

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

Contempt APPLICATION NO. 43/2001

Applicant (s) Smt. Mahima Akela

Respondent(s) N.O.I 2001

Advocate for the Applicant: Abdul Khaleque

Advocate for the Respondent: case

| Notes of the Registry | Date | Order of the Tribunal |
|--|---------------|--|
| This Contempt petition has been filed by the Counsel for the petitioner praying for punishment of the Contemner for non-compliance of the order dated 9-5-2001 passed by this Hon'ble Tribunal in O.A. 420/2000. | 20.9.01 bb | Issue notice on the respondents to show cause as to why the contempt proceeding shall not be drawn up against the alleged contemner as prayed for, returnable by three weeks. List on 17.10.2001. |
| Lord before the Hon'ble Court for further orders. | 17.10.01 | Mr B.C. Pathak, learned counsel for the respondents seeks time to file reply. Prayer allowed. List on 28.11.01 for order. |
| Section 19(2)(b) 24/9/2001 Secton Adm. | pg | <i>ICU</i> Member |
| Notice refused and sent to D/s for serving the respondent No.1 by Regd A/c. 24/9/01 | | |
| D.M.O. 3670 | 11/26/01 | |

(2)

① Service report w/c 28.11.01
Still awaited.

② No. reply has been
bileed.

By
27.11.01

No. reply has been
bileed.

By
11.2.02

Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing for the contempern stated that ~~xx~~ against the order 9.5.01 in O.A. 420/00, the respondents ~~have~~ gone to the High Court and High Court dated ~~of~~ 28.11.01 passed an interim order. The interim order passed by the High Court has also been complied with. In the circumstances, the matter now be posted for hearing before Division Bench.

List on 12.2.2002 for hearing before Division Bench.

I C Usha
Member

mb

12.2.02 Heard Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.

It has been stated by Sri B.C. Pathak, learned Addl. C.G.S.C. that against the judgment and order dated 9.5.2001 passed in O.A. No. 420/2000, the respondents approached the High Court by way of Writ Petition and the matter is under examined before the High Court. In these circumstances the Contempt Proceeding stands dropped.

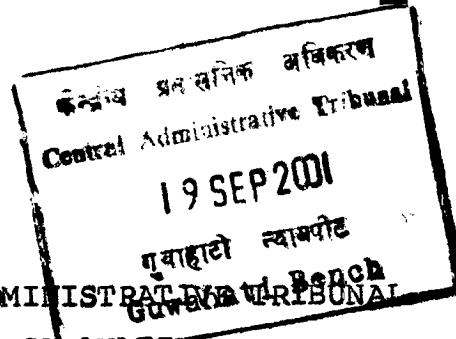
I C Usha
Member

h
Vice-Chairman

mb

20. 2. 2002
Copy of the order
has been sent to the
spec. for being ac-
cused to the 2/Adm
for the parties.

ff



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI.

CONTEMPT PETITION NO 43 OF 2001

In O.A. No.420 of 2000

Filed by
Smtt. Mo
Bhupinder
Asgar M

IN THE MATTER OF :

A petition under Section 17 of the Central Administrative Tribunal Act, 1985 praying for punishment to the contemners/Respondents for non-compliance of Judgment & order dated 9-5-2001 passed by this Hon'ble Tribunal, in O.A.No.420 of 2000

- A N D -

IN THE MATTER OF :

Smt. Mahima Deka,
W/O Late Arun Ch.Deka,
resident of
Vill.Niz Madartola,
P.O.& P.S.Kamalpur,
Dist. Kamrup.

.....Petitioner.

- V E R S U S -

Sri Som Kamei

The Senior Supdt. of Post Offices
R.M.S. Guwahati Divn. Guwahati.

