

30/100

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 236/96

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SECTION OFFICER (Judl.)

Kalish
31.1.18

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ON No. 236/96

Dr. J. P. Chakraborty Applicant(s)
VS-

Union of India & or Respondent(s)

Mrs. N. Dutta, Dr. Das Advocates for the applicant(s)

Mr. C.G.S.C. Advocates for the Respondent(s)
Dr. Y.K. Phukan, Sr. G.A., Assam, Mrs. M. Das, G.A., Assam.

Office Notes Date Courts' Orders

14-10-96

This application is in
form and within time

C. F. of Rs. 50/-

deposited vide

IFO/BD No 446693

Dated 8.10.96

Dr. Registrar 10/96
SIX

Learned counsel Mr. N. Dutta

for the applicant. Learned Sr. C. C.

S.C. Mr. S. Ali for respondent No. 4

None for the respondents No. 1, 2, 3

and 5.

Issue notice on the respon-

dents to show cause as to why the

application should not be admit-

and relief sought be allowed.

List for show cause and con-

sideration of Admission on

19-11-96.

Member

15-10-96

Notice have been
prepared and issue

vide Despatch No 3508

on date 16.10.96.

lm
14/10

Bon

19.11.96

Learned Sr. Counsel Mr. B.K. Das
for the applicant.

Mr. S. Ali, Sr. C.G.S.C. for t
respondent No. 4.

Dr. Y.K. Phukan, Sr. G.A., As
with Ms M. Das, G.A. Assam
respondent Nos. 1, 2, 3 and 5.

Show cause has not been
submitted. Dr. Y.K. Phukan seeks time
to file show cause. Prayer allowed.

List for show cause and
consideration of admission on
10.12.1996.

Contd...

Service Reports are still awaited.
show Cause has not been filed.

8/11

2

O.A. 236 of 1996

19.11.96

Dr. Y.K.Phukan is directed to serve copy of the show cause to the counsel of the opposite party before the date fixed for admission as above.

[Signature]
Member

trd
[Signature]
19/11

Pl. comply above
order dtd 19.11.96
M
19/11

10.12.96

Learned Sr.counsel Mr. B.K.Das with Mr. D.K.Das for the applicant.

Mr. S.Ali, learned Sr. C.G.S.C. for the respondent No. 4.

Dr. Y.K.Phukan, learned Sr. Govt. Advocate, Assam with Ms M.Das, G.A. for respondent Nos. 1,2 and 3.

The respondent Nos. 1 to 3 have submitted written statement. Copy of which has been served on the counsel of the applicant.

Perused the contents of the application and written statement and heard counsel of both sides for admission. Application is admitted. Issue notice on the respondents by registered post.

Dr. Y.K.Phukan submits that the written statement on behalf of respondent Nos. 1,2 and 3 submitted today may be treated as written statement filed by the respondents and no fresh written statement may be filed by them. Dr. Phukan and Mr. Das submit that the case may be listed for hearing. List for hearing on 16.1.1997. The Government of India, respondent No. 4, may in the meantime submit written statement with copy to the counsel of the applicant. The applicant is also at liberty to submit rejoinder with copy to the opposite party before the date of hearing.

Heard counsel of the applicant on interim relief prayer. The following reliefs have been prayed :-

Contd....

20.11.96
Copy of Service
Respondent No. 5.
served as "refused
Mark" in envelop.

[Signature]
at for other Respd's.
Service Reports are still
pending.
Show Cause has not
been filed.

12-12-96

10.12.96

1. to stay the operation of the impugned notification dated 29.6.96 (Annexure-E) and dated 2.7.96 (Annexure-F).
2. to direct the respondents to allow the applicant to join in the post of I.G.P.

Mr. B.K. Das submits that the applicant is entitled to the interim reliefs as prayed on the ground that the order of reversion of the applicant is non est or illegal as it was issued without giving the applicant opportunity of being heard before such order was issued. However after considering the prayers as made in the application and the submission of counsel of both sides, it is considered that the prayers cannot be allowed at this stage as, if allowed, it would amount to allowing the application. Therefore the prayer of interim relief is rejected.

ba
Member

trd

16.1.97

Mr D.K.Das for the applicant. Mr S. Ali, Sr.C.G.S.C for respondent No.4. Mrs M Das for respondents No.1, 2 & 3.

Written statement of respondent No.4 has not been received. Mr D.K.Das presses for early hearing and he will file rejoinder before the date of hearing.

List for hearing on 11.2.1997.

Respondent No.4 may submit written statement in the meantime. The applicant may also submit rejoinder before the date of hearing with copy to the counsel of the opposite parties.

ba
Member

pg
16/1

1) Notice duly served on Respondant No- 1,2,3, & 4.

ba
12.12

12-12-96

W/S filed by the R. No. 1 to 3.

15-1-97

1) Notice duly served on Respondant No- 1,2,3, & 4.

2) Written statement filed on behalf of R. No- 1 to 3. at page 33 to 39.

ba
15.1

(7)

OA 236/96

10-2-97

11-2-97

- 1) Notice duly served on R-1-3 and 4.
- 2) Notice unserved on R-5.
- 3) Written statement has been submitted on R-1-3.

lm

W 10/2/77

24-2-97

25.2.97

Notice unserved on R-5 as refused by the Section.
Memo of appearance not yet W 24/2

Notice unserved on op. No 5. nkm
refused by the Section W 10/3
No appearance has been filed on
op. No 1-3.
13

11.3.97

Notice duly served on
op. Nos 1-3 & 4.
Notice unserved on op.
No 5.
W/s has been filed.
No appearance has been
filed.

trd
W 14/3

20.3.97

On the prayer of the learned counsel for the parties this case is adjourned to 3.4.97 for hearing.

Member

nkm

On the prayer of Dr. Y.K. Phukan learned Sr. Government Advocate this case is adjourned till 25th Feb' 1997 as Dr. Phukan is required some instructions.

Member

Vice-Chairman

Heard Mr N. Dutta, learned counsel for the applicant, and Mr P.G. Baruah, learned Advocate General, Assam, assisted by Dr Y.K. Phukan, Mr P. Pathak and Mrs M. Das. After hearing at some length Mr B.K. Das, learned counsel for the applicant in O.A.No.261.96 prayed for a short adjournment to examine certain questions of law. Considering the submission of Mr B.K. Das the case is adjourned till 11.3.97.

Member

Vice-Chairman

At the request of Mr. N. Dutta, learned counsel appearing on behalf of the applicant hearing adjourned till 20.3.1997.

List on 20.3.97 for hearing.

Member

Vice-Chairman

Vice-Chairman

16


4

3.4.97 Mr. P.G.Baruah, learned Advocate General submits that he is not in a position to argue the case today due to personal difficulties. As per medical advise he is to take rest for sometime therefore requested that the case may be adjourned for sometime. Mr. B.K.Das and Mr. N.Dutta counsel appearing on behalf of the applicant have no objection to the prayer of Mr. P.G.Paruah. Learned counsel for the parties suggest that the case may be fixed on 29.4.97. Accordingly the case is adjourned till 29.4.97.

List on 29.4.1997 for hearing.


Member


Vice-Chairman

trd

7/4


29-4-97 Learned Sr. counsel Mr.B.K.Das appearing on behalf of the applicant and learned Addl. C.G.S.C. Mr.A.K.Choudhury, Dr.Y.K.Phukan, Government Advocate, Assam are present.

List for hearing on 8-5-97.


Member


Vice-Chairman

W/S. has been fixed on R.No. 1-3. Notice unserved on R.No. 5.


lm

30/4

8.5.97 Part heard. List on 15.5.97 for further hearing.


Member


Vice-Chairman

W/S. has been fixed on behalf of R.No. 1-3. Notice unserved on R.No. 5, returned by the Section. No. appearance has been fixed.

pg

9/5

45

15.5.97

Part heard. List on 20.5.97 for further hearing.

Member

Vice-Chairman

nkm

16/5

20.5.97

We have heard Mr N. Dutta, learned counsel for the applicant, Mr P.G. Baruah, learned Advocate General, Assam, and Mr S. Ali, learned Sr. C.G.S.C. After arguing at some length the Advocate General prays for adjournment to receive further instructions in the matter. Mr Ali submits before us that he has not received any instruction, and therefore, he seeks a short adjournment. Considering the submissions we grant adjournment till 10.6.97 for further hearing. It shall remain part heard. List the matter on top of the list.

Records have been produced by Dr. Y.K. Phukan, learned Sr. Government Advocate, Assam. Keep the record in safe custody.

Member

Vice-Chairman

nkm

26/5

16.6.97

There was no court on 10.6.97 due to circuit court at Kohima. Adj 15

1.7.97

By order

dh

(7)

O.A.No. 236/96

1-7-97

We have heard counsel for the parties. Hearing concluded. Judgment reserved.


Member


Vice-Chairman

lm

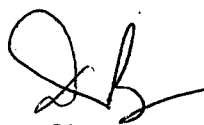

2/7

Please comply
order dated 25/11/97.
MS
26/11

25.11.97

The learned counsel for the applicant are not present. Dr Y.K. Phukan is present on behalf of the State of Assam. In all probability the other counsel have not received notice. Therefore we adjourn this till 2.12.97 for further hearing.


Member


Vice-Chairman

27.11.97.
Copy of order dtd.
25.11.97 issued to
the applicant Advocate. MS
26/11

2.12.97

Counsel for the parties are present. The case is re-heard today.


Member


Vice-Chairman

WTS has been sent on
R No. 1-3.
Notice underwritten
R. S. submitted by him.

pg

MS
4/12
7.1.98

1-12.97.
Copy of order dtd. 25/11/97
issued to the Mr. N. Dutta
Adv. B.C. Das, Sr. Advocate.

Common order delivered alongwith O.A.261/96 in the open Court and kept in separate sheets.

The application is dismissed. No order as to costs.


Member


Vice-Chairman

21.1.98
Copy of The Judgment
has been sent to the
d/Sec. for issuing the
one to the parties. pg
kb. given vide dtd.
123 to 129 3.21.1998

A

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. of 199

O.A.No.236 of 1996 and O.A.No.261 of 1996

DATE OF DECISION...7.1.1998.....

Shri T. P. Chakraborty, IPS (In O.A.No.236/96)

Shri A.K. Roy, IPS (In O.A.No.261/96) (PETITIONER(S))

Mr B.K. Das, Mr N. Dutta,

Mr P.K. Roy and Mr D.K. Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Mr S. Ali, Sr. C.G.S.C., Mr A.K. Choudhury, Addl. C.G.S.C.
Mr P.G. Baruah, Advocate General, Assam,
Dr Y.K. Phukan, Sr. Government Advocate, Assam, and
Mrs M. Das, Government Advocate, Assam.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

D. Baruah

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.236 of 1996

And

Original Application No.261 of 1996

Date of decision: This the 7th day of January 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Tara Prasad Chakravarty, IPS, (In O.A.No.236/96)
Inspector General of Police(R),
Assam (now reverted),
Ulubari, Guwahati.

2. Ashim Kr Roy, IPS, (In O.A.No.261/96)
Inspector General of Police,
Assam (now reverted),
Silchar, Assam.

.....Applicants

By Advocates Mr B.K. Das, Mr N. Dutta,
Mr P.K. Roy and Mr D.K. Das.

- versus -

1. State of Assam, represented by the
Chief Secretary ,
Government of Assam, Dispur.
2. The Commissioner & Secretary to the
Government of Assam,
Home and Political Department,
Dispur.
3. The Director General & Inspector General of Police,
Assam, Ulubari, Guwahati.
4. The Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
5. The Additional Chief Secretary to the
Government of Assam,
Dispur.

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C.,
Mr A.K. Choudhury, Addl. C.G.S.C.,
Mr P.G. Baruah, Advocate General, Assam,
Dr Y.K. Phukan, Sr Government Advocate, Assam and
Mrs M. Das, Government Advocate, Assam.

.....

B

O R D E R

BARUAH.J. (V.C.)

Both the above two applications involve common questions of law and similar facts. Therefore, we propose to dispose of both the applications by this common order.

2. The applicants in these applications challenge the Notifications dated 29.6.1996 and 2.7.1996, issued by the Deputy Secretary to the Government of Assam, Home(A) Department and Secretary to the Government of Assam, Home etc. Department, respectively and pray for order/direction to set aside and quash the said two Notifications and allow the applicants to continue in the posts of Inspector General of Police, in their respective disciplines in which they had been working.

3. For the purpose of disposal of these applications facts may be narrated as follows:

(a) The applicant in O.A.No.236/96 has stated that at the material time he was serving as Deputy Inspector General of Police (Reorganisation), Assam. He was promoted to the rank of Inspector General of Police, Reorganisation, Assam, by order dated 8.3.1996 issued by the Deputy Secretary to the Government of Assam, Home (A) Department. The applicant claims that he is an efficient officer with unblemished service career and a recipient of various Medals for his outstanding services including President's Medal. He also tackled the drug trafficking and other unlawful activities including insurgency in an efficient manner.

