

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓

(DESTRUCTION OF RECORD RULES, 1990)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

O.A.No. 100/95

Misc.Petn.

C.P. No.

R.Appl:

.....S. K. Tewari.....APPLICANT'S
frs.

U.O. 1. 9.05.....RESPONDENT'S
AK Bhattacharya
Mr. P. Pathak FOR THE APPLICANTS
Mr. R. Barua, Mr. A.K. Sarma

.....
Mr. S. Ali, Sr. C.A.B.C.....FOR THE RESPONDENTS

OFFICE NOTE	DATE	ORDER
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This application is in
form and within time,
C. F. of Rs. 50/-
deposited vide
IPO/SD No. 68.45.94
Dated 10.5.95

23.5.95

Heard Mr A.K.Bhattacharya, Sr.counsel
for the applicant at length. Adjourned to
25.5.1995 as the learned counsel desires to
seek further instructions from the applicant.
Part heard for admission.

dw 22/9/95
P. Pathak (4)
P. Pathak

Member

Vice-Chairman

pg

25.5.95

Mr A.K. Bhattachargee, Mr P. Pathak,
Mr R. Barua and Mr A.K. Sarma for the
applicant.

Mr S. Ali, Sr. C.G.S.C. for the
respondents.

Heard the counsel for the parties. The
application is summarily rejected. Detailed
order contained in separate sheets.

Member

Vice-Chairman.

nkm

22/7/95

6.7.95
copy of Judg. / Order
dtd. 25.5.95 issued
to all concerned by
Regd. Post order No.
8073-3077 Dtd. 19.7.95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.100 of 1995

Date of decision: This the 25th day of May 1995.

(AT ADMISSION STAGE)

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri S.K. Tewari, IAS
Commissioner and Secretary to the
Government of Assam,
Public Enterprises Department,
Dispur, Guwahati.

... Applicant

By Advocate Shri A.K. Bhattacharjee,
Shri P. Pathak, Shri R. Barua and
Shri A.K.Sarma.

-versus-

1. The State of Assam, represented by
The Chief Secretary,
Government of Assam,
Dispur, Guwahati
2. Shri Niranjan Ghose, IAS
Secretary to the Government of Assam,
Personnel etc. Departments,
Dispur, Guwahati.
3. Union of India, represented by
The Secretary,
Department of Personnel and Training,
Public Grievances and Pensions,
Government of India,
New Delhi.
4. The Additional Chief Secretary
to the Government of Assam, and Inquiry Authority,
Dispur, Guwahati.
5. The Joint Secretary to the Government of Assam,
Department of of Personnel (Personnel - A),
Dispur, Guwahati. ... Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C.

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O R D E R

CHAUDHARI.J. V.C.

On 23.5.1995 we heard learned counsel Mr A.K. Bhattacharjee at length. We have also considered the rulings cited by him. After he concluded the submissions we found that it was not possible to admit the application as it has been brought at an interlocutory stage. Hence we asked Mr Bhattacharjee as to whether the applicant would desire to withdraw the application or whether he would want us to reject it as interlocutory without adverting to the merits or whether we should record our reasons in support of our order for rejecting the application which might come in the way of the applicant in future proceedings. The learned counsel sought time until today to consider.

2. Today Mr Bhattacharjee states that we may pass our order by recording reasons as the applicant may desire to approach the Supreme Court and he left alongwith his instructing advocates leaving it to us to pass the order. Hence we proceed to record our reasons for which we are not inclined to admit the application.

3. The applicant is an IAS officer presently holding the post of Commissioner and Secretary to the Government of Assam, Public Enterprises Department, Dispur, Guwahati. He has sought to assail the Memorandum No.AAT 51/93/39 dated 24.1.1994 issued by the Government of Assam by order and in the name of the Governor of Assam. The Memorandum states that the Governor proposes to hold an inquiry against the applicant under Rule 8 of the A.I.S. (Discipline and Appeal) Rules, 1969. A statement of charge, a statement of allegation

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in support of each article of charges, a list of witnesses and a list of documents to be relied for proving the charges have been annexed to the Memorandum. The applicant was called upon to submit his written statement of defence.

4. The applicant has filed a detailed written statement of defence on 14.2.1994 in pursuance to the said Memo. By order of the Governor dated 25.3.1994 Shri A. Bhattacharya, IAS, Additional Chief Secretary to the Government of Assam has been appointed as the Inquiring Authority for holding the enquiry and an officer has also been appointed as the Presenting Officer. The applicant has also impugned the order issued by the Inquiry Authority, dated 5.5.1995 informing him that the hearing of the enquiry into the charges will be held by him on 15.5.1995 and requesting him (the applicant) to remain present. By way of relief the applicant prays that the aforesaid Memorandum and orders be quashed and set aside and the Government of Assam be directed to recall/rescind the departmental proceeding and to reinstate him in service unconditionally.

4. The Governor of Assam was pleased to issue Notification dated 24.12.1993 placing the applicant under suspension pending drawal of departmental proceedings. That order, however, has been revoked on 10.4.1995 on his appeal and the applicant has been posted in the present post by order dated 13.4.1995.

5. We have carefully gone through the Article of Charges, the statement of allegations, the list of documents and the list of witnesses and the exhaustive written

statement....

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statement of defence filed by the applicant at the enquiry.

5. The misconduct alleged against the applicant has arisen out of what transpired at a discussion held to find out a solution to the problem of regularisation of some casual workers belonging to economically backward families and early payment of their wages. According to the allegations, Shri J. Sinha, Minister of Animal Husbandry and Veterinary, Government of Assam, Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains), Assam, and the Director of Animal Husbandry and Veterinary, Assam, Khanapara, Guwahati, Dr Chandra Rajkonwar (who have been cited as witnesses proposed to be examined at the enquiry) were present at the discussion. The applicant was also present. It is alleged that the applicant misconducted himself with and in the presence of the two Ministers.

6. It is alleged that the applicant used the phrase 'bogus' when the Ministers were explaining him the problem of the casual workers, and he did not believe in the statements made by them and he did not give replies to the Ministers politely with due respect and had acted in a manner most unbecoming of a Government servant of his status and rank and had violated all official norms, decorum, discipline and failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1) of the All India Services (Conduct) Rules, 1968 which was not expected from a senior IAS officer of his status and rank. The applicant, therefore, has been charged for violation of official norms, decorum, discipline, violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968, and for gross misconduct.

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7. The second head of charge levelled against the applicant is that he had reacted furiously when the two Ministers were trying to convince him about the problem and shouted and uttered language at which the Minister Shri Sinha felt very humiliated and though he asked him to calm down he jumped up from the chair and arrogantly left the chamber of the Minister banging the door from behind. He had done so knowingly and intentionally with a view to show disrespect to the two Ministers and by such rude behaviour he humiliated the Ministers who were duly elected representatives of the people and had brought disrepute to the Government. Thus he had violated the official norms, rules, decorum, discipline and Rule 3(1) of the All India Services (Conduct) Rules, 1968 and had committed gross mis-conduct.

8. The applicant in his written statement has denied having used the term 'bogus' relating to the workers, but stated that the phrase used by him to which exception was taken by the Minister of State, PWD, was 'motivated appointment'. He has also denied that he made any of the statements attributed to him under charge 2. He has, however, not confined to mere denial of the allegations, but has stated several other things to which we advisedly do not make any reference at this stage.

9. The position, therefore, is that a disciplinary enquiry according to the rules has been initiated. Articles of Charge have been served. The applicant has also filed his written statement. The Inquiry Officer has been appointed and the disciplinary enquiry is at the stage of hearing.

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10. Mr Bhattacharjee, the learned counsel for the applicant, submitted that the imputations and allegations made against the applicant do not constitute 'misconduct' within the meaning of Rule 3(1) of the All India Services (Conduct) Rules, and therefore, the enquiry is without jurisdiction and is illegal and therefore should be quashed at this stage itself. The learned counsel submitted that Rule 3(1) aforesaid has to be read in two parts. The portion of the rule reading as 'at all times maintain absolute integrity and devotion to duty' and the portion reading as 'shall do nothing which is unbecoming of a member of the Service' have to be read conjunctively, and, therefore, even assuming that the applicant might have behaved in the way as alleged or used the language which is alleged to be objectionable, yet, since that does not reflect on the applicant's absolute integrity and devotion to duty, the charge framed is wholly illegal.

The said Rule 3 reads as follows:

"3. - (1) Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service."

On a plain reading of the rule we are inclined to take the view that the 'unbecoming conduct' to be misconduct is not required necessarily to be related to maintaining absolute integrity and devotion to duty since it is an independent ingredient of the rule. It may however happen that these may appear to be overlapping in a given set of facts which however can be determined only after the conduct is established on evidence and it becomes possible to gather the nature and character of each part of the alleged objectionable behaviour. Thus although there is no

allegation....



allegation of lack of integrity or devotion to duty the charge as framed cannot be held to be bad or illegal at this stage.

11. It is submitted by the learned counsel that the phrase 'unbecoming conduct' has not been defined in the Rules and, therefore, merely describing the conduct of the applicant as unbecoming would not warrant framing of the charge as the test is not fulfilled to attract Rule 3. The learned counsel referred in this connection to the following decisions:

- i) AIR 1992(2) SCJ 628, State of Punjab and Others -vs- Ram Singh
- ii) AIR 1979 SC 1022, Union of India and Others -vs- J. Ahmed
- iii) AIR 1984(3) SCC 316, A.L. Kalra -vs- Project And Equipment Corporation of India Ltd.

It is pertinent to note that in the decision in Ram Singh's case it has been clarified that, "the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the status and the public purpose it seeks to serve."

In J. Ahmed's case it has been observed that the inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute

misconduct....

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misconduct. Some other act or omission may as well constitute misconduct.

In Kalra's case it has been observed that "what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation." The position, therefore, is that whether a particular conduct that has been attributed to the delinquent is unbecoming and amounts to misconduct depends upon the very conduct and the background in which that conduct is exhibited. There is no straight-jacket formula to describe such misconduct. The question, therefore, is essentially a question of fact.

12. Whether in the instant case the conduct attributed to the applicant is sufficient to amount to misconduct and/or it reflects upon the applicant's integrity and devotion of duty can be determined only after the facts on the basis of which the allegations have been brought forward are established by evidence. That exercise has to be done at the enquiry by the Inquiry Officer and a conclusion cannot be reached by us at this stage on the question as to whether the alleged conduct is misconduct or not. Such an exercise will be premature and without any basis. This is, therefore, an interlocutory stage when the question has been brought before us. However, in the absence of evidence and findings on the question of fact recorded by the appropriate authorities it would neither be possible nor correct for us to express any opinion on that aspect.

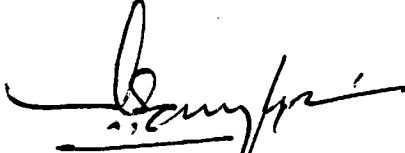
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12. The learned counsel also referred to the decision of the Madras Bench of the Central Administrative Tribunal in the case of Dr (Mrs) Sushila Oza -vs- Union of India and two others, (1988) 6 ATC 100. That decision, however, turns on the facts of that case and even in that decision also, it has been observed that "the concept of misconduct itself has to be interpreted in accordance with the developments in the society and that reasonable or realistic standards have to be applied." That again will be question of fact.

13. It also appears to be the allegation of the applicant that the enquiry authority has reason to be biased against him. That, however, is not a sufficient ground to interfere at this stage without the authority having shown any bias while conducting the disciplinary enquiry.

14. For the aforesaid reasons we are not satisfied that any prima facie case has been disclosed which would require us to stall the further hearing of the disciplinary proceeding at this initial and interlocutory stage of the Enquiry.

15. In the result the original application is summarily rejected.


(G. L. SANGHVI)
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O. A. 100/95

Sri Sheo Kishore Tewari, IAS,

.... APPLICANT.

- VS -

The State of Assam and others.

.... RESPONDENTS.

Sri S.K. Tewari, ... Applicant.

-Versus -

- 1) The State of Assam.
- 2) Sri Nirenjan Ghose,
- 3) Union of India,
- 4) Addl. Chief Secretary to the Govt. of Assam and Inquiry Authority.
- 5) Joint Secretary to the Govt. of Assam.

.... Respondents.

I N D E X

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FILED BY
Sri Sheo Kishore Tewari
IAS
APPLICANT
THROUGH
Bishwajit Barad
23/12/93
Advocate

<u>Sl.N.</u>	<u>Particulars.</u>	<u>Annexure.</u>	<u>Page</u>
	on various grounds and praying for quashing the order.		
5.	Impugned charge-sheet issued in the form of a memorandum dated 24.1.94 under the signature of Chief Secretary to the Govt. of Assam.	D	61
6.	Order dated 10.4.95, revoking the order of suspension of the applicant with immediate effect, issued under the signature of the Deputy Secretary to the Govt. of India, Personnel Department.	E	70
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण

10 MAY 1995

241
Guwahati Bench
গুৱাহাটী বেঞ্চ

(Application under Section 19 of the Administrative Tribunal Act, 1986).

O.A. No. 100 of 1995.

I N D E X

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S. K. Tewari.
Signature of the Applicant.
10.5.95

For the use in
Tribunal's Office.

Date of filing

10.5.95

Signature for
Registrar.

[Signature]

Received copy

Sd/- SSC
10/5/95

" Fit me by the
of patient words
for the world's sake
I never
C/S-174

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DETAILS OF APPLICATION

1. Particulars of the Order/Orders against which
the application is made :

The application is directed against the impugned (i) Memorandum No. AAI.51/93/39 dated Dispur, the 24th January, 1994 issued under the signature of the Chief Secretary to the Government of Assam and Department of Personnel (Personnel - A) purportedly proposing to hold an inquiry against the applicant Shri S.K. Tewari, IAS, presently Commissioner and Secretary to the Government of Assam, Public Enterprises Department, Dispur, Guwahati and (ii) Order No. AAI.51/93/114 dated 13.4.1995 issued under the signature of the Joint Secretary to the Government of Assam posting your applicant as Commissioner and Secretary to the Government of Assam, Public Enterprises Department without prejudice to the purpoted disciplinary proceeding allegedly pending against him consequent upon revocation of suspension order dated 24.12.1993 issued under the signature of Respondent No. 2 and (iii) impugned Notification No. AAA.5/94/Pt.I/37 dated 4.5.95 issued under the signature of the Joint Secretary to the Government of Assam, Department of Personnel (Personnel - A) Respondent No. 5 transferring and posting the applicant as Officer on Special Duty, Assam Administrative Staff College, Guwahati w.e.f. the date of taking over charge (iv) impugned letter No. FEB.203/94/47 dated 5.5.1995 issued

under

3.

under the signature of the Additional Chief Secretary to the Government of Assam and Inquiry Authority directing the applicant to be present in the Office room of the Respondent No. 4, the Additional Chief Secretary to the Government of Assam and Inquiry Authority on 15.5.1995 at 3.30 P.M. to attend the hearing of the purported departmental proceeding.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of this Tribunal.

3. LIMITATION :

The applicant further declares that the application is within limitation period prescribed in Section 21 of Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

(i) That your applicant a regular recruit of 1973 batch of the Indian Administrative Service was placed under the Assam and Meghalaya Joint Cadre. Your applicant since his joining the Assam and Meghalaya Joint Cadre of the Indian Administrative Service, hereinafter referred to as IAS, in the year 1973 has

been

been serving in different capacities within and outside the State of Assam and at present your applicant is the Commissioner and Secretary to the Government of Assam, Public Enterprises Department, Dispur, Guwahati - 6.

(ii) That your applicant states that he has been serving in the State for the last about 20 years as an IAS Officer of high repute and he commands high respect amongst the people of Assam in general and the State bureaucracy in particular. Because of his high moral standard and integrity throughout his service career he is loved and respected by all concerned and has an unblemished record of service to the full satisfaction of the authorities concerned.

(iii) That your applicant states that while your applicant was serving as Secretary to the Government of Assam in the Personnel etc. Department he had to earn ire of the present Secretary, Personnel Department, namely, Shri Niranjan Ghose, who was at that time a member of the Assam Civil Service in the capacity of Joint Secretary to the Government of Assam, Administrative, Reforms and Training Department. In this connection it would be pertinent to mention that said Shri Ghose while posted as Director, Manpower, Assam, was placed under suspension by an order dated 21.06.89 in connection with his alleged involvement in the rice scandal which rocked the State of Assam and pursuant to his suspension

a charge -

a charge-sheet was issued to him and a departmental proceeding was initiated, However, as the said proceeding could not be completed in time as stipulated by the Hon'ble Gauhati High Court in an application submitted by said Shri Ghose, he had to be reinstated in service and on his reinstatement he was posted as Joint Secretary, Administrative, Reforms etc. Thereafter the State of Assam (Vigilance and Anti-Corruption Branch under direct control of the Chief Minister) lodged a criminal case against said Shri Ghose which was registered as ACB P.S. Case No. 22/89 under Section 13(2) read with Section 13(d)(ii) and 13(d)(iii) of the Prevention of Corruption Act, 1988. The said F.I.R. was lodged on 15.07.89 and Shri Ghose was on anticipatory bail and ultimately the proceeding of the said case was stayed by the Hon'ble Gauhati High Court. Thereafter while Shri Ghose was serving as Joint Secretary to the Government of Assam, Administrative Reforms etc. Departments and your applicant was Secretary, Personnel Department, Assam, another criminal case was lodged by the aforesaid Anti-Corruption Branch against Shri Ghose which was registered on 30.6.90 as ACB P.S. Case No. 3 of 1990 under Section 120 B of the Indian Penal Code read with Section 13(1)(d)(ii) and 13(1)(d)(iii) of the Prevention of Corruption Act, 1988 and Section 109/420 of the Indian Penal Code.