..... Respondent/Contemner.

contd. 2

Mahima Deka

The humble Petition of the
above named applicant :

MOST RESPECTFULLY SHEWETH :-

1. That your applicant is the wife of Late Arun Ch. Deka who was an employee of the R.M.S.Guwhati Divn. and worked under the respondent and he completed 14 years of continuous service from 9-2-85 to 15-1-99. Although Sri Deka was initially appointed as casual worker, he was given the status of temporary Group D, employee's status along with other employees. Sri Deka died while he was in service on 16-1-99 after completing 14 years of continuous service. The applicant Smt. Mahima Deka submitted application, before the respondent authority requesting to pay the family pension and retirement benefit in her favour in view of the fact that her husband completed 14 years of continuous service. The respondent rejected the prayer of the applicant. That against the order of non-payment of pension and service benefit the applicant filed an application which was admitted by this Hon'ble Tribunal as O.A.No.420 of 2000.

2. That the Hon'ble Tribunal after hearing both the parties in O.A.No.420 of 2000 was pleased to pass a judgment and order dated 9-5-2001, directing the respondent/contemner to take necessary steps for granting family pension and retirement benifit to the

contd.....3

Mahima Deka

applicant with effect from 9-2-85 with the above direction the O.A.No.420 of 2000 was allowed.

Photo copy of the Judgement and order dated 9-5-2001 passed in O.A.No.420/2000 is enclosed herewith as Annexure- "A".

3. That your applicant begs to state that the respondent/Contemner ought to have taken steps to pay ~~xx~~ the pension and other service benefits to the applicant as per the Hon'ble Tribunal's direction, but the Contemner/Respondent have not taken any steps to obey the Hon'ble Tribunal's order and thereby shown utter disregard/disrespect to the Hon'ble Tribunal.

4. That your applicant beg to state that as she was very needy she submitted an application enclosing the copy of the judgement and order before the respondent/contemner requesting him to pay the pension and other benefit of her late husband as per the Hon'ble Tribunal's order. But the respondent/contemner did nothing to honour the Hon'ble Tribunal's order. Copy of the said application is enclosed herewith and marked as Annexure- "B".

5. That your applicant getting no favourable action from the respondent/contemner submitted another application on 2-8-2001 before the respondent/contemner, but up till ~~now~~ now no action has been taken by the respondent/contemner to pay the Pension etc. to the applicant.

Copy of the said application is annexed as Annexure- "C".

6. That your applicant begs to state she submitted two petition enclosing the Hon'ble Tribunal's order before ~~to~~ the respondent/contemner requesting them to implement the judgement and order passed in O.A.No.420/2000 and till now he has not taken any step to pay the pension etc. to the applicant. As such, the applicant is compelled to approach this Hon'ble Tribunal by filing this Contempt petition against the Respondent/Contemner for seeking justice.
7. That your applicant begs to state that in spite of clear direction from the Hon'ble Tribunal the Respondent/Contemner has deliberately not complied with the Judgement & order dated 9-5-2001 with a motive behind.
8. That your applicant begs to state that the Respondent/Contemner has shown disregard, disobedience to this Hon'ble Tribunal and had not cared to carry out the Judgement & order dated 26-06-98 passed by this Hon'ble Tribunal and this amounts to serious contempt of Court. As such, he deserve the punishment for disobedience, disregard and disrespect shown to the Hon'ble Tribunal by not implementing the Judgement & Order dated 26-6-98 passed in O.A.No.420/2000.
9. That your applicant submits that unless the Respondent/Contemner is held up in case contempt of

contd.....5

Court the Contemner will not implement the Judgement & Order dated 9-5-2001 passed by this Hon'ble Tribunal and as such, it is a fit case where the Contemners may be directed to appear before this Hon'ble Central Administrative Tribunal to explain as to why he has shown disrespect to this Hon'ble Tribunal and why they have not yet implemented the Judgement & order dated 9-5-2001 passed in O.A.420/2000.

10. That your applicant submits that the Respondent/Contemner deliberately the intentionally had disobeyed and dishonoured the Judgement & order passed by this Hon'ble Court in O.A.No.420/2000 and hence all of them are liable to be punished under the provision of contempt of Court proceeding.

11. That your applicant submits that he has filed this petition bonafide and for the ends of justice.

Under the facts and circumstances narrated above, it is, therefore, respectfully prayed that Your Lordship may be pleased to admit this petition and issue contempt notice to the respondent/Contemner to show cause as to why he should not be punished under Section 17 of the Central Administrative

contd.... 6

Mahima Deka

Tribunal Act, 1985 or pass such any other order or orders as the Hon'ble Tribunal may deem, fit and proper.

