

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. /  
2. Misc Petition No. /  
3. Contempt Petition No. 22/08 in O.A 448/01  
4. Review Application No. /

Applicant (S) Hiccumay Kakati

Respondant(s) U. O. I. 90ms

Advocate for the applicant(s) S. Saurav, B. Deh.

Advocate for the Respondant(s) ... Case No. L. Ahmed  
Sidd. Case

Notes of the Registry | Date | Order of the Tribunal

This ~~Contempt~~ petition 1369.063  
has been filed by the  
Counsel for the petitioner  
u/s 17 of the CAT Act, 1985 **1m**  
for drawl or appropriate  
Contempt proceeding against  
the Contemnors for their  
wilful and deliberate  
violation of the judgement  
and order dated 3.6.02  
passed by the Hon'ble  
tribunal in O.A 448/01. **01.11.20**

Iced before the  
House Court for further  
orders.

for Section officer

The alleged contemners were represented through Mr.M.U.Ahmed, learned Addl.C.G.S.C. and he submitted that he shall require some time to file affidavit.

It appears that order of this Tribunal was passed on 9.6.2002 directing the respondents to ~~app~~ post the applicant in Accounts cadre, which was challenged before the High Court. The High court ~~in W.P.(C) No.1142/03~~ also dismissed the said W.P.(C) No.1142/03. Much time has elapsed but still order of this Tribunal is not complied with.

post on 24.11.2006. If no reply is filed by that time Notice of contempt shall be issued to the alleged contemners.

### vice-Chairman

✓ →2- C.P. 22/2006

Notice & order  
Sent to D/section  
for issuing to  
resp. nos - 2  
by regd. A/D post.  
R-1, received by hand.  
(21/10/06) D/No - 988, 989  
Dt - 22/10/06

24.11.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice - Chairman.

Mr M.U. Ahmed, learned Addl. C.G.S.C. for the Respondents that there may be development in the Review Petition filed before the High Court. Post on 01.01.2007.

Vice-Chairman

/mb/

Notice duly Served  
on resp - No - 1.

17.1.07.

Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents again has submitted that there may be some development in the Review Petition filed before the High Court and he prays for further adjournment as a last chance. Further three weeks time is granted to ~~for~~ some development post the matter on 13.2.07.

Vice-Chairman

Notice duly Served  
on resp - No - 2.

1m

(21/10/06)  
31-10-06

Service completed.  
no reply recd.

13.2.07

Counsel for the respondents has got some personal difficulty. Post the matter on 15.3.07.

Vice-Chairman

Order dt - 21/10/06. Date New  
21/10/06

U/m  
21/10/06  
(Applied)

15.3.07.

Mr. M.U. Ahmed learned Addl. C.G.S.C. has submitted that there may be development in the Review Petition filed before the High Court and he prays for further time. Three weeks time is granted as a last chance post the matter on 9.4.07.

○

Member

Vice-Chairman

30.11.06

1m

Affidavit/Compliance  
report by Respondent  
nos. 1 & 2.

Affidavit has  
been filed.

Affidavit filed by PAJ,  
R.No - 1 & 2. 22/10/07.

22/10/07.

Notes of the Registry

Order of the Tribunal

7.5.07.

The Review Petition has been filed

by the respondents before Gauhati High Court. Post the matter on 17.6.07. It is made clear that if the <sup>order</sup> of the High Court not produce by the respondents the consequential order will follow.

Affidavit filed by

R.No-182.

23

17.5.07

lm

Vice-Chairman

17.5.07.

I have heard Mr. H.K. Das learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the Respondents. When the matter came up for hearing it is seen that whether the notices to be issued or not. It is reported that the alleged contemner in C.P. is retired. Therefore, the counsel for the applicant is directed to furnish the correct name and address of the alleged contemner against whom the notice will be sent. Post the matter on 8.6.07.

Affidavit filed by

R.No-182.

23

16.5.07.

Service Completed.

18/5/07

Affidavit filed by

R.No-182.

23  
7.6.07

(S) J. K. Das  
(S) M. U. Ahmed  
(R) K. K. Sarker  
(R) K. K. Sarker  
A.S.P.O. 22/11/07

lm

Vice-Chairman

08.06.07

This Contempt Petition has been filed by the applicant for non-compliance of the order of this Tribunal dated 3.6.02 in O.A.No.448 of 01.

