

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALATI BENCH

ORDER SHEET

Original Application : _____

Misc Petition No. : _____

Contempt Petition No : _____ 43/03 in CA 220/02

Review Application No: _____

Applicants:- Binoy Das

Respondents:- N.O.I. For.

Advocate for the Applicants:- Mr. S. Saiona, Mr. U. Das

Advocate for the Respondents:- A. Deb Roy, Sr. Case No.
Mr. Y. Doloi, K.C. Roy, A. Deb for Respondent No. 2 & 3.

Notes of the Registry	Date	Order of the Tribunal
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This Contempt petition
has been filed by the
counsel for the applicant
praying for travelling up
Contempt proceeding against 1m
the Contemners for their
willful and deliberate
violation of the Judgement
and order dated 8.4.03
passed by this Honble Tribunal
in O.A. 220/02.

Laid before the
Honble Cont for further
order.

Section Officer
6/9/03

bb

21.11.03

Issue notice.
List on 27.10.03 for further
orders.

Member

Vice-Chairman

Respondent nos.2 & 3 entered
appearance through learned counsel Mr
K.C.Roy. Mr. Roy prays for some time
to file reply.

Prayer allowed. Respondent No.1
may also file reply, if any. List the
case on 21.11.2003 for filing of repl.

Member

Vice-Chairman

Leftover, but no more
rest of B available.

B/O
lar


C.P. 43/03 (1A 220/02)


23.1.2004

Present: Hon'ble Shri Bharat Bhusan,
Member (J)

Hon'ble Shri K.V. Prahladan,
Member (A).

Mr S. Sarma, learned counsel
for the applicant is present. Four
weeks time allowed to the
respondents for filing reply. List
it on 24.2.04 for orders.


Member (A)


Member (J)

nkm


24.2.2004


Present: Hon'ble Shri Shanker Raju,
Judicial Member

Hon'ble Shri K.V. Prahladan,
Administrative Member.

Heard Mr. U.K. Nair, learned
counsel for the petitioner. In the
reply filed by the respondents, the
claim of the applicant though
considered was rejected as he was
found ineligible. This has been on
the premises that the applicant was
not in service on 1.8.1998. The
aforesaid contention has already
been taken into consideration in the
O.A. and has been repelled. In this
view of the matter the order of the
respondents runs in the face of our
orders which cannot countenance.
Respondents are accorded four weeks
time to pass a fresh order in true
letter and spirit of our directions,
failing which the respondent 2 shall
remain present before us.

List the matter on 12.3.04.


Member (A)


Member (J)

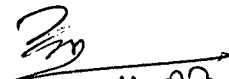
nkm

15/9/03

Notice is prepared and
sent to Despatch
Section for issuing
to the Contemner NOS.
1 to 3 vide NO 1947-1949
dated 15.9.03.


15/9/03

No. reply has been
biked



20.11.03

No. reply has been
filed.


20.11.04

23.2.04

Show Cause reply
submitted by the
Respondent No. 2 and 3.



C.P. 43/03 (O.A. 220/02)

3

3

O.A.

Notes of the Registry

Date

Order of the Tribunal

May kindly be seen at
flag 'A'.

The letter No. TF/NE/Gent-29/
VOL.-IV/38 dated 24.9.03
issued by the Divisional Engineer
(EST), Sri Perana BORO is received
by this Registry on 3.10.03.
This is regarding ~~the~~ the
O.A. No. 220/02 (Binary. Das-
K. U. I. 9000).

Laid before the Hon'ble
Court for necessary orders.

on leave.

S.O (3)

DR

10/10/03

15.3.04

Additional-Show-cause
Reply has been submitted
by the Respondent Nos. 2 & 3.

P.N.

9 (7) O.A. No. _____

Notes of the Registry

Date

Order of the Tribunal

12.3.2004

Since the order dated 24.2.2004 was passed by the Division Bench, list the matter before the Division Bench after six weeks, after 26th April, 2004.

K. P. S. Reddy
Member (A)

mb

15.3.04

16.6.04 Present : The Hon'ble Mrs Bharati Ray,
Judicial Member

The Hon'ble Shri K.V. Prahladan
Administrative Member

When the matter was called for learned counsel for the applicant submits that the order dated 8.4.2003 passed in O.A.220/02 by this Tribunal has been stayed by the Hon'ble High Court in Writ petition No.1603/04 on 27.5.04. That being the position.

In the circumstances the C.P. is closed, for the time being.

K. P. S. Reddy
Member(A)

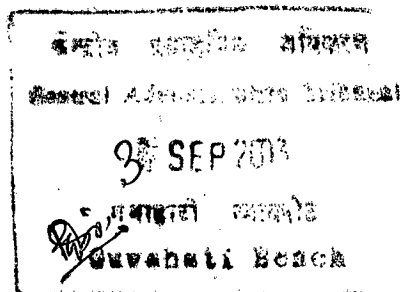
S. J.
Member(J)

pg

21.6.04

Copy of the order has been sent to the office for drawing the fine to the A/Advocate for the applicant as well as to the Contemner Contemner No. 3 by post.

H.S.