(b) The applicant in O.A.No.261/96 also states that at the material time he was Deputy Inspector General of Police. Initially, he was in Assam Police Service and in 1975 he was promoted to the senior scale of Assam Police Service and in 1984 he was nominated to the IPS and later promoted to the supertime scale of IPS and

12

posted as Deputy Inspector General of Police (DIGP for short), Central Western Range, Guwahati. He was also similarly promoted to the rank of Inspector General of Police (Law and Order) by order dated 8.3.1996 and was incharge of Central Western Range, Assam. This applicant also claims that he is an efficient police officer having an unblemished service career and a recipient of various distinctions including Indian Police Medal for gallantry in 1969 and also received a number of recommendations for his meritorious services. He received appreciation at the time when he was posted at Srinagar and Amritsar on deputation to the Central Reserve Police Force. The applicant claims that because of his ability in controlling the crimes and in maintenance of law and order, he became an eyesore to many of the persons interested. He believes that in the discharge of his duties, on many occasions, he dissatisfied some political and student leaders who found it difficult to achieve their narrow political aims. His further grievance is that those leaders at times almost came out openly through the press and other means including rallies demanding action against him but failed. He also alleges that taking the advantage of the change of Government they influenced the Government machinery with a view to harass him in various ways so that he might not get any promotional avenue in his service career. He alleges that some political and student activists became successful in influencing the new Government machinery to initiate a departmental proceedings on some false charges. However, those were proved to be baseless later on. He was also suspended with the sole purpose to dismiss him from service. However, with the refusal of the Government of India to take any action against him, according to the applicant, the attempt to dismiss him from service was totally frustrated. Thereafter, he was posted as Commandant 76 Bn. Central Reserve Police Force at Srinagar on deputation. There also he had shown his exemplary courage in dealing with insurgency. In saying so the applicant wants to show that he is an able, efficient

and.....

and courageous police officer. Because of the drastic steps taken while maintaining law and order he became an eyesore to those persons who found it difficult to overcome the steps taken by him.

4. Both the applicants state that the Government of Assam created six ex cadre posts in the rank of Inspector General of Police (IGP for short) for a period upto 28.2.1997 in exercise of its power and also under the second proviso to Rule 4(2) of the IPS (Cadre) Rules 1954. Thereafter, the applicants alongwith four other persons, were promoted on the basis of merit with due regard to their seniority. The applicant in O.A.No.236/96 was promoted to IGP, in charge Reorganisation. The applicant in O.A.No.261/96 was promoted to IGP, Law and Order, in charge Central Western Range, Guwahati. On promotion as aforesaid the applicants joined in their posts on 8.3.1996 and had been working and they received remuneration as IGP as per the provision of rules. The applicant in O.A.No.236/96 was, however, transferred to IGP in charge of Central Western Range as the applicant in O.A.No.261/96 took leave on medical ground.

5. According to the applicants, the order of cancellation of their promotion to the rank of IGP was illegal and based on some extraneous considerations. It was punitive in nature. Besides, such order of cancellation entails evil consequence. Therefore, the principles of natural justice ought to have been followed. Such cancellation was impermissible in law. The applicants contend that the cancellation of the promotion of the applicant to the IPS cadre was violative of the provisions of Article 311 of the Constitution of India. Besides it was arbitrary, unfair and unreasonable. The order of cancellation, according to the applicants, were on the basis of some irrelevant and extraneous considerations and in utter disregard to the principles of natural justice. The applicants have further alleged that the decision to cancel their promotion with retrospective

effect.....

effect in consequence whereof the applicants had been reverted to their original post, was on the basis of some extraneous material. The action was also actuated by malafide exercise of power.

6. The applicants further state that the Government sanctioned the aforesaid six posts of IGP temporarily by Notification dated 6.5.1996. The aforesaid posts were created on the basis of the formal proposal sent by the Director General of Police (DGP for short), Assam. The applicants and other persons had been promoted on the basis of objective assessment such as the nature of duties and responsibilities attached to the posts in comparison to those attached to the cadre posts. According to the applicants the posts had been created as per the provisions of rule. It is also stated that the provisions of IPS (Fixation of Cadre Strength) Regulation, 1955, earmarks fortytwo number of posts in the rank of Superintendent of Police/Additional Superintendent of Police/Commandant for the Assam Cadre of IPS, out of which only thirtyfour officers were available. Of the thirtyfour officers nine officers had been posted against non-cadre posts. By pointing out this, the applicants have tried to show that there was no overutilisation of the ex cadre posts. On the other hand as many as thirty posts had been earmarked for Central Deputation in the Joint Cadre of Assam and Meghalaya, and against that only twentysix posts had been utilised. Saying that the applicants want to show that the State Government was fully competent to create the aforesaid six posts of IGP. The applicants also state that since the creation of the posts by the Government of Assam was valid there was nothing wrong in it. The applicants also state that the Government cancelled the Notifications dated 8.3.1996 by which the applicants and the other persons had been promoted. According to the applicants this had occasioned because of a new political party coming into power. The applicants further state that by then the applicants and the other promotees had

discharged.....

discharged their duties in their promotional posts for more than two months. The reversion order was passed without giving any opportunity of hearing and thus the State Government had violated the provisions of rules and the principles of natural justice. By a separate Notification No.HMA.224/96/Pt/6 dated 2.7.1996 cancelled the promotions of the applicants by giving retrospective effect, directing them to continue as DIG, which post they held prior to their promotion. The applicants filed representations dated 11.7.1996 to the Chief Secretary. Till the date of filing of the applications, to the knowledge of the applicants, no action had been taken by the authority.

7. The applicants also state about the creation of six ex cadre posts and appointment of six officers including them. They have also mentioned in their applications that this order of cancellation was passed solely on some extraneous considerations. The applicants, however, have not clearly stated what the extraneous considerations were. The applicants also defend the action of the earlier Government in creating the posts under proviso to Rule 4(2) of the Assam Police Service Cadre Rules. They have highlighted the fact that the action taken against them were absolutely malafide and cannot sustain in law. This, according to the applicants, was done by the present Government just to take revenge of their courageous activities in controlling insurgency and tackling the law and order problem in a firm way. It is further stated that the entire actions regarding cancellation of their appointment to the ex cadre posts of IGP was not only illegal and arbitrary, but were actuated by malafide intentions of some of the officers.

8. The respondents have also entered appearance in this case and the respondent Nos.1, 2 and 3 have filed written statements. In their written statements these respondents have disputed the claim

of the applicants. According to them the applications were not maintainable as the applicants had no right to the ex cadre posts of IGP. The respondents have further stated that the applicants were not qualified to be promoted to IGP, inasmuch as they did not complete the required number of years for promotion to the rank of IGP. Thus the appointment of the applicants to the post of IGP, was contrary to law and in violation of the guidelines of the Union Home Ministry. Besides, IPS of Assam and Meghalaya is a Joint Cadre. Therefore, in order to promote some members of the cadre, the Joint Cadre Authority ought to be consulted. However, this was not done in the instant cases. The respondents have also taken various legal grounds in the written statement to justify the action of the respondents in cancelling the order of promotion.

9. We have heard Mr B.K. Das, learned counsel for the applicant in O.A.No.236/96, and Mr N. Dutta, learned counsel for the applicant in O.A.No.261/96. We have also heard Mr P.G. Baruah, learned Advocate General, Assam, and also Mr S. Ali, learned Sr. C.G.S.C., appearing on behalf of the respondents in both the cases.

10. Mr B.K. Das, learned counsel for the applicant, A.K. Roy, in O.A.No.261/96, urged before us that the order of cancellation of the appointment of the applicant was bad in law on the ground that the order was passed on extraneous considerations and besides, the actions of the Government had been actuated by malafide intention. These actions were taken in unholy haste solely on a note submitted by the then Legal Remembrancer. While highlighting these point he had drawn our attention to the date which was immediately after assumption of power by the new Government. His further submissions were that such similar action had been taken against the applicant when this Government came to power in 1985. On the earlier occasion departmental proceedings had been initiated against this applicant on some vague and baseless charges. However, it had to be dropped without taking any action. The learned counsel

refutes.....

-7-

refutes the opinion of the Legal Remembrancer, which according to the counsel was the basis of the impugned order of cancellation. According to the learned counsel the order of cancellation was passed on three grounds, namely, (1) Proviso to Rule 4(2) of the IPS (Cadre) Rules 1954 read with IPS (Pay) Rules, 1954, had been violated before passing the order. As the said posts were created on the proposal of the DGP, according to the learned counsel, the Legal Remembrancer overlooked the principle of the concept of the cadre and ex cadre posts. The learned counsel had drawn our attention to the All India Service Manual at page 995 and IPS (Pay) Rules at page 873. By making such submission the learned counsel stressed that the Legal Remembrancer had failed to apply his mind properly and fairly while recommending review of the whole matter. The opinion of the Legal Remembrancer was misconceived and unsustainable inasmuch as the ex cadre posts had been created with the concurrence of the Finance Department.

11. The learned counsel also wanted to impress upon us by saying that even after furnishing such notes in records, the Government had recently appointed IGP in those ex cadre posts. The opinion of the Legal Remembrancer to the effect that the Joint Cadre Authority ought to have been consulted was also not sustainable inasmuch as there were no such rule. Even if such rules were there these could not be of a mandatory nature. The learned counsel further submitted that the report of the Legal Remembrancer was promptly accepted without proper application of mind. It was done in unholy haste. The learned counsel also submitted that the impugned notification had been passed in total disregard to the principles of natural justice. In this connection the learned counsel have placed reliance on catena of decisions. Relying on such decisions, the learned counsel submitted that even in ad hoc promotion the reversion was not valid if such reversion had not been based on any reasonable ground. The drastic steps of reversion taken by the

Government.....

Government was absolutely unknown in any administrative actions. There was no such precedence in Assam Police regarding ex cadre posts. The learned counsel further submitted that even the Legal Remembrancer had admitted that Rule 4(2) of the IPS (Cadre) Rules, 1954, empowered the State Government to add one or more posts for a period upto one year to the cadre. This showed that any number of posts could be created for that period. Under the said rule, according to the learned counsel, no restrictions had been imposed to the State Government with the only exception that if it had to last for more than one year, the Central Government's approval would be necessary. In the instant case the time limit was only one year and it had not exceeded. The learned counsel further submitted that the written statement filed by the respondents had clearly indicated that there had already been four excess posts and with the addition of the new promotees the excess comes to ten. The Government of India, while exercising its power under Rule 4(e) had not disapproved the excess so that the applicant had to be reverted. It was further highlighted that even assuming that there was over utilisation of the posts, in that case the reversion ought not to have been confined with the six persons only. But the Government, in its best wisdom, decided to revert only those who were appointed later without disturbing the other officers who had been appointed in excess of the quota. This, according to the learned counsel, was a clear violation of the equality clause of the Constitution.

12. Regarding the Joint Cadre Authority, the learned counsel also submitted that such consultation was not prevalent. In the past also the Government promoted without the approval of the Joint Cadre Authority. Regarding the guidelines the learned counsel submits that the sixteen years rule was never adhered to, and therefore, it became a professed norm of the Government.

13. Mr N. Dutta, learned counsel appearing on behalf of the applicant, T.P. Chakraborty, in O.A.No.236/96, submitted that there had not been any violation of the executive business as because the Home Secretary was not consulted. In that regard he referred to Rule 26(6) and Rule 32(A)(b). But the Chief Secretary had the power and the Chief Minister was also the Home Minister at that time. The learned counsel also submitted that there was violation of Rule 4(2) of IPS (Cadre) Rules and Rule 9 of IPS (Pay) Rules. Under the second proviso of Rule 4(2) of IPS (Cadre) Rules, 1954, State Government had the power to create ex cadre posts for a period not exceeding one year and therefore, the posts were created rightly. The learned counsel further submitted that certain guidelines of mandatory nature had been violated.

14. Mr Dutta while refuting the charge that in order to get promotion to the post of IGP a person is to remain as DIG for a particular period, submitted that this guideline was not mandatory. He also pointed out the decision of the Full Bench in Bhupinder Singh -vs- Union of India and others reported in 1991(16) ATC 104. As per the guideline one was required to serve for sixteen years but this was struck down in that case. The applicants had completed fourteen years. The learned counsel further submitted that the consultation of the Joint Cadre Authority was also not necessary as per Rule 11(A) of the Cadre Rules in respect of officers of the Assam Wing. He had also drawn our attention to the Schedule to the IPS (Fixation of Strength) Regulations, 1955, so far Assam and Meghalaya were concerned. In this connection he invited our attention to the written statements. According to him there had already been some excess ex cadre posts created before.....

before the six posts were created. Therefore, according to the learned counsel if some persons could be absorbed in ex cadre posts in excess then there should be no reason to cancel the present six ex cadre posts.