Pursuant to the institution of the second criminal case on 30.06.90 Shri Ghose, who was the Joint

Secretary,

Secretary, Administrative Reforms and Training, Assam was again placed under suspension pending drawal of a disciplinary proceeding during the President's Rule in the State of Assam in the year 1990 and the said order of suspension was issued under the signature of your applicant as the Secretary, Personnel Department. Later on Shri Ghose was reinstated and the order of second suspension against him was revoked and ultimately inspite of the pendency of the aforesaid criminal cases he was appointed as Secretary, Personnel Department in or about October, 1993 in addition to his earlier duties as Secretary, Finance Department. Since then Shri Ghose had been looking for some opportunity to harm your Petitioner to avenge himself. This opportunity was provided by a minor incident on 23.12.1993.

(iv) That your applicant states that Shri S. Barka^rtoky, formerly, Minister of State P.W.D. (Plains) and now Minister of State, Flood Control ~~Sanity~~ has been a family friend of said Shri Ghose for a long time. On the date of the alleged occurrence of 23.12.93 around 12.30 P.M. in the office of Shri Jagannath Sinha, Minister, Animal Husbandry and Veterinary, Assam, your applicant was called to attend a meeting in the Office Chamber of the Veterinary Minister to discuss the selection of Veterinary Field Assistant Trainees. In the midst of the said meeting, your applicant was also called by Shri Mukut Sarma, Minister of Revenue, Assam to discuss an official matter and accordingly your applicant had to leave the office chamber of the Minister, Veterinary for a

for a while and immediately after your applicant's return to the Office Chamber of the Minister of Veterinary to resume the discussion on the subject of Selection, Shri Sarat Barkataky, Minister of State, P.W.D.(Plains), entered the Office Chamber of the Minister, Veterinary unannounced and took a chair therein. In this connection, it would be pertinent to mention here that your applicant did not know the said Minister of State for P.W.D. (Plains) by face earlier and the Minister, Veterinary also did not introduce him to your applicant. Instead the Minister, Veterinary asked said Shri Barkataky to explain his problem to your applicant, whereupon the said Minister of State told your applicant about the alleged non-payment of wages to some casual workers of his constituency who were/are allegedly working under the Veterinary and Animal Husbandry Department. In this connection your applicant told the said State Minister that there were about 800 Muster Roll employees in the Directorate of Animal Husbandry and Veterinary, Assam upto 1990. Thereafter the said Directorate had been burdened with a large number of unauthorised and unnecessary Muster Roll workers and the present number has been estimated to be 5000. Your applicant further informed the said State Minister that as Commissioner of the Department he reappropriated an amount of rupees one crore from another head of account to clear the back wages of Muster Roll employees for 2 months. Thereafter the wages of those Muster Roll workers could not be paid for lack of fund. Further, the Minister

of Veterinary was pleased to pass an order to the effect that Muster Roll casual workers recruited on or after 1.1.1990 should be discharged and accordingly, the Directorate is taking action pursuant to the said order. It was further informed by your applicant that there was no such thing as "regular casual employees". Casual employees are appointed only against leave vacancies and other casual vacancies filled up for short periods of time. They are not regular vacancies. And that too has been stopped by the Government as an economy measure. It was further informed that the former Director of Veterinary Department of Assam, Dr. J.C. Saikia, had been placed under suspension for having made irregular appointments of Muster Roll/Casual workers and after that the said Directorate had constituted a Committee to enquire into the irregularities relating to the engagement of such workers in the Department. Therefore, your applicant expressed his inability to pay wages to a particular group of alleged "regular casual employees" working allegedly in that Department within the Constituency of the said Minister of State. Probably because of your applicant's forthright expression of inability to oblige the Minister of State in respect of his personal and unofficial verbal request made casually and not officially the said Minister took an exception and got infuriated without any provocation whatsoever. The said Minister of State further remarked rudely that he has come to discuss the matter with the Minister Veterinary and not with the Commissioner,

Veterinary

Veterinary and Animal Husbandry. Your humble applicant had then no alternative but to leave Office Chamber of the Minister of Veterinary gracefully.

(v) That your applicant states that on that day itself your applicant was called upon by the Additional Chief Secretary, Assam Shri K.S.Rao, who was also holding the charge of the Chief Secretary of the State temporarily due to the absence of the Chief Secretary from the station and asked your applicant about the alleged incident, whereupon your applicant explained the said incident as has been stated above and the Additional Chief Secretary being fully satisfied with the explanation given by your applicant opined that it was all right. But to the utter shock and surprise of your applicant, he was served with the illegal order of suspension dated 24.12.93 issued under the signature of Shri N. Ghose, Secretary, Personnel, placing your applicant under suspension with immediate effect on the alleged ground that "Rude and unbecoming behaviour of a senior All India Service Officer like Shri S.K. Tewari humiliated the Ministers and has brought disreputation to the Government". In the said illegal order things have been introduced which never took place. The entire episode as described in the illegal order of suspension is a framed up cock-and-bull story based on lies, surmises and conjectures of the Secretary, Personnel and the Minister of State, P.W.D. It is a clear case of conspiracy against your

applicant

applicant only to denigrate him in public esteem by said Shri Ghose, Secretary, Personnel at the behest of the said Minister of State who are close associates and family friends. When the arbitrary order of suspension was passed, the Hon'ble Chief Minister of Assam and also the Chief Secretary of the State were on tour outside the State. The Additional Chief Secretary, who was present at the station and was holding the charge of the Chief Secretary was never taken into confidence by the Secretary, Personnel while passing the illegal order of suspension. Indeed, the Additional Chief Secretary, Shri K.S. Rao in a statement to the press contradicted the reported suspension of your applicant. The said order was passed by Shri N. Ghose, Secretary, Personnel Department allegedly on the basis of telephonic approval of the Hon'ble Chief Minister who was in Bombay at the relevant time as reported in the press. Even assuming while denying that such an approval was there over telephone, the said alleged action cannot be the basis for passing the illegal order by Shri Ghose and the same is not only against the established rules and procedure, but also against the mandatory provisions as contained in All India Services (Conduct) Rules, 1968 - hereinafter referred to as the Conduct Rules. As stated earlier, your applicant was the Administrative Head of the Personnel Department who initiated the disciplinary action against said Shri Ghose who was a member of ACS Cadre in the year 1990 and placed him

under

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under suspension because of his alleged involvement in connection with ACB P.S. Case No. 3 of 1990 under Section 120 B of the Indian Penal Code read with Section 13(1)(d)(ii) and 13(1)(d)(iii) of the Prevention of Corruption Act, 1968 and Section 109/420 of the Indian Penal Code. Shri Ghose has all along been trying to malign your applicant after he was posted as the Secretary, Personnel. And accordingly, Shri Ghose with a vindictive, biased and biased and mala fide intention to achieve collateral gain passed the arbitrary order of suspension on a trivial issue that allegedly took place on 23.12.1993 in the Office Chamber of the Minister, Veterinary.

A copy of the said illegal order dated 24.12.93 issued under the signature of the Secretary, Personnel and a photo copy of the Press report contradicting the said order of suspension as appeared in the Assam Tribune dated 25.12.93 are annexed hereto and marked as Annexure - 'A' and 'B' respectively.

(vi) That your applicant states that the illegal order has been passed in total abuse of the discretionary power of suspension in total non-application of mind and in mala fide exercise of powers with a biased and vindictive attitude of the Secretary, Personnel Shri Ghose to satisfy his old grudge against your applicant. Such mala

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fide exercise of power not being legally vested with the said Secretary under the Rule, the illegal order was void ab initio. The Secretary, Personnel in the absence of the Hon'ble Chief Minister of Assam, who is the Head of the Personnel Department and the Chief Secretary, Assam, who is Chief Executive Head of the State, no such order of suspension could have been passed on the basis of the alleged satisfaction of the Secretary, Personnel Department as admittedly in absence of the Hon'ble Chief Minister the purported satisfaction on the basis of the alleged materials on records could not be substituted by the Secretary, Personnel on the basis of his whims and caprices. The said alleged satisfaction not being present at the time of passing of the illegal order, the order was void and illegal which had been passed without any authority or legal sanction. The arbitrary order reflected total mala fide and bias of the Secretary, Personnel as admittedly no such "rude and unbecoming behaviour", as alleged, was shown by your applicant. The allegations as quoted in Assamese in the illegal order were absolutely concocted, framed up and devoid of any truth and the same had been attributed only to malign your applicant in public esteem and these were creations of the Secretary, Personnel. An eye witness to the said alleged incident was the present Director of Animal Husbandry and Veterinary, Assam which fact also found place in the arbitrary order. The said Director on 24.12.1993 informed your applicant

officially

officially about the alleged incident that took place on 23.12.1993 in view of the oral explanation sought for by the Additional Chief Secretary from your applicant on 23.12.1993. In the said report the said Director mentioned what exactly took place in the office chamber of the Minister, Veterinary on 23.12.1993 while the said Director was present. Your applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said office note dated 24.12.1993 submitted by the Director, Veterinary at the relevant time.

(vii) That being highly aggrieved and dissatisfied with the illegal order of suspension dated 24.12.1993, your applicant submitted an appeal to the Government of India containing inter alia, that the order of suspension was void ab initio being violative of the provisions of the rules, Conduct Rules and the Executive Instructions and Guidelines issued by the Government of India from time to time and also being violative of the rules of natural justice and provisions of Articles 14, 19, 21 and 311 of the Constitution of India, inasmuch as, the same was illegal being based on surmises and conjectures of the Secretary, Personnel in mala fide exercise of powers under the rules in achieving collateral gain and, as such, your applicant prayed for quashing the order of suspension.

A copy of the said Memorandum of Appeal submitted by your applicant on 28.12.1993 is annexed hereto and marked as Annexure - 'C'.

(viii) That your applicant states that thereafter the Government of India, Department of Personnel sent a teleprinter message bearing No. Q77 PDL 109, PDPRPDLY, PDPX 084 issued under the signature of Shri C.P. Singh, Deputy Secretary (V), Department of Personnel and TRG, North Block, New Delhi dated 28.12.1993 to the Chief Secretary to the Government of Assam calling for a detailed report in respect of the suspension order under Rule 3 (6A) of the All India Service (Discipline and Appeal) Rules, 1969 (hereinafter referred to as Rules) and thereafter the Government of India, Personnel Department was pleased to issue a D.O. letter No. 105/20/93-AVD-I dated 24.1.1994 under the signature of Shri C.P. Singh, Deputy Secretary, Personnel, Government of India to the Chief Secretary to the Government of Assam informing that the order of suspension of the applicant was not in accordance with the Rules and Instructions and/or Guideline issued by the Government of India for placing Government servant under suspension and alongwith the said letter a copy of the relevant Government of India's Instructions was also enclosed for doing the needful. The Respondent Authorities instead of revoking the mala fide, illegal and the arbitrary order of suspension dated 24.12.1993 placing your applicant under suspension purportedly issued the impugned Memorandum No. AAI.51/93/39 dated 24.1.1994 issued under the signature of the Chief Secretary to the Government of Assam proposing to hold an inquiry against your applicant on the alleged charges of acting

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in a manner most unbecoming of a Govt. servant allegedly in violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968 (hereinafter referred to as Conduct Rules). Alongwith the said purported impugned Memorandum dated 24.1.1994, Article of charges and statement of allegations were issued with purported list of documents and witnesses. By the said impugned Memorandum your applicant was directed to submit his written statement of defense as per Rule 8(5) of the Rules.

A photo copy of the impugned charge-sheet issued in the form of a Memorandum dated 24.1.1994 issued under the signature of the Respondent No. 1 is annexed hereto and is marked as Annexure - D.

(ix) That your applicant states that after the instruction of the Government of India, Personnel Department vide D.O. letter No. 105/20/93-AVD-I dated 24.1.1994 directing the Government of Assam for reviewing the order of suspension it was incumbent on the part of the Respondent Authorities to do so but because of the personal venom of Shri Nirranjan Ghose, Secretary, Personnel and his close relation with the then Minister of State Shri Sarat Barkataky, the Respondent No. 1 could not do anything in that respect. Thereafter the Hon'ble Prime Minister of India who is also in-charge of Personnel Department finally ordered revocation of suspension on

file

file in or about March-April, 1994 and also gave instructions that the applicant should be posted under Government of India. The statutory appellate order was not issued as the file was moved for posting under the Central Government. But for reasons best known to the authorities in the Central Government no final order was issued till Government of India, the appellate authority issued the Order No. 105/20/93-AVD-I issued under the signature of Shri D.K. Samantary, Deputy Secretary to the Government of India revoking the order of suspension with immediate effect. In the said order dated 10.4.1995, the President of India accepted the appeal filed by your applicant under the Rule and ordered revocation of the suspension order with immediate effect.

A copy of the Order dated 10.4.1995 issued under the signature of the Deputy Secretary to the Government of India, Personnel Department is annexed hereto and is marked as Annexure - E.

(x) That after the order of revocation by the Government of India, Department of Personnel and Training dated 10.4.1995 by accepting the appeal submitted by the applicant under the Rule it was highly necessary and incumbent on the part of the Respondent Authorities to re-instate your applicant without any delay but the Respondent No.1 kept the said order with him without issuing or informing the appellant about the receipt

of the

of the decision of the Government of India dated 10.4.1995 revoking the order of suspension forthwith by accepting the statutory appeal by the President of India. When your applicant came to know about the order of revocation, he personally met the Chief Secretary to the Government of Assam i.e. Respondent No. 1 on 12.4.95, and reported for duty unilaterally and thereafter he received a copy of an order bearing No. AAI.51/93/114 dated 13.4.1995 issued under the signature of Respondent No. 5. The said order posting your applicant as Commissioner and Secretary to the Government of Assam, Public Enterprises Department also reflects malice in law and in fact as the Government of Assam in its colourable exercise of power put a rider, while giving effect to the Government of India's Orders, to the effect that the posting of the petitioner was "without prejudice to the disciplinary proceedings" now pending against him. Such a condition was not at all there in the order of revocation of suspension dated 10.4.1995 issued by the Government of India. The Respondent Authorities more particularly Respondent No. 1 and 2 with absolute malafide intention by showing total disregard to the appellate order issued by the President of India in the name of re-publication introduced certain conditions only to harm your applicant. Such type of conditions not having been imposed while allowing the appeal by the President of India, the republication and the order of posting

issued

issued without putting the rider/condition "without prejudice to the disciplinary proceedings" now allegedly pending against him for the ends of justice, equity and administrative fair play and to prevent mischievous executive action of Respondent No. 1 and 2. Your applicant further states that on receipt of the Order of posting issued by the Respondent No. 5 dated 13.4.1995, your applicant immediately addressed to the Respondent No. 2 about incorporating the phrase "Without prejudice to the disciplinary proceeding" and stated that the same was amounting to amendment of the President's Order which was amounting to amendment of the President's Order which was beyond his competence and jurisdiction and requested the said Respondent No. 2 to re-examine the matter and to take remedial action and to reply immediately in that respect but till date the said Respondent No. 2 failed to give any reply.

Copies of impugned Notification No. AAI.51/93/114 dated 13.4.1995 issued by Respondent No. 5 and letter dated 20.4.1995 issued by the applicant to Respondent No. 2 are annexed hereto and are marked as Annexures - F and F₁ respectively.

(xi) That your applicant states that the Respondent Authority thereafter in a hot haste without creating an equivalent post with equal status and responsibility of

a Commissioner

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a Commissioner and Secretary of Super time Scale with seniority purportedly posted your applicant as Officer on Special Duty, Assam Administrative Staff College, Guwahati w.e.f. the date of taking over charge. As admittedly the Administrative Staff College is under a Director much junior to your applicant, so, under any circumstances the applicant cannot be posted as an Officer on Special Duty attached to a Director and accordingly your applicant immediately on 4.5.1995 addressed a letter to Respondent No. 2 requesting him to issue a further Notification declaring the post of Officer on Special Duty, Assam Administrative Staff College, Guwahati if at all existing as equivalent to a cadre post of IAS and if there was no such post, to issue an order ~~sanctioning~~ sanctioning the post and declaring equivalent thereof. He has not received any reply to date.

A copy of the impugned Notification No. AA.6/94/Pt.1/37 dated 4.5.1995 issued by Respondent No. 5 and letter dated 4.5.1995 issued by the applicant addressing Respondent No. 2 are annexed hereto and marked as Annexures - G and G₁, respectively.

(xii) That posting the petitioner to a non-existent post under a junior Director reflects total malice in law and in fact of the action of Respondent No. 1 and 2

and the

and the same has been done deliberately by the said Respondent No. 1 and 2 only to humiliate and harass your applicant by totally abusing and ~~mis~~ misusing the discretionary power of transfer and posting vested on Respondents No. 1 and 2.

