S. Which was registered as case No. 108/05 dtd. 20.12.2005 u/s 408 IPC and accordingly the officer Incharge Haflong P.S. on 21.12.2005 at the O/O Commandant, 5th APBn, Sontilla seized the money and then the money have given to the H/A to kept in his own custody.

It is clear that the total Rs. 5,23,000 '00 (Rupees five lakh twenty three thousand) alleged mis appropriation of Govt. money should be refunded by the present QMI/MTI of 5th APBn, Sontilla within 15 (fifteen) days received of the Internal Audit report. As per enclosed annexure-V where he has refunded money amounting to Rs. 5,92,000 '00 to Sri L.Hmar H/A of 5th APBn, Sontilla. The money which he ~~was~~ was taken as loan advance from H/A by the order of the than Commandant, Sri B.K.Nisra, IPS of 5th APBn, Sontilla.

It appears from the detail analysis of undisbursed money from 2/02 to 3/05 shown at annexure-I D.D.O. kept Govt. money without disbursement after drawal of money from Treasury stretching back many months, which is most irregular. According to the Treasury rules no money should be drawn from Treasury which is not required for immediate disbursement. Such mis appropriation of Govt. money could have been avoided had there not been such a huge amount in cash awaiting disbursement on the accounts of the Commandant, 5th APBn, Sontilla, Haflong.

D.D.O.
Dandadhar Das
Internal Auditor,
A.P.H.Q. Ulubari,
Guwahati - 7.

Marnah I.A.
7.7.06

Naren Baruah
Internal Auditor,
A.P.H.Q. Ulubari,
Guwahati - 7.

ANL
7.7.06
Sunanda Ram Nath
Internal Auditor,
A.P.H.Q. Ulubari,
Guwahati - 7.

—X—X—X—X—X—X—

Attested

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

09 OCT 2004

(Guwahati Bench
गुवाहाटी न्यायपीठ

Dated Ghyt., the 20th April '2007.

ASSAM POLICE HEADQUARTERS
ULUBARI ::::::: GUWAHATI.

O R D E R

perused the findings of the Enquiry Officer Shri Haren Tokbi, APS, Dy. Supdt. of Police, (HQ), N.C. Hills, District and heard the delinquent AB-Inspector of Police, Shri Phani Bhushan Acharjee in person. It has been established that the delinquent has not refunded Rs. 5,23,000/- (Rupees five lakhs twenty three thousand) only of Govt. money received by the delinquent ABI/QMI from the Head Asstt. of 5th A.P.Bn., Sontilla up to now. The delinquent claims that he has refunded the amount but has not been able to prove it up till now. In view of this, it is clear that the delinquent has caused a loss of Rs. 5,23000/- (Rupees five lakhs twenty three thousand) only to the Govt. of Assam.

On perusing his service records, I find that he has just over two months left for him to go on retirement on super-annuation. This being so, there is no time to impose any penalty on him as there will be no time left with us to implement it on him. Similarly, there is no time left to recover the amount of loss caused by him to Govt. from his pay as it cannot be recovered in just over two months of service left.

In view of this, the only punishment that can be inflicted now is to send him on compulsory retirement from service.

Accordingly, I shri R.N. Mathur, IPS, Director General of Police, & Inspector General of Police, Assam hereby awards the delinquent AB-Inspector the penalty of compulsory retirement from service with effect from the end of this month i.e. 30th April '07. The Departmental Proceeding initiated against Shri Phani Bhushan Acharjee, ABI/QMI of 5th A.P.Bn., Headquarters, Sontilla vide this

Attested

Contd.....2/-

Contd.....2/-

11211

Guwahati Bench
গুৱাহাটী ন্যায়পুর

Office Memo No. Proc.Cell/XXVII/24/2006/95 dtd. 30.03.2006 is
disposed of accordingly.

Sd/- R.N. Mathur,
Director General of Police, Assam,

Inspector General of Police, Assam,
Assam I.I.P. Guwahati.

Memo No. Proc.Cell/24/2006/128 Dated Guwahati, the 30th April 2007.

