

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No.:

Misc. Petition No.

Contempt Petition No.

Review Application No.

41/2002 no A.448/01

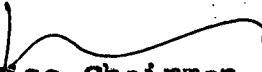
Applicant (s) Hiccanmix Kakahi

$-V(s)$

Respondent (s) H. O. D. 90m

Advocate for the Applicant (s) B.K.Sharma, S.Savona, V.K. Raj

Advocate for the Respondent(s) Miss U. Das.  
CASE: B.C. Pathak vs  
Contamnab. 291

Notes of the Registry	Date	Order of the Tribunal
<p>This Contempt petition has been filed by the petitioner praying for drawing up a Contempt petition proceeding against the contemners for their wilful and deliberate violation of judgment and order dt. 3-6-2002 passed in O.A. 448/01 by - H.C. Hon'ble Chairman.</p> <p>Legal before the Hon'ble Court for further order.</p> <p></p> <p>for <u>Section 5 thereof</u></p> <p></p>	13.9.02 mb. 11.10.2002 bb	<p>Heard Mr. S. Sarma, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the contempt proceeding shall not be initiated.</p> <p>List on 11.10.02 for orders.</p> <p></p> <p>Vice-Chairman</p> <p><del>XXXXX notice</del> Heard Mr. S. Sarma, learned counsel for the applicant.</p> <p>Issue notice. List on 25.11.2002</p> <p></p> <p>Vice-Chairman</p>

(2)

Notice prepared  
And sent to D. Section  
620 issuing of the  
Sum to the respondent  
through Regd. post.

Vide D. No - 2748 W/49  
Dtd. 21/10/02

25.11.02

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents four weeks time is allowed to the respondents to file reply, if any. List on 1.1.2003 for orders.

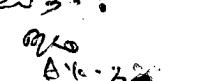
  
Vice-Chairman

30  
25.11.02

mb

1.1.2003

Due to vacation, the case is adjourned to 7.1.2003.

  
Vice-Chairman

No. reply has been  
filed.

30  
1.1.03

7.1.03 Learned counsel for the respondents states that as per his instruction a further Writ Petition has been preferred in the Gauhati High Court but he is not aware about the decision thereto. In that view of the matter some time is prayed.

List on 5.2.03 for order.

16/1/03  
Member

18/1/03  
Chairman

No. reply has been  
filed

30  
4.2.03

pg

5.2.2003

The respondents are yet to file reply. Earlier, the respondents were ordered to obtain necessary instructions on the matter. Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents stated that no such instruction was forthcoming. Put up the matter again on 14.2.2003 to enable the respondents to reply, if any.

  
Member

mb

  
Vice-Chairman

14.2.2003 Put up on 12.3.2003 for orders on the prayer made by Mr. A. Deb Roy, learned Sr. C.G.S.C. who has appeared on behalf of Mr. B.C. Pathak, learned Addl. C.G.S.C. for respondents.

No reply has been filed.

3/20  
11.3.03

Vice-Chairman

mb

12.3.2003 None appears for the respondents. List again on 27.3.2003 for further orders.

No reply has been filed.

3/21  
26.3.03

mb

27.3.2003

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

The Hon'ble Mr. S. Biswas Administrative Member.

No written statement so far filed. Put up again on 29.4.2003 enabling the respondents to file written statement.

No written statement has been filed.

3/22  
28.4.03

S. Biswas

Member

Vice-Chairman

bb

29.4.2003

The respondents are yet to file reply though time granted. The respondents are allowed further two weeks time to the respondents to file reply, if they are so advised.

List the case on 13.5.2003 for further order.

No reply has been filed.

3/23  
12.5.03

Vice-Chairman

bb

13.5.2003 List again on 13.6.2003 to  
enable the respondents to file  
reply, if any.

26.5.03

Affidavit in reply  
filed by the Respondent No. 2 13.6.2003 Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. R.K. Upadhyaya, Member (A).

Vice-Chairman

mb

Heard Mr. S. Sarma, learned  
counsel for the applicant and also Mr.  
B.C. Pathak, learned Addl. C.G.S.C.  
for the respondents.