I have heard Mr. H. K. Das learned counsel for the applicant and Mr. M.U. Ahmed learned Addl.C.G.S.C. for the Respondents. Affidavit has been filed by the respondents contending that though WPC No.1142/03 was dismissed by the Hon'ble High Court as it has become infructuous. When the matter came up for hearing Mr. M.U. Ahmed learned counsel for the respondents has

Contd/-

✓

08.06.07

submitted a High Court's order of Review Petition No.90 of 2006 dated 22.5.2007, which has been filed by the respondents. The operative portion of the order is reproduced below:

"This review Petition has been filed for review of the order dated 19.8.2005 whereby a Division Bench of this Court dismissed the Writ Petition © No.1142 of 2003 on the ground that it become infructuous. It may be mentioned here that the learned counsel for the Union of India made a submission that the Petition had become infructuous. Mr. Rahman submits that the submission made on behalf of the Union before the learned Division Bench was on wrong premises. No such instruction was given to the learned Counsel by the Union. Mr. Rahman submits that the aforesaid order of dismissal be recalled and the Writ Petition be heard on merit.

Considering the submissions advanced, we think that a decision on merit is required to be given in the Writ Petition filed by the Union of India. Hence, we allow this Review Petition, recall the order dated 19.8.2005 and direct the Registry to list the Writ Petition for hearing in the week beginning 28<sup>th</sup> of May, 2007.

It may be mentioned here that the present service status of the respondent shall not be disturbed in any manner till disposal of the Writ Petition.

The Review Petition accordingly stands disposed of."

In view of the above submissions and order of the Writ Petition it is borne out that the Review Petition is allowed by the Gauhati High Court and Writ petition is restored and hence the order in O.A. is under challenge and become live/ Restored.

In view of the restoration of the Writ Petition, there is no meaning in keeping the C.P. on the file of the Court and hence dismissed. However the Petitioner can approach the appropriate forum after the disposal of the Writ Petition if they succeed in it. C.P. Stands closed and accordingly disposed of. .

Received copy  
John  
16.6.07

19/6/07  
Add. GSEC

  
Vice-Chairman

lm

19.6.07  
Copy of the  
order has been  
handed over to  
the A/Adv. for  
the party's.  
ct

Central Administrative Tribunal  
Guwahati Bench

Guwahati Bench

Filed by:-  
The Petitioner  
through  
Bandaon Duni<sup>5</sup>  
Advocate

12.9.06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

C.P. No. 22/06

in OA No. 448/01

Sri Hiranmay Kakati

-VS-

Union of India & Ors.

IN THE MATTER OF

An application under Sec.17 of the  
Administrative Tribunal Act 1985 for  
drawal of appropriate contempt  
proceeding against the contemners  
for their willful and deliberate  
violation of the judgment and order  
dated 3.6.02 passed by the Hon'ble  
Tribunal in OA No.448/01.

-AND-

IN THE MATTER OF

An application under Rule 24 of the  
Central Administrative Tribunal  
(Procedure) Rules,1987 for execution  
of the judgment and order dated  
3.6.02 passed in OA No. 448/01  
passed by this Hon'ble Tribunal.

-AND-

IN THE MATTER OF

Sri Hiranmay Kakati  
S/O Late Bharat Ch. Kakati,  
R/O Brindaban Hati,  
Barpeta.

.....Petitioner

-vs-

1. Sri A.K.Ghosh Dastidar  
The Chief Post Master General  
Department of Post.  
Guwahati-1.

2. Sri B.Bairagi  
Superintendent of Post Offices  
Department of Post  
Nalbari-Barpeta Division, Nalbari.

.....Contemnors

The humble petition on behalf of the petitioner  
above named:

MOST RESPECTFULLY SHEWETH

1. That the petitioner above named while was working  
as HSG Accountant Barpeta HO, received an order dated  
25.2.99 transferring him to join as SPM Santinagar. The