Copy forwarded to :-

1. The Commandant, 5th Assam Police Battalion, HQs., Sontilla, Haflong Assam for information and necessary action.
2. The I/C Pension Cell, Assam Police Headquarters, Ulubari, Guwahati, for information and necessary action.
3. The Supdt. Force (B) Branch, Assam Police Headquarters, Ulubari, Guwahati for information and necessary action.
4. Shri Phani Bhushan Acharjee, AB-Inspector/QM 5th Assam Police Battalion, Sontilla for information.

DR
Director General of Police, Assam,

Inspector General of Police, Assam,
Assam I.I.P. Guwahati.

20/4/07

RRRRR

Attested
De

A-7
50

GOVERNMENT OF ASSAM
OFFICE OF THE DIRECTOR GENERAL OF CIVIL DEFENCE AND
COMMANDANT GENERAL OF HOME GUARDS, ASSAM, BELTOLA,
GUWAHATI - 781028.

No. CG.111/2009/Pt-II/39

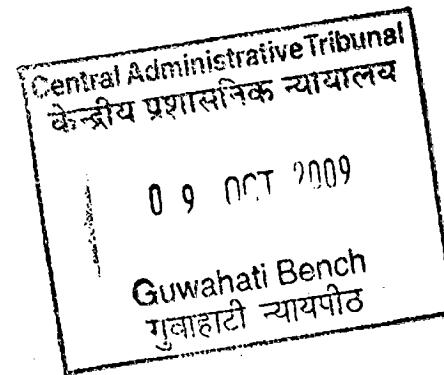
Dated Beltola the 6th July/09

From,

Shri. B. K. Mishra
Inspector General of Police (HG & CD),
Assam, Beltola, Guwahati-28.

To,

Shri S. C. Das
Principal Secretary to the Govt. of Assam
Home Department, Disput, Guwahati-6.



Ref : Your memo No. HMA(IPS)145/Pt-V/174, dtd. 11-02-2009 regarding
submission of my written statement of defence.

Sir,

With reference to the above, this is to inform that I have already submitted my reply in this matter on 29-3-2009 but even after expiry of more than three months nothing has been communicated by the Government so far.

2. As it is affecting my career adversely, you are requested to kindly give suitable instructions for its early disposal.

Yours faithfully

(B.K. Mishra)

Inspector General of Police (HG & CD),
Assam, Beltola, Guwahati - 28.

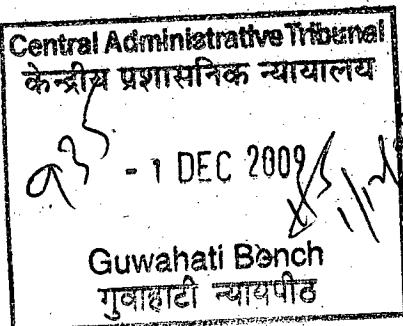
Attested

Sub Inspector B.K. Mishra

File in Court on 11/12/09

Court Officer.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



ORIGINAL APPLICATION NO.208 OF 2009

IN THE MATTER OF:

O.A No.208 of 2009

Sri Binay Kumar Mishra

.....Applicant

-VS-

The Union of India and Others

.....Respondents

-A N D-

IN THE MATTER OF:

Written Statement on behalf of the
Respondent nos. 2 and 3

*Receiving
Nagendra
1/12/09*

I, Shri Anjan Chakraborty, aged, about 50 years, son of Late Nagendra Nath Chakraborty, presently serving as Joint Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati-6 do hereby solemnly affirm and state as follows:

1. That I am presently serving as Joint Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati-6. A copy of the Original Application no. 208/09 has been served upon the respondents. I have gone through the same. Being the Joint Secretary to the Government of Assam, am acquainted with the facts and circumstance of the case. I have been authorised to file the written statement on behalf of respondent nos. 2 and 3.
2. That I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.
3. That with regard to the statements made in paragraph 4.1 of the Original Application, the humble answering respondent has nothing to make comment on it. However, he does not admit any statements which are contrary to records.
4. That with regard to the statements made in paragraphs 4.2 to 4.4 of the Original Application, the humble answering respondent has nothing to make comment on it as they are matters of records of the case.

*File in
The State of Assam
Rupnandan Mukherjee
Joint Secretary
Govt. of Assam
CAT - 1/12/09*

Anjan Chakraborty

5. That with regard to the statements made in paragraphs 4.5 and 4.6 of the Original Application, the humble answering respondent begs to state that the departmental proceedings was drawn up against the applicant for certain lapses/irregularities committed by him during his tenure as commandant, 5th APBn, Sontila, vide letter no. HMA(IPS) 145/Pt.IV/173 dated 05.02.05.