Mr. B.C. Pathak, learned Addl.  
C.G.S.C. for the respondents stated  
that against the judgment and order  
of the Tribunal dated 3.6.2003 passed  
in O.A. 448/2001 the respondents moved  
the High Court by way of a writ petition  
which was numbered and registered  
as W.P.(C) No. 1142/2003 and the sub-  
ject matter is under examination.

In that view of the matter, the  
C.P. stands dropped.

*Ch. B. S. Sarma*

Member

mb

*Vice-Chairman*

Filed by  
 the petitioner through  
 Bishan Das  
 17/6/02

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.  
GUWAHATI BENCH.

C.P. No. 41 /02  
O.A. No. 448 / 01

Hiranmay Kakati.  
....Applicant.

-vs-

Union of India & Ors.  
....Respondents.

IN THE MATTER OF

An application Under Section 17 of the  
Administrative Tribunal Act,1985 for  
drawing up of a Contempt proceeding  
against the contemners for their willful  
and deliberate violation of the Judgment  
and order dated 3.6.2002 passed in OA  
No.448/01 by this Hon'ble Tribunal.

-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 3.6.2002  
passed in OA NO. 448/01 passed by this  
Hon'ble Tribunal.

-AND-

IN THE MATTER OF

Sri Hiranmay Kakati  
Public Relation Inspector  
Barpeta, Head Post Office  
Barpeta.

....Petitioner.

-vs-

1. Mr. A.N.D. Kachari.

The Chief Post Master General (In Charge)  
Department of Post, Ghy-1.

2. Mr. Niranjan Das.

Supdt. of Post Office  
Department of Post, Nalbari- Barpeta  
Division, Nalbari.

....Contemnners.

The petitioner above named .

Most Respectfully Sheweth:

1. The petitioner claiming his regularisation of period of service from 8.3.1999 to 22.3.2000 and claiming his posting in Accounts Cadre preferred OA No. 448/01 before this Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding and in the light of earlier Judgment and order dated 10.3.2000 passed in OA No.88/99 was pleased to allow the said Original Application directing the Respondents thereto to regularise the period of the absence of the applicant as well as to post him in Accounts Cadre in the Postal Department.

A copy of the aforementioned Judgment and order dated 3.6.2002 passed in OA No. 448/01 is annexed herewith and marked as ANNEXURE-1.

2. That after the pronouncement of the aforesaid Judgment the petitioner on 17.6.2002 submitted the certified copy of the same to the concerned authority with a prayer to implement the same at on early date. However, till date the Respondents have not taken any initiative to implement

the aforementioned Judgment and order dated 3.6.2002 passed in OA No.448/02 passed by this Hon'ble Tribunal.

3. That the petitioner begs to state that both the contemners knowing fully well about the Judgment, is yet to comply with the same. Even the contemners have not yet initiated any step for implementation of the aforesaid Judgment. It is stated that issues involved in the OA was regarding the posting of the petitioner in Accounts cadre of Postal Department as he was a qualified person to held Post under Accounts Cadre and to regularise his period of absence from 8.3.1999 to 22.3.2000. In fact, in the earlier round of litigation through OA No.88/99, settled the issue but since no action was forthcoming, petitioner had to approach the Hon'ble Tribunal once again by way of filing OA No.448/01. The contemners even after the Judgment (Annexure-1) are delaying the matter even after repeated persuasion by the petitioner.

4. That the petitioner begs to state that Contemner No.2, the Supdt. of Post Offices being a controlling authority is duty bound to communicate and to pass necessary order implementing the Annexure-1 Judgment, after taking due approval from Contemner No.1. But in the instant case both the contemners knowing fully well about the existence of the Annexure-1 Judgment have not taken any initiative.

5. That the petitioner begs to state that the Annexure-1 Judgment left no ambiguity in understanding the direction contained therein and thus there should not have been any difficulty for contemners to implement the same. The contemners knowing fully well about the direction contained in the Judgment have been kept on dishonoring the same, and as such both of them are liable to be punished

severely for their willful and deliberate of the same.

