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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No.
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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

....

OA No. 261/96

Sr. A.K. Ray, IPS Applicant(s)
-Versus-

Union of India & Ors. Respondent(s)

Mr. B.K. Das, N. Dutta, P.K. Ray Advocates for Applicant(s)

Mr. A.K. Choudhury, B.S.S., Dr. Y.K. Phukan Advocates for Respondent(s)

Office Notes 8 Date Courts Orders

14-11-96

This application is taken up unlisted at the request of Sr. counsel Mr. B.K. Das.

Learned counsel Mr. B.K. Das for the applicant. Mr. A.K. Choudhury Addl. C.G.S.C. for respondent No. 1. None for the other respondents Nos. 1, 2, 3 & 5.

Issue notice on the respondents to show cause why this application should not be admitted and reliefs sought be allowed.

A similar case O.A. No. 235/96 has been listed on 19-11-96. List for show cause and consideration of Admission on 19-11-96 along with O.A. No. 236/96.

Service on respondent No. 4, Secretary to Government of India, Ministry of Home Affairs, New Delhi, may be effected by speed post at the cost of the applicant during course of the day.

Member

lm

19/11

Caveat-petition no. 1/96

filed by in Govt. against-
Mr. A.K. Ray, IPS which has been disposed of - on 14.10.96
was placed along with OA no. 236/96, also placed before the Hon'ble court for perusal.

14/11

ST

pl. comply order

Dated 14-11-96.

14/11/96

15/11/96

Notice issued to the concerned parties vide D. No. 15 Dt. 15.11.96.

1) Service repairs are still awaited.
2) Show cause has not been filed.
19.11.96

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

Mr. A.K.Choudhury, learned Addl. C.G.S.C. for the respondent No. 4.

Dr. Y.K.Phukan, Sr. G.A., Assam with Ms M.Das, G.A. Assam for 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.

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.

Member

Service repairs are still awaited.
trd
19/11/96

Show cause has not been filed.
19/11/96

10.12.96

Learned Sr. Counsel Mr. B.K.Das with Mr. P.K.Roy 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 has 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

Contd....

10.12.96 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 :-

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.

[Signature]
Member

Mr P.K.Roy for the applicant. Mr S.A. Sr.C.G.S.C for respondent No.4. Mrs M.Da for respondents No.1, 2 & 3.

Written statement of respondent No.4 has not been received. Mr ~~P.K.Roy~~ ^{P.K.Roy} presse 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.

[Signature]
Member

D Notice duly Served on
Respondant No-1,2,3 & 5,

[Signature]
11.12.96

Receiving copy of order
dt. 10.12.96
P.K.Roy
Advocate
14/12/96

12-12-96

W/S filed by Mr. trd
R. No. 1, 2, 3 & 5. 16.1.97

15-1-97

1/ Notice duly Served on
Respondant No-1,2,3,

5,

2/ written statement filed
on behalf of The
Respondants. at page -
33 to 39.

[Signature]
15.1

261/96

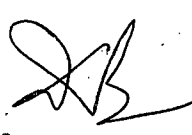
10-2-97

11-2-97

Resinder in reply of
affidavit of the Respondents filed
by the applicant

On the prayer of Dr.Y.K.Phukan
learned Sr.Government Advocate, this
case is adjourned till 25th Feb'97
as Dr.Y.K.Phukan is required some
instructions.


Member


Vice-Chairman

1) W/S has not been
filed on R-4. 1m

2) NO appearance has
been filed on R-2-5.

MV 25.2.97
10/2

24.2.97

1) Written statement
has been submitted
on R-1-3 and 5.

~~rejoinder~~ has
been filed.

The case is ready
for hearing except
1. nkm
10/3

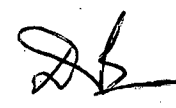
MV
24/2

11.3.97

Service ~~for~~ ready on
spdt no. 1, 2, 3 & 5
to notice returned on
spdt no. 4 till now.
w/statmt has been filed
- Respdt no. 1-3 & 5
Rejoinder has been filed, trd

No appearance has been
filed 4 Addl. C.S.C & G.A.

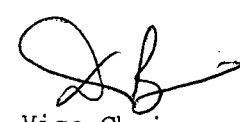

Member


Vice-Chairman

On the prayer of Mr. B.K.Das, learned
counsel appearing on behalf of the Applicant the
case is adjourned till 20.3.1997.

List on 20.3.1997 for hearing.

Member


Vice-Chairman

1-7-97

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

Member

Vice-Chairman

lm

g

2/7

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 case till 2.12.97 for further hearing.

Member

Vice-Chairman

nkm

2.12.97

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

Member

Vice-Chairman

7.1.98

Common order delivered alongwith O.A.236/96 in the open court and kept in separate sheets.

The application is dismissed. No order as to costs.

Member

Vice-Chairman

pg

21.1.98

Copy of the Judgment

sent to the D/Sec. in issue to the parties. The record will be sent to the D/Sec. on 21.1.98

Please comply.

rs
26/11

27.11.97

Copy to cover dtd.

25.11.97 issued to

the Mr.B.C. Das,

applicant Advocate.

from

rs is in h'd on

No. 1-3 & 5.

findings is in h'd pg

rs has not been h'd on R.A. 4/12

1.12.97

Copy of order dtd 25.11.97 issued to the Mr. N. Bhatta, Mr. B.C. Das, Mr. Advocate.

9

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.

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ORDER

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

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

B2

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.....

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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 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 cl

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 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 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

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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 not.....

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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 not.....

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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

Legal.....

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

under.....

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

more.....

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.

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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.....

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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.

B
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

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 cases.....

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."

RV
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,.....

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:

12/ ".....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.....

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. Sharma, reported in 1992 Supp (1) SCC 222, held that the administrative authority has wide discretion, but actions when taken mala fide 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 arbitrium. 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.....

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

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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.

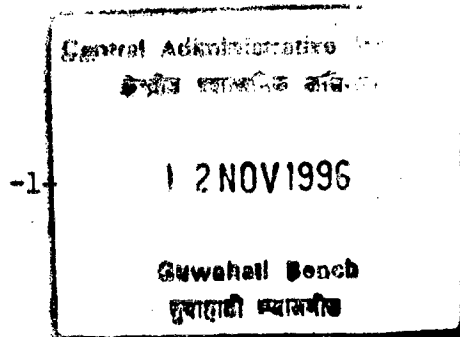
34. Taking into consideration the entire facts as stated above we are of the opinion that the Government thought that the promotions given to the six officers were not in accordance with the provision of rules. According to the Government the creation of the ex cadre posts was beyond the limit. It is 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.....

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.

So/- VICE CHAIRMAN
So/- MEMBER (A)



Filed by the applicant
Through P.K. Roy
Advocate
12-11-96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

O.A. No. 261 of 1996.