It is a fact that the said letter was delivered by the Department to the petitioner through Home Guard of the petitioner's office who came to the department in connection with their delivery of Daks so that the ^{petitioner is} able to get the communication early. It is also a fact that the designation and office address was also quoted inadvertently as Commandant, 16th AP(IR)Bn, Bormonipur, Morigaon instead of IGP(HG & CD), Beltola, Guwahati, due to oversight which came to the notice of the department when the petitioner informed about the matter. However, on receipt of the information from the petitioner, a revised memorandum was prepared and served upon the petitioner vide HMA (IPS) 145/Pt.IV/174 dated 11.02.09 in cancellation of the earlier memorandum dated 05.02.09 and duly served upon the petitioner. There was no intention to humiliate as alleged in the said paragraph.

6. That with regard to the statements made in paragraphs 4.7 of the Original Application, the humble answering respondent begs to state that the written statement in defence submitted to the department by the petitioner vide his letter number CG.111/Pf/2009 dated 29.03.09 was received by the department on 30.03.09.

7. That with regard to the statements made in paragraphs 4.8 of the Original Application, the humble answering respondent begs to state that the petition dated 06.07.09 was received by the government.

8. That with regard to the statements made in paragraphs 4.9 of the Original Application, the humble answering respondent begs to state that the replies furnished by the applicant in his defence was considered by the department. On consideration of the matter it was decided to obtain the views of the Director General of Police, Assam. Accordingly, the Director General of Police was requested to offer his views in the matter vide letter no. HMA(IPS) 145/Pt-IV/205 dated 31.08.09. The matter will be taken up immediately for consideration on receipt of the views of the Director General of Police.

Copy of the letter dated 31.08.09 is annexed herewith and marked as **Annexure A**.

9. That with regard to the statements made in paragraphs 4.10 of the Original Application, the humble answering respondent begs to state that at the time of promotion of the applicant to the post of Deputy Inspector General

and Inspector General of Police, there was no disciplinary proceeding initiated or pending against the applicant and as such the applicant was considered for promotion to the said posts. Therefore the departmental proceeding which has been initiated after the said promotion cannot be the deciding factor for his promotion to the aforementioned posts.

10. That with regard to the statements made in paragraphs 4.11 of the Original Application, the humble answering respondent begs to state that the applicant was placed under suspension on 07.12.05 vide notification No. HMA 167/94/Pt.VII/21 dated 07.12.05 and subsequently reinstated in service on 07.02.06 vide notification no. HMA 576/2005/50 dated 07.02.06. The matter for regularisation of the suspension period was taken up for consideration but on consideration it was revealed that the period of said suspension related to the departmental proceeding drawn up vide memorandum dated 11.02.09. Therefore, it has been decided by government to keep the matter of regularisation of the suspension period pending till disposal of the departmental proceeding now drawn up against him.

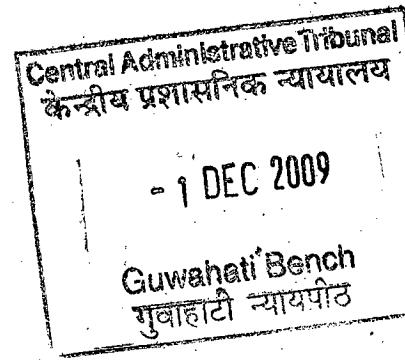
Copies of the said notifications dated 07.12.05 and 07.02.06 are annexed herewith and marked as **Annexure B and C** respectively.

11. That with regard to the statements made in paragraphs 4.12 of the Original Application, the humble answering respondent begs to state that the Article of Charge No. I & II of the proceeding drawn up vide Memorandum No. HMA (IPS) 145/Pt. IV/174 dated 11.02.09 relates to the matter other than the family dispute. The charge No. III & charge no. IV are regarding violation of rules and procedures required for the purpose of appointment of Grade IV and Drafty and charge No. V related to misappropriation of Government money and there is no official communication in the office of the respondent No. 3 to show that one Inspector was responsible for the said misappropriation.