6. That the petitioner begs to state that through this application he also prays for a direction towards the Respondents for implementation of the Annexure-1 Judgment invoking Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

7. That this application has been filed bonafide and to secure ends of Justice.

In the promises aforesaid it is most respectfully prayed that your Lordship would graciously be pleased to draw up Contempt proceeding against the Contemners for their willful and deliberate violation of the Judgment and order dated 3.6.2002 passed in OA No. 448/01 passed by this Hon'ble Tribunal and to punish them severely for their aforesaid action and be further pleased to pass appropriate direction towards the Respondents for implementation of the Judgment and order dated 3.6.2002 passed in OA No.448/01 and /or be pleased to pass any such order/orders as Your Lordships deemed fit and proper considering the facts and circumstances of the case.

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

DRAFT CHARGE

Whereas Sri A.N.D.Kachari, the Chief Post Master General (In- charge) Department of Post, Guwahati-1 and Sri Niranjan Das, Supdt. of Post Offices Nalbari-Barpeta Division, Nalbari have willfully and deliberately violated the Judgment and order dated 3.6.2002 passed in OA No.48/01 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench and as such they are liable to be punish under the provisions contained in Contempt of Court's Act for such Act of willful and deliberate violation.

AFFIDAVIT

I Sri Hiranmay Kakati, S/O. Sri B.C. Kakati, aged about 52 years, at present working as Public Relation Inspector, in Barpeta Head Office, Barpeta do here by solemnly affirm and state as follow :

1. That I am petitioner instant petition and as such, acquainted with the facts and circumstances of the case and competent to swear the present affidavit.
2. That the statements made in paragraphs 287..... are true to my knowledge and those made paragraphs 1..... being matter of record are true to my information derived therefrom which I believe to be true and rest are my humble submissions before this Hon'ble Court.

6th  
And I sign this affidavit on this the day of Sept.  
2002 at Guwahati.

Identified by  
Usha Das  
Advocate.

Deponent.

Hiranmay Kakati  
Solemnly affirm and state by  
the deponent who is identified by  
Miss U.Das Advicate.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

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  
The Secretary to the Government of India,  
Ministry of Communication,  
Department of Posts,  
New Delhi.

2. The Chief Post Master General,  
Department of Posts,  
Guwahati, Assam.

3. The Superintendent of Post Offices,  
Department of Posts,  
Nalbari-Barpeta Division,  
Nalbari.

.....Respondents

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

## O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legitimacy of the order dated 26.12.2000 issued  
by the Superintendent of Post Offices, Nalbari-Barpeta  
Division, Nalbari vide Memo No.B-190/Ch-II is the subject  
matter of this proceeding in the following circumstances:

The applicant was working as Accountant in the Head  
Post Office under the respondent Nos.2 and 3. By order

Attested  
[Signature]  
Advocate

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.....

Arindel  
Nason  
Advocate

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.

*Attended  
Vidya  
Advocate*

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

প্রিমিয়া

13/1/02  
Section Officer (J.)  
Central Administrative Tribunal  
Chittagong Administrative Tribunal  
Nawabhati Bench, Guwahati  
প্রাচীন নামসহ, প্রাচীন

Attested  
Niranjan  
Advocate

केन्द्रीय प्रशासन आयोग  
Central Admin. Commission  
26th MAY 2003  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
Guwahati  
GUWAHATI BENCH AT GUWAHATI

15  
Filed by:-  
B. C. Pathak  
(B. C. Pathak)  
26/5/03  
Addl. Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench : Guwahati

C.P. NO.41/2002

IN O.A NO.448/01

Shri Hiranmay Kakati

...Petitioner

-versus-

Shri A.N.D Kachari and another

...Respondents

(Affidavit-in-reply filed by the respondent No.2)

I, Shri Ganesh Ch. Hazarika, son of late Tabbar Ram Kaibarla aged 56 years, resident of Ambari Tinali (Fatasil) Guwahati-25 and at present working as the Chief Postmaster General, Assam Circle, Guwahati, do hereby solemnly affirm and state as follows :