petitioner challenging the transfer order dated 25.2.99 issued by the respondents approached this Hon'ble Tribunal by way of filing OA NO. 88/99. The Hon'ble Tribunal while admitting the OA issued notices to the respondents. Thereafter the petitioner preferred MP NO. 87/99 in the said OA and the Hon'ble Tribunal on 30.3.99 was pleased to pass an interim order staying the effect and operation of the order of transfer dated 25.2.99. The respondents pursuant to the interim order dated 30.3.99 issued an order dated 15.2.00 by which the present petitioner has been posted as Public Relation Inspector under the Barpeta head Quarter. Thereafter the Hon'ble Tribunal vide judgment and order dated 10.3.2000 set aside and quashed the said order of transfer dated 25.2.99 with a further direction to grant all consequential service benefits to the petitioner. The petitioner immediately on receipt of the said order dated 10.3.2000 submitted the same before the respondents for implementation of the same, but the respondents did nothing towards implementation of the said judgment and order passed by the Hon'ble Tribunal so far it relates to his posting in the Accounts Cadre. Apart from that the period which he was not allowed to join has not been regularised. Situated thus the petitioner preferred a representation praying for regularisation of those period. The respondents vide its letter dated 26.12.2000 rejected his such prayer for regularisation of the period with effect from 8.3.99 to 22.3.00 which was protected by the interim order dated 30.3.99 passed in MP No. 87/99. The petitioner challenging the order dated 26.12.00 along with a prayer to allot him the post of Accountant under the Accounts cadre, has

preferred the above noted OA NO 448/01. The Hon'ble Tribunal after hearing the parties to the proceeding, vide judgment and order dated 3.6.2002 was pleased to allow the said OA. The Hon'ble Tribunal while allowing the said OA was also pleased to set aside and quash the order dated 26.12.00.

A copy of the judgment and order dated 3.6.02 passed in OA NO 448/01 is annexed herewith and marked as Annexure-1.

2. That the petitioner immediately on receipt of the certified copy of the judgment and order dated 3.6.02 submitted the same to the contemners on 17.6.02. The respondents however did nothing towards implementation of the judgment and order dated 3.6.02 passed in OA ND 448/01.
3. That the petitioner kept on pursuing the matter before the respondents towards implementation of the judgment and order dated 3.6.02, but the respondents willfully and deliberately kept on showing total disregard to the judgment passed by the Hon'ble Tribunal. The petitioner having no other alternative preferred Contempt Petition No.41/02 before this Hon'ble Tribunal.
4. The the petitioner begs to state that thereafter the respondents went upto the Hon'ble High Court assailing the legality and validity of the judgment and order dated 3.6.02 passed in OA No. 448/01 by way of filing WP(C) No.

1142/03 and because of the pendency of the said Writ Petition the CP No.41/02 was closed. The Hon'ble High Court on 3.6.03 was pleased to issue Rule in the matter while suspending the effect and operation of the judgment and order dated 3.6.02 passed in OA No.448/01 and finally the Hon'ble High Court vide judgment and order dated 19.8.05 was pleased to dismiss the said Writ Petition.

A copy of the said judgment and order dated 19.8.05 passed in WP(C) No. 1142/03 is annexed herewith and marked as ANNEXURE-2

5. That the petitioner immediately after passing of the said judgment and order dated 19.8.05 passed in WP(C) No. 1142/03 the petitioner apprised the respondents about the same and also requested the authority for implementation of the judgment and order dated 3.6.02 passed in OA No. 448/01. But the respondents did nothing in the matter till date. The petitioner once again requested the respondent authorities for implementation of the said judgment and order passed by this Hon'ble Tribunal by submitting a representation dated 12.6.06 .

A copy of the said representation dated 12.6.06 is annexed herewith and marked as ANNEXURE-3.

6. That the petitioner kept on pursuing the matter till the |

before the contemners but as on date nothing has been communicated to him and they are continuing the process of violation of the judgment and order passed by the Hon'ble Tribunal.

7. That the petitioner begs to state that the present case is an unique example of its nature wherein willful and deliberate violation of the judgment and order is very apparent and as such the Hon'ble Tribunal may be pleased to draw up appropriate contempt proceeding against each of the contemners and thereafter to punish them severely invoking the provisions of the contempt of Court Act 1971 of the Central Administrative Tribunal Act 1985.

8. That this application has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that Your Lordships would graciously be pleased to draw up contempt proceeding against the contemners for their willful and deliberate violation of the judgment and order dated 3.6.02 passed in OA No.448/01 passed by the Hon'ble Tribunal with a further direction to implement the said judgment and/or pass any such order/orders as may be deemed fit and proper.

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

DRAFT CHARGE

Whereas Sri A.K.Ghosh Dastidar, the Chief Post Master General, Department of Post, Guwahati-1 and Sri B. Bairagi, Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari have willfully and deliberately violated the judgment and order dated 3.6.02 passed in OA No. 448/01 passed by the Hon'ble Tribunal and as such they are liable to be punished under the provisions contained in Contempt of Court's Act for such act of willful and deliberate violation.