Ashim Kr. Roy I.P.S

V/s.

State of Assam & ors.

I N D E X

SlNo.	Particulars.	Annexures	Pages
01.	Application		1-16
02.	Extract of Paper Report	A	17-21
03.	Copy of Govt. Notification dated 6.5.96.	B	22
04.	Notification Dt. 48.3.96.	C	23-25
05.	Copy of Govt. Notification No. HMA/IPS/110/Pt.dt. 12.5.96	D	26
06.	Copy of notification No. HMA. 280/94/28 dt. 20.5.96.	E	27
07.	Govt. Notification dt. 29.6.96	F	28-29
08.	Copy of Notification Dt. 2.7.96.	G	30-31
09.	Copy of representation dt. 11.7.96	H	32
10.	W/S - R.M. 1-3 & 5		33-39
11.	Rejoinder		40-55

For Use in Tribunal Office.

Registration No. OA 261/96

Date of filing. 12-11-96.

Registrar.

Filed by Applicant
through P.K. Roy
Advocate
1/2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

O.A. NO. 261 of 1996.

BETWEEN

1. Shri Ashim Kr. Roy , I.P.S.
Inspector General of Police, Assam
(now reverted) Presently on leave at
cachar High School Road,
Itkhola, Dilluhat-K 2, Assam

.....Applicant.

AND

2.
 1. State of Assam represented by its Chief Secretary.
 2. Commissioner & Secretary to the Govt
of Assam Home and Political Department, Dispur.
 3. Director General & Inspector General of
Police, Assam, Ulubari, Guwahati,
 - ✓ 4. Union of India, represented by
Secretary to the Govt. of India Ministry
of Home Affairs, New Delhi
 5. Shri C.P. Misra, I.A.S. Additional Chief
Secretary to the Govt. of Assam, Dispur.

.....Respondents.

Contd...3..

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3. DETAILS OF APPLICATION

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

- i) Notification No. HMA 224/96/16(e) dt. 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. Assam, home etc. Department, Disput.

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 tot he applicant under the service rules for redressal of his grievences and as such the bar provided under Section 21 of the Administrative Tribunal Act, 1985 is not applicable in the instant case.

6. FACTS OF THE CASE

6.1 The applicant was initially appointed to the Assam Police service (A.P.S.) as a Deputy Superintendent of Police in August , 1996 on the basis of combined competitive examination conducted by the Assam Public Service Commission . He was promoted to the senior scale of A.P.S. in 1975 and in 1984, the applicant was nominated to the Indian Police service (I.P.S.) and was latxer

promoted to the supertime scale of I.P.S. and posted as Deputy Inspector General of Police, Central Western Range, Guwahati. By an order dated 8.3.96, the applicant was promoted to the rank of Inspector General of Police, Law and order and in-charge of Central Western Range, Assam, Guwahati.

6.2 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 Gallantry in 1969 and recommendations for meritorious service in 1994. He also received high appreciations when he was posted at Srinagar and Amritsar on deputation to the central Reserve Police Force under the Govt of India for effectively dealing with terrorism which was then convulsing the states.

6.3 That in view of his ability in controlling crime and maintenance of Law and order, the Govt. of Assam have always posted the applicant in the most tumultuous districts and Ranges to meet the requirement of public interest. However, his strict lawful actions, in the discharge of his duties on many occasions dissatisfied some political and student leaders who found it difficult to achieve their narrow political aims. These leaders at times came out almost openly through press, postering and by other means including rallies demanding actions against the applicant and having failed to achieve that, took advantage of the change of Govt. and influenced the Govt. machinery to harass the applicant either by taking departmental actions on false and frivolous charges or by restraining the Govt. from allowing him to move up on the promotional ladder. The applicant states that when the new Govt. led by the Asom Gana Parishad came into power in 1985 following the 'Assam Accord' the same political and student activists were successful in influencing the Govt. machinery to initiate a departmental proceedings on some false charges. But the said

Contd...5..

allegations/charges were ultimately found to be baseless and the proceedings had to be dropped . The A.G.P. Govt. initially ordered the suspension of the applicant aiming towards his dismissal, but the Govt. of India did not agree with the unfounded order of suspension so passed by the State Govt. and instead, posted him as Commandant, 76 Bn. Central reserve Police Force at Srinagar on deputation where he showed exemplary courage in dealing with the insurgency which was then beginning to grip the valley.

An extract of the paper report with its translated copy urging upon the Chief Minister to take action against the applicant is annexed as Annexure - 'A' to the application for perusal of the Hon'ble Court. The applicant craves leave of the Hon'ble Tribunal to produce some other similar paper reports at the time of hearing of this application.

6.4. That to combat the recent growth of violent activities and to arrest the increasing rate of drug trafficking and other unlawful activities including insurgency throughout 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 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.G.P. (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 - 'B' to this application.

6.5 That pursuant to the aforesaid creation of 6 (six) posts of I.G.P. , 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) Shri A.K. Sahu I.P.S | Director, Prosecution |
| 2) Shri Subhash Goswami IPS. | Officer on Special Duty
in the rank of I.G.P. |
| 3) Shri D.K. Pathak, I.P.S. | I.G.P. Eastern Range. |
| 4) Shri R. Kumar, I.P.S. | I.G.P., Western Range |
| 5) Shri T.P. Chakraborty, I.P.S | I.G.P. i/c. Reorganisation |
| 6) Shri A.K. Roy, I.P.S.
(Applicant). | I.G.P. , Law and other
incharge, Central Western
Range, Guwahati |

A copy of the Govt. notification dated 8.3.96 is annexed as Annexure - 'C' to this application.

6.6. That on being appointed on promotion as I.G.P. Law and order and incharge CWR. , Guwahati, the applicant joined the said post on 9.3.96 and worked as such till 12.5.96 when he applied for 7 days casual leave followed by 90 days earned leave on medical ground which was duly granted to him vide Govt. notification No. HMA/IPS/110/Pt. 1 dated 12.5.96 and in his place Shri T.P. Chakraborty, I.P.S. was appointed as I.G.P. , CWR vide Govt. notification No. HMA 280/94/28 dated 20.5.96.

A copy of Govt notification No. HMA/IPS/110/Pt.1 dated 12.5.96 and notification No. HMA 280/94/28 dated 20.5.96 are annexed as Annexure 'D' and 'E' to this application.

6.7. 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 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. SP/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 other hand, 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.

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.

6.8 That in the meantime the new Govt. led by the A.G.P. came into power in Dispur in May'96 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-'C') 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 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 - 'F' to this application.