1. That I have been implicated as the respondent No.1 in the above noted Contempt Petition No.41/2002 (hereinafter referred to as the "Petition") and a copy of he said petition has been served on me. I have gone through the same and understood the contents thereof.
2. That I also state that the respondent No.2 is no longer holding the post at Nalbari and he has been transferred and posted at Guwahati in different capacity and in his place a new incumbent has joined.
3. That the petitioner filed the abovenoted O.A No.448/01 in this Hon'ble Tribunal. This Hon'ble Tribunal after hearing the parties passed the final order on

3.6.2002 directing the respondents to regularize the period of absence of the applicant and to post the applicant in the Accounts Cadre.

4. That after receipt of the copy of the said final order dt. 3.6.2002, the respondents considered the case and finally decided to go for judicial review (appeal) in the Hon'ble Gauhati High Court. Accordingly, a Writ Petition has been filed in the said Hon'ble High court on 5.12.2002 and the same has been registered as the W.P (C) No. 1142/2003. Now the entire matter is being subjudiced before the higher court for judicial review. Pending judicial review and the final order to follow from the said writ petition, the respondents cannot implement or comply with the final order passed by the Hon'ble Tribunal.

In this regard the respondents also state that the Respondents can go for appeal /judicial review as a matter of right and which has been done in this case. As such the respondents have not done any such thing that may in any way amount to contempt of court or any willful violation or disobedience of the order passed by this Hon'ble Tribunal.

A copy of the writ petition filed is annexed as the Annexure-R1.

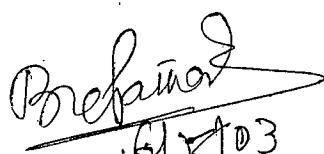
5. That with regard to the statements made in para 1,2 and 3 of the petition I say that in view of the above facts as stated herein above, the respondents are not implementing the order passed by this Hon'ble Tribunal. As the entire matter is seized by the Hon'ble High Court and a final pronouncement is expected soon, the respondents are waiting for the same. The respondents are aware that if they lose the case in the Hon'ble High court, they may go to the Hon'ble Supreme Court or they may decide to comply with the order passed by this Hon'ble Tribunal and this is the legal provision to be followed by the respondents. In view of the present position the petition is liable to be dropped atleast for the time being.

6. That with regard to the statements made in para 4, I say that the said respondent No.2 has been transferred long before and he is no longer holding the said post and hence, the matter was not in that way followed as it is asserted by the petitioner. However, all necessary steps were taken in time to file a writ petition in the Hon'ble Gauhati High Court. Hence the allegations are baseless and the petition is liable to be dropped.
7. That with regard to the statements made in para 5, I say that under the facts and circumstances of the matter, there is no willful disobedience of the order passed by this Hon'ble Tribunal. The order passed by the Hon'ble Tribunal has not been complied with temporarily in view of the pending litigation in next higher court in form of appeal. The law is also well settled that willful disobedience excludes casual, accidental, bonafide or unintentional acts or genuine inability to comply with the order.
8. That with regard to the statements made in para 6, I say that in a contempt petition the petitioner may allege disobedience of the order/judgment of the court, but he can not seek other alternative relief in the form of execution of the order. Hence the petition is bad in law and the same is liable to be dismissed.
9. That with regard to the statements made in para 7 and the prayer portion of the petition, I say that in view of the facts and circumstances of the case and the provisions of law, there is no disobedience of the court's order as alleged by the petitioner and the petition is liable to be dropped.
10. That in case this Hon'ble Tribunal comes a finding that the respondents are liable for contempt of court (civil contempt), in that case I respectfully submit that I have the highest regard to the authority, power of the court and I know that I am bound by the order/judgment passed by any such court except the right of appeal and judicial review and I hereby seek unqualified apology and to exonerate me from the charges of contempt of court.

11. That the statements made in this affidavit in para 1, 2, 3, 5 to 9 and 10 — are true to my knowledge and belief, those made in para 4 — — being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Court. I have not suppressed any material fact.