Further, it is also prayed that in view of the deliberate disrespect and disobedience to carry out the Hon'ble Tribunal's order the Contemner particularly the Contemner should be asked to appear in person before this Hon'ble Tribunal to explain as to why they should not be punished for contempt of Court.

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

contd.....7

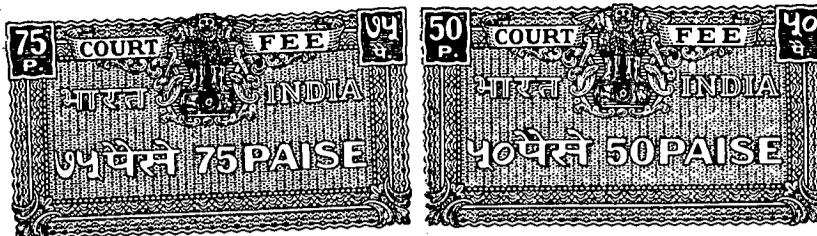
Mahima Deka

DRAFT CHARGE.

The applicant aggrieved for non-compliance of the Hon'ble Tribunal's Judgement & order dated 9-5-2001 passed in O.A.No.420/2000. The Contemner/Respondent has will-fully,deliberately violated the judgement and order passed in O.A.No.420 of 2000 by not implementing the direction contained therein till date. Accordingly, the Respondent/Contemner are liable for contempt of Court proceeding and severe punishment thereof as provided under the law. They may also be directed to appear in person and reply the charge of this Hon'ble Tribunal.

contd..Affidavit.

Mahima Deka



- A F F I D A V I T -

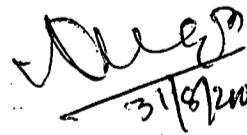
I, Smt. Mahima Deka, wife of Late Arun Ch. Deka, aged about 35 years, resident of Niz-Madartola, P.S. Kamalpur, District- Kamrup, Assam, do hereby solemnly affirm and state as follows :-

1. That I am the contempt petitioner in the above contempt petition and as such I am fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1, 3, 4, 5, 6 are true to my knowledge and those made in paragraph 2 being matter of record are true to my information derived therefrom which I believe to be true and the rests are my humble submissions made before this Hon'ble Tribunal.

And I sign this Affidavit on this the 31st day of August, 2001 at Guwahati.

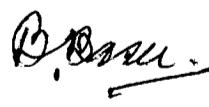
Smt Mahima Deka
Deponent

Identified by -


31/8/2001

Advocate, Guwahati.

Solemnly affirmed and declared before me by the deponent who is identified by Shri A. Khaleque Advocate on this the 31st day of August, 2001 at Guwahati.


Advocate:
Magistrate: Guwahati.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 420 of 2000.

Date of Order : This the 9th Day of May, 2001.

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

Smt. Mahima Deka,
Wife of Late Arun Chandra Deka,
(Ex-temporary Group-D employee of
Dept. of Post, Guwahati H.R.O,
Mails, Guwahati)
resident of Vill. Nizmadartola,
P.O. & P.S. Kamalpur, Dist. Kamrup
(Assam). . . . petitioner

By Advocate Mr A.Khaleque.

- Versus -

1. Union of India,
represented by the Secretary,
Dept. of Post, Govt. of India,
New Delhi.
2. The Director of postal Service,
Assam Circle,
Guwahati.
3. The Senior Superintendent of Post Offices,
R.M.S. Division, Guwahati. . . . Respondents.

By Advocate Shri A.Deb Roy, Sr.C.G.S.C.

O.R D E R

CHOWDHURY J. (V.C.)

The subject matter relates to entitlement of the pensionary benefits of a temporary employee who was subsequently regularised as Group D employee. The applicant is the wife of late Arun Chandra Deka who has assailed in this application the impugned order dated 7.4.99 passed by the respondent No.3, the Senior Superintendent refusing her prayer for family pension.

