

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

Contempt APPLICATION NO. 26 OF 2001

APPLICANT (S) in O.A. 177/2000
Swaroop Sharma

RESPONDENT (S) U.O.I Poms

ADVOCATE FOR APPLICANT(S) V. M. Thomas

ADVOCATE FOR RESPONDENT(S) case.

Notes of the Registry

dated

Order of the Tribunal

This Contempt
Petition has been filed
by the Counsel for the petitioner
praying for Non-Compliance
with the order dated 15.5.2001
passed by His Honble Court
in O.A 177/2000.

Laid before the
Honble Court for further
orders.

Section officer

Do.

Notice prepared and sent to
D/S for issuing the Respondent
No 1 by Regd A/D vide
D/No 2877W dtd 3/8/01

3/8/01
29.8.2001

copy of the ~~order~~ order
has been sent to the D/Sec.
for issuing the same to the
H/Advocates for the parties etc.

26.7.01

bb
27.8.01
VMS
27/7/01

mb

Issue notice on the respondents
to show cause as to why the contempt
proceedings shall not be initiated aga-
inst the alleged contemner, returnable
by four weeks.

List on 27.8.2001 for order on.

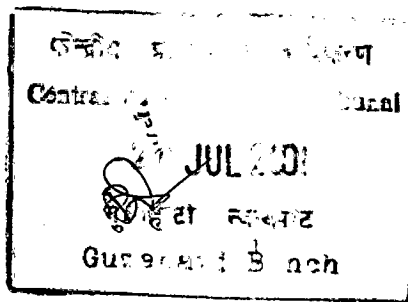
IC (Sharma)
Member

Vice-Chairman

Heard Mr. B.C. Pathak, learned Addl. C.G.S.
C. and Mr. V.M. Thomas, learned counsel for the
applicant.

It has been stated that the Union of
India has filed W.P. before High Court which
was numbered as W.P. 5938 of 2001. In this
circumstances, the present Contempt proceeding
is closed.

Vice-Chairman



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Filed by the petitioner
through
(V.M. THOMAS)
Advocate
20/7/2001

C. P. No. 26 /2001
O.A. 177/2000)

Shri Swaroop Sharma,
"Gauri Shankar",
Kench's Trace,
Shillong - 793004.

...Petitioner

-versus-

Shri Umed Singh,
Director (in-charge),
North Eastern Police Academy,
Umsaw - 793123, Umiam,
Meghalaya.

...Respondent

In the matter of :

An application under Section 17 of the
Administrative Tribunals Act, 1985,
read with Section 12 of the Contempt
of Courts Act, 1971.

-And-

In the matter of :

Wilful and deliberate disobedience of
and non-compliance with the Order of
this Hon'ble Court dt. 15th May 2001
passed in O.A.no.177/2000, by the
Respondent.

Contd-2

Swaroop Sharma

The humble petitioner above-named :

Most Respectfully Sheweth :

1. That the petitioner had preferred the O.A.no.177/2000 before this Hon'ble Tribunal challenging the illegal and arbitrary discontinuance of the petitioner's adhoc service as Asstt. Director (Lecturer) in the North-Eastern Police Academy and his replacement by another adhoc appointee, viz. Mr.Baharul Islam Laskar. The petitioner prayed for a direction to the Respondent no.3 in the O.A. (the Director of the Academy) to immediately reinduct the petitioner in service and to continue him in that capacity till such time as regular selection and appointment is made.

2. That the aforesaid O.A. was disposed of by this Hon'ble Tribunal by the order dt. 15th May 2001 holding that "No justification was assigned for replacing the applicant by another adhoc. The impugned action in replacing the applicant by another adhoc is thus unsustainable." Accordingly this Hon'ble Tribunal directed the respondents "to allow the applicant to continue to hold the adhoc post till completion of the process of regularisation."

A copy of the aforesaid order of this Hon'ble Tribunal dt.15th May 2001 is annexed hereto as ANNEXURE - A.

3. That the petitioner submitted a copy of the aforesaid order to the Respondent on 7/6/2001 enclosed with his letter dt. 6/6/2001 requesting him to do the needful immediately for complying with the order of the Tribunal.

A copy of the aforesaid forwarding letter dt. 6/6/2001 is annexed hereto as ANNEXURE - B.

Contd-3

Swaroop Sharma

4. That the petitioner states that subsequently the office of this Hon'ble Tribunal also sent a copy of the said order to the Respondent which was received by the Respondent on 20/6/2001.

5. That the petitioner begs to state that it is the present Respondent who is the person responsible for carrying out the aforesaid order of this Hon'ble Tribunal. However inspite of the receipt of the said order the Respondent has deliberately, knowingly and wilfully refused to carry out the same. On the other hand, in utter defiance of the order, the Respondent is continuing to retain Mr. Baharul Islam Laskar as Asstt. Director (Lecturer) on temporary basis. It may be mentioned that at present the academic session 2001-2002 is in progress (March to February).

6. That it is relevant to mention here that inspite of being given several opportunities the Respondent had failed and neglected to file any written statement in the O.A. 177/2000. As such now there can be no justification at all on his part in not complying with the order of this Hon'ble Tribunal.