And I sign this affidavit on this 6 th day of May, 2003 at Guwahati.

Identified by me

  
B.C. Pathak  
Advocate 6/5/03

Sri Ganesh Ch. Hazarika

Deponent

গুৱাহাটী পোস্ট অফিস  
গুৱাহাটী-৭৮১৩৩৫  
Supdt. of Post Offices  
Nalbari Ra. post Division  
Nalbari-৭৮১৩৩৫

Solemnly affirmed and signed  
before me by the deponent,  
who is identified by Shri  
B.C.Pathak, Advocate on this

6 th day of May, 2003 at  
Guwahati.

  
Dilip Baruah  
Advocate

DISTRICT: NALBARI.

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA:MANIPUR:  
TRIPURA: MIZORAM & ARUNACHAL PRADESH)

(CIVIL EXTRA-ORDINARY JURISDICTION)

WRIT PETITION(C) NO. 1112/2002

To

The Hon'ble Shri P.P.Naoleker, B.Com.,  
L.L.B., the Chief Justice of the Hon'ble  
Guwahati High Court and his Lordship's  
other companion Justices of the said  
Hon'ble court.

IN THE MATTER OF:

An application under article  
226 of the Constitution of  
India for issuance of writ  
in the nature of mandamus/  
certiorari against the  
impugned order passed by  
Learned Central Administrative  
Tribunal in OA No. 448/2001.

-AND-

IN THE MATTER OF:

Impugned order dt. 3/6/2002  
passed by Learned Central  
contd...2.

Administrative Tribunal

in O.A. No. 448/2001 direc-

ting regularise the period of

absence from 8/3/99 to 22/3/2000.

-AND-

IN THE MATTER OF:

Legality and validity of the

impugned order dt. 3/6/2002

passed in OA No. 448/2001.

-AND-

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 Hiranmoy Kakati,

Public Relation Inspector,

Barpeta Head Post office,

Barpeta.

... Respondent.

contd...3.

The petition of the petitioner abovenamed  
MOST RESPECTFULLY SHEWETH.

1. The brief fact resultant to this petition is that the Learned Central Administrative Tribunal vide impugned order dt. 3/6/2002 in OA No.448/2001 has directed the applicant to regularise the period of absence from 8/3/99 to 22/3/2000 holding the view that the respondent is not guilty for absence from duty though during the aforesaid period the respondent has not joined his duty inspite of request and the aforesaid absence is caused by the respondent at his own valition.

A copy of the impugned order dt. 3/6/2002 is enclosed here- with as Annexure-I(at page ) .

2. The back ground of the case is that the respondent who was working as Accountant in the Head Post office, Barpeta, by order dt. 9/12/98 the respondent was transferred to Kaithalkuchi as Higher Scale Grade-II and subsequently on 25/2/99 a modified order was issued transferring the respondent to Santinagar as Sub-Post Master.

Copy of the aforesaid order dt. 9/12/98 and 25/2/99 are enclosed herewith as Annexures-II & III respectively(at page & at page ).

contd...4.

3. That your writ petitioner begs to submit that the respondent was appeared in PO & RMS examination, 1979 and being qualified Accountant he has opted for Accounts line on Time-bound one promotion and Bional Cadre Review and he was graded as Higher Scale Grade-II. Against the aforesaid transfer order the ~~xxxxx~~ respondent approached before Central Administrative Tribunal by filing the OA No. 88/99 against transfer order dt. 9/12/98 as well as modified order dt. 25/2/99 and the application was allowed. The Tribunal in the aforesaid order held the view that the action of the writ petitioner transferring the respondent from Accounts line to the General line by the aforesaid transfer order was unlawful and accordingly the same was set aside. The writ petitioner will rely the aforesaid order dt. 10/3/2000 passed by learned Central Administrative Tribunal in OA No. 88/99 at the time of hearing.