15. The learned counsel also submitted that the order was not reasonable. According to him the authority did not address itself to the relevant matter and in fact totally excluded the same and irrelevant and extraneous matters were taken into consideration. Therefore, the action of the respondents was illegal and arbitrary. He referred to a judgment of the Hon'ble Gauhati High Court, Subash Project and Marketing reported in 1994(2)GLR 183 and also to a judgment of the Apex Court, Dwarika Prasad Sahu -vs- State of Bihar, reported in AIR 1975 (SC) 134.

16. Mr P.G. Baruah, learned Advocate General, Assam, on the other hand, submitted that the action of the Government was just and proper because the Government noticed certain irregularities in creating the posts. The learned Advocate General also submitted that it was not a case of setting aside the appointment of the applicants, but the cancellation was for review of the orders of promotion of the applicants and other officers. The Government found that some mandatory provisions had not been complied with before creation of the said six ex cadre posts. The learned Advocate General went to the extent of saying that posts, in fact, were non existent at that time in the eye of law. He also submitted that there was no comparable or objective assessment at the time of passing the orders of promotion. He drew our attention to a circular issued by the Ministry of Home Affairs under No.MHA.6/9/63-AIS dated 9.2.1995. He had also invited our attention to the guidelines dated 29.12.1990 produced before us. In the present facts and circumstances of the cases there was no violation of the principles of natural

justice. In this connection he had drawn our attention to the decision of the Apex Court, State Bank of Patiala and others -vs- K. Sharma, reported in AIR (1996)SC 1669. He also invited our attention to another decision of the Apex Court, M. Venkateswarlu and others -v- Government of A.P. and others, reported in (1996)5 SCC 167. He had also drawn our attention to a portion of the records.

17. On the rival contentions of the learned counsel for the parties, now, the questions that fall for determination are as follows:

- i) Whether the impugned Notifications dated 29.6.1996 and 2.7.1996 can sustain in law.
- ii) Whether the action of the respondents and other officials of the Government were actuated by malafide intentions.

18. Point No.1

The relevant records have been placed before us. We have perused the same. From the records it appears that by Notification dated 8.3.1996 both the applicants, Shri T.P. Chakraborty and Shri A.K. Roy, were promoted to the rank of IGP in the pay scale of Rs.5900-7000 per month. The applicant Shri T.P. Chakraborty was posted as IGP Police Reorganisation, with headquarters at Guwahati with effect from the date of taking over of charge. The applicant Shri A.K. Roy was, similarly, posted as IGP Law and Order with headquarter at Guwahati, with effect from the date of taking over of charge. On 6.3.1996, Shri R. Das, the then Director General of Police put up a confidential note to the then Chief Secretary, Shri A. Bhattacharjya referring to his earlier note dated 2.2.1996 regarding creation of posts and upgradation of officers to the rank of IGP. This note was a modification of the earlier note. From the note it appears that till 6.3.1996 the aforesaid six posts had

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not yet been created. On 3.2.1996 the said Director General of Police, Shri R. Das, also wrote a confidential letter No.C.47/88/Vol.1/66 dated 3.2.1996 suggesting creation of a post of IGP and Additional Director General of Police (ADGP for short). On the subsequent day the then Chief Secretary put up a note before the Chief Minister stating that it was necessary to create some temporary ex cadre posts at the level of IGP pending the cadre review and occurrence of regular vacancies. In his note he stated as follows:

".....In giving effect to the proposal above, it would be necessary to create some temporary ex-cadre posts at the level of the IGP pending the cadre review and occurrence of regular vacancies. With the approval of CM, Personnel and Finance Departments would be moved to agree to the creation of these posts till 28.2.97 for the present."

On the next day, the note sheet further indicates, the Secretary (Personnel) agreed to the proposal in principle pending formalities to be completed. On the same day, i.e. 8.3.1996, a note was put up before the Secretary (Finance) and on receipt of the said note the Additional Secretary (Finance) informed that Finance department agreed as endorsed by the Chief Secretary keeping in view of the advice dated 8.3.1996 of the Personnel (A) Department. The record, however, does not show any further order and the order of appointment by Notification dated 8.3.1996 was issued. The record also does not disclose whether all the necessary formalities had been complied with. In all probability the necessary formalities had not been complied with in view of the fact that the note was put up on 7.3.1996 and the notification was issued on 8.3.1996. Meanwhile, there was a change in the

Ministry.....

Ministry and the Chief Minister of the new party, after coming into power, wanted to know about the legality in making the appointments and that too in such a hurry. The opinion of the Legal Remembrancer was also sought for. Later, on 12.6.1996 the Commissioner and Secretary, Home and Political Department, put up a note to the Additional Chief Secretary (who was in charge of Home and Political Departments). In the said note the Commissioner and Secretary, Home Department, intimated that six persons had been promoted to the rank of IGP on the initiation of the then Chief Secretary, Shri A. Bhattacharjya and DGP, Shri R. Das. In the note it was also mentioned that on 8.3.1996 the then Chief Secretary made some comments that some IGP promotions need to be done on that day itself. On that day itself, he also came to know that the Deputy Secretary had already issued orders for appointment. He felt that this was done just to favour the applicant, Shri A.K. Roy, but he could not prevent the irregularities. He also mentioned in his note that one officer, Shri Deshmukhya of 1980 batch who was above the applicant, Shri A.K. Roy, had not been considered for promotion and no reason had been recorded. He further stated that there was nothing on the record to show that the Personnel Department or the Finance Department considered the proposal for creation of posts, which according to him was in violation of Rule 9 of the IPS (Pay) Rules. The Commissioner also mentioned in his note that as per IPS (Pay) Rules ex cadre posts should

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not exceed the deputation quota of the cadre. In fact, the deputation quota had already been exceeded in creating ex cadre posts at various times. Therefore, according to him, creation of such posts without review was unwarranted. He suggested in his note that the opinion of the Legal Remembrancer should be sought for and the matter might be proceeded accordingly. He suggested that the opinion ought to be sought from the Legal Remembrancer on the following points:

- "(1) The procedure followed by the Chief Secretary to promoting these officers by opening a file in his own office.
- (2) Whether these promotions violate the Rules of creation of Ex-Cadre posts.
- (3) Whether consultation of Joint Cadre Authority was necessary as these promotions will have significant affect on the Cadre Management of Meghalaya wing of Assam-Meghalaya Cadre of IPS.
- (4) Whether this has violated any existing Rules of Executive Business as this file was not routed through the Secretary of the Deptt. at any point of time.
- (5) The very propriety of handling of this case by the Chief Executive of the Administration, the way he handled."

Yet another note was put up by the Commissioner and Secretary, Home and Political Departments, to the Chief Secretary stating, interalia, that a letter dated 5.6.1996 from the Ministry of Home Affairs was received regarding promotion of IPS officers in Assam. The Ministry of Home Affairs had informed that the promotion of IPS officers of the 1980 batch was in violation of the guidelines issued by them and wanted to know the reason from the Government for not following the guidelines issued by the Ministry of Home Affairs. Accordingly the Legal Remembrancer's opinion was sought for. In the note sheet we find the opinion of the Legal Remembrancer. In his opinion the

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Legal Remembrancer stated as follows:

".....the creation of six Ex Cadre posts of IGP's rank was proposed in violation of the second proviso to Rule 4(2) of the IPS (Cadre) Rules, 1954 read with Rule 9 of the IPS (Pay) Rules, 1954."

The Legal Remembrancer further opined that:

".....Such appointment by the State Govt. without approval of the Central Govt. violates the rules."

The Legal Remembrancer also stated as follows:

"Further, promotion of Assam Cadre Officers of 1980 batch of IPS, who have not completed the minimum stipulated years of service as prescribed under the guidelines issued by the Union Home Ministry, to the posts of IGP's rank in the instant case constitutes violation of the said guidelines, for which the Central Govt. have already called for an explanation from the Govt. of Assam vide Sl.15/c dated 05-06-96."

The Legal Remembrancer also opined that the Joint Cadre Authority ought to have been consulted. He further stated that the file dealing with the promotion of the six officers to the rank of IGP was not routed through the official head (Commissioner & Secretary, Home at the relevant time) of the administrative department (Home). According to the Legal Remembrancer this also violated the Assam Rules of Executive Business, 1968, particularly, the Rules 4, 6 and 55 thereof. He further stated that under Rule 4, the business of promoting the six Police Officers should have been transacted in the Home Department. Under Rule 6 the Commissioner and Secretary, Home Department, in his capacity as official head of the Administrative Department should have been allowed to deal with this matter, who was made responsible in the proper transaction of business in the Home Department

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under Rule 55. According to the Legal Remembrancer the whole process was completed in the absence of the Commissioner and Secretary. The Legal Remembrancer further stated that the Deputy Secretary of the Home Department for the first time came to know about this matter on 8.3.1996 when the then Chief Secretary directed him to issue orders. The Legal Remembrancer stated as follows:

".....The Deputy Secretary, Home just signed the draft Notification dated 08-03-96 at Sl. 8/c-9/c and issued the same promoting the six officers to the non-existent posts of IGP's rank in pursuance of the Chief Secretary's orders as aforesaid."

The Legal Remembrancer had also pointed out various irregularities and that it was also done in great hurry totally ignoring the formalities necessary.

19. The Legal Remembrancer's opinion was put up on 25.6.1996 and on receipt of the same on 29.6.1996 the Additional Chief Secretary suggested for cancellation of the Notification dated 8.3.1996 and accordingly the impugned orders were passed.

20. Mr B.K. Das, learned counsel for the applicant in O.A.No.236/96 and Mr N. Dutta, learned counsel for the applicant in O.A.No.261/96 submitted that this was done without affording any reasonable opportunity.

Mr Das very strenuously argued that the impugned notifications cancelling the promotion of the applicant was contrary to the rules and in utter violation of the principles of natural justice. According to him there was no violation of the proviso to Rule 4(2) of the rules. In fact the rules had been

violated.....

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violated earlier by promoting some officers of the IPS Cadre. Mr Dutta submitted that the IPS Cadre Rules, if it had to be adhered to, then it exceeded the limit long before the promotions given to the applicants alongwith four other officers. However, the Government instead of disturbing others simply cancelled the appointment of the applicants and four others by the impugned notifications.

21. The IPS (Cadre) Rules, 1954 (Cadre Rules for short) was made by the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951, after consultation with the Governments of the States concerned. Rule 4 of the said rules deals with the Cadre strength. Under the said rule the strength and composition of each cadre shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made it shall be as in force immediately before the commencement of these Rules. Rule 4(2) requires the Central Government to re-examine the strength and composition of each such Cadre at an interval of every three years, in consultation with the State Government or the State Governments concerned, and make such alterations as it deems necessary. However, as per the first proviso the Central Government, in spite of the rules, has power to alter the strength and composition of any cadre at any time. The second proviso to the said rules says that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or

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more posts carrying duties or responsibilities of a like nature to cadre posts. There is also a Government of India's decision issued under G.I.M.H.A. letter No.6/9/63-AIS (I) dated 9.2.1965. As per the said decision Rule 4 (2) of the Cadre Rules, Government decision is as follows:

"Both these provisions are independent of each other and are not inter-connected. The second proviso to Rule 4(2) of the Cadre Rules empowers the State Government to make temporary addition to the Cadre for the period not exceeding the limit indicated therein. Rule 9 of the Pay Rules, on the other hand, provides for the regulation of pay of cadre officers appointed to non-cadre (ex cadre) posts. The State Governments are competent to appoint cadre officers to such posts under their control to the extent that the appointments should not exceed the number of posts in the deputation reserve of the State cadre. The non-cadre (ex-cadre) posts to which cadre officers are appointed would not result in the posts becoming temporary additions to the cadre within the scope of the second proviso to Rule 4(2) of the Cadre Rules."

From this it is very clear that the State Government may, in case of necessity for a period not exceeding the limit indicated, make temporary additions to the cadre. However, the State Government has power to make additions which do not exceed the number of posts in the deputation reserve of the State Cadre. This itself is clear that though the State Government for very temporary period is entitled to add one or more posts for a period not exceeding one year by itself and with the concurrence of the Central Government for two years; it must be limited to the extent of the deputation reserve. In the present case the deputation reserves were two as admitted by the learned counsel for the parties.

22. Now, admittedly, the applicants and the four others had been promoted to the rank of IGP in contravention of the rules. Besides, from the record we do not find that the proper procedure had been followed. As per the procedure the creation of posts ought to have been made in a manner prescribed, i.e. the matter ought to have been routed through the Commissioner and Secretary, Home Department.