7. That the petitioner begs to submit that by his wilful and deliberate refusal, neglect and failure to carry out the order of this Hon'ble Tribunal the Respondent has committed contempt of this Hon'ble Tribunal and is continuing to do so. As such the Respondent is guilty of contempt of court and is liable to be proceeded against and punished accordingly.

8. That under the aforesaid facts and circumstances it is humbly submitted that this is a fit case wherein this

Contd-A

Swaroop Sharma

Hon'ble Tribunal may be pleased to initiate proceedings against the Respondent for contempt of court and to impose punishment on him in accordance with law.

9. That this petition is made bonafide and in the interest of justice.

It is therefore prayed that Your Lordships may be pleased to admit this petition, and may be pleased to initiate proceedings against the Respondent under Section 17 of the Administrative Tribunals Act, 1985, read with the provisions of the Contempt of Courts Act, and to impose punishment on him for wilful and deliberate disobedience of and non-compliance with the order of this Hon'ble Tribunal dt. 15th May, 2001, passed in O.A.177/2000;

And/or may be pleased to pass such or further orders as Your Lordships may deem fit and proper.

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

VERIFICATION

I, the petitioner, Shri Swaroop Sharma, aged about 29 years, son of Shri D.C.Sharma, resident of "Gauri Shankar", Kench's Trace, Shillong-793004, do hereby verify that the statements made in the above petition in paras 3, 4,

5, 6 and 9

are true to my knowledge,

Contd-5.

Swaroop Sharma

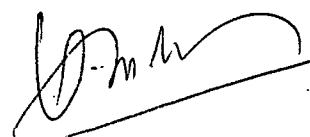
those made in paras 1 and 2 are true to my
information derived from records, and those made in paras
5 and 6 are my humble submissions based on
legal advice and I have not suppressed any material fact.

And I sign this verification on this 19th day
of July, 2001 at Guwahati.


(Shri Swaroop Sharma)

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal Guwahati for initiating a contempt proceeding against the alleged contemners/Respondents for wilful and deliberate non-compliance of the order of the Hon'ble Tribunal dated 15.5.2001 in O.A. 177/2000 and further be pleased to impose punishment upon the alleged contemners / Respondents for wilful and deliberate non-compliance of order dated 15th May 2001 passed in O.A. No. 177/2000.


(C.V.M. THOMAS)
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 177 of 2000

Date of Order: This the 15th Day of May 2001.

HONBLE MR. JUSTICE D.N. CHOUDHURY, VICE-CHAIRMAN

HONBLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

Shri Swaroop Sharma

"Gauri Shankar"

Kench's Trace,

Shillong-793004.

... .. Applicant.

By Advocate Mr. V.M. Thomas.

-Vs-

1. The Union of India,
represented by the
Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi-110001.

2. The Director (ME-II)
Government of India,
Ministry of Home Affairs,
New Delhi-110001.

3. The Director,
North Eastern Police Academy,
(Govt. of India, Ministry of Home Affairs)
Unsaw-793123, Umiam, Meghalaya.

4. Baharul Islam Laskar
Asstt. Director (Lecturer) - Adhoc
North Eastern Police Academy
Unsaw-793123, Umiam, Meghalaya.

By Advocate Mr. B.C. Pathak, Addl. C.G.S.C.

O R D E R.

D.N. CHAUDHURY: This application under Section 19 of the Administrative Tribunal Act assailing the action of the respondent No. 3 in not extending the term of the applicant's adhoc service, but replacing him by another adhoc appointee. An advertisement was published by the Respondent No. 3 for filling up, one post of Assistant

contd/-2

Marked
D.N. Chaudhury
Advo case

Director(Lecturer) in the North-Eastern Police Academy on Adhoc Basis. Having the required eligibility criteria the applicant applied for the post. The interview was held on 8th December, 1998. He was selected for the post and appointed as Assistant Director (Lecturer) on adhoc basis for 179 days from 15.12.98 to 11.6.99. Before expiry period of the appointment the Respondent No.3 again advertised the post for adhoc appointment. Subsequently interview was held and the applicant was once again appointed as Assistant Director(Lecturer) on adhoc basis for another term of 179 days with effect from 18.6.99 to



12.99, vide order dated 15th June 1999. The post was again advertised for adhoc appointment in the Assam Tribune. The applicant again applied for that post. The written test and interview were held in January, 2000.

The applicant appeared for the test and interview. Thereafter the Respondent No.3 appointed another candidate, the respondent No.4, as Assistant Director (Lecturer) on Adhoc basis.

Hence this application assailing the action of the respondents as arbitrary and indiscriminatory. It is also contended that among the members of the Board that conducted the aforesaid interview there was no specialist on the subject of sociology. Moreover, the Deputy Director(indoor) who had earlier been a regular member of the Board was also not made a member. In this application the applicant mainly contended the policy adopted by the respondents in replacing him now by another adhoc appointee. This according to the applicant, is illegal and arbitrary. The respondent No.3 has rejected the rightful and legitimate claim of the

contd/-

Attested
[Signature]
Advocate

-8-

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applicant and therefore the applicant has approached this Tribunal. The applicant submitted representation and there-
after submitted legal notice. The applicant moved this application questioning the legitimacy of the action of the respondents.