A F F I D A V I T

I, Sri Hiranmoy Kakati, S/o. Late B.C.Kakati, aged about 56 years, resident of Brindaban Hati, Barpeta, Assam, do hereby solemnly affirm and declare as follows :

1. That I am the petitioner in the instant petition as such, I am acquainted with the facts and circumstances of the case.
2. That the statements made in this affidavit and in the accompanying application in paragraphs 6 are true to my knowledge ; those made in paragraphs 1-5 being matters of records are true to my information derived therefrom.

And I sign this affidavit on this the 14th day of 06.

Identified by me :

*Barindra Devi*

Advocate

*Hiranmoy Kakati*

Deponent

Solemnly affirm and state by the deponent who is indentified by Miss B.Devi, Advocate.

*Ujjalow*  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

## ANNEXURE-1

13

Original Application No.448 of 2001

Date of decision: This the 3rd day of June 2002

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Hiranmoy Kakati  
Public Relation Inspector,  
Barpeta Head Post Office,  
Barpeta.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma,  
Mr U.K. Nair and Ms U. Das.

- versus -

1. The Union of India, represented by

dated 25.2.1999 the order dated 9.12.1998 was modified. By the order dated 9.12.1998 the applicant who was working as HSG-II Accountant, Barpeta HO was relieved to enable him to join as Sub Post Master (SPM for short), Kaithalkuchi SO. By the modified order dated 25.2.1999, the applicant was to join as SPM, Santinagar SO. The aforementioned order transferring him out from the accounts line to the general line was assailed before this Tribunal in O.A.No.88 of 1999. The said O.A. was finally adjudicated upon and by Judgment and Order dated 10.3.2000 the application was allowed. The Bench held that the action of the respondents in transferring the applicant from the accounts line to the general line was unlawful and accordingly the same was set aside. It may also be mentioned that by order dated 30.3.1999 in Misc. Petition No.87 of 1999 (in O.A.No.88/99) the order dated 25.2.1999 was kept in abeyance. The Tribunal by Judgment and Order dated 10.3.2000 in O.A. NO.88/99 set aside the order dated 25.2.1999 and allowed the O.A. with all consequential benefits. The applicant, thereafter intimated the Judgment and Order of the Tribunal dated 10.3.1999 to the authority and prayed for granting him the consequential benefits. By the impugned order dated 26.12.2000 the Superintendent of Post Offices informed the applicant that he was absent from 8.3.1999 to 22.3.2000 and therefore, the said period could not be regularised. Hence this application.

2. The full text of the impugned order dated 26.12.2000 reads as follows:

"Sub: OA No.88/99 filed by Sri H. Kakati Acctt,  
HO - UOI & others.  
Ref: CO's/GH letter No.Vig/5/xxIII/93 dtc. 15-11-  
2000

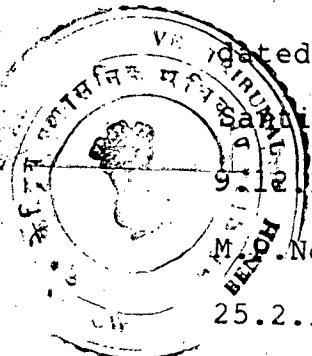
In pursuance of CO's/GH letter No. noted above, I am directed to intimate that your case of regularisation of the period from 8-3-99 to 22-3-2000 was forwarded to CO/GH vide this office letter of.....

of even no dtd. 27-10-2000. The Circle Office observed that you did not join in your new post as SPM, Santinagar SO, instead filed the OA mentioned above and while admitting the OA on 26-3-99 the Hon'ble CAT did not pass any order staying the transfer order. You failed to join even then instead filed an M.P.No.87/99 in the said OA and obtained an interim on 30-3-99 to rejoin at Barpeta HO. But you did not rejoin at Barpeta HO nor pursued with authority for necessary order. You rejoined at Barpeta HO only on 23-3-2000 that too after receipt of CAT's order dtd. 10-3-2000 setting aside the transfer order. The CO/GH observed that you remained out of office willfully.

In view of the above, the period of absence from 8-3-99 to 22-3-2000 can not be treated as duty in term of FR-54(A), as intimated by CO/GH.

This is for favour of your information."