23. It was argued that the Home Department was under the then Chief Minister who was also the Home Minister. Besides, as it was routed through the Chief Secretary who was in overall charge of all the Departments of the Government, and therefore, bypassing the Home Secretary would not make any difference. We cannot appreciate the argument of the learned counsel in this regard. It is true that at that material time the Home Department was under the Chief Minister and the Chief Secretary was in overall charge of the departments, but that does not mean that in certain cases the concerned Secretary should be bypassed. In that case it would be an arbitrary action inasmuch as in case of necessity if the Government wants to favour some officers and that too at very high level, may ignore the concerned Secretary. In our view the procedure prescribed that it should be routed through the Secretary of the particular department should be followed, because that particular department normally will know the exact position and also the problems of the department. Therefore, if it is routed through the particular department, it would be possible for the concerned Secretary to point.....

point out if there are certain lacunae. This was not done in the present case. We feel that the action of the Government in this matter is contrary to the rules, and not fair and reasonable, and therefore, it cannot sustain. The Minister normally acts on the advice of the Secretary of the concerned department. Merely because the Chief Minister was also a Home Minister at the material time and the Home Department was under him that may not improve the position. When a specific procedure is prescribed by the rule, that procedure should be followed or not at all.

24. The next ground taken by the learned counsel for the applicants, is that the applicants alongwith four others having been appointed by the competent authority and they having discharged their duties as such could not be reverted to the lower rank without affording reasonable opportunity of hearing, that is by following the principles of natural justice. To counter this the learned Advocate General, Assam, submitted that the principles of natural justice had no place here in the present facts and circumstances of the cases, inasmuch as the applicants had no right to the said posts.

25. Principles of natural justice have an important place in the administrative law. They have been defined to mean fair play in action. These principles constitute the basic element of fair hearing. An order of an authority exercising judicial or quasi judicial function passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. But while applying the principles of natural justice, it must be borne in mind

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that these principles are not immutable but flexible and cannot be put in a strait jacket. In the absence of contrary indication in statute, fairness in action is an implied requirement to protect arbitrary action, more so, where statute confers wide power with discretion. This concept is also applicable in administrative action. However, the concept of natural justice is not a static one, it is expanding every day. The doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law to ensure the rule of law and to prevent failure of justice. In Asstt. Excise Commissioner -vs- Issac Peter, reported in (1994) 4 SCC 104, the Apex Court observed that just as principles of natural justice ensure fair decision, where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by the statutory provisions, i.e. where it is a statutory contract - or rather more so. Again in Superintendent of Police (C.B.I.) -vs- Deepak Chowdhury, reported in (1995) 6 SCC 225, the Apex Court observed that in certain cases which are purely of administrative nature the principles of natural justice are not required to be followed.

26. In case of a policy decision of Government the principles of natural justice need not be followed. Besides, if the State finds that certain actions had been taken earlier in complete violation of the procedure prescribed the State Government may take up a decision to review the order passed earlier and in such

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cases also principles of natural justice need not be followed.

27. In Delhi Transport Corporation -vs- D.T.C. Mazdoor Congress, reported in 1991(1) Suppl. SCC 600 or A.I.R. 1991 (SC) 101, the Apex Court observed thus:

"The principle of natural justice or holding of an enquiry is neither a universal principle of justice nor inflexible dogma. The principles of natural justice are not incapable of exclusion in a given situation. For example, Article 311(2) of the Constitution which essentially embodies the concept of natural justice, itself contemplates that there may be situations which warrant or permit the non-applicability of the principles underlying Article 311(2) of the Constitution. Reference may be made to the second proviso to Article 311 of the Constitution. This Court has also recognised that the rule of audi alteram partem can be excluded where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its application and even warrants its exclusion. If importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands, natural justice could be avoided."

Reiterating the decision in Tulsi Ram Patel's case (AIR 1985 SC 1416) the Apex Court further observed as follows:

".....This Court in Tulsi Ram Patel's case (AIR 1985 SC 1416) (Supra) had in terms ruled that not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. But the principles of natural justice must not be displaced save in exceptional cases....."

28. It is also well established principle of law that the requirement of natural justice should be tailored to safeguard the public interest which must always outweigh every lesser interest. Subject to the requirement of public.....

public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act. (See Jamiaat-E-Islami Hind -vs- Union of India, (1995) 1 SCC 428). The normal rule about the applicability of the principle of natural justice is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course, of course, is not permissible where the rule excludes, either expressly or by necessary intendment, the application of the principles of natural justice but in that event validity of rule may fall for consideration.

29. It is now well established that the principle of natural justice in some appropriate cases may be excluded. In Maneka Gandhi -vs- Union of India, reported in AIR 1978 SC 597, it was held that if the law prescribing a procedure has to stand the test of one or the other fundamental rights conferred under Article 19 of the Constitution it must fulfil the test of Article 14 whereunder the principle of reasonableness is an essential element of equality and non-arbitrariness. The procedure must be right and fair and just and not arbitrary, fanciful or oppressive. Such exclusion is also seen in proviso 2 to Article 311(2) of the Constitution. The requirement of reasonable opportunity of being heard is guaranteed to a civil servant under Article 311(2). This requirement can also be dispensed with as incorporated in the second proviso to Article 311(2). Clause (2) of Article 311 is merely an express statement of.....

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of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 of the Constitution as a result of the interpretation placed upon it by the decisions of the Supreme Court. However, Justice Chinnappa Reddy in his dissenting judgment in Swadeshi Cotton Mills -vs- Union of India, reported in AIR 1981 (SC) 818 had summarised that the implications of natural justice being presumptive, it may be excluded by express words of a statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. In his dissenting judgment in Swadeshi Cotton Mills (Supra), Justice Chinnappa Reddy said thus:

".....The argument of Shri Nariman would vest in the Government a power to decide from case to case the extent of opportunity to be given in each individual case and, as a corollary, a corresponding right in the aggrieved party to claim that the opportunity provided was not enough. Such a procedure may be possible, practicable and desirable in situations where there is no statutory provision enabling the decision making authority to review or reconsider its decision. Where, there is a provision in the statute itself for revocation of the order by the very authority making the decision, it appears to us to be unnecessary to insist upon a pre-decisional observance of natural justice. The question must be considered by regard to the terms of the statute and by an examination, on the terms of the statute, whether it is possible, practicable and desirable to observe pre-decisional natural justice and whether a post decisional review or reconsideration as provided by the statute itself is not a sufficient substitute."

30. In the present case the Government decided to review the policy of the earlier Government and for that purpose the present Government considered as to whether the ex cadre posts could be created beyond the prescribed limit. No right accrues to the applicants in the ex cadre

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posts. The present Government having noticed that the appointments had been made contrary to the rules and for that purpose the Government wanted to review the legality and propriety in promoting the applicants and four others to the rank of IGP without following the procedure prescribed. This action cannot be said to be cancellation of the appointments as such on any misconduct or otherwise. A policy was adopted to see by the Government that illegality was committed as stated above. Therefore, in our opinion for taking up a policy decision to review the entire matter requirement of principles of natural justice need not be complied with. At the time of review if the posts could be created legally and if the applicants were also entitled, surely, they would have got their jobs. Therefore, we do not agree with the learned counsel appearing on behalf of the applicants that the impugned notifications were violative of the principles of natural justice.

Point No.2:

31. In Original Application No.261/96 the applicant, Shri A.K. Roy, has made severe allegations of malafide. According to him the entire action was vitiated by malafide intention. Therefore, according to him, the impugned orders of cancellation of his appointment is liable to be struck down. Similar allegations have also been made by the other applicant, Shri T.P. Chakraborty (applicant in Original Application No.236/96).

32. The term 'malafide' means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done

honestly.....

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honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of malafide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. Malafides are essentially questions of fact and they have not only to be alleged, but has also to be supported by the relevant materials. The allegations of malafide must be proved. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken malafide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand. In Sardar Partap Singh -vs- State of Punjab reported in AIR 1964 (SC) 72, the Apex Court observed as follows:

".....In the case before us it is common ground that it was the Chief Minister who was incharge of the Health Department in which the appellant was employed and it was therefore the Chief Minister as the Minister in charge of that portfolio who initiated these proceedings, though the formal orders of the ministry were issued by the Secretaries et., of the Department in the name of the Governor. For the purposes of the present controversy the functionary who took action and on whose instructions, the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by mala fides in taking that action.....

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action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted that he would raise a legal contention, that even if mala fides were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that mala fides was not made out by the evidence on record. Such an argument, if right, would mean that even fraud or corruption leaving aside mala fides, would not be examinable by a Court and would not vitiate administrative orders....."

Again in Express Newspapers Pvt. Ltd. and others -vs- Union of India and others, reported in AIR 1986 SC 872, The Apex Court observed thus:

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy, a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab, (1964)4 SCR 733: (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, 1904 AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred.'"

In the same judgment, the Apex Court further held:

".....For purposes of the present controversy, the functionary who took action and presumably on whose instructions

the impugned notices were issued was no one than the Lt. Governor of Delhi who, according to learned counsel for respondent 1, could not usurp the powers and functions of the Union of India in relation to the property of the Union and therefore had no functions in relation to the lease in question. It seems that the Minister for Works & Housing was taking his orders from respondent No.2. The dominant purpose which actuated respondent No.2 in initiating governmental action was not so much for implementation of the provisions of the Master Plan or the Zonal Development Plans framed under the Delhi Development Act or the observance of the relevant Municipal Bye-laws under the Delhi Municipal Corporation Act, but to use these provisions for an 'alien' purpose and in bad faith i.e. for demolition of the Express Buildings with a mark of retribution or political vendetta for the role of the Indian Express during the period of Emergency and thereafter and thereby to bring about closure of the Indian Express. If the Act was in excess of the power granted to the Lt. Governor or was an abuse of misuse of power, the matter is capable of interference by the Court."

The Supreme Court in State of Bihar -vs- P.P. P.P. Sharma, reported in 1992 Supp (1) SCC 222, held that the administrative authority has wide discretion, but actions when taken malafide gets vitiated. It was further held as follows:

".....Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act de hors judicial flavour does not entail compliance with the rule against interest and likelihood of bias. The administrative authority is free to act in its discretion if he deems necessary or if he or it is satisfied of the immediacy of official action on his or its part. His responsibility lies only to the superiors and the Government. The power to act in discretion is not power to act ad-arbitrarium. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it brings the authority concerned in conflict with law. When the power is exercised mala fide it undoubtedly.....

R2/

undoubtedly gets vitiated by colourable exercise of power.

"Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused....."

32. Mr B.K. Das, learned counsel for the applicant in O.A.No.261/96, had also strenuously argued on this point. This argument was also adopted by Mr N. Dutta, learned counsel for the applicant in O.A.No.236/96. In para 6.3 of the original application No.261/96, the applicant, Shri A.K. Roy, has given details whereby he wants to show that the entire action of cancellation of the promotion was vitiated by malafide intention. In the said paragraph he has stated that because of his ability, the Government posted him in the most difficult districts and he discharged his duties, which action dissatisfied some political and student leaders who found it difficult to achieve their narrow political aims and these leaders came out openly through press and postering and by other means including rallies demanding action against him and these people being dissatisfied with his works took advantage of the change of Government and influenced the Government machinery to harass the applicant and in doing so they influenced the Government machinery to initiate a departmental proceeding on some false charges which ultimately failed. He used to receive anonymous phone calls threatening to teach him a good lesson alleging that he went against their personal interest. He also attacked the then Legal Remembrancer. According to him the Legal Remembrancer gave his report against the applicant under the influence of the Government as he was

ambitious.....

ambitious of his future prospects. The proposal for review made by the Legal Remembrancer was approved by the Additional Chief Secretary on the same day and immediately he passed the order of cancellation of his appointment.

33. From the above averments made by the applicant, Shri A.K. Roy, it only appears that he was a capable officer and he dealt with the law and order problems efficiently which antagonised some of the members of the political party and also student organisations and because of this with the change of power they took the advantage by influencing the new Government. These averments, in our opinion, are not enough to come to a conclusion that the order of cancellation of his promotion was actuated by malafide intention of any oblique purpose. As held by the Apex Court the allegations of malafide action has to be proved. These vague and bald averments made by the applicant, in our opinion, cannot indicate that the order of cancellation was on the basis of malafide intention. This applicant had also made an averment that the then Legal Remembrancer gave his opinion without any basis with the sole idea of his future prospects in the service. There is nothing on the record to show that such report was given for that purpose. We have looked into the report. The report of the Legal Remembrancer indicates that he had gone through the various provisions of the relevant rules and the surrounding circumstances. It is really unfortunate that the applicant had made such aspersions to a high official of the Government without any basis or without making any attempt to prove the allegations. The applicant has not made those officers, including the Legal Remembrancer parties to the case. Besides, the applicant had made the allegations of malafide without any proof. In our opinion this ought not to have been done by the applicant who is placed in a very high position

R2/

position of a disciplined department. We hope and trust, in future, the applicant may not make such aspersions to another high officer without there being any basis. When we asked Mr B.K. Das, learned counsel for the applicant, Shri A.K. Roy, about the basis of the averments that the then Legal Remembrancer submitted the report with the sole idea for his future prospects in his service career, the learned counsel for the applicant could not show anything in this regard. The applicant in O.A.No.236/96, Shri T.P. Chakraborty, however, did not make such strong allegations against the officers. At any rate, on going through the averments made on the point of malafide we find that there is not sufficient materials before us to come to a conclusion that the entire action was vitiated by malafide intention. Therefore, the applicants fail on this ground also.