2. The relevant purpose for adjudication of the case
facts in
are as follows :-

The deceased husband of the applicant Arun Chandra Deka was recruited as a casual labour (extra Mazdoor) in

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Deka
APR 2001

contd. 2

the year 1985 after undergoing a recruitment test/interview. He was directed to work at Sub-Record Officer at Rangia. On 4.9.87 he was transferred to Head Record Office, Mails, R.M.S., Guwahati. The deceased Deka worked as a casual worker continuously and by order dated 31.12.92 he was granted temporary status as per the scheme circulated by circular No.45-95/87-SPB.1 dated 12.4.91 treating certain temporary employees as Group D employee. By memo No. B-2/ Ext-Maz/96 dated 28.5.96 the applicant alongwith 10 others were ordered to be treated at par with the temporary Group D employees with effect from the date showing against each of them and from that date they would be entitled to the benefits as admissible to temporary Group D employees on regular basis in accordance with letter dated 30.11.92. The name of the applicant was shown at sl.No.4 and he was granted temporary status with effect from 29.11.89 and treated at par with temporary Group D employees with effect from the date on 29.11.92. Alongwith the applicant one Miss Sandhya Rani Borah who was given temporary status with effect from 25.4.92 was treated at par with temporary employee with effect from 25.4.94. The husband of the applicant expired on 16.1.99. The present applicant i.e. wife of the deceased Arun Ch. Deka submitted one application on 23.3.99 requesting the respondents authority to sanction her the family pension and retirement benefits in her favour in view of the fact that her husband completed 14 years of service continuously from 9.2.85 to 15.1.99. Thereafter also she moved the authority from time to time for such pensionary benefits, which was not favourably responded. By order dated 7.4.99 the respondent No.3 informed the applicant that as per departmental rules there was no provision for family pension and retirement benefits for

casual Mazdoor and accordingly her case was rejected. Hence this application assailing the legality and validity of the action of the respondents in refusing to grant pensionary benefits.

3. The respondents in its written statement stated that a sum of Rs.1000/- was provided to the applicant as financial assistance. It asserted that the departmental rules did not permit any family pension or retirement benefits for casual mazdoor. The respondents in its written statement admitted the fact that the husband of the applicant alongwith other eligible extra Mazdoors were conferred temporary status with effect from 29.11.89 and he continued as casual labour as well as a regular Group D employee. The respondents in its written statement stated that the husband of the applicant rendered 13 years 11 months 7 days service but regularisation was not possible due to non qualifying of literacy test. The respondents stated that steps were taken for regularisation and literacy test was held on 7.2.93 and 21.6.97 on the basis of residual vacancies but since the husband of the applicant could not qualify himself he was not regularised. In para 10 of the written statement the respondents stated that 8 persons clearing were regularised after the literacy tests which was held on 21.6.97 as per merit of the test. Out of those 5 persons Sri Nalini Baishya and Miss Sandhya Rani Borah were regularised by relaxing the normal recruitment rules. Mr A.Deb Roy, learned Sr.C.G.S.C however submitted that Miss Sandhya Rani Borah was regularised by relaxing the recruitment rules as she was appointed on compassionate ground. From the records made available it transpires that the husband of the applicant Sri Arun Ch.Deka was granted temporary

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status on and from 29.11.89 and treated at par with temporary Group D employees from 29.11.92. He was working as casual labour from 9.2.85. The only objection of the respondents for denying pension to the wife of the deceased employee was that the said Arun Ch. Deka despite the opportunities provided to him could not qualify himself in the literacy test and therefore he could not be considered for regularisation though on their own showing they regularised the other persons in 1993 and 1997. The husband of the applicant was not regularised according to the applicant on the alleged ground that he did not qualify in the literacy test. No such requirement of passing literacy test was pointed out to me nor to that effect any recruitment rules were produced. Insisting for literacy test for regularisation the respondents on their own admitted the regularisation of one of such employee Miss Sandhya Rani Borah by invoking its relaxation power. According to the respondents since her appointment was made on compassionate ground by relaxing the educational qualification. The husband of the applicant had rendered temporary service and worked as casual labour from 9.2.85. On the basis of his length of service and as per the direction of the Supreme Court and as specified in the he was scheme/employed by the respondents and was also granted temporary status and treated at par with temporary Group D employees with effect from 29.11.92. Since he was treated at par with temporary Group D employees such person almost termed to be regular employee. So much so all the service benefits were made available to them including counting of service for the purpose of pension and terminal benefits as in the case of temporary employee appointed on regular