As per the order the applicant, on being relieved was to join his new posting at Santinagar SO. Instead of joining the post the applicant obtained an interim order from the Tribunal to rejoin at Barpeta HO. But, the applicant did not rejoin at Barpeta, though he joined at Barpeta HO on 23.3.2000 on receipt fo the Tribunal's order. The order

  
dated 25.2.1999 directing the applicant to rejoin as SPM, Santinagar SO, on modification of the order dated 9.12.1998, was stayed bythe Tribunal on 30.3.1999 in M.P.No.87/99. When the order was stayed the order dated 25.2.1999 was inoperative. Finally, the O.A. was disposed of on 10.3.2000. In the set of circumstances, when the very order dated 25.2.1999 was stayed the applicant could not be held guilty for absence from duty. At least, after the order dated 10.3.2000 the respondents ought to have regularised the said period from 8.3.1999 to 22.3.2000 instead of refusing to treat the said period as on leave. The provisions of FR-54(A) is patently not applicable in the instance case. When the very order dated 25.2.1999 was kept in abeyance the applicant could not be held to be absent from duty.

: 4 :

3. We have heard Mr S. Sarma, learned counsel for the applicant and Mr B.C. Pathak, learned Addl. C.G.S.C. at length. Considering all the aspects of the matter we set aside the Memorandum dated 26.12.2000 and direct the respondents to regularise the period of absence of the applicant and pass necessary consequential order thereafter.

4. In view of the order dated 10.3.2000 passed by this Bench in O.A.No.88 of 1999 the applicant is to be posted in the Accounts Cadre and not in the General Cadre. Since the said order attained finality, the respondents are to give effect to the order and take all necessary steps as per law to post the applicant in the accounts line.

5. With the above observation the application is allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER (A)

TRUE COPY

নথিপতি

nkm

13/1/02  
Section Officer (J.)  
নেতৃস্থান অধিকারী (স্বাধীক কাউন্সিল  
Central Administrative Tribunal  
প্রদেশ স্বাধীক অধিকারী  
Guwahati Bench, Guwahati-  
স্বাধীক স্বাধীক, প্রাপ্তি

प्रतिलिपि दस्तावेज की अपेक्षित तारीख। Date of application for copy	प्रतिलिपि दस्तावेज की अपेक्षित संख्या राजित करने की तिथिवर्ती तारीख। Date fixed for notifying the requisite number of copies and follow.	प्रतिलिपि दस्तावेज की तारीख। Date of delivery of the requisition stamp and follow.	प्रतिलिपि दस्तावेज की तारीख। Date on which the copy was ready for delivery.	प्रतिलिपि दस्तावेज की तारीख। Date of making over the copy to the applicant.
21/3/06	21/3/06	21/3/06	24/3/06	24/3/06

13 IN THE GAUHATI HIGH COURT  
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,  
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

ANNEXURE-2

Appeal from

Civil Rule

WP(C) No. 1112 of 2003

Appellant

Petitioner

The union of India & ors  
versus  
Sri. Hiranmay Rakoti

Respondent

Opposite Party

Appellant  
For

MR. C. Choudhury  
Bipul, Sarpara.

Petitioner  
For

Opposite Party

Noting by Officer or

Serial

Date

Office notes, reports, orders or proceedings

3/6/06  
21/3/06

Attested  
Sri  
Advocate

10040  
2003-04-07

IN THE MATTER OF :

The Union of India, represented  
by the Secretary to the Govt.  
of India, Ministry of Commu-  
nication, Department of Posts,  
New Delhi through the Superin-  
tendent of Post Offices, Depart-  
ment of Posts, Nalbari-Barpeta  
Division, Nalbari.

... Petitioner

—VS—

Shri Kiranmoy Kakati,  
Public Relation Inspector,  
Barpeta Head Post office,  
Barpeta.

... Respondent.

contd...3.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports; orders or proceedings with signature
1	2	3	4
			<p>W.P. (C) No. 1142 of 2003 BEFORE HON'BLE THE CHIEF JUSTICE MR. B.K. ROY THE HON'BLE MR. JUSTICE P.G.AGARWAL <u>ORDER</u> 19.8.2005 B.K. Roy, C.J.: Mr. B. Sarma, learned counsel appearing on behalf of the Petitioner has submitted that this Writ Petition has become infructuous and the Petitioner does not want to press this Writ Petition. [2] Consequently, we dismiss this Writ Petition as not pressed.</p>

Sd/- P.G. Agarwal

Judge

Sd/- B.K. Roy

Chief Justice

P.NO. 50350

ddm/21/3/06

CERTIFIED TO BE TRUE COPY

Sd/- P.G. Agarwal

Date 24/3/06

Superintendent (Copying Section)

Gauhati High Court

Authorised U/S 76, Act I, 1872

24/3/06

To  
The Superintendent of Post Offices  
Nalbari-Barpeta Division,  
Nalbari, Assam.