(xiii) That your applicant states that Respondent Authorities were all along been silent in respect of the purported departmental proceeding initiated vide impugned Memorandum dated 24.1.1994. Your applicant pursuant to the said impugned Memorandum dated 24.1.1994 submitted his written statement in defence ~~xxx~~ categorically denying the purported so called charges allegedly brought against him and contended inter alia that under Rule 8 of the Rules an inquiry could be made only into the truth of some imputation of misconduct. The said Rule provided that a statement of imputation of misconduct. The said Rule provided that a statement of imputation of misconduct in support of each charges would be served upon the members of the service as no statement of imputations of misconduct had been served on him, therefore there could be no inquiry under the provisions of Rule 8 of the Rule and accordingly specifically denied all, the alleged charges being absolutely baseless. Your applicant while submitting his written statement

in defence

in defence on 14.2.1993 prayed for submitting additional written statement in defence after furnishing him the relevant documents sought for mention of which were made specifically in the said written statement in defence which is annexed as a ready reference for perusal of this Hon'ble Court and marked as Annexure - H.

(xiv) That till date the Respondent Authority has failed to supply any of the relevant documents to your applicant as sought for making an effective written statement in defence prejudicially affecting his legal right of making an effective written statement in defence but the Respondent Authority by an order No. AAI.51/93/91 dated 25.3.1994 issued under the signature of the Respondent No. 2 purportedly appointed Shri A. Bhattacharyya, IAS, Additional Chief Secretary to the Government of Assam as Inquiry Authority. Your applicant immediately on 31.3.1994 objected to the appointment of Shri A. Bhattacharyya, IAS and contended further that in his written statement in defence submitted on 24.1.1994 he prayed for giving him an opportunity of being heard on the appointment of Inquiry Authority if any and to supply copies of documents on which the alleged charges

were

were based. The applicant further contended that he had already been prejudiced for denying him access to the relevant documents not only in violation of relevant Rules and Instructions but also in violation of the fundamental principle of natural justice. Your applicant further reiterated the ill conceived and biased action of Shri N. Ghose, Respondent No. 2 who had already evinced bias in handling the case. The applicant also alleged personal bias against Shri A. Bhattacharya being appointed as Inquiry Authority who is now the Chief Secretary of the State of Assam. The reason of his apprehension of not getting a fair inquiry at the hands of Shri A. Bhattacharya, IAS, who was also categorically mentioned in his letter dated 31.3.1994 addressed to the then Chief Secretary, Assam and prayed for cancellation of the appointment of the Inquiry Officer. The applicant craves leave of this Tribunal to refer to and rely upon the order No. AAI.51/93/91 dated 25.3.1994 issued by Respondent No. 2 appointing Inquiry Authority and his objection dated 31.3.1994 and marked as Annexures-I and J at the time of hearing of this application.

(xv) That your applicant states that thereafter the Respondent Authority by an Order dated 28.4.1994 purportedly cancelled the appointment of Shri A. Bhattacharya, IAS, as Inquiry Authority and appointed Shri T.K. Kamilla, IAS, Additional Chief Secretary to the Government of Assam as Inquiry Authority and the copy

of the

of the said Order was served on your applicant only on 23.6.1994 after almost 2 months from the date of the order appointing the present Inquiry Authority. Thereafter though originally by an order dated 25.3.1994, the Presenting Officer was appointed to present the case of the Government, the same was changed subsequently on 6.6.1994 and 10.3.1995 and till date the said presenting Officer purportedly appointed has not taken any steps to discharge his duties as same but most curiously the present Inquiry Authority recently i.e. on 5.5.1995 issued a letter to your applicant requesting him to be present in his Office Chamber on 15.5.1995 at 3.30 P.M. wherein Shri Sarat Barkataky, Minister of State (Independent Charge), Flood Control, Assam was directed to be produced by the Presenting Officer as the sole witness for the purported hearing of the impugned departmental proceeding. The said letter dated 5.5.1995 issued by the Inquiry Authority is annexed hereto and marked as Annexure - K.

(xvi) That neither the Disciplinary Authority nor the Inquiry Authority had taken any steps to conduct the inquiry for more than one year ; but as soon as your petitioner objected to the phrase 'without prejudice to departmental proceedings pending against him' imported by the State Government into the President's Order of revocation of suspension, the Inquiry Authority issued the aforesaid notice dated 5.5.1995. This notice is

significant

significant in that it calls upon the Presenting Officer to examine a witness viz; Shri S. Barkakaty, Minister of State. The Inquiry Officer has thereby tried to bypass the mandatory provision of Rule 8(10) which reads as under :-

Rule 8(10) : "If the member of the service who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence appears before the inquiry authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty or has any defence to make and if he pleads guilty any of the article of charge, the inquiry authority shall record the plea sign the record and obtain the signature of the member of the service thereon."

The Inquiry Authority has further directed the Presenting Officer to examine one particular witness only. This is against the spirit of sub-rules (12) and (15) of Rule 8 under which the Inquiring Authority should direct the Presenting Officer to produce all the oral and documentary evidence, the specific mention of one witness implies a discussion between the Inquiry Authority and the Presenting Officer behind the back of the

petitioner

petitioner about the manner of presenting the case.

Your petitioner submits that the inquiry has been vitiated even before it has started because of the violation of the rules and the principles of natural justice by the Inquiry Authority.

~~xvii~~

(xvii) That the much belated notice of inquiry issued by the Inquiring Authority has come at a time when the state Government has lost all legal and moral right to pursue the departmental proceeding any further. In his appeal against the order of suspension the petitioner had put forth two main grounds, viz: that the alleged actions of the petitioner did not constitute a misconduct and that the State Government's action was mala fide, actuated as it was by the personal malice of Shri N. Ghose, Secretary, Personnel and Shri S. Barkatoky, and Minister of State, The State Government's Order of suspension was an unusually long one and identical with the charge sheet in all material particulars. The suspension order was as detailed as the charge sheet. In addition the State Government ^{had submitted a report to the Govt.} of India under Rule 6(A) ^{as well as its para-wise comments on the appeal of your petitioner.} Thus all the relevant material was before the Government of India when they accepted the petitioner's appeal in full, without any qualification whatsoever. The Government of India which is the Appellate Authority as well as Appointing Authority having accepted the

contention

contention that there was no action on the petitioner's part which could be construed as a misconduct and that there was mala fide exercise of power by the State Government, it is not open to the State Government to pursue the so-called inquiry only to prolong the harassment of the petitioner.

(xviii) That the impugned inquiry under Rule 8 cannot in any case be held because the State Government has not given the petitioner an opportunity to file a proper written statement of defence. Under sub-rule (4) of Rule 8 the obligation is cast upon the Disciplinary Authority to draw up and deliver to the member of the Service :-

- (i) definite and distinct articles of charge ; and
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge.

The Disciplinary Authority has failed to serve a statement of the imputations of misconduct on your petitioner. Further the Disciplinary Authority has failed to frame distinct and definite articles of charge. A perusal of the Charge-sheet will show that both charges listed out in it are far from distinct and definite. In essence they are a hotch potch of many unrelated charges. The

facts

facts stated in the chargesheet donot have the remotest bearing on the integrity or the ~~also~~ devotion to duty of your petitioner. However, the two main charges are : failure to maintain absolute integrity and failure to maintain devotion to duty. Rule 3(1) of the All India Services (Douduct) Rules has been mentioned again and again in the Chargesheet. The said sub-rule lays down that a member of the Service shall always maintain absolute integrity, devotion to duty and shall do nothing that is unbecoming of a member of the service. A bare perusal of the chargesheet shows that there is no nexus between the allegations contained therein and a charge of lack of absolute integrity or devotion to duty. However, these two charges have been specifically made against your petitioner under 'Charge No. 1' and by implication under 'Charge No. 2'. Thus the Disciplinary Authority has failed to frame the articles of charge as per rules and failed altogether to serve a statement of the imputations of misconduct.

(xix) That the petitioner submitted a written statement of defence under protest in spite of the difficulties noted in the foregoing paragraph. However, he requested the Disciplinary Authority to furnish him a copy of the complaint filed by the Minister of State, Shri S. Barkatoky, ~~Minister~~ Further he asked for the relevant government documents on the basis of which the Disciplinary Authority had stated that the twelve

casual

casual workers whose cases were being canvassed by Shri S. Barkotoky, Minister of State had been working regularly for one year, that they had not been paid their wages, that they belonged to poor and backward & families, that the petitioner should have paid their wages and discharged them if they were found to be 'bogus' etc. etc. There are a host of such statements for which no basis has been cited in the chargesheet. The petitioner, therefore, also requested 14 (fourteen) such documents to be made available to him to enable him to check the veracity of statements made in the chargesheet. The petitioner further requested the Disciplinary Authority to permit him to submit an additional written statement of defence after the inspection of all the relevant documents. But the Disciplinary Authority ignored the petitioner's request and ordered inquiry by an Inquiring Authority on the basis of the written statement of defence given under protest. Thus the Government acted in violation of the provisions of Rule 8, in particular sub-rule (7) thereof, and the principles of natural justice.

(xx) That the petitioner was kept under suspension for long 15 or 16 months and during this period the State Government made no serious effort to conclude the proceedings. Even after an Inquiring Authority was appointed ignoring the petitioner's request for an opportunity to file a proper written statement of defence,

the said

the said inquiring authority took no action whatsoever for one year until the order of suspension was revoked by the Government of India in appeal and the State Government's version of the facts was rejected by the same authority. Thereafter the Inquiring Authority has become suddenly active, that too in a selective manner by calling for the evidence of one rather than all the three witnesses cited and not at all calling for the document cited in the charge sheet. The petitioner submits that the fault does not lie with the Inquiring Authority alone. The very decision to appoint an Inquiring Authority who is under the administrative control of the State Government is wrong in this case where the complainant is a Minister and two of the three witnesses are also Ministers. Therefore it is futile to expect an impartial inquiry by an officer under the control of the State Government, the difficulty is compounded by the fact that Shri N. Ghose continues to be Secretary, Personnel and Shri A. Bhattacharyya, to whose appointment as Inquiring Officer your petitioner has objected, has become the Chief Secretary to the Government of Assam from 1.3.1995.

(xxi) That under the facts and circumstances mentioned hereinabove, it is a fit case wherein this Hon'ble Tribunal may be pleased to quash the purported impugned departmental proceeding and all subsequent arbitrary and illegal action of the Respondents No. 1 and 2 for the ends of justice,

equity

equity and administrative fair play. If the impugned departmental proceeding initiated vide office Memorandum No. AAI. 51/93/39 dated 24.1.1994 and all subsequent orders relating to the said purported proceeding are not set aside and quashed it will have a demoralising effect not only on your applicant, but also on upright, honest and dedicated members of the IAS Cadre. Moreover, the same will seriously tell upon the unblemished service career of your applicant maintained all throughout as admittedly the arbitrary and illegal order of suspension and the purported departmental proceeding has been initiated in gross violation of all mandatory provisions of Rules Constitutional provisions, statutory guidelines and with a vindictive and malafide attitude in total non-application of mind and on extraneous considerations which reflects absolute malice in law and in fact as no reasonable man having a little instructions in law could have done so as has been done by the Respondent No. 1 and 2. As such, the entire departmental proceeding and the subsequent action thereof is liable to be set aside and quashed.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

(1) For that the entire impugned action of proceeding continuing the purported departmental/is arbitrary after the allegation of personal vendatta and bias

of

of Respondent No. 2 Shri Niranjana Ghose and mala fide exercise of power by Respondents No. 1 and 2 having being accepted by the Appellate Authority i.e. the President of India while ordering revocation of the arbitrary and illegal suspension order. The purported departmental proceeding cannot be legally sustained, the grounds of suspension and the alleged charges framed against your applicant in view of the impugned Memorandum No. AAI.51/93/91 dated 25.3.1994 being absolutely the same adverbatim and the ground of suspension having being rejected by the Appellate Authority i.e. the President of India on considering the Appeal of the applicant and the comments thereon submitted by the disciplinary authority. The impugned purported departmental proceeding on the same ground cannot be legally sustained being void ab initio and to uphold the Rule of law, justice, equity and fair play and to prevent any further miscarriage of justice at the hands of Respondent Nos. 1 and 2 whose animosity and bias towards the applicant had been accepted by the appellate authority.

(ii) For that even assuming while denying that there is a departmental proceeding pending against the applicant in view of the purported impugned Office

Memorandum

Memorandum dated 24.1.1994, the same cannot be allowed to be continued being grossly violative of the mandatory provisions of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1966 as admittedly till date the Respondent Authority has failed to supply the relevant documents as sought for by the petitioner, prejudicially affecting his legal right of making an effective written statement in defence. Further after taking no steps whatsoever for one year, or so, the Inquiring Authority without affording the opportunity to the applicant as mandatorily required under sub-Rule (10) of the Rule 8 of the Rules issued the impugned Notice dated 5.5.1995 fixing the date of evidence on 15.5.1995, that too the evidence of one particular witness in violation of Rule 8 (12) and (15) and the principles of natural justice. The action of the Respondent Authority in conducting the departmental

enquiry

departmental enquiry being grossly violative of the mandatory provisions of the Rules and provisions of Articles 14, 16, 311 (2) of the Constitution of India and principles of natural justice. And, as such, the impugned purported Departmental Proceeding and all the subsequent illegal and arbitrary orders issued by the Respondent Authorities are liable to be set aside and quashed forthwith.

(iii) For that the entire departmental inquiry being based on the arbitrary and illegal order of suspension in as much as on the same ground as narrated in the illegal order of suspension which had been revoked by the President of India the appellate authority, the purported disciplinary proceeding against the applicant for allegedly committing misconduct in violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968 cannot be legally sustained. As, admittedly even assuming while denying that there was exchange of words between your applicant and the Minister of State, P.W.D. as alleged in the impugned Office Memorandum dated 24.1.1994, that cannot be construed and or interpreted as rude and unbecoming behaviour bringing disreputation to Government on the surmises and conjectures of the Disciplinary Authority. The misconduct for which an officer is charged, must be one of the misconducts specified in the Rules relating to conduct of Government

employees.

employees. A general expectation of a certain direct behaviour in respect of employee may be a moral or ethical expectation. Failure to keep such moral, ethical decorum/behaviour by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconducts. A bare perusal of the conduct Rule, 1968, would reveal beyond any reasonable doubt that at no point of time your applicant committed any misconduct as enumerated in the Conduct Rules. The alleged rude and unbecoming behaviour "has nowhere been defined in the Conduct Rules". The said Rule 3 of the Conduct Rules bears the heading 'General'. Rule 4 to 20 of the Conduct Rules provides various kinds of misconduct. Even assuming while denying that there was some 'exchange of words' as alleged in the impugned Memorandum dated 24.1.1994, that itself cannot constitute misconduct unless the specific conduct falls within any of the enumerated misconducts in the Conduct Rules. Any attempt to telescope general provisions of Rule 3 of the Conduct Rules into any of the enumerated misconduct of the Conduct Rules must be looked upon with apprehension as the phrase "Behaviour unbecoming of a Government servant" is obviously vague and of a general nature and, what is unbecoming of a public servant may vary with individuals and expose a Government servant like your applicant to the vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not

amenable

amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and define with precision and accuracy, the alleged misconduct so that any ex post facto interpretation of some incident may not be camouflaged as misconduct as has been done in respect of the applicant in malafide exercise of power of the Respondent No. 2 Shri N. Ghose, Secretary, Personnel etc. to satisfy his whims and caprices to settle score with the applicant. Such impugned arbitrary and illegal action of alleging misconduct and to hold a purported departmental proceeding not being in conformity with the established principle of law and Rules of natural justice and being violative of the Conduct Rule itself cannot be legally sustained even for a moment and is liable to be set aside and quashed forthwith to uphold the Rule of law, justice, equity and administrative fair play.

(iv) For that the entire impugned Memorandum dated 24.1.1994 alongwith the baseless and framed up charges alleging misconduct on the basis of surmises and conjectures of the Respondent Authorities/^{not}at all being a misconduct under the Conduct Rule and the appellate authority having accepted the appeal denying all the allegations allegedly brought against the applicant for the sake of propriety, it was incumbent on the part of the Respondent Authorities to drop the purported departmental proceeding allegedly pending

against

against the applicant which is otherwise grossly violative of the mandatory provisions of the Rules, Conduct Rules and Article 311(2) of the Constitution of India and principle of natural justice. And, as such, the purported proceeding is liable to be set aside and quashed forthwith.

(v) For that the malafide, bias and animosity of the Respondent No. 2 Shri Niranjan Ghose towards the applicant having been proved and established legally in view of the appellate order of the President of India while ordering revocation of the suspension order as admittedly the President of India being the appellate authority accepted the appeal after carefully considering the appeal alongwith the comments offered by the Respondent Authorities wherein your applicant alleged malafide and biasness and vindictive attitude of the Respondent No. 2 by name, the purported departmental proceeding initiated at the behest of the Respondent No. 2 on the same ground in any view of the matter cannot be allowed to be continued to prevent miscarriage of justice and abuse of mischievous ~~executive~~ executive action of the Respondent Authorities and to uphold the Rule of law.