6.9 That thereafter the Govt. by separate notification No. HMA. 224/96/Pt/6 (e) dated 2.7.96 passed an illegal order by which the order of cancellation of his promotion dated 29.6.96 (Annexure-'F') has been given retrospective effect by continuing him as D.I.G. (CWR) Assam, which he held prior to his promotion. The applicant being aggrieved by the aforesaid orders, filed a representation to the Chief Secretary on 11.7.96, but till today no action has been taken on the said representation. A copy of the notification dated 2.7.96 is annexed as Annexure - 'G' to this application. A copy of the representation dt 11.7.96 is also annexed as Annexure 'H' to this application.

6.10. 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 and order dated 2.7.96 giving the said order a retrospective effect are 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.

6.11. That the applicant states that the posts created by the Govt. are also ex-cadre posts and the 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 like nature to cadre posts.

6.12. That the applicant states that ever since the new Govt. came into power following the recent Assembly election on April, 1996, he has been getting innumerable anonymous phone calls threatening to teach him a good lesson alleging that he went against their personal interest and the applicant believes that same group of leaders who earlier influenced the then Govt. in 1985 to suspend and initiate a departmental proceeding against the applicant, but could not succeed have become active again and successfully influenced the Govt. machinery to cancel the promotion order dated 8.3.96 reverting the applicant to the post of D.I.G. of Police. The impugned order therefore is absolutely mala fide and not sustainable in law and unless the orders dated 9.6.96 and 2.7.96 are set aside the applicant would suffer an irreparable loss and injury inasmuch as there would be stigma on his otherwise unblemished and excellent service career.

6.13. That the applicant states that in the context of what has been narrated above, it is apparent that there was a crusade against the applicant simply because as a loyal Police officer when he was entrusted with the task of dealing with pro-violent demonstrations of the press, defiance of the prohibitory laws and the unlawful activities of the militants and insurgents within his jurisdiction, he exercised his lawful power with all stringencies which naturally antagonised the opposition political parties. The militant and the press alike raised their voices against him day in and day out and carried on a personal attack to belittle him in the eye of the people. One of many such inflammatory write ups appearing in the news papers has been incorporated as annexure to this application. This hostile and vindictive attitude was nursed

by all the opposition political parties including the Asom Gana Parishad which owes its inception to the by gone agitation of Assam on foreigners' issue and which is now at the helm of the government in the state. The present militant outfits operating in Assam which have now become a frankenstein to their own interests are also up in arms against him with the support of a section of the press and the people who are opposed to him in the administration. If the records are called for proper scrutiny of the events and the administrative notings recorded in the secretariat files, it would be apparent that the Commissioner & Secretary. Home and Political Deptt. for the purpose of appeasing the present Govt. particularly made a long note in the Secretariat file aiming at the applicant alone and also pointed out that upon his alleged disagreement with the then Chief Minister/Chief Secretary, he wanted to go on leave. But in fact he did not go and simply forwarded his fanciful notes to the Additional Chief Secretary, suggesting to seek opinion of Legal Remembrancer under orders of the Chief Minister and the Legal Remembrancer in turn being ambitious of his future prospect made a similar long note most of which are legally not sustainable. But ultimately he suggested a review of the whole matter, because of the fact that there was a proposal not only for the applicant alone, but for five other officers were also mooted out to which the Legal Remembrancer did not write a single line in his notes. The proposal for review made by the Legal Remembrancer was approved by the Additional Chief Secretary on the same day i.e. on 29.6.96 and immediately on the second para of his notes, he has passed the order for cancellation of the promotion for all the six officers, for which the notification has been issued. A respect for the elementary principle of Natural justice atleast is to be shown by the bureaucratic set up of a democratic Govt. if rule of law is to survive. Ex-facie it shows that the present State Govt. more particularly the Additional Chief

is not prepared to pay that little respect for the rule of law, the resultant effect of it is that the six I.S.G.P. , holding the newly created ex-cadre posts including the applicant was hastily reverted vindictively with a clear extraneous motive to please the ruling party and the vibrant press and some interested political leaders. All the aforesaid notes would show that there was no formal decision of the Govt. in cancelling the promotion order and the decision was a perverted decision which is no decision in the eye of law.

G R O U N D S

7.1 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 orders dated 29.6.96 and 2.7.96 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.

7.2 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 and by giving it a retrospective effect vide order dated 2.7.96, 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.

cel,

7.3 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.

7.4 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.

7.5 For that the impugned orders have been passed mala fide and on extraneous consideration and as such the same are liable to be set aside.

7.6 For that the impugned orders are illegal, unfair, irrational and arbitrary and violative of Article 14, 16 and 21 and 311 of the Constitution of India and as such cannot sustain.

7.7 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.

Contd.

7.8 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 decision being passed on consideration of extraneous materials and in mala fide 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.

7.9 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.

7.10 For that in any view of the matter the impugned orders are not sustainable in law and liable to be quashed.

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 Tribunal Act is the only effective and efficacious remedy available to the applicant. He however filed a representation to the Chief Secretary to the Govt. of Assam on 11.7.96 which is not disposed of till today.

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, call for the records particularly the office notes in which the Respondent No. 5 has made various correspondences with the legal Remembrancer with regard to the applicant's promotion as stated in paragraph 6.13 of this application.
- ii) after hearing the parties and perusal of records set aside/quash the impugned notification dated 29.6.96 and 2.7.96 (Annexure - 'F' and 'G')
- iii) direct the respondents to allow the applicant to continue in the post of I.G.P. Law and order incharge , C.W.R. in which he was working and from which he availed leave as granted by the Govt.
- iv) grant the cost of the application and/or any other reliefs to which the 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 :

- 1) to stay the operation of the impugned notification dated 29.6.96 (Annexure-'F') and dated 2.7.96 (Annexure-'G')
- 2) to direct the Respondents to allow the applicant to join in the post of I.G.P., Law and order, incharge C.W.R. on expiry of his leave.

12) PARTICULARS OF THE I.P.O.

1. I.P.O. NO. 09/346839
2. Date of Issue 30.8.96
3. Issuing Post Office G.P.O. Guwahati
4. Payable at Guwahati

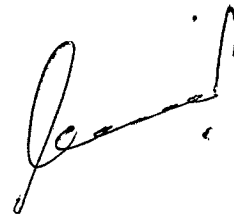
13) LIST OF ENCLOSURES

1. I.P.O. No. 09/346839
2. Other documents detailed in the Index.

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

I, shri Ashim Kr. Roy , I.P.S., Son of Late Nripendra Nath Roy, aged about 56 years, presently on leave at Cachar High School Road, Itakhola, Silchar-2, do hereby verify and state that the statements made in paragraph 15, 6.1, 6.3, 6.7, 6.10, 6.13, 7.1, ^{7.10, 8.11} are true to my knowledge and those made in paragraphs 6.4, 6.5, 6.6, 6.8, 6.9, 12 and 13 are true to my information derived from record and I have not suppressed any material facts.

And I sign this verification on this 18th day of Sept. 1996 at Silchar.