12. That with regard to the statements made in paragraphs 4.13 of the Original Application, the humble answering respondent begs to state that the state respondent initiated the departmental proceeding against the applicant in exercise of powers conferred under the provisions of the rule 7 of the All India Services (Discipline & Appeal) Rules, 1969.

13. That the instant Original Application has no merit at all and is liable to be dismissed.

Anjan Chatterjee



VERIFICATION

I, Shri Anjan Chakraborty, aged about 50 years, son of Late Nagendra Nath Chakraborty, presently serving as Joint Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati-6 in the district of Kamrup, Assam do hereby solemnly affirm and verify that I am fully conversant with the facts and circumstances of the case. I have been duly authorised to file this written statement on behalf of the respondent nos. 2 and 3.

The statements made in paragraphs 1 to 3 and 9 are true to my knowledge and those made in paragraphs 4 to 8 and 10 to 12 being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact before the Hon'ble Tribunal.

And I sign this verification on this the 1st day of December 2009 at Guwahati.

Anjan Chakraborty

SIGNATURE

Confidential

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT :: DISPUR

No. HMA(IPS) 145/Pt.IV/205

Dated Dispur, the 31st August, 2009.

From : Shri A. Chakravarty, ACS.
Joint Secretary to the Govt. of Assam.
Home (A) Department.

To : The Director General of Police, Assam,
Ulubari, Guwahati-7.

Sub : Departmental Proceedings in respect of Shri B K Mishra, IPS.

Ref : No. HMA(IPS) 145/Pt.IV/173 dtd.5th February, 2009.

Sir.

In inviting a reference to the subject above. I am directed to enclose herewith the replies to the show cause notice submitted by Shri B K Mishra, IPS and request you kindly to furnish your views on the replies submitted by Shri B K Mishra, IPS in support of his defence.

Yours faithfully,

Enclo :- As stated.

Abul
31.8.09
Joint Secretary to the Govt. of Assam,
Home (A) Department.

Certified to be true

Abul
27.11.09

O/C

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

DEC 2009

ORDERS BY THE GOVERNOR OF ASSAM

NOTIFICATION

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Dated Dispur, the 7th December, 2005

No.HMA.167/94/Pt.VII/21 : Pending drawal of departmental proceedings Shri B.K. Mishra, IPS, Commandant, 5th APBn, Sontilla is placed under suspension with immediate effect.

Sd/- V.B.Pyarelal
Commissioner & Secretary to the Govt. of Assam,
Home (A) Department

Memo No.HMA.167.94/Pt.VII/21-A, Dated Dispur, the 7th December, 2005
Copy to:

1. Commissioner & Secretary to Chief Minister, Assam, Dispur.
2. PPS to Chief Minister, Assam, Dispur.
3. PS to Minister of State, Home & Political, Assam, Dispur.
4. SO to Chief Secretary, Assam, Dispur.
5. PS to Addl. Chief Secretary, Home & Political, Dispur.
6. The Accountant General, Assam, Maidamgaon, Beltola, Guwahati-29.
7. The Under secretary to the Govt. of India, Ministry of Home Affairs, New Delhi-110001.
8. The Under secretary to the Govt. of Meghalaya, Home (P) Department, Shillong.
9. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7 for information and necessary action.
10. Shri J.K. Doley, APS, is directed to take over the charge of Commandant, 5th APBn., Sontilla, immediately.
11. Shri B.K. Mishra, IPS, (under suspension), C/O D.G.P., Assam, Ulubari, Guwahati-7.

By order etc.

(P. Barua)

Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Certified to be true

27.11.09

7/1

- 57 -

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 7th February, 2006.

NO. HMA.576/2005/50 : The suspension order issued against Shri B.K. Mishra, IPS, vide Notification No. HMA167/94/Pt-VII/21 dated 7-12-2005 is hereby revoked and Shri B.K. Mishra, IPS. is reinstated in service with immediate effect.

Sd/ P. Baruah,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Memo. No. HMA.576/2005/50-A, Copy to :-

Dated Dispur, the 7th February, 2006.

1. The Accountant General, Assam, Maidampaon, Beltola, Guwahati-29 for information and necessary action.
2. The Under Secy. to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Under Secy. to the Govt. of Meghalaya, Home (P) Department, Shillong.
4. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
5. Shri B.K Mishra, IPS, C/O Director General of Police, Assam, Ulubari, Guwahati-7.