(vi) For that the said Respondent No. 2 from the very beginning is acting in a manner prejudicially affecting the legal rights of the applicant in his colourable exercise of power as Secretary, Personnel to vindicate his personal grudge against the applicant

as stated


as stated earlier. The said Respondent No. 2 deliberately with malafide intention did not review the illegal and arbitrary order of suspension dated 24.12.1993 inspite of the direction of the Government of India. Personnel Department in its D.O. letter No. 105/20/93-AVD-I and also did not carry out the order of revocation as ordered by the President of India while re-printing the order of revocation dated 10.4.1995 issued by the Government of India, Personnel Department, but put a rider with a phrase 'without prejudice to the disciplinary proceeding' on the basis of his whims and caprices which reflects total malice in law and in fact in, as much as, the all other actions of the said Respondent No. 1 and 2 in transferring your applicant as Officer on Special Duty to a non-existent post in the Assam Administrative Staff College in utter violation of Rule 9 of the Indian Administrative Service (Pay) Rules. The said action of the Respondent No. 1 & 2 being grossly violative of the mandatory provisions of the Indian Administrative Service (CADRE) Rules, 1954 and provisions of Indian Administrative Service (Pay Rules), 1954 and provisions of Articles, 14, 16, 300A and 311(2) of the Constitution of India and principles of natural justice cannot be legally sustained and is liable to be set aside and quashed forthwith to uphold the Rule of law, justice, equity and administrative fair play.

contd...

(vii) For that the Disciplinary Authority has failed to frame distinct and definite articles of charge and to prepare a statement of imputations of misconduct as required under the Rules. No statement of imputations of misconduct has been served on the petitioner. The facts alleged in the Charge-Sheet do not have any nexus with the charges framed. The Disciplinary Authority has maintained a studied silence on all the infractions of the rules pointed out by me. It is abundantly clear from the facts narrated hereinbefore that the sole objective of the Disciplinary Authority in pursuing the purported disciplinary proceedings is to cause harassment to the petitioner by hook or by crook. The entire alleged proceeding is, therefore, liable to be quashed, being violative of statutory provisions and principles of natural justice, actuated as it is by personal vindictiveness and malice. The continuance of the alleged proceeding is misuse of executive authority by respondents 1 and 2 and as such violative of Articles 14, 16, 21, 300A and 311(2) of the Constitution of India.

(viii) For that in any view of the matter the impugned departmental proceeding is liable to be set aside and quashed forthwith.

contd...

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6. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he has got no other alternative and/or efficacious remedy other than to come under the protective hands of this Hon'ble Tribunal, more so in such a situation after allowing the appeal by the Appellate authority ordering revocation of the suspension order furnished by order dated 10.4.95.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

That your applicant declares that no case is pending in any other court in respect of the subject matter in question.

8. RELIEF SOUGHT :

In view of the facts mentioned in paragraph 4 above, the applicant prays that the records of the case be called for, the case be admitted and upon hearing the parties on the cause or causes that may be shown and on perusal of the records be pleased to grant the following reliefs :-

- (i) To set aside and quash the impugned Memorandum dated 24.1.94 (Annexure-D) including order dated 4.5.95 (Annexure G) and 5.5.95 (Annexure K)

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(ii) To direct the Government of Assam in the personnel Department to recall/rescind the impugned departmental proceeding forthwith and to reinstate the applicant in his service unconditionally;

(iii) Cost of this application; and

(iv) Any other relief or reliefs to which the applicant is entitled to under the law and equity.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the applicant prays that this Hon'ble Tribunal be pleased to stay/suspend the operation of the impugned departmental proceeding and all subsequent action of transfer and posting.

10. PARTICULARS OF POSTAL ORDERS :

I.P.O. No. 803 8845⁹⁴ Dated 10th May, 1995 payable at Guwahati.

11. LIST OF ENCLOSURES :

As stated in the Index.

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

I, Shri Shree Kishore Tewari, IAS, son of late Raj Bali Tewari, aged about 48 years, the applicant in the instant application, do hereby verify and state that

Contd.

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the statements made in the application in paragraphs

1 to 4 are true to my knowledge and those made in paragraphs 5 are true to my legal advice and that I have not suppressed any material facts

And I sign this verification on this , the 10th day of May, 1995 at Guwahati.

Sheo Kishore Tewari
10.5.95

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL ::::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI- 781006
@2222

ORDERS BY THE GOVERNORNOTIFICATION

Dated Dispur, the 24th December, 1993.

NO. AAI. 51/93/6 : Whereas 12 (twelve) persons of the Assembly Constituency of Shri Sarat Barkotoky, Minister of State (Independent charge), P.W.D(Plains), Assam have been working regularly during the last one year as casual workers under the Animal Husbandry and Veterinary Department, Sonari ; and Whereas, for the last few months the Minister of State, P.W.D. (Plains), Assam has been requesting the Minister of Animal Husbandry and Veterinary, Shri Jagannath Sinha for early payment of their wages as they are facing acute financial hardship due to non-receipt of their wages. The Minister of Animal Husbandry and Veterinary assured Shri Sarat Barkotoky, Minister of State, P.W.D. (Plains), Assam for regularisation of their appointment and early payment of their wages ; and Whereas, on 23.12.1993 at about 1.00 P.M., the Minister of Animal Husbandry and Veterinary, Shri Jagannath Sinha called for Shri Sarat Barkotoky, Minister of State, P.W.D.(Plains), Assam in the office chamber of Shri Jagannath Sinha in Janata Bhawan for a discussion on the problems for an immediate solution and accordingly Shri Sarat Barkotoky, Minister of State, P.W.D.(Plains), Assam, went to the office chamber of Minister of Animal Husbandry and Veterinary where Shri S.K. Tewari, IAS, Commissioner & Secretary to the Govt. of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department and the Director of Animal Husbandry and Veterinary were also present ; and Whereas, the Minister of Animal Husbandry and Veterinary explained to Shri S.K. Tewari, IAS, about the problems faced by these 12 (twelve) casual workers due to non-receipt of their wages for such a long period and that the Minister of State, P.W.D.(Plains), Assam, stated that he knew these workers who have been working regularly but they have not received their wages for such a long time; and

Whereas, even after explaining of the position to Shri S.K. Tewari, IAS, by the Minister of State, P.W.D. (Plains), Assam; Shri Tewari said that they were all bogus and further reacted furiously uttering that "Students shouted at us" and "Ministers also shouted at us". The Minister of State, P.W.D.(Plains), Assam, Shri Sarat Barkotoky in turn said that he was not shouting but appealing to the Minister of Animal Husbandry and Veterinary

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for the cause of the casual workers ; and

Whereas, Shri S.K. Tewari, IAS, immediately got infuriated without any provocation and started shouting in Assamese " উত্তৰি মোক দম দে খুৱাইছে নেকি ? দম দে খুৱাইছে নেকি ? " repeatedly and further stated that he did not care and bother about any Minister. Shri S.K. Tewari has also said loudly that at best the Chief Minister may transfer him and that he was prepared to leave the service ; and

Whereas, even after appeal by the Minister of Animal Husbandry and Veterinary to Shri S.K. Tewari to be calm and polite repeatedly, Shri S.K. Tewari did not care, rather he jumped up from the chair and arrogantly left the office chamber of the Minister of Animal Husbandry and Veterinary shouting that he does not care Ministers and banged the door from behind ; and

Whereas, such a rude and unbecoming behaviour of a Senior All India Service Officer like Shri S.K. Tewari humiliated the Ministers and has brought disreputation to the Government ; and

Whereas, the Governor of Assam is satisfied that there are materials on records to draw up Departmental proceedings against Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department ; and

Whereas, the Governor of Assam is satisfied that it is necessary and expedient to place Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department under suspension immediately.

Therefore, pending drawal of Departmental proceedings, Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department is placed under suspension under Rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969 with immediate effect.

BY ORDERS AND IN THE NAME
OF THE GOVERNOR OF ASSAM

Sd/- NIRANJAN CHOSE

Secretary to the Government of Assam
Personnel, etc. Departments, Dispur

Nemo No. AAI 51/93/6-A :::: Dated Dispur, the 24th December, 1993.

Copy to :-

1. Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department.
2. Assistant General, Assam, Shillong.

Contd.....

3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Spl. Commissioners & Spl. Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer and Ex-Officio Commissioner & Secretary to the Govt. of Assam, Election Department, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
9. All Commissioners of Divisions, Assam.
10. The Spl. Commissioner & Spl. Secretary to the Govt. of Assam, Agriculture, Veterinary etc. Depts and Agricultural Production Commissioner, Dispur.
11. The Chief Secretary to the Govt. of Meghalaya, Shillong.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The OSD to Chief Minister, Assam, Dispur.
16. The Jt. Secretary to Chief Minister, Assam, Dispur.
17. The Secretary, Bodoland Autonomous Council, Kokrajhar.
18. The Principal Secretary, N.C.Hills District Council, Haflong.
19. The Principal Secretary, Karbi Anglong District Council, Diphu.
20. All Deputy Commissioners/Sub-Divisional Officers.
21. The Spl. Officer to Chief Minister, Assam, Dispur.
22. The Secretary-cum-Registrar, Office of the Lokayukta, Nabin Nagar, Guwahati.
23. The PS to Chief Secretary, Assam, Dispur.
24. The PS to Addl. Chief Secretary (R)/(3), Assam, Dispur.
25. All PS to Ministers/Ministers of State.
26. Animal Husbandry & Veterinary Department/Soil Conservation Department, Dispur.
27. Personal file of the officer.
28. The Supdt., Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the above Notification in the Assam Gazette.

By order etc.,

N. Ghose 24/12/93
(NIRANJAN GHOSE)

Secretary to the Government of Assam
Personnel, etc. Department, Dispur

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*Attested
by...*

Confusion over suspension

GUWAHATI, Dec 24 — The Assam Government today suspended Animal Husbandry and Veterinary Department and Soil Conservation Department's Commissioner and Secretary SK Tiwari under Rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1963, an official notification said, reports UNI.

Our Staff Reporter adds: The Chief Minister Sri Hiteswar Saikia and the Chief Secretary Sri H N Das are out of station. The Additional Chief Secretary, Sri K S Rao, who is holding the charge of the Chief Secretary said that it 'cannot be' and there was no such suspension order.

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ANNEXURE- C

BEFORE THE SECRETARY, DEPT. OF PERSONNEL AND TRAINING,
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
GOVERNMENT OF INDIA, NEW DELHI.

(Through the Chief Secretary, Government of Assam)

Dispur, Guwahati-781 006.

In the matter of :

An appeal under Rule 15 of the All India
Services (Discipline and Appeal) Rules,
1969.

And

In the matter of :

Impugned order vide Notification NO.AAI.
51/93/6 dated Dispur, the 24th December,
1993 issued under the signature of the
Secretary, Government of Assam, Personnel
etc. Department, placing the appellant
Shri S.K. Tewari, IAS, Commissioner and
Secretary to the Government of Assam,
Animal Husbandry and Veterinary Department
and Soil Conservation Department, Dispur
under Suspension purportedly in exercise of
Powers under Rule 3(1) of the All India
Services (Discipline and Appeal) Rules,
1969 with immediate effect.

And

In the matter of :

Shri.....

*Attested
By, Dispur*

2.

Shri Sheo Kishore Tewari, IAS, Commissioner and Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department, Dispur, Guwahati-781006 (under suspension)

.... Appellant

The humble appeal of the appellant abovenamed, -

Most Respectfully Sheweth :-

1. That your appellant, a regular recruit of 1973 batch of the Indian Administrative Service, was placed under the Assam and Meghalaya Joint Cadre. Your appellant since his joining the Assam and Meghalaya Joint Cadre of Indian Administrative Service - hereinafter referred to as I.A.S., in the year 1973 has been serving in different capacities within and outside the State of Assam and at present your appellant is the Commissioner and Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and also Soil Conservation Department.

2. That your appellant states that he has been serving in the State for the last about 20 years as an I.A.S. officer of high repute and he commands high

respect.....

Shri Sheo Kishore Tewari
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amongst the people of Assam in general and the State bureaucracy in particular. Because of his high moral standards and integrity throughout his service career he is loved and respected by all concerned and has an unblemished record of service to the full satisfaction of the authorities concerned.

3. That your appellant states that while your appellant was serving as Secretary to the Government of Assam in the Personnel etc. Department he had to earn the ire of the present Secretary, Personnel Department, namely Shri Niranjan Ghose, who was at that time a member of the Assam Civil Service in the capacity of Joint Secretary to the Government of Assam, Administrative, Reforms and Training Department. In this connection, it would be pertinent to mention that said Shri Ghose while posted as Director, Manpower, Assam, was placed under suspension by an order dated 21.06.89 in connection with his alleged involvement in the rice scandal which rocked the State of Assam and pursuant to his suspension a charge-sheet was issued to him and a departmental proceeding was initiated. However, as the said proceeding could not be completed in time as stipulated by the Hon'ble Gauhati High Court in an application submitted by said Shri Ghose, he had to be reinstated in service and on his reinstatement he was posted as Joint Secretary, Administrative, Reforms etc. Thereafter the State of Assam (Vigilance and Anti-Corruption Branch under direct control of the Chief Minister) lodged a criminal case against said Shri Ghose which was registered as ACB P.S. Case No. 22/89 under Section 13(2) read with Section 13(d)(ii) 13(d)(iii)

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of the prevention of Corruption Act, 1988. The said F.I.R. was lodged on 15.07.89 and Shri Ghose was on anticipatory bail and ultimately the proceeding of the said case was stayed by the Hon'ble Gauhati High Court [which was pending before the Court of Special Judge, Assam at Guwahati]. Thereafter while Shri Ghose was serving as Joint Secretary to the Government of Assam, Administrative, Reforms etc. Department and your appellant was Secretary, Personnel Department, Assam another criminal case was lodged by the aforesaid Anti-Corruption Branch against Shri Ghose which was registered on 30.06.90 as ACB P.S. Case No.3 of 1990 under Section 120 B of the Indian Penal Code read with Section 13(1)(d)(ii) and 13(1)(d)(iii) of the Prevention of Corruption Act, 1988 and Section 109/420 of the Indian Penal Code.

Pursuant to the institution of the second criminal case on 30.06.90 Shri Ghose, who was the Joint Secretary, Administrative Reforms and Training, Assam was again placed under suspension pending drawal of a disciplinary proceeding during the President's Rule in the State of Assam in the year 1990 and the said order of suspension was issued under the signature of your appellant as the Secretary, Personnel Department. Your appellant was the Administrative Head of the Personnel Department exercising disciplinary powers in respect of the members of the ACS Cadre of which Shri Ghose was a member at that time. Later on Shri Ghose was reinstated and the order of second suspension against him was revoked and ultimately in spite of the pendency of the aforesaid criminal cases he was appointed as Secretary, Personnel Department recently in addition to

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his earlier duties as Secretary, Finance Department. In this connection, it would not be out of place to mention here that Shri Ghose has all along been showing animosity towards the appellant and he has been bent upon harming your appellant because of ^{his} strong notion of Shri Ghose based on surmises and conjectures that the second order of suspension in the year 1990 was issued at the behest of your appellant. On the fateful day of July 1, 1991 while your appellant was proceeding towards his office, he was kidnapped by suspected members of the United Liberation Front of Assam, in short ULFA, a banned organisation of Assam and your appellant was kept as a hostage by the said organisation till 16.12.91. After release of your appellant he came to know that he was kidnapped and kept as a hostage by the said organisation with several other State Government officials including a Russian technocrat as hostages against release of some of ULFA cadre. And to the shock of your appellant, two of the hostages were killed by the said organisation including the said Russian technocrat. But ultimately due to the endeavour made by the Government of Assam and the good gesture shown by the people of Assam and the press your appellant and the others were released safely on 16.12.91. The agony both mental and physical suffered by your appellant, his family and his friends is simply beyond description. However, for that suffering the appellant has to blame none as he had to become an unfortunate victim of circumstances.

4. That your appellant states that the present Minister of State P.W.D. (Plains) Assam has been a family friend of said Shri Ghose for a long time. On the date of the alleged occurrence of 23.12.93 around 12-30 P.M.

in the ..