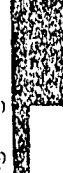


11 JUN 1996

ANNEXURE - 4.

କିମ୍ବଦନ୍ତୀ ଶ୍ରୀମଦଭଗବତ୍ ଗୀତା

প্রাচীন দাংদা
গুহাখোঁজ, ১০ ছন্দ : পূর্ব চকরা
কেতকের নাটকি কালে দম্প সূচিক
প্রাণদেবের সন্দর্শন করে থে থেয়ে।
'কল্লের নিমিত্ত' পদোদ্রিতি অঙ্গিরে ভাই
থে যেমদা ফলত বিভাগ্যটো দক্ষতা,
অনুদান বুলি কোনো প্রাণদেব
নাউকীয়া কেইনে। কল্ল তেজাশেদার
কোত্ত কেইজনমান পুত্রিক বিহারা
অপারিমা রাজ অনুদার জাত করে
বিভাগ্যটো ভরমুঠি ইন্দ্রে সৌখিন
করি পেলোলে যে তার নিরাময়
ব্যবস্থা।



 মধ্যমেস্থীয়ে।

[illegible][illegible]

-18- (27) 58

Annexure - A.

Translated copy.

ASHIM ROY AND OTHER FIVE PROMOTED WITHOUT POSTS.

WILL THE CHIEF MINISTER TAKE ACTION ?

Pratidin News

Guwahati, 10th June :

Some unprincipled actions of the previous Govt. have destroyed the entire police administration. Appointment and promotion made illegally has made the police administration inefficient. By acquiring huge favour by pleasing the Govt. some police officials have brought down the image of the administration to such an extent that unless the new Govt. takes prompt action into it, then this vast force of over forty thousand of policemen would fail to protect the life and liberty of the citizens.

While referring to the failure of the police to deal with the law and order situation of the State, a police source said, if sycophancy is the yardstick of efficiency, then no efficient policeman would be able to function without political interference.

It is noteworthy that just before the election, the late Hiteswar Saikia and his affectionate Arun-Ranju-Niranjana have created a history by promoting six D.I.s.G without any post and two of whom had no eligibility defying administrative

rules.....

Amal,
P. K. Roy
Amal
19/6/86

rules and policies which resulted in misuse of administrative power on the one hand and loss of revenue on the other. The said D.I.G are A.K.Sahu, Subhash Goswami, D.K.Psthak, R.Kumar and the most familiar persons of the people of Assam Shri Ashim Roy and Tarapada Chakraborty. It is pertinent to mention that like Ashim Roy, Tarapada Chakraborty was also a member of I.P.S. of 1980 batch. They have deprived officers like 'Deshmukhya' and others who are senior to him only because they could please the Govt.

Surprisingly, there was no post to accommodate these six D.I.G. on their promotion as I.G.P. and such posts are yet to be created. Therefore, the Govt. is finding it difficult to find out as to what procedure was adopted in promoting these officers.

The sources further revealed that the proposal sent from the D.G.P's office for promotion of six D.I.Gs. was not only approved overnight, but the said approval was received in the D.G.P's office along with the formal order of promotion to the utter surprise of everybody in the office. Therefore, it is apparent that the entire process was done under heavy political interference and conspiracy.

On the other hand, it was stated that the Anti-corruption branch was making an enquiry against

two

for L2
14/10/96

Annx. A.

two of the aforesaid police officers and to provide such officers involved in the corruption cases, clearance from the said branch was necessary. But such administrative requirement was ignored by the mighty pen of Arunaday, Ranju, Niranjana and the power of Chief Minister Hiteswar Saikia. The sources suspects transactions of lacs of rupees over this illegal promotion prior to the election.

There was also some mixed reaction on yet another matter. It was stated that these posts were created with a view to maketh the police department more capable and stronger to curve the increasing rate of extremist activities. But the inner circle of the police department is asking as to how the illegal promotion done in the confidential file of Chief Secretary without going through the Home Department has helped to curb the extremist activities or to make the police stronger.

It was alleged that such action has brought down the morale of the entire police force and the officers who are always devoted to their duties have expressed an opinion that enquiries should be held in the matter of such promotion.

It seems that the Govt. have been giving much importance to the police and the Home Department. It is alleged that the present Govt. is not very satisfied with

the.....

Handwritten notes:
pr Mr
14/10/96

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the Home Commissioner Shri Rao for some of his actions during the previous Govt. and because of that the Additional Chief Secretary Shri C.P. Misra has been given the additional charge of Commissioner of Home. Shri Misra is known as an able administrator. Therefore the concerned people are required to wait for some time more to know the role that would be played to bring back the demoralised police and make the department able.

Shri Rao -

P. N. Ray

Adm. Secy.

14/12/46

GOVERNMENT OF ASSAM

HOME (A) DEPARTMENT

No. HM. 179/96/4.

Dated Dispur, the 6th May/1996.

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

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

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

Sir,

I am directed to convey the sanction of the Governor of Assam to the creation of the following 6 (six) Nos of excadre posts in the rank of I.C.P. for a period upto 28-2-97 w.e.f. - the date of entertainment in the scale of pay Rs. 5900-6700/- plus other allowances as admissible:

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

The expenditure is debitable to the "Head of Account" - 2055-Police-001-Direction & Administration-(a) H.Q.-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-II) Deptt. conveyed vide their U/O No.1184/96, dtd. 4-5-96,

Yours faithfully,

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

Copy to: 1) The Under Secy. to the Govt. of Assam, Finance (C-II) Deptt. for information with reference to the U/O No.1184/96, dtd. 4-5-96.

2) The Under Secy. to the Govt. of Assam, Finance (C-II) Deptt. for information with reference to the U/O No.1184/96, dtd. 4-5-96.

By Order, *[Signature]*

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

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

By Order, *[Signature]*
Home (A) Department.

Atk. 179/96/4-P.H. May
Atk. 179/96/4-P.H. May

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT.
ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Disput, the 8th March, 1996.

N. 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. 5900-200-6700/- 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/-

Att. Secy,
P. H. Roy
Adv. Secy
14/03/96

Dated 14th Apr, the 6th May/1986.

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

I am directed to convey the sanction of the Governor of Assam to the creation of the following 6 (six) Nos of exadgre posts in the rank of I.C.P. for a period upto 28-2-57 u.e.f. - the date of entertainment 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-S.
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-II) Deptt. conveyed vide their U/O No.1184/96, dtd: 4-5-96.

Yours faithfully,

Under Secy. to the Govt. of Japan,
Home Affairs Department.

6-10 90.H.I.179/86/1-1, Home (A) Department.
Copy to (a) The Director, Immigration, 1986,
(b) The Director, General Inspection of Police.

2) The Under Secy. to the Govt. of Assam, Finance (U.C. 71)
C above, for information with reference to the U/O filed

By Order, ^o tr.