By order etc.

Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Certified to be true

Subent
27.11.09

1311

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

1 DEC 2009

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH :::: GUWAHATI.

TRIBUNAL,

ORIGINAL APPLICATION NO. 208 OF 2009

IN THE MATTER OF

Shri Binay Kumar Mishra

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
..... Applicant.
8 05 JAN 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

- VS -

The Union of India and others

- And -

IN THE MATTER OF

**Rejoinder submitted by the applicant
against written statement filed on
behalf of respondent No. 2 & 3.**

*Received for
Mrs. Manjula Deka
Sr. Cuse.
Manjula Deka
5.1.10*

I, Shri Binay Kumar Mishra, aged about 47 years s/o Shri Jagdish Mishra, presently serving as Director Prosecution, Govt. of Assam, Ulubari, Guwahati - 7 do hereby solemnly affirm and state as follows :-

- 1) That no written statement has been filed by respondent No. 1. Similarly no separate written statement filed by respondent No. 2 & 3 in the instant case as directed by the Hon'ble Tribunal.
- 2) That with regard to statement made in this paragraph, the humble applicant has nothing to make comment.
- 3) That with regard to statement made in this paragraph, the humble applicant has nothing to make comment.
- 4) That with regard to statement made in this paragraph, the humble applicant has nothing to make comment.
- 5) That with regard to statement made in this paragraph, the humble applicant begs to state that no departmental proceedings were drawn up against him in the capacity of then Commandant 5th A.P. Bn. Sontilla by Govt. of Assam through its order dtd. 5.2.2005, as claimed. On 5.2.2009 the Govt. of Assam vide letter No. HMA(IPS)145/Pt.IV/173 to passed an order for initiating disciplinary proceedings which was later modified and another order was issued on 11.2.09. However it is a matter of great surprise that though the disciplinary authority ordered for drawal of departmental proceedings on five year old facts but failed to give any justification for the inordinate delay in doing so.

05 JAN 2010

After passage of such a long time it is quite natural that one tends to forget details of the case and basic objective of such enquiry is lost.

According to a landmark judgement given in similar context :

"By lapse of time some evidence is bound to vanish and as the time passes by memories of incidents and occurrences get blurred, recollection of an event becomes difficult and memory about an incident fades."

We would accordingly hold that inordinate delay in commencing a proceeding against the applicant caused prejudice to him and the order of punishment cannot be claimed"

[P.K.Panda V. Union of India,(1992) 19 ATC 792 (CAT,Cuttack Bench)]

According to another verdict given in similar situation :

"Inordinate delay in issuing a charge- memo renders it liable to be quashed".

[P.K.Alapat V. Union of India, and others, O.A. No.1229 of 1996, CAT, Ernakulam Bench, date of judgement 21.1.1997]

According to yet another judgement given in a similar case :

"Charge sheet issued against an employee after a lapse of 15 years of the incidents with no reason or explanation for such delay is liable to be quashed".

[R.S. Saharan V. Union of India and others, (CAT Ahmedabad Bench) 2/2002 Swamysnews.76, O.A. No. 459 of 2000]

Since disciplinary authority has not bothered to explain the reasons for delay in issuing the chargesheet to the applicant, the impugned order is malafide and this amounts to arbitrary exercise of power.

6) That with regard to the statement made in this paragraph the humble applicant begs to state that though the written statement in defence was submitted by him on 29.3.2009 but no action was taken by respondents in this matter till filing of the O.A. in Oct/2009.

7) That with regard to statement made in this paragraph, the humble applicant begs to state that the disciplinary authority is only interested in dragging the matter endlessly and thus causing irreparable harm to the career of the applicant, which is quite apparent from the fact that till filing of O.A. in Oct/2009 no decision was taken in this matter by the respondents.

8) That with regard to statement made in this paragraph, the humble applicant begs to state that after lapse of five months only respondent No. 3 decided to obtain views of D.G.P. Assam who is not the competent authority as far as the matter of disciplinary proceedings against a member of AIS is concerned. This is nothing but a delaying tactics adopted by respondents with a view to cause mental agony and harrasment to the applicant.