Attested
/s/ H. H. H.
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in the office of Shri Jagannath Sinha, Minister, Animal Husbandry and Veterinary, Assam, your appellant was called to attend a meeting in the Office Chamber of the Veterinary Minister to discuss the selection of Veterinary Field Assistant Trainees. In the midst of the said meeting, your appellant was also called by Shri Mukut Sarma, Minister of Revenue, Assam to discuss an official matter and accordingly your appellant had to leave the Office Chamber of the Minister, Veterinary for a while and immediately after your appellant's return to the Office Chamber of the Minister of Veterinary to resume the discussion on the subject of selection, Shri Sarat Barkataky, Minister of State, P.W.D. (Plains), entered the Office Chamber of the Minister, Veterinary unannounced and took a chair therein. In this connection, it would be pertinent to mention here that your appellant did not know the said Minister of State for P.W.D. by face earlier and the Minister, Veterinary also did not introduce him to your appellant. Instead the Minister, Veterinary asked said Shri Barkataky to explain his problem to your appellant, whereupon the said Minister of State told your appellant about the alleged non-payment of wages to some casual workers his constituency who were are allegedly working under the Veterinary and Animal Husbandry Department. In this connection your appellant told the said State Minister that there were about 800 Muster Roll employees in the Directorate of Animal Husbandry and Veterinary, Assam upto 1990. Thereafter the said Directorate had been burdened with a large number of unauthorised and unnecessary Muster Roll workers and the present number has been estimated to be 5000. Your appellant further informed the Minister

That

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that as Commissioner of the Department he reappropriated an amount of rupees one crore from another head of account to clear the back wages of Muster Roll employees for 2 months. Thereafter the wages of those Muster Roll workers could not be paid for lack of fund. Further, the Minister of Veterinary was pleased to pass an order to the effect that Muster Roll casual workers recruited on or after 1.1.90 should be discharged and accordingly, the Directorate is taking action pursuant to the said order. It was further informed by your appellant that there was no such thing as "regular casual employees". Casual employees are appointed only against leave vacancies and other casual vacancies ~~are~~ filled up for short periods of time. They are not regular vacancies. And that too has been stopped by the Government as an economy measure. It was further informed that the former Director of Veterinary Department of Assam, Dr. J. C. Saikia had been placed under suspension for having made irregular appointments of Muster Roll/Casual workers and after that the said Directorate had constituted a Committee to enquire into the irregularities relating to the engagement of such workers in the Department. Therefore, your appellant expressed his inability to pay wages to a particular group of alleged "regular casual employees" working allegedly in that Department within the Constituency of the said Minister of State. Probably because of your appellant's forthright expression of inability to oblige the Minister of State in respect of his personal and unofficial verbal request made casually and not officially the said Minister took

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an exception and got infuriated without any provocation whatsoever. The Minister of State further remarked rudely that he has come to discuss the matter with Minister Veterinary and not with the Commissioner, Veterinary and Animal Husbandry, Your humble petitioner had then no alternative but to leave the ~~but to leave the~~ Office Chamber of the Minister of Veterinary gracefully.

5. That your appellant states that on that day itself your appellant was called upon by the Additional Chief Secretary, Assam Shri K.S. Rao, who was also holding the charge of the Chief Secretary of the State temporarily due to the absence of the Chief Secretary from the station and asked your appellant about the incident, whereupon your appellant explained the incident as has been stated above and the additional Chief Secretary being fully satisfied with the explanation given by your appellant opined that it was all right. But to the utter shock and surprise of your appellant, he was served with the impugned order of suspension dated 24.12.93 issued under the signature of Shri N. Ghose, Secretary, Personnel, placing your appellant under suspension with immediate effect on the alleged ground that "Rude and unbecoming behaviour of a senior All India Service Officer like Shri S.K. Tewari humiliated the Ministers and has brought disreputation to the Government". In the said impugned order things have been introduced which never took place. The entire episode as described in the impugned order of suspension is a framed up cock-and-bull story based on lies surmises and conjectures of the Secretary, Personnel and the Minister of State, P.W.D. It is a clear case of conspiracy against

your ..

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your appellant only to denigrate him in public esteem by said Shri Ghose, Secretary, Personnel at the behest of the said Minister of State who are close associates and family friends. When the impugned order of suspension was passed, the Hon'ble Chief Minister of Assam and also the Chief Secretary of the State were on tour outside the state. The Additional Chief Secretary, who was present at the station and was holding the charge of Chief Secretary was never taken into confidence by the Secretary, Personnel while passing the impugned order of suspension. Indeed, the Additional Chief Secretary Shri K.S. Rao in a statement to the press contradicted the reported suspension of your appellant. Annexure - A is the photocopy of the press report. The said order was passed by Shri N. Ghose Secretary Personnel Department allegedly on the basis of telephonic approval of the Hon'ble Chief Minister who was in Bombay at the relevant time as reported in the press. Even assuming while denying that such an approval was there over telephone, the said alleged action cannot be the basis for passing the impugned order by Shri Ghose and the same is not only against the established rules and procedure, but also against the mandatory provisions as contained in the All India Services (Conduct) Rules, 1968 - hereinafter referred to as the Conduct Rules. As stated earlier your appellant was the Administrative Head of the Personnel Department who initiated the disciplinary action against said Shri Ghose who was a member of ACS cadre in the year 1990 and placed him under suspension because of his alleged involvement in connection with ACB P.S. Case No.3 of 1990 under Section 120B of the Indian Penal Code read with

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Section 13(1)(d)(ii) and 13(1)(d)(iii) of the prevention of Corruption Act, 1988 and Section 109/420 of the Indian Penal Code which is pending disposal before the Special Judge, Assam at Guwahati. Shri Ghose has all along been trying to malign your appellant after he was posted as the Secretary, Personnel. And accordingly, Shri Ghose with a vindictive, biased and mala fide intention to achieve collateral gain passed the impugned order of suspension on a trivial issue that allegedly took place on 23.12.93 in the Office Chamber of the Minister, Veterinary.

A copy of the said impugned order dated 24.12.93 issued under the signature of the Secretary, Personnel is annexed herewith and marked as Annexure - 'B'.

6. That being highly aggrieved and dissatisfied with the impugned order of suspension dated 24.12.93, your appellant begs to prefer this appeal, on amongst other, the following -

G R O U N D S

(A) For that the impugned order of suspension dated 24.12.93 is absolutely void ab initio being violative of the mandatory provisions of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 - herein-after referred to as the Rules, The said impugned order was passed on the basis of a hearsay evidence without any materials on record whatsoever. Even assuming while denying that there was any material on record, as alleged, the satisfaction of the Governor not being there on the basis of the alleged materials on record, the said impugned order cannot be legally sustained and is liable to be set

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aside and quashed forthwith.

(D) For that while passing the impugned order it was incumbent on the part of the authority to take approval of the highest Executive of the State, that is, the Chief Minister or the disciplinary authority, that is, The Governor and in the instant case, there being no such approval of the Governor, the impugned order ought not to have been passed and issued at the whims and caprices of the Secretary, Personnel in collaboration with the Minister of State P.W.D. (Plains) on the alleged ground of taking telephonic approval from the Hon'ble Chief Minister who was out of the station and as such not in a position to apply his mind to the alleged materials on record. Such action in passing the impugned order is unusual and not haste itself reflects malice in law as well as in facts - ^{more so because it is} ~~that too~~ based on hearsay evidence and ex post facto interpretation of the said alleged incident by the Secretary, Personnel and the Minister of State, P.W.D. Even assuming while denying that there was exchange of words between your appellant and the said Minister of State, P.W.D. that day, that cannot be construed and/or interpreted as "rude and unbecoming behaviour bringing disreputation to Government" on the surmises and conjectures of the Secretary, Personnel. The misconduct for which an officer is charged, must be one of the misconducts specified in the Rules relating to conduct of Government employees. A general expectation of a certain direct behaviour in respect of employees may be a moral or ethical expectation. Failure to keep such high standard of moral, ethical decorum / behaviour by itself cannot constitute

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misconduct unless the specific conduct falls in any of the enumerated misconducts. A bare perusal of the All India Services (Conduct) Rules, 1968 would reveal beyond any reasonable doubt that at no point of time your appellant committed any misconduct as enumerated in the Conduct Rules. The alleged "Rude and unbecoming behaviour" has nowhere been defined in the Conduct Rules. Rule 3 of the Conduct Rules reads as follows :-

"Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service".

The said Rule 3 of the Conduct Rules bears the heading "General". Rules 4 to 20 of the Conduct Rules provide various kinds of misconducts. Even assuming while denying that there was some exchange of words, as alleged in the impugned order that itself cannot constitute misconduct unless the specific conduct falls within any of the enumerated misconducts in the Conduct Rules. Any attempt to telescope general provisions of Rule 3 of the Conduct Rules into any of the enumerated misconducts of the Conduct Rules must be looked upon with apprehension as the phrase "behaviour unbecoming of a Government servant" is obviously vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose a Government servant like your appellant to the vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as a misconduct would expose a gray area not amenable to objective evaluation. Where misconduct when

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proved entails penal consequences, it is obligatory on the employer to specify and define with precision and accuracy, the alleged misconduct so that any ex post facto interpretation of some incident may not be camouflaged as misconduct as has been done in the instant case in mala fide exercise of discretionary powers by the Secretary, Personnel to satisfy his whims and caprices. Such impugned illegal action not being in conformity with the established principles of law and the rules of natural justice, the said impugned order cannot be legally sustained and given effect to and is liable to be set aside and quashed to uphold the rule of law, justice, equity and administrative fair play.

(C) For that passing of an order of suspension of any public servant is a matter of important consequences not only so far as the public servant is concerned; but also as regards the satisfactory discharge of the duties by the members of a service and therefore so far as the public interest is concerned. It affects the reputation of the public servant and if unjustifiably passed it affects his morale apart from the fact that it deprives him of the full emoluments and the right to work. That being the legal position, it is necessary that such power is exercised with caution and only for valid reasons and not for extraneous considerations as has been done in the instant case on the basis of false, baseless and fabricated allegations having no materials on records, save and except the hearsay evidence of the said State Minister, P.W.D. and the surmises and conjectures of the Secretary, Personnel who is having personal animosity towards your appellant from the year 1990. The impugned order of suspen-

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-sion is unfair and unjust and has been passed not in public interest ~~publicly made~~ but with a mala fide and vindictive attitude to achieve collateral gain in colourable exercise of powers by the Secretary, Personnel. The impugned order is vitiated because of gross illegality as the competent authority did not apply its mind to the Rules and the Instructions issued by the Government of India from time to time acting as guiding principles for placing All India Service Officers under suspension. Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what ~~he~~ he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conducts of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. A bare perusal of the impugned order reflects absolute malice in law and in fact and the language used therein is unbecoming of a public order publicly made. The language used in the impugned order is nothing but an ex post facto interpretation of the incident by the Secretary, Personnel who is trying to camouflage the same as misconduct. The impugned order ^{shows} perversity of mind of the maker as no reasonable and prudent man having ^a little instructions in law could have passed such an order as has been done in the instant case. The order itself is violative of the conduct Rules being based on oral and/or alleged telephonic instructions of the Hon'ble Chief Minister as admittedly the

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Additional Chief Secretary of the State, who was in charge of the State was quite unaware of the issue from the beginning to end including issuance of the impugned order. The mala fide exercise of powers by the Secretary, Personnel being writ large on the face of the impugned order, the same cannot be allowed to stand even for a single moment and is liable to be set aside and quashed forthwith.

(D) For that the order of suspension of a Government servant is not to be passed lightly for the reality cannot be ignored that an order of suspension brings to bear on the Government servant, consequences far more serious in nature than several of the penalties made mention of in the Rule. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a Government Servant in the course of many years of service. The damage suffered by the Government servant is largely irreparable because the denegation and disgrace visited on him by the order of Suspension is seldom wiped out by his being subsequently exonerated from blame and reinstated in service. Hence it is imperative that utmost acution and circumspection should be exercised in passing an order of Suspension purportedly under the Rule resulting in such grave consequences to the Government servant concerned. It is necessary to remember that the power of suspension is to be sparingly exercised and that it is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or by the Government in respect of any act of commission or omission on the part of an officer. In the instant case, the Secretary, Personnel at the behest of the Minister of State P.W.D. and in active connivance with the said Minister to satisfy their

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personal whims and caprices in general and personal grudge of the Secretary, Personnel in particular passed the impugned order in hot haste ~~allegedly~~ to show the displeasure felt by the Minister of State for, not acceding to the personal as distinct from official demand made by the Minister of State. Such mala fide and illegal exercise of powers not being vested with the Secretary, Personnel, the impugned order is illegal and void ab initio and cannot be given effect to legally in the interest of public service.

(E) For that in any view of the matter the impugned order being per se illegal and violative of the provisions of the Rules, Conduct Rules and the executive Instructions and the guidelines issued by the Government of India from time to time and also being violative of the Rules of natural justice and the provisions of Articles 14, 19, 21 and 311 of the Constitution of India and being based on surmises and conjectures of the Secretary, Personnel in mala fide exercise of the powers under the Rules in achieving collateral gain, cannot be legally given effect to and is liable to be set aside and quashed forthwith.

(F) That this appeal petition has been made bona fide and in the interest of justice.

In the premises aforesaid, it is respectfully prayed that the Government of India may be pleased to peruse this Memorandum of Appeal, call for the records and on perusal thereof be pleased to pass necessary orders quashing the impugned order of suspension dated 24.12.93 issued under the signature of the Secretary, Personnel and/or direct the Government of Assam,

personnel ..

[Signature]
1075

Personnel Department to recall/
rescind the impugned order of
suspension forthwith and to rein-
state your appellant uncondition-
ally for the ends of justice,
equity and administrative fair play.

A N D

Pending disposal of the appeal, be
pleased to stay/suspend the operation
of the impugned order of suspension
and to direct the Government of Assam
to pay to your appellant all emoluments
etc. as though he has not been placed
under suspension.

And for this act of kindness, your appellant, as in duty
bound shall ever pray.

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ANNEXURE-D

CONFIDENTIAL
BY JUDICIAL MENTOR

-6/78

NO. AAI 51/93/39
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006

00000

Dated Dispur, the 24 th January, 1994.

MEMORANDUM

The Governor of Assam proposes to hold an inquiry against Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry & Veterinary Department and Soil Conservation Department (under suspension) under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. The charges on which the imputations proposed to be held is set out in the enclosed statement of charges (Annexure-I).

A statement of allegation in support of each article of charges is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained are also enclosed (Annexure-III).

2. Shri S.K. Tewari, IAS (hereinafter called the charged officer) is directed under Rule 8(5) of AIS (Discipline & Appeal) Rules, 1969 to submit within 10 (ten) 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. The charged officer is informed that an inquiry 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. The charged officer is further informed that if he does not submit the written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority when asked for 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 Rules, the Inquiring Authority may hold the inquiry against him ex-parte.

5. Attention of the charged officer is invited to Rule 18 of the All India Services (Conduct) Rules, 1968 under which no member of the service shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government.

6. The receipt of this Memorandum may be acknowledged.

BY ORDER AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(H. N. DAS)

Chief Secretary to the Government of Assam

Dated Dispur, the 24th January, 1994.

Memo No. AAI. 51/93/39 -A

Copy to :-

1. Shri S.K. Tewari, IAS, Commissioner & Secretary to the Government of Assam, Animal Husbandry & Veterinary Department and Soil Conservation Department, (under suspension), Officer's Colony, Jawahar Nagar, Khanapara, Guwahati.

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Handwritten signature and initials at the bottom right corner.

2. The Secretary to the Government of India, Ministry of Personnel & Training, North Block, New Delhi- 110 001.

By order etc.,

(H. N. DAS)

Chief Secretary to the Government of Assam

....

... ..

Assam
S. S. S. S. S.

ARTICLE OF CHARGESCharge No. 1:

That while you were holding the post of Commissioner & Secretary to the Government of Assam, Animal Husbandry & Veterinary Department and Soil Conservation Department, you were told by Shri Sarat Barkotoky, Minister of State (Independent Charge), Public Works Department (Plains), Assam, that 12 (twelve) persons of his Assembly Constituency have been working regularly during the last one year as casual workers under the Animal Husbandry & Veterinary Department at Sonari. These persons come from extremely economically backward families of the Assembly Constituency of Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains).

For the last few months, Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) has been requesting Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary for early payment of their wages as they have been put to acute financial hardship due to non-receipt of their wages for long one year. Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary assured Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) once and again for regularisation of their appointments and for early payment of their wages.

In order to find out a solution of the problem, the Minister of Animal Husbandry & Veterinary called Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) for discussion in his office chamber at Janata Bhawan on 23.12.1993 at about 1.00 P.M. Accordingly, Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) attended the office chamber of Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary at Janata Bhawan on 23.12.1993 at about 1.00 P.M. for discussion where yourself and Dr. Chandra Rajkonwar, Director of Animal Husbandry & Veterinary were present. Immediately, on entering the office chamber, the Minister of Animal Husbandry & Veterinary introduced Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) to you and Dr. Chandra Rajkonwar.

After preliminary discussion, the Minister of Animal Husbandry & Veterinary explained to you the whole problem faced by the aforesaid 12 (twelve) casual workers due to non-receipt of their wages for such a long period. The Minister of State, Public Works Department (Plains), Shri Sarat Barkotoky has also explained the position of these 12 (twelve) casual workers who have been working regularly but not received their wages.

Even after explaining the problem of these casual workers by the 2 (two) Ministers, you had stated that they were all "bogus". Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) then explained the genuineness of these casual workers as he knew them personally because they hailed from his Constituency and they have been working regularly. In spite of explaining the whole position by the two Ministers, you did not believe their statement.

If these 12 (twelve) casual workers were "bogus" according to your assessment, they should have been discharged immediately after making payment of their wages and they should not have been allowed to continue,

Agreed
S. Anwar
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if their services are not required at all. But you commented that "they were all bogus". You could have obtained a report either from the Director of Animal Husbandry & Veterinary or from the Field officer under whom these casual workers are working about the authenticity/genuineness of the statement of the Minister of State, Public Works Department (Plains). Even you could have furnished a reply to the Ministers politely with due respect stating that the problem of these casual workers would be examined in order to mitigate the problem. But you did not care to do so.