Notices were served on the respondents. Accordingly, the case is fixed for hearing. The respondents did not file any written statement.

Heard Mr. B.C. Pathak, Addl. C.G.S.C. appearing on behalf of the respondents No. 1, 2 and 3. Mr. B.C. Pathak Addl. C.G.S.C. submitted the steps were already taken for regularisation of the post. It was made clear that the advertisement is made for filling up the post of Assistant Director (Lecturer)

In the North Eastern Police Academy through U.P.S.C.

From the facts mentioned above it thus emerges that the applicant was appointed to the post on adhoc basis. His services were yet to be regularised. Pathak also submitted that the right of the applicant was of precarious nature and therefore, their appointment for limited purpose and before expiry period it appointed any other person. In the instant case in respondent No. 4 was appointed on the basis of the selection. Mr. V.M. Thomas learned counsel appearing on behalf of the applicant has submitted that as per legal policy for public appointments are to be made on regular basis. There could be no reason for replacing him now by another adhoc appointee. Accordingly the applicant contended that such replacement was illegal and arbitrary. Mr. Thomas also submitted that the actions of public authority is to conform to the content of Article 19 of the Constitution. In support of the contention the learned counsel referred to the decision of the Supreme Court State of Haryana -Vs- Piara Singh (1992) (4) SCC 118). In above Supreme Court Judgment it has been laid

contd/-

Attested
[Signature]
Advocate

down that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. This is to avoid arbitrary action on the part of the appointing authority. Mr.B.C.Pathak also referred to the decision of the Supreme Court Dr.(Mrs.) Meera Massey, Appellant -Vs- Dr.S.R.Mehrotra & Others. The above decision mainly pertains to filling up the post of regular basis. The said case factually distince from the case. The contention of Mr.Pathak that the application is barred the principle of acquiescence and waiver. For that purpose the decision of the Suneeta Agarwal -Vs-State of Haryana and Others (2000) 2 SCC 615 was referred to. It is not a case where the applicant can be held to guilty of acquiescence. No justification was assigned for replacing the applicant by another adhoc. The impugned action in replacing the applicant by another adhoc is thus unsustainable.

The respondents are directed to allow the applicant to continue hold the adhoc post till completion of process of regularisation. Accordingly, application is allowed. There shall however no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)



Certified to be true Copy
প্রমাণিত প্রতিলিপি

N. S. Sanyal
5/6/2001

Section Officer (J)
আলুবাগ অধিকারী (ন্যাযিক শাখা)
Central Administrative Tribunal
কেন্দ্রীয় প্রশাসনিক অধিকারন
Guwahati Bench, Guwahati-8
গুৱাহাটী ন্যায়কবীঠ, গুৱাহাটী-৮

Attested
[Signature]
Adm. case

HS
5/6/2001

SWAROOP SHARMA

'GAURI SHANKAR'

KENCH'S TRACE

SHILLONG - 4

Dt. 06/06/2001

To,

The Director
North Eastern Police Academy
Umsaw 793123
Meghalaya

Sub : Order dated 15th May 2001 passed by the Central Administrative Tribunal,
Guwahati bench in O.A. No. 177 / 2000 (Swaroop Sharma - vs - Union of India) and
others.

Sir,

I am enclosing herewith a certified copy of the afforsaid order of the Tribunal passed in my favour for your compliance.

I had served as Asstt. Director (Lecturer) on ad - hoc basis for two consecutive terms of 179 days each from 15-2-98 to 11-6-99 and from 18-6-99 to 13-12-99. However thereafter I was replaced by another ad - hoc appointee. I challenged the afforsaid action of the authorities before the Central Administrative Tribunal Guwahati Bench, by filing original application in 177/2000, wherein I contested that as per law let down by Supreme Court, one ad - hoc appointee cannot be replaced by another ad - hoc appointee, but can be replaced only by a regular appointee.

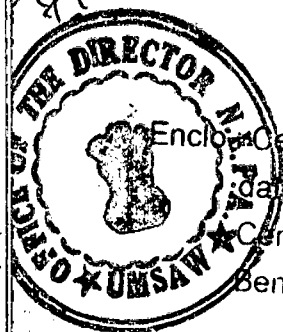
The application was heard at length by the Tribunal and was disposed of in my favour by the afforsaid order dated 15-5-2001, the Hon'ble Tribunal has directed the respondents to allow me to continue to hold the ad - hoc post till completion of the process of regularisation.

Accordingly, I request you to kindly do the needful immediately complying with the order of the Tribunal.

Thanking you.

Yours faithfully,

[Signature]
(Swaroop Sharma)



Enclosed Certified copy of the order
dated 15-5-2001, passed by
Central Adm. Tribunal Guwahati
Bench in O.A. in 177 / 2001.

WP 3938/01

Attested
[Signature]
Advocate