

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

Contempt APPLICATION NO. 53 / 2001
No O.A. 172/2000

Applicant (S) Sri Agit Kr. Das

Respondant(S) Prondip Kr. Hazarika & ORS.

Advocate for the Applicant: B. Malakar
G. B. Das
Mr A. Deb Roy,

Advocate for the Respondant: S. C. S. S.

Notes of the Registry

Date

Order of the Tribunal

This Contempt petition 17.10.01
has been filed by the
counsel for the petitioner
praying for writ of
injunction of the judgement
and order dated 10.4.2000
passed by this Hon'ble
Tribunal in O.A. 172/2000

and before the
Hon'ble Court for further
orders.

Section Officer
PR

Notice released and sent to D/Ls
for compliance of Respondant No 1 to 2
by Regd. A.D. on 18/10/07

D No 4028 to 4029

Dtd. 23/10/07

Issue notice on the respondents
to show cause as to why the contempt pro-
ceeding as prayed for in the application
should not be initiated, returnable by
four weeks.

List on 23.11.2001.

Member

Put after receipt of service
report.

List on 10.12.2001.

Member

Vice-Chairman

2

(2)

① Service report are still awaited.

10.12.01

Sri A. Deb Roy, learned Sr. C.G.S.C.

② No. Show Cause reply has been filed.

C. submits that against the order dated 10.4.2001 passed in O.A.No. 172/2000 the respondents are approached the High Court and the High Court has stayed the operation of the order dated 10.4.2001 passed in O.A.No. 172/2000. Sri A. Deb Roy is directed to file a copy of the High Court order.

By
22.11.01

No. Show Cause reply has been filed.

List on 7.1.2002 for order.

By
7.12.01

K. C. Sharma
Member

mb

7.1.2002

List on 28.1.2002 enabling the parties to obtain necessary instruction.

No. Show Cause reply has been filed.

By
25.1.02

K. C. Sharma
Member

[Signature]
Vice-Chairman

bb

28.1.02

It has been stated by Sri A. Deb Roy, learned Sr. C.G.S.C. that against the order dated 10.4.2001 passed in O.A. No. 172 of 2000 the respondents moved the High Court by a Writ Petition and the High Court admitted the Writ Petition which is number and registered as W.P.(C) No. 7949/2001. The High Court also stayed the operation of the order of the Tribunal by order dated 8.1.2002. In view of the above, the C.P. stands closed.

By 30/1/02

31.1.02

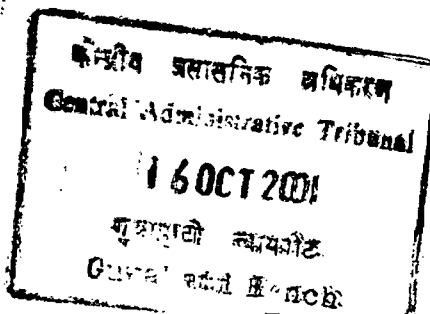
Copy of the order has been sent to the Office for issuing the rule to the L/Adm for the parties.

K. C. Sharma
Member

[Signature]
Vice-Chairman

mb

4/5,
15/10/2001



filed by
G.B. Das,
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

Contempt Petition No. 53 /2001.
Arising Out of OA No. 172 of 2000.

IN THE MATTER OF :

An application for wilful violation
of the judgment and order dated
10.4.2001 passed by this Hon'ble
Tribunal in O.A. No. 172 of 2000.

-And-

IN THE MATTER OF :

Shri Ajit Kumar Das
Son of Sri Madhan Ch. Das,
Vill : Borjhar, Dist : Kamrup, Assam.

... Petitioner.

-Vrs.-

1. Shri Pradip Hazarika, IAS,
Director, Census Operations,
Assam, Guwahati.
2. Sri Nipendra Ch. Sen,
Deputy Director, Office of the
Census Operations, Assam, Guwahati-7.

... Contemners.

The humble petitioner
above named -

MOST RESPECTFULLY STATES AS UNDER :

2.

1. That, your humble petitioner was a permanent employee under the Directorate of Census Operations and as on 1.10.1993 he was drawing Rs.1833/- per month as salary from the Directorate. He was a Grade-IV employees and his designation was Farash.

2. That on 21.12.93 the Director of Census Operations Guwahati issued an order terminating the services of as many as 31 employees appointed in connection with the Census Work of 1991. In the order issued as above, the name of the petitioner appeared against sl. no. 27. The order issued states as under :

"The following officials have been appointed on purely temporary and ad hoc basis against 1991 Census posts which had been sanctioned by the Government of India till 31.12.93. Consequent on the expiry of the sanction of these posts and as already indicated in their appointment letters the services of these officials stand terminated with effect from 31.12.93."