Through proper channel

Date: 12.9.2006

Sub:- Judgment and order dated 19.8.2005 passed in  
Writ (C) No. 142/03.

Sirs,

With due respect I beg to pay the following few lines  
for your kind consideration and necessary action thereof.

That on 19.8.2005, the writ petition filed by you  
against the judgment and order passed by the Hon'ble Central  
Administrative Tribunal, Guwahati Bench, has been dismissed  
by the Hon'ble Guwahati High Court. Therefore, I request  
your honour to implement the judgment and order passed by  
the Hon'ble Central Administrative Tribunal, Guwahati Bench  
and extend me the benefits.

Yours faithfully

*Hiranmay Kakati*

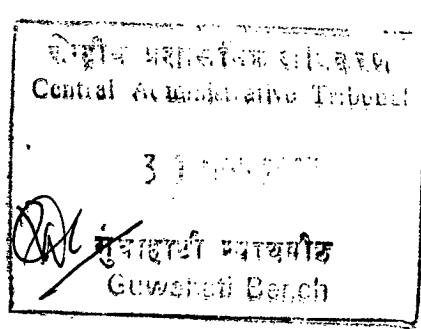
(HIRANMAY KAKATI)

*Postmaster (off)*  
*Barpeta Ho*

*Attested*

*Dri*

*Advocate*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Contempt Petition No. 22/2006  
In O.A. No. 448/01

IN THE MATTER OF:

Sri Hiranmoy Kakati

..... Petitioner

- Versus -

- 1) Sri A.K. Ghosh Dastidar,  
The Chief Post Master General,  
Assam Circle, Guwahati.
- 2) Sri B. Bairagi,  
Superintendent of Post Offices,  
Nalbari Barpeta Division,  
Nalbari.

... Alleged Contemner/  
Respondents

- AND -

IN THE MATTER OF:

An affidavit and/or compliance  
Report for and on behalf of the  
Respondent No. 1 & 2.

1. That I am the Respondent No. 2 in the instant Contempt Petition and have gone through the aforesaid Contempt Petition filed by the Sri Hiranmoy Kakati and have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.
2. At the outset I submit that I have the Highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any Order passed by the Hon'ble Tribunal. However, I tender unqualified

and unconditional apology for any delay or lapse in the compliance of the Order dated 3.6.02 in O.A. No. 448/01 pronounced by this Tribunal.

3. That there is no any willful or deliberate and reckless disobedience of the aforesaid order by the respondents and showing any contempt to the order of this Tribunal does not arise.
4. BRIEF HISTORY OF THE CASE. – which may be treated as the integral part of this affidavit/reply.

Sri Hiranmoy Kakati joined in the cadre of P.A. on 28.8.68. In 1979 Sri Kakati passed the PO & RMS Accountant Examination and posted on 12.05.85 as Accountant at Barpeta HO. Thereafter on 9.12.98 Sri Kakati was transferred as SPM, Kaithalkuchi SO and subsequently he was posted as SPM, Santinagar SO modifying the said transfer order vide memo No. B/A-19/Ch-II dated 25.2.99. As Sri Kakati was transferred from Accounts line to General line, he was aggrieved for such transfer order and filed a Court case at Central Administrative Tribunal, Guwahati vide O.A. No. 88 of 1999. Sri Kakati also filed a Misc Petition vide 87/99 which was heard on 30.3.99 staying operation of transfer order dated 25.2.99 upto 9.4.99. Thereafter O.A. No. 88/99 came up for hearing on 9.4.99 on which the interim order dated 30.3.99 passed in Misc. Petition 87/99 was confirmed to be continued until further order. The judgement of the said case (88/1999) was passed on 10.3.2000 quashing/ setting aside the impugned order dated 25.2.99 with all consequential benefits in accordance with law.

We have examined the said judgement dated 10.3.2000 and on 26.12.2000 Sri Hiranmoy Kakati was informed that the period of absence from 8.3.99 to 23.3.2000 cannot be regularised as duty as per rules. But Sri Kakati was not satisfied with our decision and filed a case to the

C.A.T. vide O.A. No. 44/2001. The Department responded the case and lastly C.A.T. passed its order on 3.6.02 directing the department to post Sri Hiranmoy Kakati in Accounts line instead of General line. In the meantime Sri Kakati joined as PRI(P) at Barpeta HO on 24.3.2000 (F/N) in response to SPOs/Nalbari memo No. B/A-13/Ch-III dated 15.2.2000 and on 1.5.03 Sri Kakati was temporarily posted as APM(A/Cs), Barpeta HO where he is continuing.