Under Secy. to the Govt. of Assam,
Home (A) Department
Dated Dispur, the 6th May/1946.
General, Assam, Shillong (Meghalaya).

Senior Financial Advisor
Home (A) Department

Assigned
P. H. Ray
Schwartz
14 Feb 96

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT.
ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Disput, the 8th March, 1996.

N. 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. 5900-200-6700/- 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/-

Att. Secy,
P. H. Roy
Adv. Secy
14/03/96

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

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.

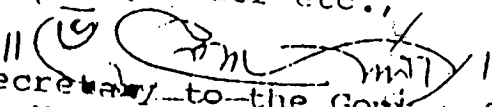
Mem. NO. CS (Con).1/96/8-g Dated Dispur, the 8th March, 1996.

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/-

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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

Attched-

Pk Ray

Ad. v. v. v.

14/10/96

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 10th May, 1996.

No. HMA(IPS) 110/Pt.I/12 : Subject to admissibility, Shri A.K. Roy, IPS, Inspector General of Police (L&O) is granted 90 (ninety) days Earned leave for a period with effect from the date of availing on medical ground under AIS(leave) Rules, 1955 as amended.

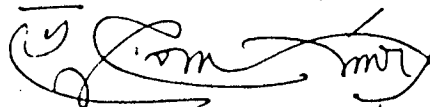
The Officer would have continued to hold the same post but for his proceeding on leave and there is every likelihood of the Officer returning to the same post on expiry of leave.

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

Memo.No. HMA.(IPS) 110/Pt.I/12-A, Dtd.Dispur, the 10th May, 1996.
Copy to :-

1. The Accountant General, Assam, Shillong.
2. The Director General of Police, Assam, Ulubari, Guwahati- 7,
3. Shri A.K. Roy, IPS, Inspector General of Police(L&O), Assam, Rehabari, Guwahati- 8.

By order etc.,



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

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Attched-
PK Roy
Advised
c/10/96

30 ANNEXURE - E
-27- 69/165-46

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.

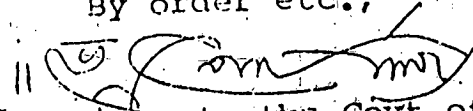
Sd/- B. Sarma,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

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.,

11  11 20/5/96
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Attested
P. H. Sarma
Admin.
14/6/96

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ANNEXURE-F

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

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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/-

29
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.

Cf. notification dt 27.9.96
Reversion with
retrospective
effect.

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

A 1154

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.,

(Sd/- B. Sarma)
23.6.96

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

Attested
P. K. Roy
2nd secy
14/10/96

GOVERNMENT OF ASSAM
HOME (L) 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/-

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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. Chakraborty,
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.,

2/7/96

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

Atty. Gen.,
P.N. Roy
Advocate
24/10/96

SITAKAK

(35)

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72

From

Shri Ashim Kr. Roy, IPS
(on leave)
Cochar High School Road
Itkhola, Silchar
Cachar, Assam

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 the Government has cancelled the notification No. C.S.(Con) 1.96/ 8(c) dated 08.03.96 promoting me to the rank of I.G.P. (Law and order) I have however not been given an opportunity to represent against the proposed order of cancellation of the promotion which has resulted in the reduction in rank.

I would like to say that I have all along served the government to its utmost satisfaction and received many letters of appreciation, commendation and reward including the Police Medal for gallantry.

That Sir, if the said order is not reviewed, it would mean great ignominy and loss of face to me.

That Sir, I was promoted to the rank of Inspector General of Police with effect from 10.03.96 as I fulfilled the necessary conditions to the satisfaction of the Government.

I would therefore request you to consider my case and redress my grievances by restoring me to the rank of Inspector General of Police again with effect from the date of cancellation.

Yours faithfully,

(A.K. ROY)

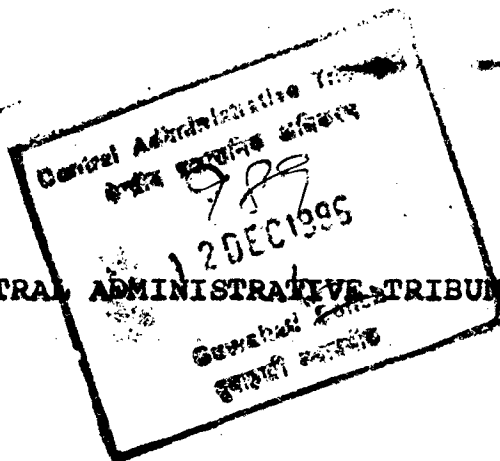
Advance copy for favour of information:

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

11.7.96
(A.K. ROY)

Attested -
P.N. Roy
Ad. Secy
14/10/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GAUHATI BENCH



Filed by:-

State of Assam & Co.

Respondent Nos. 2, 3

Through
Messrs. M. D. Das & Co.

Advocate, Gauhati Bench

In the matter of :

O.A. No. 261 of 1996

Between

Shri Ashim Kumar Roy Applicant

and

The State of Assam

and others

... Respondents

(Written Statements 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 this 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. That the statements made in paragraphs 6.1 and 6.2 being matters of records of the case, the respondents have nothing to give any comment or reply to the statements of the said paragraphs. However, the contention of the applicant that he was appointed as Deputy Superintendent of Police in Assam Police Service in August, 1996 is not at all correct. The applicant joined the said service in the year 1966 and not in 1996.

3. That the allegations made in paragraph 6.3 against the respondents are absolutely untrue and incorrect and the respondents categorically deny the same. Nothing has been done against the applicant by the respondents by taking advantage of the change of Government and being influenced by the Government machinery in order to harass the applicant, as alleged.

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A departmental proceeding can be drawn up against any officer or employee on the basis of charges ^{and} articles of imputation and not without any material. There are enough materials on record from which the Government came to an irresistible conclusion that the applicant was illegally promoted to an ex-cadre post in flagrant violation of the relevant laws. The Government being fully satisfied with such materials, the impugned notices were issued. I say that there is nothing illegal in the action taken by the Government and that this Hon'ble Tribunal has nothing to interfere with the impugned action.

In this connection, the respondents beg to state the following legal position for the appraisal of this Hon'ble Tribunal.

(i) The then Chief Secretary to the Government of Assam on some advice of the then Director General of Police, opened a 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, ^{was} empowered the State Government to create certain ex-cadre posts in the IPS, has been violated. The power 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 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 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 ~~the~~ 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 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 the 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 then Chief Secretary.

(vii) Under Rule 32 A 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) 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, Memo 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.