3. That out of 31 employees terminated by the order dated 21.12.93, 21 of them filed an application before this Hon'ble Tribunal and the Hon'ble Tribunal being prima facie satisfied admitted the application registered as O.A.No. 269 of 1993 and granted stay order. The stay order granted on 30.12.93 was, however, vacated by this Hon'ble Tribunal on the application filed by the Department. It is stated here that similar petitions were filed by some other employees in which also the Tribunal granted

3.

stay order and that stay order remained in force till the passing of the order after hearing on 5.6.98 by the Hon'ble Tribunal.

4. That the petitioner begs to state that in the O.A. the respondents filed written statement and their main contention before the Hon'ble Tribunal was that the posts in which the petitioner and others were appointed related to the Census work of 1991 and the works having come to close by 31.12.93 the sanction for the post expired and therefore, there was no work for the petitioners and hence their services were terminated.

5. That the petitioner begs to state that the petitioner was appointed vide order dated 7.9.90 in the post of Farash in the office of the Director of Census Operations, Assam in the scale of Rs.750-940/-. There was no mention in the appointment letter that the post was sanctioned for 1991 Census as was mentioned in case of other petitioners.

6. That the petitioner begs to state that the Hon'ble Tribunal after hearing of the case vide judgment and order dated 5.6.98 disposed of the application as per observations made therein. In the judgment, it is stated in paragraph - 4.

"Our findings above will not however be applicable in this particular case to Ajit Kumar Das, Faresh, Applicant No. 19 inasmuch as the terms of his appointment are different from those of the other

applicants. According to his appointment letter dated 7.9.1990, Annexure - 18 (name therein is Sri Ajit Chandra Das son of Sri Madan Ch. Das of Borjhar Kamrup and it has not been disputed that he is not the same as Ajit Kr. Das, applicant no. 19 he was not appointed for the 1991 census. No material was placed before us by the respondents to show that he was actually appointed against a post specially created for the 1991 census. According to the appointment letter he was appointed as temporary employee. It is true that there is a stipulation in the order dated 7.9.1990 that his appointment could be terminated at any time without notice and assigning any reason thereof and he had accepted the terms of appointment. But, since he was not particularly appointed for the 1991 census, once he joined the service, his services will have to be governed by service rules and the law relevant thereto. The respondents could not have terminated his service on the ground that sanction had expired as had been done in this case. Further it may be mentioned here that the name of applicant no. 19, Ajit Kumar Das, does not appear against sl. "22. Farash" in the office note dated 1.12.1993 produced by the respondents before us. In the facts and circumstances the impugned order dated 21.12.1993 in so far as it relates to serial no. 27 Ajit Kumar Das, Farash, mentioned therein is not sustainable in law and accordingly it is hereby set aside to that extent. The respondents are directed to reinstate the applicant no. 19. Shri Ajit Kumar Das, Farash and treat him as in continuous service from 1.1.1994 with all service benefits including monetary.

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7. That the petitioner begs to state that after delivery of judgment by this Hon'ble Tribunal, the petitioner reported before the contemner no. 1 for duty in terms of the judgment passed by this Hon'ble Tribunal. But the contemner no. 2 stated that he has referred the case to Registrar General and the petitioner would be informed accordingly on receipt of the reply.

8. That the petitioner begs to state that thereafter the contemner no. 1 instead of implementing the judgment and order filed a review application before this Hon'ble Tribunal which was registered as R.A. No. 12 of 1998 for review of the judgment. The ground for review was that the post held by the petitioner was a post meant for 1991 census and the post was abolished on the basis of sanction letter and therefore, they sought for review. In this connection, the petitioner affirms that nowhere in the written statement filed by the Respondents and at the time of argument, this plea was ever raised and the application for review was filed simply to deprive the petitioner.

9. That the petitioner begs to state that a letter has been issued on 30.3.1998 from the office of the Registrar General wherein the practice of referring of questions relating to the establishment matters of Group - C and Group - D employees under the control of respective Directorate has been discarded. In this respect decisions are required to be taken by the Directorate of Census Operations. It was also stated

that in future if any such reference is made to the office of the Registrar General, such reference will not be entertained and no reply need be awaited in such cases. This being the clear instructions from the Registrar General, there was no question of referring the matter to the former by the contemner no. 2. The contemner no. 2 had done it wilfully and deliberately and thereby he had dis-obeyed the judgment and order passed by the Hon'ble Tribunal and therefore, he was liable to be punished under the contempt of Courts Act.