X

basis who were given temporary status and who completed 3 years of service in that status. As per Central Civil Services (Temporary Services) Rules 1965 in the event of death of a temporary Government Servant while in service, his family shall be eligible for family pension and death gratuity at the same scale and under the same provisions as are applicable to permanent Central Civilian Government Servants under the CCS (Pension) Rules 1972. The husband of the applicant in all practical purposes was treated as regular employee and at par with Group D employees. Once he was treated as such he is entitled for the service benefits since those period cannot be treated as non qualifying period. No such rules are cited to exclude those period. In these circumstances it is difficult to hold the contentions raised by Mr A. Deb Roy that the applicant was not entitled to family pension on the alleged purported ground that he failed in the literacy test. For the aforesaid reason the impugned communication dated 7.4.99 is set aside and quashed and the respondents are directed to take necessary steps for grant her family pension and retirement benefits with effect from 9.2.85, more so, he was granted the Group D status.

For the reasons stated above the application is allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

Certified to be true Copy
সত্যাগ্রহ প্রতিলিপি

24/12/2001

Section Officer (J)

সাম্প্রদায় কান্ডারী (স্বাক্ষর শাস্তি)
Central Administrative Tribunal
গুৱাহাটী প্রয়োগ কমিশন
Gauhati Bench, Gauhati C.A.T.
সাম্প্রদায় কান্ডারী, সাম্প্রদায়

11/4/97/101

PG

Accepted
Deb
Holi

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Recd./AD

To,

The Sr. Supdt, BMS,
CIV. En, Guwahati.

Dated, Nizamuddin, the 30 th May/2001.

Sub : Prayer for drawal of family pension and retirement benefits
wef 15-1-99.

Sir,

I respectfully beg to state that one verdict was passed by the Hon'ble CAT, Guwahati No. 420 dtd. 9-5-2001 in favour of me for the grant of family pension and retirement benefits. The ^(g.r.) ~~zero~~ copy of the verdict is sent here to do the needful.

I, therefore, cordially request you kindly arrange to pay me the family Pension wef 15-1-99. and other retirement benefits on at early date and oblige me thereby.

Yours faithfully,

Smt- Mahima Deka

(Smt. Mahima Deka) 30/5/01

Wife of Late Arun Ch. Deka
under K. R. D. (M), Guwahati.

Enclo :

Certified
One ~~fax~~ copy of verdict
No. 420 dtd. 9-5-2001.

Arrested
Arun
15/5/01

REMINDED

Regd with A/PD

To,

The Sr. Supdt. of R.M.S.
Guwahati Divn, Guwahati.

Dt. 24.7.2001

Dt- 2.8.2001

Sub :- Payment of Family Pension
Gratuity & Service benefits.

Ref :- CAT's order dt. 9.5.2001, W.O.A-NO.420/2001
and my earlier letter dt. 30.5.2001.

Sir,

Most humbly and respectfully I beg to state that as per the Judgement and order passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench I am entitled to get the family Pension, Gratuity etc, for my husband Late Arun Ch. Deka who served under you for last 14 years.

I filed an application, giving a copy of the aforesaid Judgement on 30.5.2001, but up till now nothing has been done to pay me the said benefits.

I now therefore request you kindly to pay me the family pension, Gratuity etc, at an early date as I am suffering much hardship for want of maintenance for myself and for my minor children.

Yours faithfully,

Smt. Mahima Deka

2/8/01

(Smt. Mahima Deka)
W/o. Late Arun Ch. Deka
Under H.RD(M) Guwahati.

copy to

The Director, Postal Service, Guwahati, along with a copy of the Judgement, for kind information and necessary action.

Attested
Smt. Mahima Deka
2/8/01