Guwahati Bench

9) That with regard to statement made in this paragraph, the humble applicant begs to state that on 20.12.2008 State Govt. passed an order giving two steps promotion to the applicant and barely two months after that on 11.2.09 decided to initiate departmental proceedings on certain facts which were five year old and which was very much within knowledge of the authority. It was quite natural to expect that authority must have taken into consideration past service records of the applicant before giving him promotion.

9
W.L.

According to the judgement delivered by the Hon'ble High Court, Madhya Pradesh in similar context :-

"A master cannot impose any punishment on a servant for a misconduct which he has condoned. 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 thereafter the servant cannot be punished for his lapse or misconduct".

[Lal Audhraj Singh V. State M.P. 1968, SLR 88.3 AIR 1967 M.P.284]

According to another judgement delivered on the relationship of master and servant hon'ble Court opined.

"If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he has waived or condoned."

[L W Middleton V. H. Playfair, AIR 1925 Cal 87]

10) That with regard to statement made in this paragraph, the humble applicant begs to state that it is a matter of great regret that no ground was cited by the State Goverment while placing the applicant under suspension vide its order dtd. 7.12.05.

"According to a judgement delivered by Hon'ble High Court Kerala it is necessary that such power is exercised with caution and only for valid reasons and not for extraneous considerations".

[Veeramoni V. State of Kerala 1974 KLT 630]

The fact is that the applicant was transferred to a non- cadre post in October/2005 and at a time when O.A. No. 304/2005 was still pending for decision before Hon'ble Tribunal, the order of suspension was issued on 7.12.05. However, no charge sheet was served upon the applicant in this connection. Now the respondents are trying to link this with certain other facts which is not correct. This is a clear attempt by the respondent to mislead the hon'ble Tribunal and amounts to suppression of material facts.

Guwahati Bench

11) That with regard to statement made in ~~this paragraph~~, the humble applicant begs to state that his written statement in defence submitted on 29.3.09 and annexed as A-6 in O.A. may kindly be referred. The allegation of misappropriation of Govt. money was fully established against an Inspector after conclusion of disciplinary proceedings but neither D.G.P. Assam nor respondent No. 2 & 3 made any attempt to recover the said amount.

12) That with regard to statement made in this paragraph, the humble applicant begs to state that service conditions of AIS are governed by the rules and procedures framed by the Central Government. But before initiating departmental proceedings in certain facts which were five year old, respondents failed to obtain approval of respondent No. 1. **This is a major procedural lapse and amounts to violation of principles of natural justice and fundamental rights as enshrined by Art. 14 & 16 of the Constitution.**

13) That with regard to statement made in this paragraph, the humble applicant begs to state that the impugned order issued on 11.2.09 is liable to be struck down on following grounds :-

- i) That no explanation or justifications given by the respondents while issuing charge sheet to the applicant after the gap of five years. This amounts to malafide exercise of power and arbitrariness.
- ii) That before initiating disciplinary proceedings in February, 2009, respondents had given two steps promotion to the applicant in December, 08 and, therefore, past misconduct should be deemed condoned or waived as supported by judgements by various Courts of Law.
- iii) That the applicant had submitted written statement of defence on 29.3.09 and later even reminded the respondent for early decision in July, 09 but no action was taken till filing of O.A. in October 2009. **This amounts to violation of directions contained in Circular issued by the Department of personnel and Administrative Reforms bearing No. 11018/7/78-AIS (III) Dt. 16.8.1968. According to this circular, the period from the date of serving charge sheet in a disciplinary case to the submission of report by the Inquiry officer should ordinarily not exceed six months.**
- iv) That the respondents have tried to mislead the Hon'ble Tribunal by stating certain facts which are far from truth and can be easily revealed on perusal of relevant office records. No doubt, this amounts to suppression of material facts.

05 JAN 2010

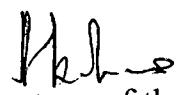
Guwahati Bench
गुवाहाटी न्यायालय

VERIFICATION

I, Binay Kumar Mishra, S/ O Shri Jagdish Mishra aged about 46 years hereby declare :

- (1) That para No. 4, 6, 7, 8, 11 are true to the best of my knowledge.
- (2) That para No. 5, 9, 10, 12 & 13 are my humble submission before the Hon'ble Tribunal. I have not suppressed any material acts.

And I sign this verification on this the 5th day of January 2010 at Guwahati.


Signature of the applicant.