10. That your petitioner humbly submits that so far as Review application was concerned, the Hon'ble Tribunal has not granted any such order staying its implementation and therefor , there was no reason on the part of the contemner no. 2 to wait for any order in the review application. The petitioner submitted an application in this respect on 9.9.98 and the contemner no. 2 immediately has given the reply on 11.9.98 stating that there was not a single post of Farash in existence after discontinuation of post created in connection with 1991 census work or any other group-D post against which the petitioner could be accommodated and therefore, the contemner no. 2 has filed the review application.

11. That the facts and circumstances stated above, clearly shows that the contemner no. 2 had wilfully and deliberately violated the Tribunal's order and as such he is required to be punished accordingly.

12. That the review application being rejected by the Hon'ble Tribunal, a belated writ petition No.664 of 1999 was filed before the Hon'ble Gauhati High Court and the Hon'ble High Court allowed the writ petition vide judgment and order dated 23.9.99 and set aside the judgment and order dated 5.6.98. In this judgment, it was observed that ~~the~~ in future if any vacancy arose, that would be filled up from amongst the applicants including the petitioner.

13. That the writ petition being allowed aforesaid the Respondent no. 1 and 2 took the exercise of appointing persons under them and although the case of the petitioner was pending before the Respondents authority, they wanted the name of the petitioner to be sponsored by the Employment Exchange and the Employment Exchange when refused to sponsor the petitioner's name, he was not called for interview. The petitioner being helpless filed an application which was registered by this Tribunal as OA 172/2000 in which the Tribunal passed an order to consider the case of the petitioner and directed that non-sponsoring of the petitioner by the Employment Exchange shall not be a ground to reject the case.

14. That the order being passed as above, the Respondent this time devised a new plea and asked the petitioner to submit a copy of the school certificate which he produced in 1991. When a copy of the school certificate was produced by the petitioner the Respondent found fault in the certificate and instead of considering the case for appointment, they asked the police to investigate the genuineness of otherwise of the school

certificate produced. That the petitioner then filed another application before the Tribunal which was registered as O.A. No. 172 of 2000. The Respondent contested the case filing written statement. The Hon'ble Tribunal heard the matter and vide order dated 10.4.2001 allowed the application directing inter alia as under :

"Taking into consideration all the aspects of the matter, I direct the respondents to consider the case of the applicant for regularisation with utmost despatch as per the order of the Tribunal merged in the order of the Division Bench of High Court on the basis of the certificate dated 19.9.91 issued by the Headmaster without insisting any more. It is expected that the Respondents shall take the matter with all seriousness and complete the exercise as expeditiously as possible, preferably within two months from the date of receipt of the order."

A copy of the order is annexed hereto and marked as Annexure - C to this petition.

15. That the petitioner submitted before contemner no. 1 a copy of the order along with an application on 16.5.2001 requesting for regularisation of the petitioner. But till today nothing has been done. The petitioner was allowed to work in the canteen on dailywage of Rs.60/- for the period from 3.6.2001 to 31.7.2001 and thereafter he was steopped. In his place one Mohan Das and Rabin Das

allowed to work. The petitioner has come to know that the contemner appointed one Sri Siddhi Deka vide order in Memo No.DCO(E)6/75/10701-A dated 4.7.2001 and one Sri Harmohan Das vide order in Memo No.DCO(E)271/93/10670-A dated 4.7.2001. In this connection, it is further stated that at the time when the judgment and order of the Hon'ble High Court was pending before the respondents two out-siders ^{ignoring} ~~challenging~~ the claim of the petitioner were appointed in utter violation of the court's order.

16. That from the above, it could be seen that the contemnners have wilfully and deliberately have violated the court's order for the 2nd time in succession under a false pretext. The intention of the contemner no. 2 was very clear which was only to deprive the claim of the petitioner.

Under the circumstances, it is most respectfully prayed that the Hon'ble Tribunal be pleased to admit this petition and initiate contempt proceedings against contemnners and punish them for deliberate and wilful violation of the Tribunal's order and /or pass such further or other orders as to the Hon'ble Tribunal may deem fit and in proper ~~for~~ the interest of justice.

And for this, the petitioner as induty bound shall ever pray.