Being a member of the Indian Administrative Service holding a very responsible post of Commissioner & Secretary to the Government of Assam, you ought to have known how to behave with Ministers, but instead of behaving with the Ministers politely with due respect, you acted in a manner most unbecoming of a Govt. servant of your status and rank and violated all official norms, decorum, discipline and failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1) of the All India Services (Conduct) Rules, 1968, which was not expected from a senior IAS officer of your status and rank.

You are, therefore, charged with violation of official norms, decorum, discipline and also violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968 and gross mis-conduct.

Charge No. 2:

During the course of discussion in the office chamber of Shri Jagannath Sinha, at Janata Bhawan on 23.12.1993 at about 1.00 P.M. both the Ministers of Animal Husbandry & Veterinary and the Minister of State, Public Works Department (Plains) had tried to convince you about the problem of the 12 (twelve) casual workers working under the Veterinary Department in the Assembly Constituency of Shri Sarat Barkotoky explaining the position about non-receipt of their wages for long one year, but you did not like to accept the genuineness of these casual workers, rather you reacted very furiously uttering that "Students shout at us" and "Ministers also shout at us". Shri Sarat Barkotoky, the Minister of State, Public Works Department (Plains) in turn said that he was not shouting, rather he was appealing to the Minister of Animal Husbandry & Veterinary for the cause of the casual workers. But in spite of this, you immediately got infuriated without any provocation and started shouting in Assamese " ওপনি টাক দা তথ্যবাহী তথি ? দা তথ্য-বাহী তথি ? " repeatedly and further stated that you did not care and bother about any Minister. Not only this, you went on saying loudly that at worst the Chief Minister may transfer you and that "I am prepared to leave the service".

At this, the Minister of Animal Husbandry & Veterinary, Shri Jagannath Sinha felt very humiliated and appealed repeatedly to you to be calm and polite, but you did not care and listen to the appeal of the Minister of Animal Husbandry & Veterinary, rather you jumped up from the chair and arrogantly left the office chamber of the Minister, Animal Husbandry & Veterinary shouting that you do not care for Ministers and banged the door from behind. You have done it knowingly and intentionally with a view to show dis-respect

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to show disrespect to the two Ministers only to refuse to make payment to the 12 (twelve) casual workers who were working without any wages for the last one year. For your above action and behaviour, Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary went to the office chamber of Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) and tendered his apology with tearful eyes saying that Shri Barkotoky had been humiliated because Shri Sinha had invited Shri Barkotoky to his chamber.

For your above rude and unbecoming behaviour, you humiliated the Ministers who were duly elected representatives of the people and brought dis-repute to the Government.

Being a member of the Indian Administrative Service holding a very responsible post of the rank of Commissioner & Secretary to the Govt. of Assam, this type of misbehaviour with two Ministers being two duly elected representatives of the people was not at all expected from you. For your above action, you have misbehaved with the two Ministers being two duly elected representatives of the people. If you were not convinced/satisfied with the statement of the two Ministers, the best course of action on your part was to report to the Chief Minister through the Chief Secretary to the Government of Assam who is in a better position to take a decision as deemed fit and proper, but instead of behaving properly with the two Ministers being two duly elected representative of the people politely with due respect, your rude and unbecoming behaviour humiliated the two Ministers being two duly elected representative of the people and has brought dis-repute to the Government. For your above activities, you have not only violated Rule 3(1) of the All India Services (Conduct) Rules, 1968, but also violated all official norms, regulations, decorum, discipline and acted in a manner most unbecoming of a Government servant which were not expected from such a very senior officer of your status and rank.

You are, therefore, charged with the charge of dis-respect to the two Ministers being two duly elected representatives of the people, violation of official norms, rules, decorum, discipline and violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968 and gross misconduct.

BY ORDERS AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(H. N. DAS)
Chief Secretary to the Government of Assam

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H. N. DAS
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STATEMENT OF ALLEGATIONS

1. That while Shri S.K. Tewari, IAS, was holding the post of Commissioner & Secretary to the Govt. of Assam, Animal Husbandry & Veterinary Department and Soil Conservation Department, he was told by Shri Sarat Barkotoky, Minister of State (Independent Charge), Public Works Department (Plains), Assam that 12 (twelve) persons of his Assembly Constituency have been working regularly during the last one year as casual workers under the Animal Husbandry & Veterinary Department at Sonari. These persons come from extremely economically backward families of the Assembly Constituency of Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains).

For the last few months, Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) has been requesting Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary for early payment of their wages as they have been put to acute financial hardship due to non-receipt of their wages for long one year. Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary assured Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) once and again for regularisation of their appointment and for early payment of their wages.

In order to find out a solution of the problem, the Minister of Animal Husbandry & Veterinary called Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) for discussion in his office chamber at Janata Bhawan on 23.12.1993 at about 1.00 P.M. Accordingly, Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) attended in the office chamber of Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary at Janata Bhawan on 23.12.1993 at about 1.00 P.M. for discussion where Shri S.K. Tewari and Dr. Chandra Rajkonwar, Director of Animal Husbandry & Veterinary were present. Immediately, on entering the office chamber, the Minister of Animal Husbandry & Veterinary introduced Shri Sarat Barkotoky, the Minister of State, Public Works Department (Plains) to Shri S.K. Tewari and Dr. Chandra Rajkonwar.

After preliminary discussion the Minister of Animal Husbandry & Veterinary explained to Shri S.K. Tewari the whole problems faced by the aforesaid 12 (twelve) casual workers due to non-receipt of their wages for such a long period. The Minister of State, Public Works Department (Plains), Shri Sarat Barkotoky has also explained the position of these 12 (twelve) casual workers who have been working regularly but not received their wages.

Even after explaining the problems of these casual workers by the two Ministers, Shri Tewari had stated that they were all bogus. Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) then explained the genuineness of these casual workers as he knew them personally because they hailed from his Constituency and they have been working regularly. In spite of explaining the whole position by the two Ministers, Shri S.K. Tewari did not believe their statement.

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If these twelve casual workers were bogus according to the assessment of Shri Tewari, they should have been discharged immediately after making payment of their wages and they should not have been allowed to continue, if their services are not required at all. But you commented that "they were all bogus". You could have obtained a report either from the Director of Animal Husbandry & Veterinary or from the field officer under whom these casual workers are working about the authenticity/genuineness of the statement of the Minister of State, Public Works Department (Plains). Even you could have furnished a reply to the Ministers politely with due respect stating that the problems of these casual workers would be examined in order to mitigate the problems. But Shri Tewari did not care to do so.

Being a member of Indian Administrative Service, holding a very responsible post of Commissioner & Secretary to the Govt. of Assam, he should have known to behave Ministers, but instead of behaving with the Ministers politely with due respect, Shri Tewari had acted in a manner most unbecoming of a Govt. servant of his status and rank and violated all official norms, decorum, discipline and failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1) of the All India Services (Conduct) Rules, 1968 which was not expected from a senior IAS officer of his status and rank.

2. During the course of discussion in the office chamber of Shri Jagannath Sinha, Minister of Animal Husbandry and Veterinary at Janata Bhawan on 23.12.1993 at about 1.00 P.M., both the Ministers of Animal & Husbandry & Veterinary and the Minister of State, Public Works Department (Plains) had tried to convince Shri S.K. Tewari about the problem of the 12 (twelve) casual workers working under the Veterinary Department in the Assembly Constituency of Shri Sarat Barkotoky explaining the position about non-receipt of their wages for long one year, but Shri Tewari did not like to accept the genuineness of these casual workers, rather he reacted very furiously uttering that "Students shout at us" and "Ministers also shout at us". Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains) in turn said that he was not shouting, rather he was appealing to the Minister of Animal Husbandry & Veterinary for the cause of the casual workers. But in spite of this, Shri Tewari immediately got infuriated without any provocation and started shouting in Assamese "আমনি মোক দম দেব্বায়েছে নেকি ? দম দেব্বায়েছে নেকি ?" repeatedly and further stated that he did not care and bother about any Minister. Not only this, Shri Tewari went on saying loudly that at best the Chief Minister may transfer him and that he is prepared to leave the service.

At this, the Minister of Animal Husbandry & Veterinary, Shri Jagannath Sinha felt very humiliated and appealed repeatedly to Shri Tewari to be calm and polite, but Shri Tewari did not care and listened to the appeal of Minister of Animal Husbandry & Veterinary, rather he jumped up from the chair and arrogantly left the office chamber of the Minister of Animal Husbandry & Veterinary shouting that he do not care for Ministers and banged the door from behind. Shri S.K. Tewari had done it knowingly and intentionally with a view to show disrespect to the two Ministers only to refuse to take part

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Signature
Date
Page

to make payment to the 12 (twelve) casual workers who are working without any wages last for one year. For his above action and behaviour, Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary went to the office chamber of Shri Sarat Barkotoky, Minister of State, Public Works Department (Flains) and tendered his apology with tearful eyes saying that Shri Barkotoky had been humiliated because Shri Sinha had invited me Shri Barkotoky to his chamber.

For the above rude and unbecoming behaviour, Shri S.K. Tewari had humiliated the Ministers who were duly elected representatives of the people and brought dis-repute to the Government.

Being a member of the Indian Administrative Service, holding very responsible post of the rank of Commissioner & Secretary to the Government of Assam, this type of mis-behaviour with two Ministers being two duly elected representatives of the people was not at all expected from him. For his above action, Shri Tewari had misbehaved with the two Ministers being two duly elected representatives of the people, but also disobeyed the orders of Ministers. If Shri S.K. Tewari was not convinced/satisfied with the statement of the two Ministers, the best course of action on his part was to report to the Chief Minister through the Chief Secretary to the Government of Assam who is in a better position to take a decision as deemed fit and proper. But instead of behaving properly with the two Ministers being two duly elected representatives of the people politely with due respect, his rude and unbecoming behaviour humiliated the two Ministers and has brought disrepute to the Government. For his above activities, Shri S.K. Tewari had not only violated Rule 3(1) of the All India Services (Conduct) Rules, 1968, but also violated all official norms, regulations, decorum, discipline and acted in a manner most unbecoming of a Govt. servant which were not expected from such a very senior IAS officer of his status and rank.

BY ORDERS AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(H. N. DAS)

Chief Secretary to the Government of Assam

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LIST OF DOCUMENTS

1. Letter dated 23.12.1993 from Shri Sarat Barkotoky, Minister of State (Independent Charge), Public Works Department (Plains), Assam, Dispur addressed to the Chief Minister, Assam.

LIST OF WITNESSES

1. Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary, Assam.
2. Shri Sarat Barkotoky, Minister of State, Public Works Department (Plains), Assam.
3. Dr. Chandra Rajkonwar, Director of Animal Husbandry & Veterinary, Assam, Khanapara, Gauhati.

BY ORDERS AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(H. N. DAS)

Chief Secretary to the Government of Assam

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Agenda
8/11/15

CONFIDENTIAL
IMMEDIATE70-
87

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
DEPARTMENT OF PERSONNEL & TRAINING

नई दिल्ली
New Delhi, the 10th April, 1965.

ORDER

WHEREAS Shri S.K. Tewari, IAS(AM:73) was placed under suspension by the Government of Assam by order dated 24.12.1963.

AND WHEREAS Shri S.K. Tewari filed an appeal against the order of suspension under Rule 16(1) of the AIS(P&T) Rules, 1963.

AND WHEREAS the Government of Assam forwarded the appeal submitted by the officer alongwith their comments on the contents of the appeal.

NOW, THEREFORE, after careful consideration of the material facts and circumstances available on record as above, the President has decided to accept the appeal submitted by the officer and orders revocation of the suspension with immediate effect.

BY ORDER AND IN THE NAME OF THE PRESIDENT.

(D.K. SAMANTRAY)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

Shri S.K. Tewari, IAS(AM:73),
(Under Suspension),
THROUGH the Secretary,
Government of Assam,
DISPUR

Approved
10/5

ANNEXURE - F

1-A
-71-

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL :::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006
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ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 13th April, 1995.

NO. AAI. 51/93/114 : Consequent upon revocation of suspension orders of Shri S.K. Tewari, IAS (RR-1973) by the Government of India and re-publication the same by this State Government vide Notification No. AAI. 51/93/113 dated 13.4.1995, Shri S.K. Tewari, IAS (RR-1973) is posted as Commissioner & Secretary to the Govt. of Assam, Public Enterprises Department with effect from the date of taking over charge, without prejudice to the disciplinary proceedings now pending against him.

Sd/- D. SAIKIA

Joint Secretary to the Govt. of Assam

Memo No. AAI. 51/93/114-A : Dated Dispur, the 13th April, 1995.
Copy forwarded to :-

1. The Establishment Officer & Addl. Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel & Training, North Block, New Delhi-110001.
2. Shri D.K. Samantaray, Deputy Secretary (V-I) to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel & Training, New Delhi- 110 001.
3. Shri S.K. Tewari, IAS, Senior Officers' Colony, Jawaharnagar, Khanapara, Guwahati- 781 022.
4. The Accountant General (A&E)/(Audit), Meghalaya, Shillong.
5. The Accountant General (A&E), Assam, Bhangagarh, Guwahati-5.
6. The Chairman, Assam Administrative Tribunal, Guwahati.
7. The Chairman, Assam Board of Revenue, Guwahati.
8. The Chairman, Assam State Electricity Board, Guwahati.
9. All Sp. Commissioners & Spl. Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
10. The Chief Electoral Officer, Assam, Dispur.
11. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
12. The Agricultural Production Commissioner, Dispur.
13. The Commissioner & Secretary to the Governor of Assam, Dispur.
14. All Commissioners of Divisions, Assam.
15. The Chief Secretary to the Govt. of Meghalaya, Shillong.
16. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
17. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
18. The Addl. Secretary to the Chief Minister, Assam, Dispur.
19. The O.D. to the Chief Minister, Assam, Dispur.

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20. The Principal Secretary, Bodoland Autonomous Council, Kokrajhar.
21. The Principal Secretary, L.C. Hills District Council, Nafiong.
22. The Principal Secretary, Karbi Anglong District Council, Diphu.
23. All Deputy Commissioners/Sub-Divisional Officers.
24. The Spl. Officer to Chief Minister, Assam, Dispur.
25. All Heads of Depts./All Depts. of Assam Secretariat.
26. The State Election Commissioner, Housefed Complex, Dispur.
27. The Secretary-cum-Registrar, Office of the Lokayukta, Maini Nagar, Guwahati.
28. The P. to Chief Secretary, Assam, Dispur.
29. The P. to Addl. Chief Secretaries, Assam, Dispur.
30. All P. to Ministers/Ministers of State.
31. The P. to Member, State Planning Board, Dispur.
32. Public Enterprises Department, Dispur.
33. Personal file of the officer.

By order etc.

(D. AIKIA)

Joint Secretary to the Govt. of Assam
Personnel (A) Department, Dispur

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ANNEXURE - F,

No. SKT/PE/1/95

20th April, 1995

From : Shri S.K. Tewari, IAS,
Commissioner & Secretary to the
Government of Assam,
Public Enterprises Department,
Dispur.

To : The Secretary to the Govt. of Assam,
Personnel Department.

Sir,

Kindly refer to your Notification No.

AAI.51/93/114 Dated 13th April, 1995 whereby you have
implemented the Government of India's Appellate Order
issued vide their No.105/20/93-AVD.I Dated 10.4.95.

In your notification you have included the
phrase "without prejudice to the disciplinary proceedings".
I have been advised that this amounts to an amendment of the
Presidents' Order which is clearly not within your
competence.

I hope you will re-examine the matter and take
remedial action. I shall be grateful for a line in reply
at your earliest convenience.

Yours faithfully,

S.K. Tewari 20.4.95

(S.K. Tewari)
Commissioner & Secretary to the Govt. of
Assam, Public Enterprises Department.

Adm. Secy. Assam
10/5

ANNEXURE - G

(16)

-74- 91

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : :A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006.

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 4th May, 1995.

No. AAA 6/94/Pt.I/37 : In the interest of public service, Shri S.K.Tewari, IAS (RR-1973), Commissioner & Secretary to the Government of Assam, Public Enterprises Department is transferred and posted as Officer-on-Special Duty, Assam Administrative Staff College, Guwahati with effect from the date of taking over charge.