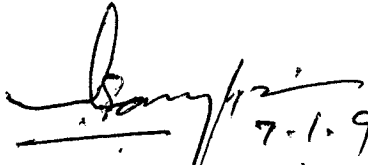
34. Taking into consideration the entire facts as stated above we are of the opinion that the Government thought that the promotions given to the six officers were not in accordance with the provision of rules. According to the Government the creation of the ex cadre posts was beyond the limit. It is true as submitted by the learned counsel for the applicants and not opposed by the learned Advocate General, Assam, that the limit had already exceeded prior to the promotions given to the applicants and four others. That, however, does not mean that such illegal procedure should be allowed to continue. At least this was the view of the present Government. This may be taken as a policy decision to which this Tribunal may not interfere with. The learned Advocate General had submitted.....

B/


submitted that the Government only wanted to review the entire actions for which the impugned orders had been passed. On the face of it and on the basis of the reports given by the Legal Remembrancer, prima facie, the Government was satisfied that the creation of the ex cadre posts was not as per rule and that is why the impugned orders had been passed. The learned Advocate General further submitted that it was nothing but a review of the entire matter. Therefore, we do not find anything wrong in it. If on review the Government finds that the creation of such posts is possible as per rule, surely, the case of the applicants will be considered. As submitted by the applicants they are efficient, honest and capable officers, if that be so, there is no impediment for them to occupy the promotional posts.

35. In view of the above we do not find any merit in the applications. Accordingly we dismiss both the applications. However, the respondents may review the entire matter regarding promotion of the applicants by creating the ex cadre posts. If on review it is found that the said ex cadre posts could be created as per rule, the respondents shall consider the case of the applicants and if they are found suitable for promotion they shall be given promotion strictly in accordance with rules. While reviewing the matter by the respondents they shall not be guided by any of our observations made in the order.

36. In the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLIYNE)
MEMBER (A)

7.1.98


(D. N. BARUAH)
VICE-CHAIRMAN

DISTRICT:KAMRUP.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH

O.A. NO. 236 OF 1996.

Sri T.P.Chakravarty.

-VERSUS-

The State of Assam & Ors.

RESPONDENTS.

SUBJECT MATTER :-

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Filed by -
[Signature]
Advocate.

To Serve copy in Respondent 4.
(to BSC) 9/10/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI

BENCH

O.A. NO. 236 OF 1996.

BETWEEN

1. Tara Prasad Chakravarty (IPS)

Inspector General of Police (R),
Assam (now reverted) presently
residing in Ulubari, Guwahati-7,
Assam.

.... APPLICANT.

-AND-

1. State of Assam.

*represented by the Chief-Secretary
Govt of Assam.*

2. Commissioner & Secretary

to the Govt. of Assam Home
and Political Department,
Dispur.

3. Director General & Inspector

General of Police, Assam,
Ulubari, Guwahati.

4. Secretary to the Govt. of

India, Ministry of Home
Affairs, New Delhi.

5. ~~State D.P. Misra, D.A.O.~~

Contd...2.

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Filed by applicant,
through D.K. DAS
Advocate. 9/10/96

2.

Additional Chief Secretary
to the Govt. of Assam,
Dispur.

...RESPONDENTS.

3. DETAILS OF APPLICATION

Particulars of the order against which the application is made :-

- i) Notification No. HMA.224/96/16(e) dtd. 29.6.96 issued by the Deputy Secretary to the Govt. of Assam, Home (A) Department, Dispur.
- ii) Notification No. HMA.22/96/Pt/6(e) dated 2.7.96 issued by the Secretary to the Govt. of Assam, home etc. Department, Dispur.

4. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the order impugned in this case is within the jurisdiction of the Hon'ble Tribunal.

5. LIMITATION

The applicant declares that there is no remedy available to the applicant under the service rules for redressal of his grievances and as such the

Contd...3.

bar provided under Section 21 of the Administrative Tribunal Act, 1985 is not applicable in the instant case.

6. FACTS OF THE CASE

1. That the applicant who was working as Deputy Inspector of Police (Reorganisation) Assam was by order dtd. 8.3.96 was promoted to the rank of Inspector General of Police, Reorganisation, Assam with Headquarter at Guwahati.

2. That the applicant has an unblemished service career and his proficiency in tackling law and order and curbing insurgency brought him various distinctions including the Indian Police Medal for meritorious service on the occasion of Republic Day, 1987 Governor's Gold Medal for outstanding service in 1991 and President Police Medal for Distinguished service on the occasion of Independence 1994.

3. That to combat the recent growth of violent activities and to arrest the increasing rate of drug trafficking and other unlawful activities including insurgency through out the State of Assam, the Govt. of Assam in exercise of its own power and under the Second proviso to Rule 4(2) of the I.P.S. (Cadre) Rules 1954, created the following 6 (six) ex-cadre posts in the rank of Inspector General of

Contd...4.

4.

Police for a period upto 28.2.97 with effect from the date of entertainment in the scale of pay of Rs. 5900-6700 vide Govt. notification No. HMA. 175/96/4 dated 6.5.96.

1. Director Prosecution - 1.
2. I.G.P. (O.S.D.) - 1.
3. I.G.P. (Re-Organisation) - 1.
4. I.P.G. (Western Range) - 1.
5. I.G.P. (Eastern Range) - 1.
6. I.G.P. (Law and Order) - 1.

- 6.

Copy of the aforesaid Govt. notification dated 6.5.96 is annexed as Annexure A to this application.

4. That the applicant along with the following 5 (five) D.I.G. of Police were promoted to the rank of I.G.P. on being selected on the basis of merit and with due regard to seniority. They were posted in the following places as shown against their names by six Govt. notifications vide No.CS (Con) 1/96/8 to 8 (f) dated 8.3.96.

1. Sri A.K.Sahu I.P.S. Director , Prosecution

Contd...5.

5.

2. Sri Subhash Goswami IPS Officer on Special Duty.

in the rank of I.G.P.

3. Sri D.K.Pathak, IPS I.G.P. Eastern Range.

4. Sri R.Kumar, IPS. I.G.P. Western Range.

5. Sri T.P.Chakravarty, IPS I.G.P. i/c Reorganisation

6. Sri A.K.Roy, IPS I.G.P. Law and other in-

Applicant charge, Central Western
Range, Guwahati.

A copy of the Govt.notification dated
8.3.96 and joining report is annexed as
Annexure - B and B1 respectively.

5. That on being appointed on promotion as
I.G.P. (Re-Organisation) Assam, Guwahati, the appli-
cant joined the said post on 8.3.96 and worked as
such till 19.5.96 when by notification vide Govt.
Memo No. HMA.280/94/28 at 20th May 1996 was trans-
ferred and postd as Inspector General of Police in
charge of Central Western Range, Assam and was paid
his regular pay as envisaged under the rules.

A copy of the notificatin dtd. 20.5.96
and payslip is annexed as Annexure- C
and D respectively.

6. That the applicant states that the six
posts of I.G.P. sanctioned temporarily by the Govt.
of Assam vide its notification dated 6.5.96 were
created on the basis of a formal proposal sent by the
D.G.P., Assam and after an objective assessment of

4.2

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the nature of the duties and responsibilities attached to the post in comparison to those attached to the cadre posts and the same are within the limits provided under the Indian Police Service (Fixation of cadre strength) Regulation, 1955 and the Indian Police Service (Cadre) Rules, 1954. It is pertinent to mention here that the I.P.S. (Fixation of Cadre Strength) Regulation, 1955 earmarks 42 number of posts in the rank of S.P. /Addl. S.P./Commandant etc. for the Assam Cadre of I.P.S. and out of which only 34 officers are available and out of those 34 posts 9 officers are posted against the non-cadre posts like Foreigners Registration Officer (FRRO) Commandants of the A.P.T.F., Superintendents of Police Border, Superintendent of Police of the newly created districts etc. and therefore there was no over utilisation of the ex-cadre posts. On the otherhand, there are 30 posts earmarked for central deputation in the joint cadre of Assam Meghalaya and against that only 26 posts have been utilised and therefore it was well within the competence of the State Govt. to create the 6 (six) posts of I.G.P. which were done validly taking the public interest into consideration. The posts so created are still valid and in existence and not cancelled and/or modified by the Govt. The appointment of the applicant in the newly post of I.G.P. Law and Order i/c CWR, was also done on the basis of merit with due regard to seniority of the applicant vis-a-vis others in the Civil list prepared by the Govt.

Contd...7.

7.

The applicant craves leave of the Hon'ble Tribunal to produce details of the posts held by the Cadre officers of the cadre at the time of hearing of application.

7. That in the meantime the new Govt. led by the A.G.P. came into power in Dispur in May 1996 after the Assembly Election in April 96 and suddenly, without any rhyme or reason and without giving any notice to the applicant, the Govt. cancelled the notification dated 8.3.96 (Annexure-B) by which the applicant was promoted to the rank of I.G.P., vide notification No.HMA. 224/96/16 (e) dated 29.6.96 though he worked in that capacity for more than two months, thereby reverting ^{unconstitutionally} and reducing the applicant to the rank of D.I.G. of Police in violation of the principles of natural justice.

A copy of the Govt. notification dated 29.6.96 is annexed as Annexure-E to this application.

8. That thereafter the Govt. by separate notification No.HMA.224/96/Pt/6 dated 2.7.96 passed an illegal order by which the order of cancellation of his promotion dated 29.6.96 (Annexure-E) has been given retrospective effect by continuing him as D.I.G.R) Assam, which he held prior to his promotion.

Contd...8.

8.

A copy of the said notification dtd.
2.7.96 is annexed as Annexure F.

8A. That the applicant being aggrieved by the aforesaid orders, filed a representation to the Chief Secretary on 11.7.96 but till date no action has been taken on the said representation.

A copy of the representation dtd.
11.7.96 is also annexed as Annexure -14
to this application.

9. That the applicant states that the order of the Govt. dated 29.6.96 cancelling his promotion to the rank of I.G.P. after he worked in the said post for 2 months 5 days is absolutely illegal and based on extraneous considerations. The orders by all implications are punitive in nature and since it has also a Civil consequence, the Govt. ought to have given prior notice before issuing the order.

10. That the applicant states that the posts created by the Govt. are also ex-cadre posts and the

Contd...9.

5-nd

second proviso to Rule 4(2) of the Indian Police Service (Cadre) Rules empowers the State Govt. to add for a period not exceeding one year and with the approval of the Central Govt. for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties and responsibilities of a likenature to cadre posts. The action of the Respondent Govt. in cancelling a valid order of promotion is not permissible in law in as much as the applicant having joined in the promoted post of I.G.P. a legal, subsisting and enforceable right accrued in favor of the applicant and the said could not be cancelled without following the procedure established by law, as has been done in the instant case and hence impugned cancellation order dtd. 29.6.96 has been passed in a malafide, perverse and arbitrary manner and hence is liable to be set aside and quashed.

GROUND S OF APPEAL

(a) For that impugned order dtd. 29.6.96 is bad in law as well as in fact inasmuch as the applicant was promoted to the rank of I.G.P. against substantive vacancy under the relevant rules in force and was also regularly being paid his salary and was all along enjoying all the service benefits attached

Contd...10.

to such post, the subsequent cancellation order passed by the Respondent Govt. is violative of Article 311 of the Constitution of India and hence the same is liable to be set aside and quashed.

(b) For that the impugned order dtd. 29.6.96 has deprived, the appellant of his rightful promotion and the same has been passed in a most arbitrary, unfair, unreasonable and capricious manner and is shocking to Judicial Conscience and the rights guaranteed to the appellant Under Article 14 and 16, 21 and 311 of the Constitution of India have been blatantly violated.

(c) For that the impugned order dtd. 29.6.96 has been passed without taking into account the relevant facts and in fact has been passed most mechanically on the basis of irrelevant and extraneous consideration and as such, the said order of cancellation reflects malice in law and can be justified by any reason other than relevant and bonafides. There has been a colourable exercise of powers for collateral purpose.