4. That the statements made in paragraphs 6.4 are not at all correct and the same are categorically denied. The six posts mentioned in the said paragraph were not at all created. It is stated in the said paragraph that the ~~XXXXX~~ tenure of the post was said to be upto 28.2.97. The way in which the six Police Officers were promoted against six ex-cadre posts has been elaborately stated above. No posts have been created and as a matter of fact, there being already excess of ex-cadre posts of the rank of IGP, the so-called promotion of the applicant to an ex-cadre post in gross violation of the aforesaid Rules is null and void and is a non est. The so-called promotion having been made in gross violation of the statutory Rules, the matter was reviewed and no sanction was given. It may be mentioned that there were already excess of four ex-cadre posts in the rank of IGP against the admissible limit and so, there could not have arisen any occasion to make six other ex-cadre posts in violation of the Rules.

5. The statements made in paragraph 6.5 are contradicting the statements made in paragraph 6.4 of the application and as such, the statements are untrue and misleading. In paragraph 6.4 it has been stated that the Government created six numbers of ex-cadre posts in the rank of IGP on 6.5.96 whereas in paragraph 6.5 it is stated that pursuant to the creation of six number of posts, Government promoted six officers in the rank of DIGP to the rank of IGP by notification dated 8.3.96. It is categorically denied that there was any selection, as alleged by the applicant.

6. That the statements made in paragraph 6.6 are denied. The statements made by the applicant that he availed of Casual Leave for seven days with effect from 12.5.96 is not borne by the materials on record, inasmuch, he was granted Earned Leave for 90 days with effect from ^{on} 10.5.96. Thus, the applicant has resorted to falsehood and thereby is misleading this Hon'ble Tribunal.

7. That the statements and allegations made in paragraph 6.7 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 the Government of India, are mentioned below :

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

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 ~~not~~ 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 were 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 statements made in paragraph 6.8 are not at all correct and are categorically denied. The so-called notifications promoting six numbers of DIGP including the applicant to the rank of IGP had been cancelled by the Government after thorough examination of the relevant Rules and procedure uniformly adopted by the Government and only after arriving at an irresistible conclusion that there were gross errors and illegalities in purporting to promote the applicant and five others to the rank of IGP, the matter was reviewed and the impugned notifications were issued. It is, therefore, absolutely incorrect to say that the notifications of so-called promotion were cancelled without any rhyme or reason, as alleged. It has already been stated in paragraph 3 above the grounds and reasons on which the so-called notifications purported to be issued by the previous Government promoting the applicant and five others to the rank of IGP were cancelled.

9. That the statements and allegations made in paragraphs 6.9, 6.10 and 6.11 are categorically denied. The statutory Rules and procedure were deliberately and wilfully violated by the then

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ix authority in order to show undue favour ~~in~~^{to} the applicant and five others ~~in~~ in promoting them in ex-cadre posts to the rank of IGP. No post in the rank of IGP was created ever and that the applicant was not at all eligible to be promoted to a post in the rank of IGP.

10. That the statements made in paragraphs 6.12 and 6.13 being the matters of the 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 contention made by the applicant in paragraph 6.12 are incorrect and irrelevant. It is categorically denied that the notification cancelling the so-called promotion order was done on pressure from some quarter, as alleged. It is stated that the law being very clear and the applicant not being at all eligible to get promotion, such grounds cannot be taken by him.

The respondents crave leave of this Hon'ble Tribunal to produce all relevant records at the time of hearing of the case and from the records it will be abundantly clear that the so-called promotion of six DIGP purported to be made by the then Government in March, 1996, is in flagrant violation of the statutory Rules and the procedure, as mentioned in the foregoing paragraphs.

11. That the respondents beg to state that the applicant being a very responsible officer, purposely and intentionally used some harsh and abusive language in the application filed before this Hon'ble Tribunal and, as such, he should be given stricture and also be reprimanded.

12. That the respondents categorically deny the submissions made in paragraphs 7.1 to 7.10 ^{under} and the grounds of 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.

13. That the respondents submit that the applicant having failed to make out any case and there being no ground to interfere with the impugned notifications 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.

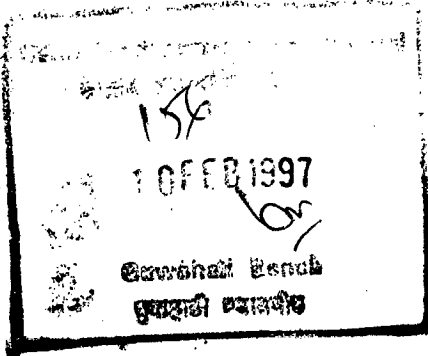
VERIFICATION

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 paragraph 11 are true to my knowledge; those made in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 being matters of records of the case, 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 this Hon'ble Tribunal; and I sign this verification this the 9th day of December, 1996 at Guwahati.


DEPONENT

~~Identified by me~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GAUHATI BENCH



In the matter of :

O.A. No. 261 of 1996

Between

Shri Ashim Kumar Roy Applicant

and

The State of Assam
and others

.... Respondents

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Filed by Mr. Ashim Kumar Roy
Advocate
10/2/97

Rejoinder
(Written statement of the applicant in response to the Affidavit filed by the Respondents before the Hon'ble Central Administrative Tribunal).

The applicant begs to state as follows :

1. The grounds and contentions of the counter affidavit filed by the respondents are frivolous which only circumvent the fact at issue. It only dwells on how the the file concerning the promotion of the applicant and others was processed in the secretariat which is of no relevance to the valid notification signed by the Dy. Secy. of the home department. The respondent has done the same with the obvious intention of confusing the fact at issue by launching an argument about the processing of the file which is irrelevant in the instant case and as such it should be forthright rejected ab initio.

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2. No comment with the indication that it was a typographical mistake - instead of 1966, it was typed 1996. The learned respondent should have passed over it considering it as a typing error which was so obvious from the text of the application and refrained from making such a fuss.

3. The list of dates furnished in Annexure 'A' to the counter affidavit will indicate how with the assumption of the present govt, vindictive actions were taken against the applicant. The impugned notification cancelling the promotion of the applicant is definitely one of such vindictive actions as the applicant along with five other officers was promoted without any violation of the relevant rules and laws.

(i) The chief secretary being the supervising authority for all the departments in the state, - the authority of the chief secretary to process the particular subject of the Home department can not be questioned. The internal procedure for examination of any matter in the secretariat has been quoted in the affidavit in opposition wrongly and in a motivated manner. Further, it gives a go bye to the subject matter at issue as raised by the petitioner relating to his wrongful

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reduction in rank and that again with retrospective effect. What a chief secretary or the Home secretary should or should not have done in processing any proposal for obtaining the orders of the competent authority (which in the present case was the Chief Minister who was also the Home Minister) in the matter of his promotion and other officers like him is a matter which is not relevant in deciding the claim of the petitioner for continuing to hold the post of Inspector General of Police. The petitioner was promoted with the approval of the competent authority at the highest level of the state govt., viz, the Chief Minister after the case of the petitioner was initiated by the administrative head of the department which in this case was the Director General of Police and the same was examined by no less an authority than the head of the Administrative machinery in the state namely the Chief Secretary who is responsible for ensuring efficient functioning of the entire state administration. It obviously includes the Home department and the commissioner and secretary (Home) as well who are subordinate to the chief secretary. This fact has been admitted by the respondent as well vide Para 3.vii of the affidavit.