4. That while the respondent assailed the aforesaid transfer order dt. 9/12/98 and 25/2/99 the learned Tribunal did not pass any interim stay order in the aforesaid OA. Subsequently the respondent filed Misc. petition before the learned Tribunal being No. ~~2~~ Misc. petition No. 87/99 (in OA No. 88/99) and in the aforesaid Misc. Petition learned Tribunal by order dt. 30/3/99 the transfer order issued to the respondent was kept in abeyance.

A copy of the aforesaid order  
dt. 30/3/99 is enclosed as  
Annexure-IV(at page, ).

5. That subsequently on 10/3/2000 the aforesaid OA No. 88/99 was adjudicated upon and transfer order dt.25/2/99 was set aside and allowed with all consequential benefits and respondent thereafter intimated the judgement and order of the Tribunal dt.10/3/99 to the authority and prayed for granting of consequential benefits.

6. That your petitioner begs to submit that office of the applicant i.e. Sydpt of Post offices on 26/2/2000 issued a letter to the respondent, contexts of which are given below:-

To

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

Sub:- OA No.88/99 filed by Sri H.Kakati, Acctt.

HO - UOI & others.

Ref:- CO's/GH letter No. Vig/5/xxiii/93 dtd.

15-11-2000.

In pursuance of CO's/GH letter No. dated above, I am directed to intimate that your case of regularisation of the period from 9-3-99 to 22-3-2000 was forwarded to CO/GP vide this office letter

contd....6

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 9-3-99 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."

Copy of the aforesaid letter dated 26/12/2000 is enclosed herewith as Annexure-V  
(at page ).

7. That your applicant begs to submit that office of the applicant informed the respondent that while admitting the OA on 26/3/99 the Hon'ble Central Administrative Tribunal did not pass any order staying the transfer order and thereafter the respondent remained absent and did not turn up for joining

contd...7

his duty. Subsequently, the respondent filed another Misc. Petition No. 87/99 in the said OA and obtained an interim stay order on 30/3/99 to rejoin at Barpeta Head Office. But the respondent did not turn up to rejoin at Barpeta Head Office nor he came forward before the authority for necessary order. The respondent has joined at Barpeta Head Office only on 23/3/2000 that too after the receipt of the adjudication order of Central Administrative Tribunal dt. 10/3/2000. Therefore, it is observed by the writ petitioner that the respondent was remained absent willfully and thus the period of absence from 8/3/99 to 22/3/2000 cannot be treated as duty. Accordingly, the aforesaid letter dt. 26/12/2000 has been issued to the respondent clarifying the view of the applicant.

8. That the respondent against aforesaid office order dt. 26/12/2000 issued by the writ petitioner approached before the learned Central Administrative Tribunal by filing OA which is being registered as OA No. 448/2001 claiming pay and allowances of the aforesaid period of absence i.e. from 8/3/99 to 22/3/2000 in view of the order passed by learned Central Administrative Tribunal dt. 10/3/2000 in OA No. 88/99 and learned Tribunal on 3/6/2002 has disposed of the aforesaid OA which is impugned in this writ petition with the direction to regularise the period from 8/3/99 to 22/3/2000 and hence this writ petition.

contd...8.

9. That the contention of the writ petitioner before this Hon'ble court is that the respondent while approaching before learned Central Administrative Tribunal initially challenging his transfer order dt. 25/2/99 failed to obtain any interim order. Therefore, respondent opt to have to join his post or his duty but he remained absent without informing the authority nor he has any leave application was put forward by him. Even though while learned Central Administrative Tribunal passed interim order on 30/3/99 he did not turn up to rejoin his duty and aforesaid order dt. 30/3/99 was actually received by the office of the writ petitioner on 22/4/99 and it is submitted that the transfer order issued to the respondent was materialised earlier on 8/3/99 before receiving the interim order dt. 30/3/99 passed by learned Central Administrative Tribunal in Misc. Petition No. 87/99 (in OA No. 88/99). The contention of the respondent that he was not allowed to join his duty and the period of absence has not been regularised is not proved. The transfer of the respondent was materialised on much earlier than that order was passed by learned Central Administrative Tribunal. It is submitted that the respondent was remained out of office during the period willfully without performing any work for which such period of absence cannot be regularised except by granting admissible leave and the matter has been referred to the Circle Head Office. However, department of the writ petitioner decided for ~~granting~~

contd...9.

granting him leave as admissible to settle the case and in this regard respondent was informed vide letter No. E/190/Ch. II dt. 17/03/2001.