(d) For that the applicant having joined the post of I.G.P. and worked in the said post for more than two months pursuant to his appointment after creation of the said post, the Govt. could not have passed the impugned order dated 29.6.96 without first

giving him a prior notice violating the principle of natural justice and as such the same are not sustainable in law and liable to be set aside.

(e) For that the Govt. has no lawful authority to prejudicially affect the rights of the applicant to hold the post of I.G.P. retrospectively by a mere executive fiat otherwise than by his consent, more so when no provision of law has authorised the Govt. to do so and as such cancellation of the applicant's promotion by the impugned order dated 29.6.96 the post in which he has already accrued a right and enjoyed the benefit thereon, are not sustainable in law and as such liable to be set aside and quashed.

(f) For that the settled position of law being, when any administrative order is likely to entail civil consequences or otherwise affects the right of citizen, it is necessary to observe principle of natural justice before passing such an order and as the same is violated in the instant case the impugned orders dated 29.6.96 and 2.7.96 cannot sustain.

(g) For that the cancellation of the order of promotion was not permissible in law for the reason that upon joining of the applicant pursuant to the promotion, that order had worked out and having thus spent itself, was no more available to be cancelled.

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(h) For that appointment of the applicant is guided by the All India Service Act, 1951 and the rules and regulation framed thereunder and no rule or regulation empowers the State Govt. to cancel the appointment to the post of I.G.P. so made and as such the impugned orders have been passed in excess of its jurisdiction.

(i) For that the decision arrived at, as the records would reveal, to revert the applicant to the rank of D.I.G., from I.G.P. is a ^{perverted} ~~perported~~ decision being passed on consideration of extraneous materials and in malafide and arbitrary exercise of power and as such the impugned orders following the said decision of the Govt. being no decision in the eye of law is not sustainable.

(j) For that the applicant has a legal, subsisting and enforceable right which has been violated by the Govt. and as such the impugned order cannot stand and liable to be set aside.

8. DETAILS OF THE REMEDIES EXHAUSTED

The applicant declares that he has no remedy available to him under the rules regulation framed under the All India Service Act, 1951 or any other rule of the Govt. and the remedy in filing the instant application u/s. 19 of the Administrative

Contd...13.

Tribunal Act is the only effective and efficacious remedy available to the applicant.

9. MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT.

The applicant declares that he has not filed any other application, writ or suit regarding the grievances in respect of which the application is made before the Tribunal.

10. RELIEFS SOUGHT

Under the facts and circumstances stated above, the applicant prays that the Hon'ble Tribunal may be pleased to -

- i) to admit the application, issue a Rule call for therecords.
- ii) after hearing the parties and perusal of records set aside/quash the impugned notification dated 29.6.96 & 2.7.96 Annexure-E and F.
- iii) direct the respondents to allow the applicant to continue in the post of I.G.P. in which he was working.
- iv) grant the cost of the application and/or any other reliefs to which the

Contd...14.

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14.

applicant may be entitled under the facts and circumstances of the case.

11. INTERIM ORDER PRAYED

Pending final decision of the application, the applicant seeks issue of the following interim order:-

i) to stay the operation of the impugned notification dated 29.6.96 (Annexure-E) and dated 2.7.96 (Annexure-F).

2) to direct the respondents to allow the applicant to join in the post of I.G.P.

12. PARTICULARS OF THE I.P.O.

1. I.P.O.No. 444693
2. Date of Issue 3-10-96
3. Issuing Post Office. GPO, Gandhinagar
4. Payable at ————

13. LISTS OF ENCLOSURES

1. I.P. No.
2. Other documents detailed in the Index.

1. 2,

VERIFICATION

I, Sri Tara Prasad Chakravarty, I.P.S. aged about 57 years, son of Late Srinath Chakravarty, presently resided at Ulubari, Guwahati-7, Assam do hereby verify and state that the statements made in paragraphs

are true to my knowledge and those made in paragraphs

17011 are true to my information derived from record and I have not suppressed any material facts.

And I sign this verification on this 9th day of October, at Guwahati.

Tara Prasad Chakravarty
SIGNATURE.

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

No. H.A. 179/96/4.

Dated Dispur, the 6th May/1996.

From : Shri D. K. Burkayantha,
Under Secy. to the Govt. of Assam,
Home (A) Department.

To : The Accountant General, Assam,
Shillong (Meghalaya).

Sub : CREATION OF POSTS OF I.G.P.

Sir,

I am directed to convey the sanction of the Governor of Assam to the creation of the following 6 (six) Nos of ex-cadre posts in the rank of I.G.P. for a period upto 29-2-97 w.e.f. - the date of commencement in the scale of pay Rs. 5900-6700/-plus other allowances as admissible.

1. Director, Prosecution - - - 1 (One)
2. I.G.P. (Officer-on-Spl. Duty) - - - - - 1 (One)
3. I.G.P. (Reorganisation) - - 1 (One)
4. I.G.P. (Western Range) - - - 1 (One)
5. I.G.P. (Eastern Range) - - - 1 (One)
6. I.G.P. (Law & Order) - - - 1 (One)

The expenditure is debitable to the Head of Account - 2055-Police-001-Direction & Administration-(a) H.O.-I-Salaries-Non-plan (General) in respect of the posts from Sl. No. 1-3 and "2055-Police-001-Direction & Administration (b) Police Range-I-Salaries-Non-plan (General)" in respect of the posts No 4 to 6 respectively in the budget for the year 1996-97.

This sanction is issued with the concurrence of Finance (C-11) Deptt. conveyed vide their U/O No. 1184/96, dtd. 4-5-96,

Yours faithfully,

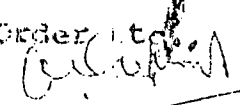
sd /

Under Secy. to the Govt. of Assam,
Home (A) Department.

Memo No. H.A. 179/96/4-A, Dated Dispur, the 6th May/1996.

Copy to : 1) The Director General & Inspector General of Police, Assam, Ulubari, Gauhati-7.

2) The Under Secy. to the Govt. of Assam, Finance (C-11) Deptt., Dispur for information with reference to the U/O cited above.

By Order, 

Under Secy. to the Govt. of Assam,
Home (A) Department.

Memo No. H.A. 179/96/4-B, Dated Dispur, the 6th May/1996.

Copy to : The Accountant General, Assam, Shillong (Meghalaya).

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 8th March, 1996.

No. CS(Con).1/96/8 : Shri A.K. Sahu, IPS (RR-75), Deputy

Inspector General of Police (TAP), Dergaon is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-5700/- P.M. and posted as Director, Prosecution with Hq. at Guwahati with effect from the date of taking over charge.

No. CS(Con). 1/96/8(a) : Shri Subash Goswami, IPS (RR-77), Deputy Inspector General of Police (B), Assam is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/-P.M. and posted as Officer-On-Special Duty in the office of the Director General of Police with effect from the date of taking over charge.

No. CS(Con).1/96/8(b) : Shri D.K. Pathak, IPS (RR-79), Deputy Inspector General of Police (ER), Jorhat is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/-P.M. and posted as Inspector General of Police Incharge of Eastern Range with Hq. at Jorhat with effect from the date of taking over charge.

No. CS(Con).1/96/8(c) : Shri R. Kumar, IPS (RR-80), Deputy Inspector General of Police (SR), Silchar is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/- P.M. and posted as Inspector General of Police in over all charge of the Western Range ^{and} of the B.A.C. area with Hq. at Kokrajhar with effect from the date of taking over charge.

Contd...2/-

NO. (Con).1/96/8(d) : Shri T.P. Chakrabarty, IPS (SPS-80),

60

Deputy Inspector General of Police (R), Assam is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/- P.M. and posted as Inspector General of Police, Incharge of Police Reorganisation with Hq. at Guwahati with effect from the date of taking over charge.

NO. (Con).1/96/8(e) : Shri A.K. Roy, IPS (SPS-80), Deputy

Inspector General of Police (CWR), Assam is promoted to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/- P.M. and posted as Inspector General of Police, Law and Order with Hq. at Guwahati with effect from the date of taking over charge. He will also remain in charge of the Central Western Range in addition to his own duties.

NO. (Con).1/96/8(f) : In the interest of public service,

Shri W.Ao, IPS (RR-82), Deputy Inspector General of Police (WR), Kokrajhar is transferred and posted as Deputy Inspector General of Police (SR), Silchar with effect from the date of taking over charge, vice Shri R. Kumar, IPS promoted.

Sd/- B. Sarma,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Mem. NO. CS (Con).1/96/8-g Dated Dispur, the 8th March, 1996.

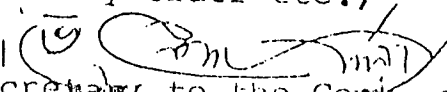
Copied to :-

1. The Accountant General, Assam, Shillong.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
3. The Secretary to the Govt. of Meghalaya, Home (P) Deptt., Shillong.
4. The Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
5. The Director General & Inspector General of Police, Meghalaya, Shillong.
6. The Inspector General of Police/Deputy Inspector General of Police

Contd....3/-

7. The Supdt. of Police/Commandant
8. The P.S. to Chief Minister, Assam.
9. The P.S. to Adviser to Chief Minister, Assam.
10. The P.S. to Chief Secretary/Addl. Chief Secretary, Assam.
11. The P.S. to Commissioner/Secretary, Home.
12. Shri
13. The Superintendent, Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the notification.

By order etc.,

||  ||
Deputy Secretary to the Govt. of Assam,
Home (A) Department. 8/3/96

ASSAM SCHEDULE III (SEC. 1) FORM NO. 81
CERTIFICATE OF TRANSFER OF CHARGE

No. F(A) XXIT/759/159,

Dated Guwahati, the 8th March 1996.

To

1. The Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6.
2. The Commissioner and Secretary to the Govt. of Assam, Home Department, Dispur.
3. The Director General of Police, Assam, Guwahati-7.
4. The Accountant General, Assam, Meghalaya, Shillong.
5. The Treasury Officer, Guwahati.
6. The Director General of Police, Meghalaya, Shillong.

Sir,

With reference to Rule 145 of the Assam Financial Rule I the undersigned have the honour to report that I have this 8th day of March, 1996 in the afternoon received charge of the Inspector General of Police, (Re-organisation) Assam at Guwahati in the Kamrup District vide Govt. Notification No. CS (Con). 1/96/ 8 (d) dated 8.3.96.

T. Chakravarty
(T. Chakravarty)
RELIEVING OFFICER

Attested
[Signature]

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 20th May, 1996.

No. HMA. 280/94/28 :

In the interest of public service, Shri T.P. Chakrabarty, IPS (SPS-80), Inspector General of Police (Reorganisation), Assam is transferred and posted as Inspector General of Police in charge of Central Western Range, Assam with effect from the date of taking over charge and until further orders vice Shri A.K. Roy, IPS who has proceeded on leave.

Sd/- B. Sarma,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

....

Memo. No. HMA. 280/94/28-A, Dated Dispur, the 20th May, 1996.

Copy to :-

1. The Accountant General, Assam, Shillong.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati- 7.
3. The Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
4. The Under Secretary to the Govt. of Meghalaya, Home (Police) Department, Shillong.
5. Shri T.P. Chakrabarty, IPS, Insp. General of Police (R), Assam, Ulubari, Guwahati- 7.
6. The P.S. to Chief Minister, Assam, Dispur.
7. The P.S. to Chief Secretary, Assam, Dispur.
8. The P.S. to Commissioner & Secretary to Chief Minister, Assam, Dispur.
9. The P.S. to Commissioner & Secretary, Home Deptt., Assam, Dispur.
10. The P.S. to Secretary, Home Deptt., Assam, Dispur.
11. The Inspector General of Police.....
-
12. The Deputy Inspector General of Police.....
-
13. The Supdt. of Police/Commandant
-
14. The Superintendent, Assam Govt. Press, Bamunimaidam, Guwahati- 21 for publication..
15. Personal file of the Officer.

By order etc.,

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

....

Attested
[Signature]

11 [Signature] 11 20/5/96

- 23 -

Anneane D

64

M.S. O. (I)-9.

[See paragraph 162 and 184(1) M. S. O. (I)]

PAY/LEAVE SALARY SLIP

Office of the A.G. (A.&E.) Assam

No. MG-2/PS(N)/PS/15

The 21/5/1996

Shri T. P. Chakraborty, Inspector General of Police (re-organisation) Assam, Kamrup, Guwahati.

..... is informed the under No. (Gazette page.....) he is entitled to draw pay/leave salary and allowances at the monthly rates shown below from the dates specified less the amount already drawn.