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The respondent is thus trying to mislead the hon'ble tribunal to think that the chief secretary should not have submitted the case of the petitioner from his office to the chief minister without its being examined and processed first by the Home department or its secretary for reasons best known to him. The petitioner however suspects that the respondent has done so to harass and harm him because of the developments mentioned by the petitioner in his application. For the respondent is not unaware of the authority and duty of the chief secretary as enshrined in the Assam Rules of Executive Business, 1968 as amended under which the chief secretary may on his own motion ask to see papers relating to any case in any department and after examination of the case submit it for orders of the minister in charge or of the chief minister through the minister in charge.

By the admission of the respondent itself the chief secy. submitted the case to the chief minister who was also the minister in charge of the Home department. Thus the chief secretary in processing the case was absolutely right and it was fully in conformity with the provisions of Rule 26(6) of the aforesaid Assam Rules of Executive Business.

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In any case, any irregularity in the internal processing or examination of the proposal of the D.G.P. Assam for the promotion of the petitioner and others can not deprive the petitioner of his rightful claim to the post of the Inspector General of Police to which he was appointed by the competent authority of the state govt. and which was duly created/ sactioned and intimated to the Accountant General Assam vide letter No. HMA/125/175/96/4 dated 6th Nov. 1996 which has been annexed to the original application.

3.(ii) As to the contention of the respondent regarding the eligibility of an All India Services Officer for the promotion to the supertime scale, the petitioner submits that the guide lines of the govt. of India are suggestive or indicative but not mandatory in respect of qualifying service and these rules apply equally to IAS and IPS officers. It is worth noting that the respondent has referred to the role of the then commissioner and secretary (Home) Shri B. V. P. Rao who (according to the admission in his own note to the Addl. chief secretary (Home) copy of which is annexed to the original application) left the office "in disgust" on learning that the proposal for promotion of the petitioner and others was being examined by the Chief Secretary for obtaining orders of the Chief Minister in

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terms of the rules mentioned above. The conduct of the commissioner and secretary (Home) warrants stricture and reprimandation by the Hon'ble tribunal and it also shows what intense hatred and ill feeling he had against the applicant and how bent he was to deprive him of his lawful promotion.

But how ludicrous and inconsistent it seems as the same commissioner and secretary (Home) Shri Rao who was himself an I.A.S. officer of 1982 batch was an exception to the same rule into which he has now taken refuge to argue that the promotion of the petitioner was in flagrant violation of the guide lines of the the Govt. of India. By the application of same rule, he can not be promoted to the supertime scale of the I.A.S. to become the commissioner and Secretary (Home) till the year 1998 A.D. where as he was promoted in 1995 and his case was processed by the chief Secretary without any reference to the partner in the joint cadre namely the Govt. of Meghalaya. The applicant can only wail at such travesty of justice and turn to the hon'ble tribunal for justice and redress.

The respondent will like to mention in this context only to explain to the Hon'ble tribunal as to what had necessitated for the Chief Secretary to directly

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intervene in the matter was that on becoming the commissioner and secretary (Home) in the supertime scale of the I.A.S., Shri Rao started treating the Senior Police officers in the state in a manner which was not only derogatory to the Senior I.P.S. officers but it also began to adversely effect the law and order and anti-insurgency operations in the state. This led to verbal representation by the effected officers including the petitioner to the DGP/ C.S. and the chief minister for either demoting the I.A.S. officers of the length of service of Shri Rao from commissioner & secretary (Home) or alternatively, in TERMS OF THE PARITY NORMS of the Govt. of India for the different All India Services Officers, to promote the I.P.S. officers at least of 1980 batch to the supertime scale that is to the rank of I.G.P. to avoid interservice rift in the state which was then witnessing unrest in the law and order front because of the terrorist activities. The D.G.P., C.S. and the Chief Minister assured the I.P.S. officers of justice and parity and this led the D.G.P. to submit a proposal for promotion of the petitioner and five others in late January or February 1996 to the Commissioner & Secretary (Home) Shri Rao. He however, because of the ill-will and grudge against the petitioner and some other officers, was trying to scuttle the proposal wrongly advocating or quoting norms/guide lines which

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were not to be invoked in the case of his promotion and a host of other I.A.S./I.P.S. officers to the supertime scale. When this was delayed for over a month and there was a simmering discontent in the police, the Chief Secretary took action and called for the papers from the Home department and the D.G.P. and acted in terms of Rule 26(6) and 32 A(b) of the Assam Rules of Executive Business as the head of the administrative machinery of the state with the positive purpose of ensuring efficiency of the function of the state police which was plagued by the highhandedness, rudeness and negative approach of a junior I.A.S. officer of hardly 13 years of service working as the commissioenr & secretary of the Home department and trying at personal level to boss over senior police officers having over 30 years of service out of which the number of years of service in the I.P.S. itself was more then the total length of the service of the commissioenr & secretary (Home) Shri Rao.

Again, Rule IV (ii) of the cadre rules provides as under "Provided further that the state govt. concerned may 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 or responsibilities of a like nature to the cadre posts".

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This will prove that the state govt. did not act in violation of any provision of IV (ii) of the cadre rules. Simple perusal of the provisions under rules of A.I.S. (Pay Rules) would clarify that the act of the state govt. in promoting the applicant and others was not at all in violation of the provisions under Rule 9 of the pay rules.

iv. In the I.P.S. pay rules there is no stipulated period of service for promotion to the rank I.G.P. (Supertime Scale). Any A.I.S. officer thereby any I.P.S. officer holding the selection grade scale may be promoted to the rank of I.G.P. (Supertime Scale) at any point of time in the exigency of the service and in consideration of the past records as has been incorporated in the A.I.S. rules vide notification No. 11030/7/87 - A.I.S. (II) dated 13.3.87 Any executive instruction to the contrary is not therefore legally tenable. Similar such promotion in the supertime scale was given by the state govt. of Assam in respect of many officers borne in the I.A.S./I.P.S. cadres. It is my fervent prayer that the honourable tribunal may be pleased to call for such records if deemed necessary or if denied by the respondent as the applicant does not have any access to such records.

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V. There are innumerable cases of similar nature when the post facto consultation with the joint cadre authority was made for the purpose of regularisation of the provision. But in the instant case, the govt. of Meghalaya was duly notified and till date no objection to the promotion has been raised by the govt. of Meghalaya (The Notification relating to the promotion of the applicant to the rank of I.G.P. of which a copy was marked to the Home department Meghalaya is annexed in the original application). In the instant case also the state govt. would have done the same had it not been vindictive particularly to the applicant as is evident from the note of the then commissioner & secretary (Home) to the additional chief secretary (Home). The rule however is directory in nature and was substantially complied with.