Thereafter, we filed a Writ Petition on 5.12.02 vide WP (C) No. 1142/03. In the meantime a Contempt Petition vide C. P. No. 41 of 2002 in respect of O.A. No. 448/01 was filed by Sri Hiranmoy Kakati; but it was dropped by C.A.T., Guwahati on 13.6.03 as our Writ Petition was accepted by the High Court.

We submitted the Writ Petition timely to the Hon'ble Gauhati High Court where it was registered as W.P.(C) No. 1142. We pursued the case time to time with the CGSC concern, but no due co-operation was found from him. Thus we got no information about some hearings of the case. The case was heard for judgement on 19.8.05. On this day our CGSC not pleaded the case properly. He commented that the Writ Petition had become infructuous and the petitioner did not want to press the writ Petition. On the basis of said comments our Writ Petition was dismissed as not pressed.

In this connection, it is to declare that we the petitioner never commented adversely as stated by the CGSC and which was reflected in the judgement dated 19.8.05. On receipt of legal opinion dated 27.4.06 in the judgement dated 19.8.05 in W.P. (C) No. 1142/2003 and as per instruction of the office of CPMG, Guwahati it was decided to file a Review Petition against the judgement dated 19.8.05. Accordingly we

submitted a review Petition to the Hon'ble High Court on 7.9.06 where it was registered as RP No. 90/06. Next date of hearing of this Review Petition has not yet been fixed.

In this meantime Sri Hiranmoy Kakati has filed a contempt petition Vide No. 22 of 06 at C.A.T, Guwahati on 12.9.06 for non implementation of judgement dated 3.6.06 passed in O.A. No. 448/01. The said contempt petition has been admitted on 13.9.06 with direction to issue show cause notice to the opposite party. Next date of the CP has been fixed to be held on 1.11.06.

5. That with regard to the statements made in para 1 of the contempt petition, the answering respondent most respectfully submits that the petitioner while working as Accountant in Barpeta HO was transferred to Kaithalkuchi SO by order dated 9.12.98. Subsequently the said order was modified by order dated 25.2.99 transferring the petitioner to Santinagar Sub Post Office as SPM. The petitioner approached C.A.T, Guwahati Bench against the aforesaid transfer by filing an application which was registered and numbered as O.A.No. 88/99. The Hon'ble Tribunal was pleased to allow the said Application holding that the action of the authority in transferring the petitioner (Sri H. Kakati) from Accounts line to the General line was unlawful. Therefore, the Hon'ble Tribunal by order dated 30.3.99 passed in Misc. Petition No. 87/99 in O.A. No. 88/99 ordered to keep the transfer order dated 9.12.98 and 25.2.99 in abeyance. Then the C.A.T by order dated 10.3.2000 was pleased to allow the said application No. 88/99 by setting aside the transfer order dated 25.2.99 with all consequential benefits.

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As per FR 17(1), an officer shall begin to draw the pay & allowances attached to his tenure of post with effect from the date of assuming the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties. Provided that an officer who is absent from duties without any authority shall not be entitled to any pay & allowances during the period of such absence. As such the period of absence from duty by the Govt. servant, now petitioner (Sri H. Kakati) from 8.3.99 to 23.3.2000 cannot be treated as duty in terms of FR 17 (1).

Against the office order dated 26.12.2000 the petitioner (Sri H. Kakati) approached the Hon'ble Tribunal by filing an original application which was registered and numbered as O.A. No. 448/2001, wherein the petitioner claimed pay & allowances for the period from 8.3.99 to 23.3.2000. The Hon'ble Tribunal by order dated 3.6.02 disposed of the Original Application No. 448/2001 with a direction upon the respondents to regularise the period from 8.3.99 to 23.2.2000.

6. That with regard to the statements made in para 2 of the contempt petition, the answering respondents most respectfully submit that as the petitioner Sri Kakati joined in general line as PRI(P), Barpeta HO on 24.3.2000 and no stay order was obtained at the time of admission of OA No. 88/99 the department challenged the legality of court's judgement dated 3.6.02 passed in OA No. 448/2001.