Sd/- D. SAIKIA

Joint Secretary to the Government of Assam

Memo No. AAA 6/94/Pt.I/37-A :: Dated Dispur, the 4th May, 1995.
Copy to :-

1. The Accountant General (A&E)/(Audit), Meghalaya, Shillong.
2. The Accountant General (A&E), Assam, Bhangaarh, Guwahati-5.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Spl. Commissioners & Spl. Secretaries/Commissioners & Secretaries / Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
9. The Agricultural Production Commissioner, Dispur.
10. All Commissioners of Divisions, Assam.
11. The Chief Secretary to the Govt. of Meghalaya, Shillong.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P. & Pension, Deptt. of Personnel & Training, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P. & Pension, Career Management Division, New Delhi.
14. The Commissioner & Secretary to the Governor of Assam, Dispur.
15. The Secretary to Chief Minister, Assam, Dispur.
16. The OSD to Chief Minister, Assam, Dispur.
17. The Principal Secretary, Bodoland Autonomous Council, Kokrajhar.
18. The Principal Secretary, J.C. Mills District Council, Jafalong.
19. The Principal Secretary, Karbi Anglong District Council, Diphu.
20. The State Election Commissioner, Assam, Dispur.
21. The Secretary-cum-Registrar, Office of the Lokayukta, Jabin Nagar, Guwahati.
22. All Deputy Commissioners/Sub-Divisional Officers.
23. All Heads of Divisions/All Heads of Assam Secretariat.
24. The Spl. Officer to Chief Minister, Assam, Dispur.
25. The PS to Chief Secretary/Addl. Chief Secretaries, Assam, Dispur.
26. All PS to Chief Minister/Ministers of State.
27. The PS to Chief Minister, State Planning Board, Dispur.
28. The PS to Chief Minister, Assam Administrative Staff College, Guwahati.
29. Shri S.K.Tewari, IAS, Commissioner & Secretary to the Government of Assam, Public Enterprises Department, Dispur.
30. Public Enterprises Department, Dispur.
31. Personnel Department, Dispur.

Handwritten signature and date:
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ANNEXURE- 6,

No.SKT/PE/1/95/15

4th May, 1995

To,

The Secretary to the Govt.of Assam,
Personnel Department.

Ref: Notification No.AAA.6/94/Pt.I/37
Dated 4th May, 1995.

Sir,

If there is a post of Officer-on-Special Duty.
Assam Administrative Staff College, Guwahati, kindly
issue a further notification declaring its equivalence
to a Cadre post of the IAS. If there is no such post,
kindly issue an order sanctioning the post and
declaring equivalence thereof.

I hope you will take action at your earliest
convenience to enable me to join ~~to~~ the post of OSD,
Assam Administrative Staff College.

Yours faithfully,

Su Lakshmi/4.5.95

(S.K. Tewari)
Commissioner & Secretary to the Govt.of Assam,
Public Enterprises Department.

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Arindam Kumar

ANNEXURE-H

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Received
14/2/94

To

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

Sir,

May I begin by thanking you for allowing me an extension of time until the 14th of February, 1994 to submit my written statement of defence against the charges communicated vide your memo NO.AAI.51/93/39 dated the 24th of January, 1994.

2. With your memorandum mentioned above I have received an 'Article of Charges' and a 'Statement of Allegations'. Both documents are couched in identical language and bear captions that find no mention in the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as the Rules). Assuming that the caption 'Article of Charges' is a typing error, the purpose of its twin-brother, the 'Statement of Allegations' remains unclear. For the purposes of my statement of defence I have assumed that these two documents together constitute the articles of charges.

3. Your memorandum states: "The charges which the imputations proposed to be held is set out in the enclosed statement of charges". This sentence is not at all intelligible. So I do not know what actually the government proposes to do.

4. Under Rule 8 of the Rules an inquiry can be made only into the truth of some imputation of misconduct. The same rule provides that a statement ^{of} imputations of misconduct in support of each charge will be served upon the member of the service. No statement of imputations of misconduct has been served on me. Therefore, there can be no inquiry under the said Rule 8.

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5. The Chargesheet does not seem to be intended for affording me an opportunity of defending myself properly. The line disregard for rules, procedure and facts apart, its language and syntax demonstrate such a cavalier indifference to grammar, accepted usage and clarity that I am unable to understand most of the chargesheet. I quote below what would seem to be the operative parts of the two 'charges'. Each and every except is more or less unintelligible :-

From 'Charge No. 1'

a) 'If these 12 (twelve) casual workers were "bogus" according to your assessment, they should have been discharged immediately after making payment of their wages and they should not have been allowed to continue, if their services are not required at all.'

b) 'Being a member of the Indian Administrative Service holding a very responsible post of Commissioner & Secretary to the Government of Assam, you ought to have known how to behave with Ministers, but instead of behaving with the Ministers politely with due respect, you acted in a manner most unbecoming of a Govt. servant of your status and rank and violated all official norms, decorum, discipline and failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1) of the All India Services (Conduct) Rules, 1968, which was not expected from a senior IAS officer of your status and rank.'

From 'Charge No. 2'

c) 'At this, the Minister of Animal Husbandry & Veterinary, Shri Jagannath Sinha felt very humiliated and appealed repeatedly to you to be calm and polite, but you did not care and listen to the appeal of the Minister of Animal Husbandry & Veterinary, rather you jumped up from the chair and arrogantly left the office chamber of the minister, Animal Husbandry & Veterinary shouting that you do not care for Ministers and banged the door from behind. You have done it knowingly and intentionally with a view to show disrespect to show disrespect to the two ministers only to refuse to make payment to the 12 (twelve) casual workers who were working without any wages for the last one year.'

d) 'For your above action, you have misbehaved with the

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two Ministers being two duly elected representatives of the people. If you were not convinced/satisfied with the statement of the two Ministers, the best course of action on your part was to report to the Chief Minister through the Chief Secretary to the Government of Assam who is in a better position to take a decision as deemed fit and proper, but instead of behaving properly with the two Ministers being two duly elected representative of the people politely with due respect, your rude and unbecoming behaviour humiliated the two Ministers being two duly elected representative of the people and has brought dis-repute to the Government.'

I shall refute these statement later in this written statement to the extent that I am able to understand them. Here I wish to underscore the disabilities created by the phrasing of the articles of charge, inhibiting any effective representation by me in my defence. In excerpt (a) I have been charged with failure to follow the most proper course of action, according to the Disciplinary Authority, namely, to pay the wages of 'bogus' workers and discharge them. The word bogus means 'sham' or 'fictitious'. So the government is actually charging me with failure to pay wages to fictitious or non-existent workers. In excerpt (b) One of the phrases used is "failed to maintain absolute integrity and devotion to duty". From the context it is quite clear that there is no intention, or the remotest reason, to charge me with lack of devotion to duty, much less lack of integrity. But the phrase seems to have been quoted from Rule 3(1) of the All-India Services (conduct) Rules, 1968 (hereinafter referred to as the Conduct Rules) without any regard to its meaning or applicability to the facts of this case. I am left in doubt whether or not I am expected to ^{answer} ~~another~~ the charge of a lapse from devotion to duty and failure to maintain absolute integrity. Amongst the alleged 'facts' mentioned in the chargesheet I can spot not a single one that has any bearing on devotion to duty and/or integrity. If I am expected to answer this charge, what facts should I refute in order to do so?

Excerpts c) and d) which seem to contain the substance of 'Charge No.2' are even more confused as well as confusing. Allegedly I "jumped up from the chair", shouted "I donot care for ministers" and left the MV's office "arrogantly". These allegations are followed by this sentence which summarises the nature of the misconduct:

*Attorney
General
Govt of Assam*

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"You have done it knowingly and intentionally with a view to show disrespect to the two Ministers only to refuse to make payment to the 12 Casual Workers who were working without any wages for the last one year." This is too confused to be intelligible. It is not clear how the ^{causal} ~~casual~~ link between showing disrespect to the Ministers and refusing to pay the wages of casual workers has been established. This is further complicated by the first sentence of excerpt d) which says : "For your action, you have misbehaved with the two Ministers being two duly elected representatives of the people." This seems to say that in order to perform some action I misbehaved with the two ministers because they were two duly elected representatives of the people. Clearly this could not be the intended meaning; but if what is stated is not what is intended, I am being deprived of an opportunity to answer the charge properly.

6. I should like to reiterate that on account of violation of the Rules by the Disciplinary Authority my defence has been severely prejudiced. I should like to reiterate further that I am unable to defend myself adequately because most of the chargesheet is either meaningless or incomprehensible. Therefore I submit this written statement of defence under protest, only to avoid further victimization on the plea of my failure to answer the charges.

I shall answer the 'charges' set out in the 'Article of charges'. The supplementary chargesheet called 'Statement of Allegations' is but a verbatim reproduction of the 'Article of Charges' and doesnot require a separate reply.

'Charge No.1'

7 (1) It has been stated in the 'Article of Charges' that 12 persons belonging to the Assembly Constituency of Shri Sarat Borkotoky Minister of State, PWD (hereinafter referred to as the Minister of State or M.O.S.) had been working regularly as casual workers under the Animal Husbandry and Veterinary Department for one year as on 23-12-93. An identical statement was made in the order placing me under suspension (notified vide Govt's No. AD.51/93/6 dtd. the 24th of December, 1993 and referred to hereafter as the suspension order). I shall like to know the basis on which the Disciplinary Authority came to ^{the} firm conclusion within less than 24 hours of the alleged incident that such casual workers indeed existed and they had been

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"working regularly for the past one year". I shall also like to know the ground for saying that these workers belong to families that are extremely backward economically. Without access to the documents relied upon, I am unable to comment on these statements. Furthermore, I may kindly be supplied with a copy of the relevant government rules or standing instructions under which these 12 casual ^{workers} were engaged and under which they were allowed to "work regularly for one year".

ii) It has been clearly admitted in para 2 of the "article of Charges" that the M.O.S. had been requesting the Minister of Animal Husbandry and Veterinary (hereinafter referred to as the Minister, Veterinary or MV) "for regularisation" of the appointments of these 12 casual workers. Thus it has been admitted that the appointments were irregular as on 23.12.93.

I have no knowledge of the correspondence between the two Ministers; so I have no other comments on the alleged repeated requests made by the M.O.S. on behalf of these irregularly appointed casual workers.

iii) It is a travesty of the truth to imply that an official meeting had been called on 23-12-93 to discuss the problems of the above-mentioned 12 casual workers. In fact, the MV has convened two meetings on 23-12-93 at 11 a.m. and 12-30 p.m., respectively, to discuss the affairs of the Cachher Milk Union and selection of trainee Veterinary Field Assistants. I and Director, Animal Husbandry attended both meetings. There was no other official meeting scheduled. These facts are a matter of record. I demand that the government supply me copies of the relevant records calling the above two meetings. These records are vital for my defence because an attempt is being made to give an official appearance to a purely un-official request by the MOS for a favour.

The MOS entered the MV's office in the middle of the second meeting. It is not a fact that the MV introduced him to me or to the Director. This deliberate falsehood has been incorporated into the charge-sheet only after the MV's failure to do so was mentioned in my appeal to the Govt. of India against the order and order.

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I had never seen or met the M.O.S. before. Having been a captive of the ULFA during the first six months of this Ministry's tenure and on leave during the next six months or so, I still do not know each and every Minister of State by face. Thus, when the M.O. entered the MV's office unannounced I did not get up or greet him. That, I think, was what put the M.O.S. in an aggressive mood from the very start. I do not blame him for it but I think this unfortunately misunderstanding was at the bottom of the M.O.S.'s hypersensitive reaction to my perfectly innocuous remarks made later in the discussion.

iv) It is not a fact that there was a preliminary discussion or that the MV explained the problem to me. The problem was stated by the M.O.S. The MV had already passed orders that casual and muster roll workers entertained after 1-1-90 (i.e. during the last three years) were to be discharged. He knew that the casual workers mentioned by the M.O.S. would be the juniormost among all the casual/muster roll workers and therefore, the first to go. Therefore, he could not possibly have "explained the problems of" these 12 casual workers to me. I may mention here that the MV's decision to discharge casual/muster roll workers engaged after 1-1-90 was taken before I joined the department.

v) I did not term the above 12 workers as "bogus". This word was never used. The phrase to which the M.O.S. took exception was "motivated appointments". I used this expression while reminding the MV that the former Director of A.H. & Veterinary, Dr. J.O. Saikia allegedly appointed a large number of casual workers and booked their wages under the salary head. As is well-known, the letter of credit (LOC) system in Assam applies to wages but not to salaries. Thus Dr. Saikia sought to evade the rigours of the LOC system, without authority, sanction or a budget provision. When the fact came to the notice of treasuries payment of wages to such casual workers from the salary head was stopped.

I reminded the MV that during the last two or three years the number of casual/muster roll workers in the department had gone up from about 800 to about 5000. I also reminded him that on his orders workers engaged after 1-1-90 were either discharged or ^{were} in the process of being discharged. I told him further about a Committee appointed by the Director of AH & Vety. to report on irregular engagement of casual/muster roll workers by the former Director and other officials.

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The Director of A.H. & Vety. explained to the M.O.S. that the Dept.'s budget for wages was spent during the first two months of the financial year and that a reappropriation of Rs. One crore had already been made from another budget head to pay wages. He clarified that no further funds were available for the payment of wages.

vi) I deny having used the word 'bogus'. However, supposing for the sake of argument, that I did use the word, I fail to see how it constituted a violation of official norms, decorum and discipline and how, by using this word, I failed to maintain absolute integrity and devotion to duty or violated any other provision of the conduct rules. The charge of failure to maintain absolute integrity is the most serious and damaging of all charges. Such a serious charge has been made against me on the strength of just two allegations, namely, that I used the word "bogus" and that I did not adopt the correct procedure in dealing with "bogus" workers which, according to the chargesheet, is, to pay their wages and then to discharge them. To paraphrase the chargesheet, the charge would run thus: "You called the twelve casual workers from the MOS's constituency 'bogus'. You also failed to follow the correct procedure for dealing with 'bogus' workers. The correct procedure is to pay the wages of bogus (i.e. non-existent) workers and then to discharge them. Since you used the word 'bogus' and since you did not find a way of paying the wages of non-existent workers, you are lacking in integrity". I am not deliberately trying to make the charges look absurd. That is what the chargesheet actually says.

vii) Accordingly, I not only deny 'Charge No.1' in toto, I maintain that there is no charge to answer.

Charge No.2

8.1) As already stated, the substance of this charge is not clear to me. So, I detail the true facts of the alleged incident hereunder and state that anything expressed or implied in the chargesheet that ^{runs} ~~was~~ counter to these facts is false, fabricated and trumped-up. The facts, in continuation of what I have stated earlier, are as follows.

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At the mention of "motivated appointments" the M.O.S. flared-up suddenly and raised his voice in anger, saying, "How dare you refer to appointments in my constituency as motivated? I am a Minister. Do you doubt the word of a Minister?" I replied that I had not known that he was a Minister and that I was not referring to the appointments made in his constituency specifically. The M.O.S. insisted that the cases of his constituents should be treated differently from others since he had personal knowledge of these cases. I refused firmly to accept this line of reasoning and told him that his constituents will have to undergo the same scrutiny and will be subject to the same treatment as about 4000 others who had been reportedly engaged over the past 2 or 3 years without the requisite budget provisions and without proper authority. When told plainly that his constituents would not get any special dispensation, the M.O.S. lost his cool completely and nearly shouted "I have not come here to discuss the matter with you. I have come to discuss it with your Minister." I then offered to leave. Since neither Minister asked me otherwise, I left. As I was leaving I heard the MV saying "Mr. Barkotoky, please cool down". Once or twice. Later the same day, the acting Chief Secretary, Shri K.S. Rao, called me to his office and told me that the M.O.S. had complained about my alleged rudeness to him. I explained the situation to Shri Rao who seemed to be satisfied and said that he would speak to me again if the M.O.S. pursued the matter.

11) It has been stated in the first paragraph of "Charge No.2" that the casual workers in question had not received their wages for one year as on 23-12-93. In other words, ever since they had been working, they had received no wages. The entire wages budget of the department plus another Rs. One crore received by reappropriation had been spent in wage payments between April and December 1993. Therefore, if these casual workers were really in place, they should have received their wages at least for some months during the current financial year. There can be no question of their wages being outstanding for one year, if these workers were really in position.

Since document, other than the M.O.S.'s complaint, has been mentioned in the chargesheet, it is reasonable to assume that all the "facts" cited in the chargesheet originate from the M.O.S.

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It follows that if any part of the M.O.S's statement should prove to be false, his entire statement should be rejected.

I challenge the M.O.S's statement that the casual workers in question had worked throughout the year 1993 but had not received any wages for this entire period of one year. Govt. can easily settle the question by referring to the records of which I too demand a copy immediately.

iii) The following statements have been attributed to me under 'Charge No.2' :-

- a) "Students shout at us. Ministers also shout at us".
- b) "Are you threatening me?" (in Assamese)
- c) "At worst the Chief Minister may transfer me".
- d) "I am prepared to leave the service".
- e) "I donot care for Minister".

I did not make any of these statements, but, supposing for argument's sake that I did, it is not clear how these statements are offensive in any way. The first two statements would go to show that the M.O.S. did shout at me and that he did threaten me. It certainly cannot be the Disciplinary Authority's case that even if the Minister shouted at me and threatened me, I committed a misdemeanour by mentioning the fact. The third and fourth statements cannot be said to be offensive to the Minister or Ministers. The last statement has apparently been included as a pejorative remark about Ministers. It is nothing of the kind. "To care for" means "to look after or to "provide for". As a civil servant I am not required to look after or provide for Ministers. Thus there is nothing in the statements themselves that may be called even remotely offensive.

However, I did not make any of these pointless statements.

iv) The improper acts of omission and to commission attributed to me are :

- a) That I shouted;
- b) That I jumped up from my chair;
- c) That I left the Minister's room "arrogantly";
- d) That I banged the door from behind; and
- e) That I failed to refer the matter to the C.M. through the C.S.