(Vi) As in 1, as such the process adopted by the chief secretary in promoting the applicant along with others can not be called in question.

(VII) Not denied.

(VIII) Has already been stated above.

4. Creation of the posts subsequent to the promotion of the officers to the rank of I.G.P. is not a violation of the rules as the A.G. is expected to issue necessary authority slip for drawal of pay by such officers only

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after the state govt.'s sanction for creation of the post is received. The Hon'ble tribunal may be pleased to ask the respondent/A.G. to confirm whether or not such practice was followed in the past in respect of other I.A.S./I.P.S. officers. Letter dt 6.5.96 only conveyed creation of posts to the A.G.

5. The same as 4.

6. The applicant availed seven days' casual leave with effect from 12.5.96, which was duly granted vide annexure to the original application. It was subsequently merged with 90 days Earned leave with effect from the date of availing casual leave as casual leave can not be prefixed with earned leave. The respondent erred in proper appreciation of the leave rules.

7. When there are already four posts in excess of the permissible limit of the Ex-cadre Posts, - the instant six cadre posts could also have continued by the same reason. The respondents exhibited vindictiveness by their action for cancelling the instant six ex-cadre posts simultaneously allowing the continuance of the earlier four ex-cadre posts in excess of the permissible limit of 14 such posts if at all the limit has exceeded.

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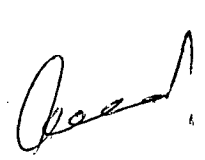
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8.9.10. The respondents acted in colourable exercise of their powers and with utter vindictiveness and discrimination by cancelling the promotion notification of the applicant to the rank of the I.G.P.

11. The applicant was justified in using the language alleged to be harsh while giving vent to his strong sense of frustration and anguish.

12. The applicant reiterates the submission made in paragraph 7.1 to 7.10, of the original application.

The honourable tribunal may, therefore be pleased to consider the above facts and legal provisions and dismiss the counter affidavit filed by the respondents ab-initio.



VERIFICATION

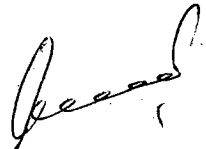
I, Shri A.K. Roy, I.P.S. now residing at Cachar High School Road, Itkhola, Silchar - 2, Cachar, Assam do

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hereby verify and declare that the statements made in the affidavit are true to my knowledge and the informations are derived from sources which I belive to be true and that the statement is for submission before the Hon'ble Tribunal; and I sign this verification on this 7th day of January, 1997 at Silchar.



DEPONENT

Identified me.

(ASHIM KUMAR ROY)



LIST OF DATES AND EVENTS

DATE	EVENTS	ANNEXURE - I
6.5.96	(i) Applied for 180 days half pay leave on medical ground. (ii) Applied for Central Deputation.	
8.5.96.	(i) Leave application was recommended by the D.G.P. as is evident from the endorsement on the body of the application. (ii) The Chief Secretary Assam recommended the leave and forwarded it to the chief meinister, Assam for approval. (iii) Received letter no. PLA 283/85/44 dated 8.5.96 from the joint secretary to the Govt. of Assam Political Deppt., 'advising me to take all care and precaution as are required to be taken individually to facilitate security'.	
9.5.96.	(i) Chief Minister Assam accords approval to granting of leave.	
10.5.96.	(i) The Chief Secretary directs the Dy. Secretary (Home) to notify the leave. (ii) Leave is notified vide No. HMA (IPS) 110/Tt.1/12 dated 10.5.1996 with effect from the date of availing. There is no mention to avail the leave after being relieved. (iii) Govt. recommends the prayer for central deputation vide letter No. HMA (IPS) 110/Pt.1/II. (iv) Applied for 7 (seven) days C.L. which was verbally granted and later confirmed vide letter No.FA/XXII/958/362 dt.20, 5, 1996. of the office of the D.G.P.	
12.5.96.	Proceeded on casual leave on 12.5.96 P.M.	
14.5.96.	A.G.P. Govt. takes over.	
20.5.96.	Availed the E.L. on medical ground	

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which was intimated to the D.G.P.
Assam vide Memo No.DR/1/Gen/F-6/96/725
dt.20.5.96.

- 24.5.96. Govt. addressed letter No. HMA (IPS) 110/Pt.1/13dt.24.5.96 directing me to appear before the medical board to the care of the Resident Commissioner Govt. of Assam, New Delhi which was never received by me and of which I only came to know through the show cause notice served on me 20.9.96.
- 29.6.96. Govt. issued notification cancelling the previous promotion order to the Inspector General of Police vide notification No.HMA 224/96/16 (e).
- 1.7.96. Letter No. HMA (IPS) 110/Pt.1/15 dt. 1.7.96, sent to my last official address at Guwahati asking me to appear before the medical board which was never received by me and of which I came to know through the show cause notice served on me.
- 6.7.96. A Public notice was issued in Indian Express directing me to appear before the medical board which had never come to my notice and of which I came to know through the show cause notice served on me.
- 11.7.96. (i) Appealed against the demotion order to the Chief Secretary Assam through the D.G.P. indicating the Home/ permanent address with advance copy to the Chief Secretary and the Home Secretary Assam for information.
- (ii) Submitted a prayer to the Union Home Secretary for posting outside Assam with copy to the Govt. of Assam.
- 25.6.96. Letter No. HMA (IPS) 28 Pt.11 dt. 25.7.96 of the under secretary to the Govt. of Assam sent to my last official address at Guwahati directing me to appear before the medical board on 9.8.96 which was never received by me and of which I came to know through the show cause notice.
- 27.7.96. Public notice issued in Assam Tribune directing me to appear before the medical board on 9.8.96

which had never came to my notice
and of which I came to know from
the show cause notice only.

- 29.7.96. Public notice issued in Indian Express directing me to appear before the medical board on 9.8.96 which however never came to my notice and of which I came to know through the show cause notice.
- 3.8.96. Wrote to the D.G.P. to indiminate my place of posting and also to convert the E.L. on medical ground to E.L. on personal ground.
- 13.8.96. Suspension order issued which was served on me at my Home/Permanent address at Silchar on 22.8.96.
- 4.9.96. Submitted an appeal to the Home Secretary to the Govt. of India under rule of All India Services (Discipline and Appeal) Rules 1969 against the order of suspension served on me through the Chief Secretary to the Govt. of Assam.
- 20.9.96. Show cause notice served on me at my home address at Silchar on 20.9.96.
- 24.9.96. Addressed a letter to the Home Secretary to the Govt. of Assam asking for time to furnish reply to the shaw cause notice. But no reply has yet been received.
-