7. That with regard to the statements made in para 3 of the contempt petition, the answering respondents most respectfully submit that being aggrieved by the judgement and order dated 3.6.02 passed by the learned C.A.T, Guwahati Bench in O.A. No. 448/2001, the present contemner preferred a Writ Petition before the Hon'ble High Court, Guwahati which was registered/numbered as WP(C ) No. 1142/2003.

The contempt of the WA before the Hon'ble High Court is that the opposite party (now the petitioner) while approaching the Hon'ble C.A.T challenging his transfer dated 25.2.99 failed to obtain an interim order. As such the O.P. ought to have joined his duty but, he remained absent without informing the authority nor did he apply for leave. Even after the Hon'ble C.A.T passed an interim order on 30.3.99. The O.P. did not turn up to rejoin his duty. The transfer order issued by the authorities materialized before receipt of the interim order dated 30.3.99 and as such the contention of the O.P. that he was not allowed to join his duty and the period of his absence has not been regularised is not true. It is submitted that the O.P. remained absent during the period willfully without performing any work for which such period of absence can not be regularised with benefits.

8. That with regard to the statements made in para 4 of the contempt petition, the answering respondents most respectfully submit that the WP(C ) No. 1142/2003 was listed before the Hon'ble High Court on 19.8.05. The Hon'ble High Court on that day has dismissed the WP(C ) as not pressed by the following order:

“ Mr. B. Sarma, learned counsel appearing on behalf of the petitioner (now contemner) and submitted that his WP has been infructuous and the petitioner does not want to press this WP. Consequently, we dismiss the WP as not pressed”.

9. That with regard to the statements made in paras 5 & 6 of the contempt petition the answering respondent most respectfully submits that the department examined the order dated 19.8.05 thoroughly and finally filed a Review Petition on 7.9.06.

10. That with regard to the statements made in para 7 of the contempt petition the answering respondent most respectfully submits that the contents as reflected in the order dated 19.8.05 is not correct. It is an admitted fact that the WP had not become infructuous and no instruction was given by the department to the learned CGSC not to press the Writ Petition. The above factual position could not be brought to the notice and on clarified before the Hon'ble court inspite of exercise of due diligence and therefore an error apparent on the face of the records has crept into the order dated 19.8.2005. As such Review Petition has been filed to review the order dated 19.8.05 passed in W.P.(C ) No. 1142/2003. The RP has been registered under Registration No. 90/06 dated 27.9.2006.

11. That with regard to the statements made in para 8 of the contempt petition the answering respondent most respectfully submits that on being aggrieved by order dated 19.8.05, preferred to exercise the right of review, which is substantive, vested valuable right and a creature of statute and accordingly a review Petition has been filed vide review Petition No. 90/06 and pleased to issue notice on 8.11.06 to the present petitioner and considering the urgency of the matter the Hon'ble High Court the aforesaid notice was made returnable within 4 weeks. As such it is a continuation of the OA 448/01. Therefore, the above statutory right cannot be curtailed by the petitioner by way of filing the instant C.P. Since the Hon'ble Courts are also zealous in guarding the aforesaid statutory right.

The order dated 8.11.06 is annexed herewith and marked as Annexure R.

In view of the above it is respectfully submitted that there is no any willful or deliberate and reckless disobedience of the aforesaid order passed by this Honourable Tribunal.

P R A Y E R

In the light of the submission made above, Your Lordship would be pleased to dismiss the Contempt Petition filed against the respondent.

AFFIDAVIT

I, Sri Bhadreswar Bairagi son of late Bhabeswar Bairagi aged about 59 years working as Superintendent of Po, Nalbari-Barpeta Dr, Nalbari do hereby solemnly affirm and state as follows :-

That I am the Respondent No. in the above case and I am fully acquainted with the facts and circumstances of the case and also authorized to swear this affidavit.

That, the statements made in para 1 to 11 of the affidavit are true to my knowledge, belief and information based on the record and nothing has been suppressed thereof.

And I sing this affidavit/report on this 24/11 day of March/2006 at Guwahati.

Identified by

ADVOCATE

Bhadreswar Bairagi

Deponent

डाक अधीक्षक नलवारी वरपेटा

डाक मंडल नलवारी - 781335

SUPDT. OF POST OFFICES

NALBARI BARPETA DIVISION

Solemnly affirm ~~NALBARI-781335~~ before

me by the deponent who is identified by

M. U. Ahmed Advocate at 644 on

this 24/11 day of November/2006 at

Guwahati.