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As regards a) I have already stated that the M.O.S. nearly shouted at me. It is ironic that facts should be turned upside down to accuse me of shouting. If I had shouted, my voice would have certainly carried beyond the flimsy partition wall to the MV's personal staff and the security staff. To my knowledge the Director of A.H. & Vety., who has been cited as witness, has also told responsible people in the government that I did not quarrel with the M.O.S. I would swear that only the two ministers heard me shouting and no one else. The allegation is absolutely false and I deny it.

Regarding b) and c) above I can see nothing wrong in jumping up from one's seat unless it was done preparatory to something improper. I did nothing improper. I only left the MV's office. It has been alleged that I left the MV's office "arrogantly". Both "jump up" and "arrogantly" are value-judgements arrived at by jaundiced eyes of prejudice. I can represent against value-judgements, not backed by concrete facts. As I have mentioned earlier, I offered to leave when I was told by the M.O.S. that he had not come to discuss the matter with me but with the M.V.. Since the Ministers seemed to accept my offer, I left. This was the most prudent thing to do. By doing so I avoided what might have developed into a scene.

Regarding d) I can only say that whoever invented this lie did not do his homework thoroughly. I could not have "banged the door from behind" because this particular door opens inwards and cannot be banged from behind. I deny this outrageous lie absolutely. Once again it is a miracle that only the two ministers seem to have seen and heard me bang the door (presuming that both ministers have made this complaint-I do not know yet). Once again the personal staff of the Minister who sit right next to the door noticed nothing; or they would have been cited as witnesses. Neither did the Director of A.H. & Vety. as I shall show during enquiry. Finally, as regards d) (my alleged omission to refer the case to the C.M. through C.S.), the Disciplinary Authority seems to have forgotten the fact that I was placed under suspension the very next day and had no opportunity of referring the matter to C.S.. But, more importantly, the contention that the matter should have been referred to the C.M. through the C.S. is wrong and has no basis. If there is such a rule or instruction a copy of it may kindly be supplied to me and I may be given an opportunity to be heard on its applicability to this case.

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Thus all allegations of improper acts of omission and commission made against me are false and frivolous.

v) There is now a curious addition to the story narrated at some length in the suspension order. The added episode has been described under 'Charge No.2' thus:

"For your above action and behaviour, Shri Jagannath Sinha, Minister of Animal Husbandry & Veterinary went to the office chamber of Shri Sarat Barkotoky, Minister of State, Public Works Department (Plain) and tendered his apology with tearful eyes saying that Shri Barkotoky had been humiliated because Shri Sinha had invited Shri Barkotoky to his chamber".

I propose to show during inquiry that the mv ~~did~~ did not agree to support the MOS's story until after the suspension order had been issued and even then he agreed to do so only under pressure. The suspension order narrated the alleged incident in full. It must be the longest ever suspension order issued by the Personnel Dept. But this episode did not find a place in the suspension order because the mv had not yet agreed to support the M.O.S's story. As soon as he agreed to do so, the original complaint may have been doctored to include yet another invention. I have no doubt that the same would be doctored again if something in this written statement makes such doctoring necessary. I demand, therefore, that a copy of the M.O.S's complaint be made available to me immediately. A copy of this complaint is also required by me for making an effective representation.

vi) Under 'charge No.2' I am once again charged with violation of rule 3(1) of the conduct Rules. I deny that I violated any conduct rule by refusing to give differential treatment to the 12 casual workers from MOS's constituency. I submit that if I had agreed to give such differential ~~xxxxxxxxxxxxxxxxxxxx~~ treatment, I would have violated not only the Conduct Rules but all norms of justice and fairplay and the principle of equality embodied in Article 14 of the Constitution of India. The charge of violation of norms, decorum and discipline is based on nothing but sumises and conjectures, ex post facto misinterpretation of my conduct and outright lies.

vii) Accordingly, I deny 'Charge No.2' absolutely and in toto, while maintaining the language of the charge is so vague and

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confusing as to render an effective defence impossible.

9. In my appeal against the order of suspension, submitted to the Government of India through the Government of Assam, I had given a detailed account of how Shri Miranjan Ghose, the present Secretary, Personnel bears a grudge against me and has misused his official position and exercised his powers mala fide in order to harass me. I had also brought out the fact that Shri Ghose is personally close to the M.O.S. and that a minor incident of legitimate disagreement has been blown out of proportion only to victimise me. To avoid needless repetition, all the relevant paragraphs of the appeal petition may be read into this written statement. A copy of the said appeal petition is already with the government and another is annexed herewith as ready reference.

10. Under both 'Charge No.1' and 'Charge No.2' I have been charged with violation of Rule 3(i) of the Conduct Rules. In this connection I shall like to make the following submission.

The misconduct for which an officer is charged, must be one of the misconducts specified in the Rules relating to conduct of Government employees. A general expectation of the a certain direct behaviour in respect of employees may be a moral or ethical expectation. Failure to keep such high standard of moral, ethical decorum/behaviour by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconducts. A bare perusal of the All India Services (Conduct) Rules, 1908 would reveal beyond any reasonable doubt that I didnot commit any misconduct enumerated in the Conduct Rules. The alleged "rule and unbecoming behaviour" has nowhere been defined in the Conduct Rules, Rule 3(i) of the Conduct Rules reads as follows:-

"Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service."

The said Rule 3(i) of the Conduct Rules bears the heading "General". Rules 4 to 20 of the Conduct Rules provide various kinds of misconducts. Even assuming for the sake of argument that there was some exchange of words, as alleged in the chargesheet that itself cannot constitute misconduct unless the specific conduct falls within any of the enumerated misconducts in the Conduct Rules, any attempt

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to telescope the general provision of rule 3 (1) of the Conduct Rules into any of the enumerated misconducts of the Conduct Rules must be looked upon with apprehension as the phrase "behaviour unbecoming of a Government servant" is obviously vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose a Government servant to the vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as a misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and define with precision and accuracy, the alleged misconduct so that any ex post facto interpretation of some incident may not be camouflaged as misconduct as has been done in the instant case in capricious and mala fide exercise of discretionary powers.

11. From the foregoing it is abundantly clear that the 'Charges' framed against me have no basis in law or in fact. Therefore the government may be pleased to drop the 'Charges' and also revoke the order of suspension.

12. In case the government decides to proceed with the inquiry in spite of my fully answering the so-called charges, I shall like to be heard on the appointment of the Inquiry Officer and also about the venue of the inquiry. In view of the manifest tendency on the part of the Disciplinary Authority to take everything stated by the M.O.S. to be the gospel truth, the fact that two Ministers have ^{been} cited as witnesses, the further fact that even a Minister could be pressurised into endorsing the complaint made by the M.O.S., my submission that the present Secretary, Personnel bears a grudge against me and all other attendant circumstances of the case, it is an inescapable conclusion that I cannot expect justice to be done in any inquiry conducted at Guwahati by an Inquiry Officer appointed by the Govt. of Assam. I also propose to make a representation in this behalf to the Govt. of India through the Govt. of Assam.

Further, I may kindly be permitted to submit an additional written statement of defence on receipt of the documents and information sought by me at various points in this written

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statement. To recapitulate, I seek the following documents/information :

1. Copy or copies of the orders by which the 12 casual employees were appointed;
2. The rules/instructions/authority/sanction under which they were appointed;
3. Evidence on the basis of which their extremely backward economic status has been claimed;
4. Documents on the basis of which the Disciplinary Authority is satisfied that they had been working regularly for one year as on 23-12-93;
5. Documentary evidence for the statement that they had not received their wages for one year as on 23-12-93;
6. Copies of notices issued for meetings called by the M.V. on 23-12-93.
7. Copy of the complaint made by the M.O.S. and copy of statement, if any, given by the M.V.;
8. A copy of the order of suspension of Dt. J.C. Saikia;
9. Copy of orders passed by the MV ~~XXXXXXXXXXXXXXXXXXXX~~ regarding discharge of casual/muster roll workers engaged after 1-1-90; and/or copy of any orders/instructions issued on the basis of M.V.'s orders;
10. Copy of the orders of the Director of A.H. & Vety. constituting a Committee to inquire into irregular engagement of casual/muster roll workers;
11. Copy of report or interim report submitted by the above Committee;
12. Copy of the relevant rule/instruction I allegedly violated in not referring the matter to the C.M. through the C.S.;
13. Copies of economy circulars in force during the calendar year, 1993;
14. A statement of expenditure incurred by the Director of A.H. & Vety. for payment of wages during the financial year, 1993-94;

Yours faithfully,
S.K. Tewari/14.12.93
(S.K. TEWARI)
IAS (RR 73)
Assam - Meghalaya

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ANNEXURE-I

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NO. AAI 51/93/91
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
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ORDERS BY THE GOVERNOR OF ASSAM

Dated Dispur, the 25th March, 1994.

Whereas, disciplinary proceeding against Shri S.K. Tewari, IAS (now under suspension), the then Commissioner & Secretary to the Government of Assam, Animal Husbandry and Veterinary Department and Soil Conservation Department was drawn up and served vide Memorandum No. AAI. 51/93/39 dated 24.1.1994 ; and

Whereas, Shri S.K. Tewari, IAS (now under suspension) submitted his written statement in defence vide his letter dated 14.2.1993 (sic) wherein he denied all the charges id to to framed against him; and

Whereas, after examination of all aspects it has been decided by the Government to get the article of charges enquired into by an ~~Enquiry Officer~~ Inquiring Authority.

Accordingly, the Governor of Assam in exercise of powers conferred under sub-rule 2 of Rule 8 of All India Services (Discipline & Appeal) Rules, 1969 is pleased to appoint Shri A. Bhattacharjya, IAS (Ret-1962) Addl. Chief Secretary to the Government of Assam as Inquiring Authority for holding an enquiry into the article of charges drawn up and served against Shri S.K. Tewari, IAS (under suspension) vide Memorandum No. AAI. 51/93/39 dated 24.1.1994 and submit report expeditiously.

Further the Governor of Assam in exercise of powers conferred under sub-rule 6(c) of the Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 hereby appoints Shri K.K. Jakharia, ACS, Deputy Secretary to the Government of Assam, Personnel (A) Department as Presenting Officer to present the case before the Inquiring Authority on behalf of the State Government in support of the articles of charges framed against Shri S.K. Tewari, IAS (under suspension).

BY ORDERS AND IN THE NAME
OF THE GOVERNOR OF ASSAM

sd/

(NIRAJAN GHISE)

Secretary to the Government of Assam
Personnel, etc. Departments, Dispur

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Memo No. AAI. 51/93/91-A : : Dated Dispur, the 25th March, 1994.
Copy to :-

1. Shri A. Bhattacharjya, IAS, Addl. Chief Secretary to the Govt. of Assam for favour of information and necessary action. Copy of the article of charges framed against Shri S.K. Tewari, IAS (under suspension) and served vide Memorandum No. AAI. 51/93/39 dated 24.1.1994 and

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Signature
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the copy of the written statement in defence submitted by Shri S.K. Tewari, IAS (under suspension) vide his letter dated 14.2.1993 (sic) are enclosed. He is requested kindly to complete the enquiry and submit his report to this Department expeditiously.

2. Shri K.K. Jekharia, ACS, Deputy Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, for favour of information and necessary action. Copies of article of charges framed against Shri S.K. Tewari, IAS (under suspension) and served vide Memorandum No. AAL. 51/93/39 dated 24.1.1994 alongwith written statement in defence submitted by Shri Tewari are enclosed. He is requested to collect other relevant papers/documents in connection with the above mentioned enquiry from the Department.

3. Shri S.K. Tewari, IAS (under suspension) Senior Officers' Colony, Jawahar Nagar, Khanapara, Guwahati-22.

By order etc.,

H. Ghose 25/3/94
(HIRANJAN GHOSE)

Secretary to the Government of Assam
Personnel, etc. Departments, Dispur

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25/3/94

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ANNEXURE - J

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Dispur March 31 '94

To

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

Sub: Appointment of Inquiring Authority.

Ref: Govt.'s notification no. AAI 51/93/91 dt. 25.3.94.

Sir,

I have the honour to acknowledge receipt of the Govt. notification under reference which was delivered to me as per bearer at 7 P.M. on 25.3.94.

2. It may be recalled that in para 12 of my written statement of defence submitted in answer to your chargesheet dt 24.1.94 I had prayed, inter alia, that -

a) I may be given an opportunity of being heard on the appointment of inquiring authority, if any; and

b) I may be supplied copies of or allowed to inspect the documents on which various statements made in the above-mentioned chargesheet were purportedly based.

3. The Govt - in the personnel Deptt. have apparently ignored my prayer whereas I am entitled to Govt. orders in writing to be able to prefer an appeal/make a representation under the relevant rules and instructions ; in particular, the Govt. of India (Deptt of Personnel)'s O.M. no. 39/40/70 - Ests (A) dt 9.11.72. By denying me access to the relevant documents the Govt. have already prejudiced my defence. By ignoring legitimate prayers the Govt. are further denying me the most elementary kind of natural justice. I therefore demand Govt.'s written orders on the specific prayers made in para 12 of my written statement of defence.

4. I had requested an opportunity to be heard on the appointment of Inquiring Authority to avoid any embarrassment

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Handwritten signature and date:
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...ing out of ill-conceived and biased action on the part of the present Secretary personnel, Shri N. Ghose, who has already evinced bias in handling this case. However, it seems that Shri Ghose's desire for revenge has got the better of his judgement in that he has apparently omitted to bring vital facts in the possession of his deptt. to the notice of the Competent Authority. These facts if brought to the notice of the Competent Authority, would have rendered it impossible to appoint Shri A. Bhattacharjya, I.A.S. as Inquiring Authority. These facts are briefly mentioned below.

88.89 → 5. During the financial year 1988-89 I worked under the control of Sri A. Bhattacharjya, I.A.S. for a period of 3-4 months while I was posted as Director of Training Assam. During this period I had some difference of opinion with Sri Bhattacharjya about purchase of books for the Assam Administrative Staff College Library and also about a certain compassionate appointment. Sri Bhattacharjya was sufficiently upset to remark to one of his joint - Secys that he would make sure that I didnot get my promotion to the selection grade of the I.A.S. Hearing of this I made a written representation to the Govt. that Sri Bhattacharjya should not be allowed to write my A.C.R for these 3 - 4 months. Notwithstanding my representation, Shri Bhattacharjya wrote my A.C.R. Later, the Govt. rejected this A.C.R. in toto on the ground of manifest bias and violation of rules. I understand that the A.C.R. recorded by Shri Bhattacharjya was full of adverse comments against me and he even left the integrity column blank without giving any reason. As far as I can remember, I was abroad at that time so I do not have a copy of the relevant Govt - orders. However, the facts stated above are a matter of record and can be verified easily from the records of the personnel deptt.

6. In view of the above, I not only have a reasonable apprehensive but a well based conviction that I will not get a fair inquiry at the hands of Sri A. Bhattacharjya, I.A.S. I

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Accordingly pray that the Govt. may be pleased to cancel the appointment of Sri A. Bhattacharjya I.A.S. as Inquiring Authority.

7. I shall also like to reiterate that the Govt - may be pleased to take a decision on the specific prayers made in para 12 of my statement of defence and communicate the same in writing to me.

Yours Faithfully,

(S.K. TEWARI), IAS (RR-73)
Assam, Meghalaya Cadre.

*Attn
for plmr
12/5*

ANNEXURE - K

CONFIDENTIAL

No.FEB 203/94/47

May 5, 1995.

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To

- 1) ✓ Shri S.K.Tewari, IAS,
Commissioner & Secretary
to the Government of Assam,
Public Enterprises Department,
Dispur.
- 2) Shri D.Saikia,
Presenting Officer,
Joint Secretary to the
Government of Assam,
Personnel (A) Department,
Dispur.

Sub:- Enquiry into the charges drawn up against Shri S.K.Tewari, IAS in the departmental proceedings drawn up against him vide memorandum issued under Memo. No.AAI 51/93/39 dated 26.1.94 of the Personnel Department, Government of Assam - hearing thereof.

The hearing of the enquiry into the charges drawn up against Shri S.K.Tewari, IAS in the departmental proceedings drawn up against him vide memorandum issued under Memo. No.AAI 51/93/39 dated 26.1.94 of the Personnel Department of the Government of Assam, will be held in my room on 15.5.95 at 3.30 PM. Shri S.K.Tewari, IAS is requested to be present in the hearing. Shri D.Saikia, Joint Secretary to the Govt. of Assam, Personnel (A) Department, Presenting Officer in this proceedings is requested also to be present along with the witness from his side viz. Shri Sarat Borkotoky, Minister of State (Independent Charge), Flood Control, Assam (formerly, Minister of State (Independent Charge), PWD(Plains), Assam for this hearing.

T.K. Kamilla 5/5/95

(T.K. Kamilla, IAS)

Additional Chief Secretary to the Govt. of Assam
&
Inquiry Authority

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Memo. No.FEB 203/94/47-A, Dated Dispur, the 5th May, 1995.

Copy to:-

PS to Shri Sarat Borkotoky, Minister of State (Independent Charge), Flood Control, Assam, Dispur, for information of the Minister.

T.K. Kamilla 5/5/95

(T.K. Kamilla, IAS)

Additional Chief Secretary to the Govt. of Assam
&
Inquiry Authority

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