A F F I D A V I T

I, Sri Ajit Chandra Das, aged about years
son of Sri Madan Ch. Das, vill : Borjhar, P.S. Azara
Dist : Kamrup do hereby solemnly affirm and decare
as follows :

1. That I am the petitioner of this contempt
petition and as such I am acquainted with the facts
and circumstances of the case.
2. That the statements made in this affidavit and
in paragraphs 1, 2, 5, 11, 15, 16 ~~to~~
are true to my knowledge and those in paragraphs 3, 4, 6,
8, 9, 12, 13, ~~to~~ 14, being matters of records
are true to my information which I believe to be true.

Identified by -

Shri Ajit Ch Das
Deponent.

G.B. Das
Advocate ~~G.B. Das~~

Solemnly affirmed and declared
before me by the deponent who is
identified by Shri G.B. Das,
Advocate.

G.B. Das
Advocate.

Draft Charge

Whereas the contemnors have wilfully and deliberately violated the order dated 10.4.2001 passed by the Hon'ble Tribunal in O.A. No. 172 of 2000 and as such they are liable under the contempt of Courts Act and therefore they are required to be punished accordingly.

B. Mallick
ADVOCATE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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Original Application No.172 o. 2000

Date o. decision: This the 10th day o. April 2001

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

Shri. Ajit Kr Das,
Resident o. Village Borjhar,
P.O. Borjhar,
District Kamrup.

.....Applicant

By Advocate Mr B. Malakar.

- versus -

1. The Union o. India, represented by
The Registrar General,
Census Operation,
New Delhi.

2. The Director o. Census Operation,
Assam,
Guwahati.

.....Respondents

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

.....
O R D E R (ORAL)


CHOWDHURY.J. (V.C.)

Heard Mr B. Malakar, learned counsel for the applicant and
Mr A. Deb Roy, learned Sr. C.G.S.C.

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2. The issue relates to permanent absorption o. the applicant with respondents. The matter was already adjudicated upon by the Tribunal which was carried upto the High Court by the respondents. The High Court by order dated 22.9.1999 in W.P.(C) No.664 o. 1999, however, modified the order o. the Tribunal, so far the applicant, Shri Ajit Kumar Das, was concerned. By the a.orementioned judgment the High Court directed the respondents to consider the case o. the applicant also along-with others for appointment in any regular vacancy that may arise in the Directorate o. Census Operations in the light o. the judgment rendered by the Supreme Court in Union o. India vs. Dinesh Kumar Saxena, reported in (1995) 29 ATC 585. It appears that the applicant was, in fact, asked

13 to appear before the Interview Board on 29.5.2000/30.5.2000. But, according to the applicant till now no action has, so far, been taken for regularisation of his service. Hence this application.

3. The respondents submitted their reply and stated that the applicant was ordered to submit his application in standard form alongwith attested copies of Certificates to the Assistant Director of Census Operations, Assam for the post of Chowkidar/Peon. The applicant was directed to submit School Certificates relating to his educational qualification, in original, which he had submitted at the time of his registration in the Employment Exchange. The applicant submitted an application dated 6.6.2000 alongwith a certificate No.183 issued by the Head Master, Palasbari Anchalik High School on 19.9.1991. According to the respondents the applicant was again asked to submit his School Certificate in original, which he had submitted to the Employment Exchange at the time of his registration, as the certificate submitted by the applicant alongwith his application dated 6.6.2000 was issued on 19.9.1991 only. In pursuance to the direction of the respondents, the applicant submitted an application in prescribed form alongwith certificate dated 19.9.1991 issued by the Head Master of the Palasbari Anchalik High School. If the respondents had any doubt about the certificate, they could have made enquiry from the concerned Head Master instead of keeping the matter alive insisting on the applicant for production of the certificate that the applicant produced before the Employment Exchange in 1984. Admittedly, the certificate was issued by the Head Master concerned. The aforesaid certificate is not a University Certificate. Such certificate only indicate about his attending of school and the time he left the school. There is no justification for insisting on production of the certificate of 1984.

4. Taking into consideration all the aspects of the matter, I direct the respondents to consider the case of the applicant for regularisation with utmost despatch as per the order of the Tribunal merged in the order

O.....

o. the Division Bench o. High Court on the basis o. the certificate dated 19.9.1991 issued by the Head Master without insisting any more. It is expected that the respondents shall take the matter with all seriousness and complete the exercise as expeditiously as possible, preferably within two months from the date o. receipt o. the order.

5. The application is allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN



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TRUE COPY
प्रतिलिपि

Section Officer (J)

आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक उच्च न्यायालय
Guwahati Bench, Guwahati-8
गुवाहाटी न्यायालय, गुवाहाटी-8

15/9/2001