Particulars	From <u>-7-95</u>	From <u>-3-96</u>	From <u>9-3-96</u>	From <u>-8-97</u>
Substantive Pay	5250/-		5250/-	N
Officiating Pay		N		
Special Pay				
Interim relief	625/-		625/-	I
Leave Salary				
Dearness Allowance	5355/-		5355/-	
House Rent Allowance		I		
City Compensatory Allowance	20/-		20/-	
..... KMA.....	80/-		80/-	L
..... SDA.....	656.25	L	656.25	
Total—	11986.25	NIL	11986.25	NIL

N. B.—D, A. & S. R. are admissible as per General Authorities.

- note (1) Payment is sub. to production of a due & drawn ^{P.T.O.} statement
 (2) He is requested to furnish Handing over charge report as DIGP(R) Assam, Guwahati.
 (3) He is requested to furnish sanction for retention of the post of DIGP(R) w.e.f. 1-3-96 to 8-3-96

A/Asst
 [Signature]

24
The scale of pay is increment occurs on
every year and in the absence of instructions to the contrary this
may be drawn till the stage* is reached,

Signature.....
Assistant Accountant General
Designation.....
Sr. Accounts Officer

1. It is particularly requested that this slip may be attached
to the first pay bill drawn at this rates and that No. 19, IPS Vol. II (N)
may be entered as the audit number at the top of every
pay bill.
2. Deductions of fund subscriptions and recoveries of
Government dues as noted in the last pay certificate should
be effected unless otherwise stated.

*Here state the stage at which a pause or efficiency bar operates,

19/10/16
No. 19, IPS Vol. II (N)

Copy forwarded to the Treasury Officer, Guwahati - Assam
for information.
He should insert the details of pay given above in any last pay
certificates issued by him in favour of this Government servant.

No.....

Signature.....
Assistant Account General
Designation.....
Sr. Accounts Officer
Estate Officer

Copy forwarded to the Executive Engineer (Building)
for information

Signature.....
Assistant Account. General
Designation.....
Accounts Officer

- N.B.—1. In case of leave salary the nature of leave may be specified
in columns 1 to 4 overleaf.
2. Where the leave salary during leave is allocable among
different Governments then allocation should be clearly
indicated.

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 29th June, 1996. 117

No. HMA. 224/96/16 : The Notification issued by Government vide No. CS(Con) 1/96/8, dated 8.3.96 promoting Shri A.K. Sahu, IPS (RR-75), Deputy Inspector General of Police (TAP) to the rank of Inspector General of Police in the scale of Rs. 5900-200-6700/-p.m. and posting Shri A.K. Sahu as Director, Prosecution with H.Q. at Guwahati is hereby cancelled.

No. HMA. 224/96/16(a): The Notification issued by Government vide No. CS(Con) 1/96/8(a) dated 8.3.96 promoting Shri Subhash Goswami, IPS (RR-77), Deputy Inspector General of Police (Border), Assam to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/- p.m. and posting Shri Subhash Goswami as Inspector General of Police (O.S.D) in the Office of the Director General of Police is hereby cancelled.

No. HMA. 224/96/16(b): The Notification issued by Government vide No. CS(Con) 1/96/8(b) dated 8.3.96 promoting Shri D.K. Pathak, IPS (RR-79), Deputy Inspector General of Police (ER), Jorhat to the rank of Inspector General of Police in the pay scale of Rs. 5900-200-6700/- p.m. and posting Shri D.K. Pathak as Inspector General of Police, In-Charge of Eastern Range with H.Q. at Jorhat is hereby cancelled.

No. HMA. 224/96/16(c): The Notification issued by Government vide No. CS(Con) 1/96/8(c) dated 8.3.96 promoting Shri R. Kumar, IPS (RR-80), Deputy Inspector General of Police (SR), Silchar to the rank of Inspector General of Police in the scale of Rs. 5900-200-6700/- p.m. and posting Shri R. Kumar as Inspector General of Police over-all charge with H.Q. at Kokrajhar is hereby cancelled.

Contd...2/-

- 2 -

63 ✓
No. HMA. 224/96/16(d): The Notification issued by Government vide No. CS(Con) 1/96/8(d) dated 8.3.96 promoting Shri T.P. Chakraborty, IPS (SPS-80), Deputy Inspector General of Police (R) to the rank of Inspector General of Police in the scale of Rs. 5900-200-6700/- p.m. and posting Shri T.P. Chakraborty as Inspector General of Police, In-Charge of Police Re-Organisation with H.Q. at Guwahati is hereby cancelled.

No. HMA. 224/96/16(e): The Notification issued by Government vide No. CS(Con)1/96/8(e) dated 8.3.96 promoting Shri A.K. Roy, IPS (SPS-80), Deputy Inspector General of Police (CWR) to the rank of Inspector General of Police in the scale of Rs. 5900-200-6700/- p.m. and posting Shri A.K. Roy, as Inspector General of Police (L&O) with H.Q. at Guwahati and also in-charge of the C.W.R. in addition to his own duties is hereby cancelled.

Sd/- B. Sarma,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Memo.No. HMA. 224/96/16-A, Dated Dispur, the 29th June, 1996.

Copy to :-

1. The Accountant General, Assam, Shillong.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati- 7.
3. The Secretary to the Govt. of Meghalaya, Home (P) Deptt. Shillong.
4. The Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
5. The Director General & Inspector General of Police, Meghalaya, Shillong.
6. The Inspector General of Police/Deputy Inspector General of Police
7. The Superintendent of Police/Commandant
8. The P.S. to Chief Minister, Assam, Dispur.
9. The P.S. to Commissioner & Secretary to Chief Minister, Assam, Dispur.
10. The P.S. to Chief Secretary/Addl. Chief Secretary, Assam, Dispur.
11. The P.S. to Secretary, Home Department, Assam, Dispur.
12. Shri
13. The Superintendent, Assam Govt. Press, Bamunimaidam, Guwahati- 21 for publication.

By order etc.,

(Signature)
29.6.96
Under Secretary to the Govt. of Assam,
Home (A) Department.

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 2nd July, 1996.

✓ No. HMA. 224/96/Pt/6 : In view of the Notification No. HMA. 224/96/16, dated 29.6.96, Shri A.K. Sahu, IPS (RR-75) continues as Deputy Inspector General of Police (TAP), Dergaon from the date of taking over charge as per Notification No. HMA. 167/94/2, dated 18.6.94. ✓

✓ No. HMA. 224/96/Pt/6(a) : In view of the Notification No. HMA. 224/96/16(a), dated 29.6.96, Shri S. Goswami, IPS (RR-77) continues as Deputy Inspector General of Police (Border), Assam with effect from the date of taking over charge as per Notification No. HMA. 167/94/21, dated 4.12.95. ✓

Shri S. Goswami, IPS, Deputy Inspector General of Police (Border) is transferred and posted as Director of Fire Service, Assam, Guwahati, in the rank of Deputy Inspector General of Police with effect from the date of taking over charge.

✓ No. HMA. 224/96/Pt/6(b) : In view of the Notification No. HMA. 224/96/16(b), dated 29.6.96, Shri D.K. Pathak, IPS (RR-79) continues as Deputy Inspector General of Police (ER), Jorhat with effect from the date of taking over charge as per Notification No. HMA. 156/87/83(b), dated 20.4.93. ✓

✓ No. HMA. 224/96/Pt/6(c) : In view of the Notification No. HMA. 224/96/16(c), dated 29.6.96, Shri R. Kumar, IPS (RR-80) continues as Deputy Inspector General of Police (SR) with effect from the date of taking over charge as per Notification No. HMA. 156/87/83(c), dated 20.4.93. ✓

Shri R. Kumar, IPS, Deputy Inspector General of Police (SR) is transferred and posted as Deputy Inspector General of Police (WR), Kokrajhar with effect from the date of taking over charge.

Contd.....2/-

-28-34-

69

- 2 -

No. HMA. 224/96/Pt/6(d): In view of the Notification No. HMA. 224/96/16(d), dated 29.6.96, Shri T.P. Chakrabarti IPS (SPS-80) continues as Deputy Inspector General of Police (R), Assam with effect from the date of taking over charge as per Notification No. HMA. 156/87/83(e), dated 20.4.93.

No. HMA. 224/96/Pt/6(e): In view of the Notification No. HMA. 224/96/16(e), dated 29.6.96, Shri A.K. Roy, IPS (SPS-80) continues as Deputy Inspector General of Police (CWR), Assam with effect from the date of taking over charge as per Notification No. HMA. 156/87/83(f), dated 20.4.93.

Sd/- J.P. Saikia,
Secretary to the Govt. of Assam,
Home etc. Department.

Memo. No. HMA. 224/96/Pt/6-A, Dated Dispur, the 2nd July, 1996.
Copy to :-

1. The Accountant General, Assam, Shillong.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati- 7.
3. The Under Secy. to the Govt. of Meghalaya, Home (P) Deptt., Shillong.
4. The Under Secy. to the Govt. of India, Ministry of Home Affairs, New Delhi.
5. The Director General & Inspector General of Police, Meghalaya, Shillong.
6. The Inspector General of Police/Deputy Inspector General of Police
7. The Superintendent of Police/Commandant
8. The P.S. to Chief Minister, Assam, Dispur.
9. The P.S. to Chief Secretary, Assam, Dispur.
10. The P.S. to Addl. Chief Secretary & Principal Secretary to Home & Political Deptt., Assam, Dispur.
11. The P.S. to Commissioner & Secretary to Chief Minister, Assam, Dispur.
12. The P.S. to Secretary, Home Deptt., Assam, Dispur.
13. The Joint Secretary to Chief Minister, Assam, Dispur.
14. The Principal Private Secretary to Chief Minister, Assam, Dispur.
15. Shri
16. The Superintendent, Assam Govt. Press, Bamunimaidam, Guwahati- 21 for publication.
17. Personal file of Officers concerned.

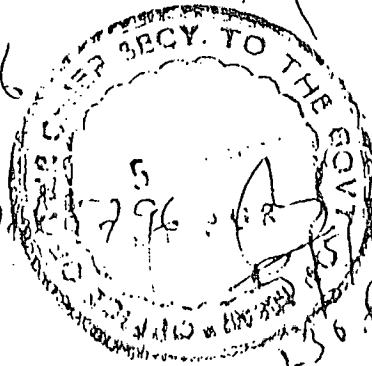
By order etc.,

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

SITAKAK

EXTRACT FROM DAK BOOK W.E.F. 2.7.96
OF DESPATCH BRANCH OF DGP'S OFFICE.

5/7/96



① NO PF/5796(A) D
addressed to the
C.S. to the G/A

② NO. PF/5796 (A) Dtd 5.7.96
addressed to the P.S. to the G/A

③ DGP Annam
no. PF/5796 dtd 5.7.96

[Signature]
P.A. in charge of the
Despatch Branch
DGP's Office
Recd 5/7/96

OFFICE OF THE DIRECTOR GENERAL OF POLICE, ASSAM, GUWAHATI

LETTER NO. FA/XXII/759/174 Dated Guwahati, the 16 July/96.

From : Shri S. Barua, IPS,
Inspector General of Police(A),
Assam, Guwahati

To : Shri T.K. Kamila, IAS,
Chief Secretary to the Govt. of Assam,
Home Deptt., Dispur.

Sub. : REPRESENTATION FROM SHRI T.P. CHAKRAVARTY, IPS
(SPS 1980) FOR RESTORATION OF PROMOTION TO THE
RANK OF INSPECTOR GENERAL OF POLICE WITH EFFECT
FROM THE DATE OF CANCELLATION OF PROMOTION
ORDER./

Sir,

I am directed to enclose a copy of representation vide No. PF/5796 dated 5.7.96 received from Shri T.P. Chakravarty, IPS (SPS 1980), which is self explanatory, requesting for restoration of his promotion to the rank of Inspector General of Police with effect from the date of cancellation of his promotion order, for your necessary action.

Shri T.P. Chakravarty, IPS was promoted to the rank of Inspector General of Police as per Govt. Notification No. BS(XN).1/96/8(d) dt. 8.3.96 and said Notification was cancelled vide Govt. Notification No. HMA. 224/96/16 (d) dt. 29.6.96.

Your faithfully,

^{Sd/-}
Inspector General of Police(A),
Assam, Guwahati

Memo No. FA/XXII/759/174-A Dated Guwahati, the 16 July/96.

Copy to Shri T.P. Chakravarty, IPS, Deputy Inspector General of Police(R), Assam, Guwahati for information with reference to his Letter No. PF/5796 dt. 5.7.96.

^b
Inspector General of Police(A),
Assam, Guwahati
16/7

NO.PF/5796.

Dated Guwahati, the 5th July, 1996.

From :- Shri T. Chakravarty, IPS

To Shri T.K. Kamila, IAS
Chief Secretary to the Govt. of Assam,
Dispur, Guwahati-6.
Through proper Channel.