Copy of the aforesaid letter  
is enclosed herewith as  
Annexure-VI(at page ).

10. That your petitioner begs to submit that the respondent has joined at Barpeta as PR(I) the normal-based supervisory post and higher than that of Accountant on receipt of the order of Central Administrative Tribunal/Guwahati dated 10/3/2000 on 24/3/2000 which has been admitted by the respondent himself in his representation dated 01/02/2001. In his aforesaid letter he also requested to pay his pay and allowances from 08/3/99 to 22/3/2000 which is basically improper on the part of the writ petitioner to grant pay and allowances whereas the respondent is willfully remained absent from duty during this period.

11. That the learned Central Administrative Tribunal while passing impugned order dated 3/6/2002 has committed manifest error of law and did not consider the actual facts and circumstances in proper perspective. It is crystal clear that the transfer order which was issued to him has been challenged

contd...10.

by filing OA and the learned Tribunal while admitting the OA dt. 26/3/99 did not pass any stay order. Therefore, the respondent ought to have joined his duty or report for his duty forthwith but he remained absent without any authority nor he applied for any leave for that period. However, the aforesaid OA has been finally disposed of on 10/3/2000 setting aside the transfer order dt. 25/2/99 which does not entitle the respondent to get his pay and allowances and regularise his service for the whole period as he remained absent till the final disposal of the OA on 10/3/2000. Therefore, the respondent is not entitled to get his pay and allowances and regularisation of the service for the aforesaid absent i.e. from 8/3/99 to 22/3/2000 in which period he did not work at all and the writ petitioner cannot liable for such absence. Hence the impugned order passed by learned Central Administrative Tribunal in OA No. 448/2001 dt. 3/6/2002 is illegal, bad against the normal rules.

12. That the aforesaid order dt. 3/6/2002 passed by learned Central Administrative Tribunal is patently illegal and bad in law and liable to be set aside and quashed.

13. That the aforesaid writ petition is made bonafide and for the interest of justice.

In the premises of the aforesaid the writ petitioner humbly prays that your Lordship may be pleased to admit this petition, call for the records of the case, issue a rule calling upon the respondent to show cause as to why the writ in the nature of certiorari and/or mandamus and/or anyother appropriate writ, order or direction should not be issued as has been prayed and as to why the impugned judgement dt. 3/6/2002 passed in Original Application No. 448 of 2002 shall not be set aside and quashed and why the prayer made in this petition by setting aside the impugned order dt. 3/6/2002 shall not be made absolute and pass such anyother order/orders on such cause or causes that may be shown and after hearing the parties and on perusal of the records, be pleased to make the rules/rule absolute and/or pass such anyother order/orders as your Lordship deem fit

and proper and to give full and complete relief to the writ petitioner.

-AND-

During the pendency of the petition as a measure of interim relief the operation of the impugned order passed by the learned Central Administrative Tribunal dated 3/6/2002 should be suspended/kept in abeyance till the disposal of this writ petition and pass such another order or direction as your Lordship deem fit and proper.

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

contd....Affidavit.13.

A F F I D A V I T

I, Shri N. Das,

Son of Late T. L. Das,

by profession service and being the aged about 57 yrs.

do hereby solemnly affirm and declare on oath as follows:-

1. That I am the citizen of India.

2. That I am the and being

I am competent and authorised to swear this affidavit on behalf of Union of India.

3. That I am fully conversant of the facts and circumstances of the case and acquainted of the case.

4. That the statement made in paras

are true to my knowledge and belief and those made in paras

are the matter of records and rests are my humble submission before this Hon'ble court. Accordingly, I sign this Affidavit on this day of

at Guwahati.

/2002

Nanayam Das,

DEPONENT

Identified by

Advocate's Clerk.