Sir,

I would like to inform you that I have received intimation that Govt. notification No.CS (Gen).1/96/8(d) dated 8.3.96 promoting me to the rank of I.G.P.(R) has been cancelled. In the meantime, I have, vide Govt. notification No.HMA.280/94/28, dated 20.5.96 been transferred and posted as I.G.P.(CWR) which post I am now holding.

I have, however, not been intimated as to the grounds for such cancellation of the promotion nor was I given any opportunity to represent against the proposed order of cancellation of promotion which amounts to reduction in rank.

I would like to say that during my entire service career of thirty years I have discharged my duties sincerely and to the satisfaction of the Govt. I have, during this service period, received many letters of appreciation, commendation, reward by the C.B.I. for arresting the absconding prime accused of the Pathasarathi murder case and awarded the Police Medal for Meritorious Service on the occasion of Republic Day, 1987, Governor's Gold Medal for Outstanding Service in 1991 and President's Police Medal for Distinguished Service on the occasion of Independence Day, 1994. Consequently, I do not understand as to why I should be made to

Contd...2

Atul
Ghosh

suffer the ignominy resulting from the order of cancellation of my promotion to the rank of I.G.P.

I have been appointed to the rank of I.O.P. with effect from 8.3.96 as I have fulfilled the necessary qualifying conditions to the satisfaction of the Govt. and had therefore been promoted. The promotion given to me was valid under the rules in force and there was no cause or material for cancellation of the said promotion.

I would, therefore, request you to consider my case and redress my grievance by restoring the rank of I.G.P. to me effective from the date of cancellation.

Yours faithfully,

T. Chakravarty

(T. CHAKRAVARTY)

No. PF/5796(A), Dated Guwahati, the 5th July, 1996.

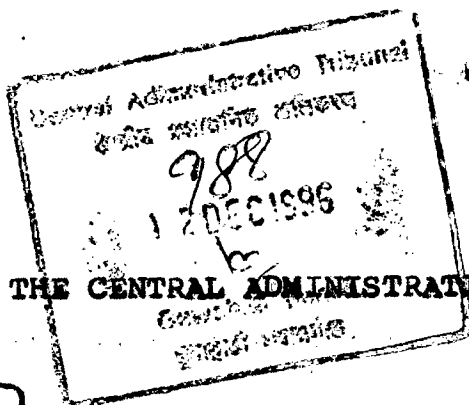
Advance copy for favour of information to :-

- 1) The Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6.
- 2) The Principal Secretary and Commissioner to the Govt. of Assam, Home Department, Dispur, Guwahati-6.

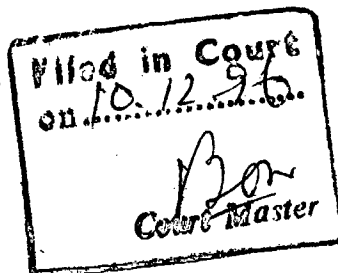
T. Chakravarty

(T. CHAKRAVARTY)

*Attended
G.H.*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GAUHATI BENCH



In the matter of :

O.A. No.236 of 1996

Between

Shri Tara Prasad Chakravarty

... Applicant

and

The State of Assam
and others

... Respondents.

(Written Statement on behalf of Respondents 1 to 3)

The Respondents beg to state as follows :

1. That the present application purported to be filed by the abovenamed applicant before the Hon'ble Tribunal is not maintainable under the law. The applicant not having any right to the ex-cadre post of Inspector General of Police (shortly "IGP") to which he was illegally promoted, the application purported to be filed by him is not maintainable, inasmuch as, no relief can be granted to him by this Hon'ble Tribunal. The application is, therefore, liable to be dismissed in limine.

2. The Respondents are stating hereinbelow the synopsis of the entire matter as to how the so-called promotions are made in gross violation of the statutory Rules and procedure.

(i) The then Chief Secretary to the Government of Assam on some advice of the then Director General of Police, opened file No.CS(CON) 1/96 in his office inspite of the fact that the matter related to the Home Department and should have been processed by the said Department.

(ii) In the instant case, apparently the second proviso to Rule 4(2) of the IPS (Cadre Rules, 1954, empowers the State Government to create certain ex-cadre posts in the IPS, has been violated. The powers of the State Government is limited to a limited number of ex-cadre posts which can only be created and the State Government cannot exceed to the

said limited number. In the instant case, when the six ex-cadre posts were created, the State Government had ~~xxx~~ already exceeded the limit and inspite of that in flagrant violation of Rule 4(2) of the above Rules of 1954, read with Rule 9 of the IPS (Pay) Rules, 1954, the then Chief Secretary himself, showing his highhandedness, processed for creation of six more ex-cadre posts in the rank of IGP.

(iii) Under the law, the State Government may, with the approval of the Central Government, appoint an IPS cadre officer to hold an ex-cadre post in excess of the number specified for a particular State under Item No.5 of the Schedule to the IPS (Fixation of Cadre Strength) Regulations, 1955. Such appointment can be made only with the approval of the Central Government. In the instant case, such approval was not obtained before the creation of the six ex-cadre posts from the Central Government.

(iv) Under a set of guidelines issued by the Union Home Ministry, an officer has to complete a minimum stipulated period of service in a particular cadre for ~~xxx~~ promotion. In the instant case, the applicant was an officer of 1980 and he did not complete the required number of years for promotion to a post in the rank of Inspector General of Police. Thus, the then State Government violated the guidelines of the Union Home Ministry. In this connection, it may be mentioned that the Central Government has already called for an explanation from the Government of Assam by certain communication dated 5.6.96.

(v) The IPS is a joint cadre of Assam and Meghalaya. In order to promote some members of the cadre, the Joint Cadre Authority has to be consulted. In the instant case, this was not done.

(vi) For the purpose of promotion from the rank of DIG of Police to the rank of IGP, the process has to be made in the ^{office} of the Commissioner and Secretary, Home. This has to be done under Rules 4, 6 and 55 of the Assam Rules of Executive Business, 1968. The then Chief Secretary himself processed the entire matter in consultation with the then Director General of Police and nothing could be done by the Home Department. The whole process was completed without the knowledge of the Home Department and the Deputy Secretary

35

3.

of the Home Department for the first time came to know about the matter when on 8.3.96 the then Chief Secretary directed him to issue orders as per draft notification, which will appear in the records of the case. Being directed by the then Chief Secretary, the Deputy Secretary, Home, simply signed the draft notification dated 8.3.96 and issued the same purporting to promote the six officers to the non-existent posts in the rank of Inspector General of Police pursuant to the direction of the Chief Secretary.

(vii) Under Rule 32 of the Assam Rules of Executive Business, 1968, the Chief Secretary is the administrative head of the Government in the State and he is responsible to ensure efficient functioning of the entire administrative machinery of the State.

(viii) ~~Under~~ From the records it appears that the then Chief Secretary received a proposal from the then DGP on 6.3.96 and on the following day (7.3.96) the then Chief Secretary opened a file in his office, sent a note to the then Chief Minister and obtained approval the same day and then on 8.3.96 the then Chief Secretary himself endorsed the file first to the Personnel Department and then to the Finance Department and obtained clearance from both the Departments. Immediately thereafter, the then Chief Secretary managed to get the draft notification typed and directed the Deputy Secretary, Home to sign and issue the order of the so-called promotion of the applicant and five others to the rank of IGP in ex-cadre post. The entire process from obtaining the approval of the then Chief Minister to the issue of the impugned notification dated 8.3.96 was completed within 48 hours. This itself is sufficient to show the malafide and ill motive of the then DGP, the then Chief Secretary and other connected officers, namely, Secretary, Personnel and Finance Department.

3. That with regard to the statement made in paragraph 1 of the application, ^{under "Facts of the case"} the respondents state that the applicant was not entitled to be promoted to the rank of Inspector General of Police (shortly IGP) by order dated 8.3.96. He was purported to be promoted to the rank of IGP against an ex-cadre post in gross violation of Law.

Contd...Page. 4.

26 4.

4. That the statements made in paragraph 2 being matters of records of the case, the respondents do not admit any statement made therein, which is contrary to and inconsistent with what appears from the records of the case. The statements are also not relevant .

5. That with regard to the statements made in paragraphs 3 and 4 of the application, the respondents state that the applicant and five others were ~~promoted~~ ^{purported} to be promoted to ex-cadre post in the rank of IGP in gross violation of the statutory Rules and Procedure, as will appear from the ~~following~~ ^{above} legal position. This Hon'ble Tribunal may be pleased to perused the legal position for the purpose of disposal of the present case.

6. That with regard to the statements made in paragraph 5 of the application, the respondents state that the promotion of the applicant and five others purported to be made by the then Government by Notification issued on 8.3.96, being ex-facie illegal and in gross violation of the statutory Rules and Procedure stated above, the State Government reviewed the entire matter by taking into account the legal position and was satisfied that the said Notification dated 8.3.96 was illegal, without any authority of Law and non-est. There being already four ex-cadre posts in ~~the rank of IGP~~ in excess and on the date of the issue of the Notification dated 8.3.96, the then Government without taking into account the legal bar and restriction issued the Notification purporting to promote the applicant and five others to the rank of IGP.

7. That the statements made in paragraph 6 being matters of records of the case, the respondents do not admit any statement made therein which is contrary to and inconsistent with what appears ^{from} the records of the case. The statements and allegations made in the said paragraph 6 are not at all correct and the same are denied by the respondents. The cadre posts allotted for the Assam Wing of the Joint Cadre as per Cadre Schedule, as notified by Government of India, are mentioned below :

- (i) DGP level - 1
- (ii) IGP level - 4
- (iii) DIGP level - 10
- (iv) Senior Scale - 42

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5.

Any posts other than the posts specified in the Cadre Schedule, as stated above, created by the State Government over and above such cadre posts are ex-cadre posts. The State Government under Item 5 of the Cadre Schedule, is competent to create 14 numbers of ex-cadre posts in Assam Wing against the admissible limit of the State Deputation reserved. The total number of ex-cadre post at the relevant time, that is, at the time of so-called promotion of the applicant and five others was 18, although the permissible limit for such ex-cadre posts was 14 only. As such, there was already four posts in excess in the ex-cadre posts. Thus, the then State Government acted illegally and without jurisdiction in purporting to promote the applicant and five others to the post in the rank of IGP.

8. That the allegations made in paragraph 7 of the application are absolutely incorrect and irrelevant. It is categorically denied that the new Government led by AGP without any rhyme or reason and without giving any notice to the applicant cancelled the Notification dated 8.3.96, as alleged. The Notification has been cancelled on the basis of the ground mentioned in paragraph 2 above. The so called promotion of the applicant and five others being without jurisdiction and non-est, the Government have the power and authority to cancel the said Notification and there was no illegality and error in doing so.

9. That the statements made in paragraph 8 of the ~~statement~~ application are not at all correct. I say that the Notification dated 2.7.96 passed by the Government is ~~illegal~~ legal and valid and cannot be questioned by the applicant.

10. That with regard to the statement made in paragraph 8 A of the application, the respondents state that as the order promoting the six DIGPs including the applicant to the rank of IGP was illegal and in gross violation of the statutory Rules and Procedure, the so-called order of promotion was rightly cancelled by the Government.

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11. The Statements made in paragraph 9 are not at all tenable, inasmuch as, working of the applicant in the ex-cadre IGP post for two ~~xxxxxx~~ months five days did not make him entitled to hold the said post. In No. extraneous consideration was made in the instant case by the Government and the impugned orders are not punitive having any civil consequence, as alleged.

12. That the statements made in paragraph 10 are not at all tenable. The so called promotion of the applicant and five others being ex-facie illegal and not being tenable in the eye of Law and being also without jurisdiction, the same were rightly cancelled by the Government as per procedure laid down as per Law.

13. That the respondents categorically deny the submissions made in grounds (a) to (j) under the application. None of the grounds is a legal ground for interference with the impugned notifications challenged before this Hon'ble Tribunal and is also not tenable under the law. The applicant has totally failed to make out any case for interference by this Hon'ble Tribunal and, as such, the application is liable to be dismissed. The respondents categorically deny the correctness of any of the grounds mentioned in the application.

14. That the respondents submit that the applicant having failed to make out any case and there being no ground to interfere with the impugned notification challenged before this Hon'ble Tribunal, the application is liable to be dismissed in limine.

The respondents, therefore, humbly pray that the application filed by the applicant may kindly be dismissed with costs.

VERIFICATION

I, Shri J.P. Saikia, Secretary to the Government of Assam, Home Department, Dispur, Guwahati-6, do hereby verify and declare that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 being matters of records of the case, are true to my knowledge, those made in paragraphs 11, 12 and 13 are true to my information derived therefrom, which I believe to be true and those made in the rest of the written statement are submissions before the Hon'ble Tribunal; and I sign this verification this the 10th day of December, 1996 at Guwahati.

J.P. Saikia
DEPONENT