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Filed by
the petitioner through
Alsha Das
Advocate
21/9/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

C.P. No. 43/03

O.A. No. 220/ 2002

Binay Das

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

IN THE MATTER OF

An application under Sec 17 of
the Administrative Tribunal
Act, 1985 for drawing up
contempt proceeding against the
contemnors for their willful
and deliberate violation of the
Judgment and order dated
08.04.2003 passed in OA
No.220/02 by this Hon'ble
Tribunal.

-AND-

A

IN THE MATTER OF

An application praying for appropriate execution of the judgment and order dated 08.04.2003 passed in OA No.220/02 by the Hon'ble Tribunal invoking Rule 24 of the Central Administrative Tribunal (procedure) Rules 1987.

-AND-

IN THE MATTER OF

Sri Binay Das
S/o Late Gobinda Das
R/o Hangrabari
C.P.H.E. Office
Guwahati-6

..... Petitioner

..... Applicant

-VS-

1. Sri Prithipul Shing
The Chief Managing Director
Bharat Sansar Nigam Limited
New Delhi

2. Sri P. Jagadishan

The Chief General Manager
Deppt. of Telecom,
Guwahati- (Panbazar),
Guwahati-781001 (Assam)

3. Sri P. Boro

The Divisional Engineer (ESTT)
(Deptt. of Telecom)
Uzanbazar, Guwahati

Assam

.....Contemners

.....Respondents

The humble application on behalf of the petitioner
above named.

MOST RESPECTFULLY SHEWETH

1. That the petitioner/applicant praying for grant of temporary status and subsequent regularisation under the scheme of Casual Labour (Grant of Temporary Status and Regularisation) Scheme 1989 preferred the above noted OA before the Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OA vide its judgment and order dated 8.4.2003 setting aside the action of the Respondents in refusing the said benefit. The Hon'ble Tribunal in the said judgment further directed the respondents to complete the process of conferment of temporary status to the petitioner within 2 months from the date of receipt of the judgment.

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A copy of the said judgment is annexed herewith and marked as Annexure-1.

2. That the petitioner immediately on receipt of the copy of the judgment submitted the same before the concern authority on 11.4.2003 prayed for implementation of the same. This was followed by another representation dated 16.6.2003 reiterating his prayer for implementation of the judgment and order dated 8.4.2003 reiterating his prayer for implementation of the judgment and order dated 8.4.2003 passed in OA No.220/02, but till date nothing has been done in this matter even after the expiry of the stipulated time frame.

A copy of the representation dated 16.6.2003 is annexed herewith and marked as Annexure-2

3. That the petitioner begs to state that prior to filing of OA No.220/02 the applicant preferred OA No. 170/2000 before this Hon'ble Tribunal. In the said OA the respondents preferred the show cause reply indicating falsely the fact that the petitioner's case does not come under the preview under the scheme of 1989. The petitioner controverted the fact and placed the actual records including payment particulars through his rejoinder. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OA directing the respondents to scrutinies the records and thereafter to provide the benefit of the scheme. However, the respondents with and

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ulterior motive rejected his case on some flimsy ground which led to filing OA 220/02.

Copies of the show cause reply and a judgment and order dated 2.1.2001 are annexed herewith and marked as Annexure-3²⁴ respectively.
^

4. That the petitioner begs to state that the attitude adopted by the respondents in handling the matter of the petitioner clearly indicates the fact that, behind the back of all such inaction there exists some ulterior motive. The respondents/contemners have full knowledge about the existence of the said judgment and order dated 8.4.2003 passed in OA No.220/02, but inspite of this the respondents have acted in a contemptuous manner. The respondent for such inaction and willful violation of the said Judgment and order dated 8.4.2003 made themselves liable to be punished under contempt of Court's Act.

5. That the petitioner begs to state that the contemners have acted in violation of the judgment of (Annexure-1) in not conferring the Temporary Status to the petitioner within the stipulated time frame and as such they are liable to be punished severely for their such action invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with provision under Central Administrative Tribunal (Contempt of Court's) Rules 1992 as well as the provisions contained in the contempt of Court's Act 1971.

6. That the petitioner begs to state that inspite of repeated requests the Respondents have acted contrary to the Annexure-1 judgment and they are continuing their such inaction even after expiry of the stipulated timeframe. It is therefore is a fit case for invoking Rule 24 of the Central Administrative Tribunal (Produced) Rule 1987 directing the Respondents to implement the Annexure-1 Judgment and order dated 8.4.2003 passed in OA No.220/02.

7. The 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 initiate appropriate contempt proceeding against the contemnors for their willful and deliberate violation of the judgment and order dated 8.4.2003 passed in OA No.220/02 and to punish them severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with Central Administrative Tribunal (Contempt of Court) Rules 1992 as well as the provisions contained in the contempt of courts Act, 1971 with a further direction towards the contemnors to implement the said judgment and order dated 8.4.2003 passed in OA No.220/02 invoking its power under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

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DRAFT CHARGE

Whereas Sri Prithipal Shing, the Chief Managing Director, Bharat Sansar Nigam Limited, New Delhi, Sri P. Jagadishan, the Chief General Manager (Telecom) (Department of Telecom), Guwahati, Panbazar, Guwahati-781001, Sri P. Boro, the Divisional Engineer (Estt.)(Department of Telecom) Uzanbazar, Guwahati, Assam, have willfully and deliberately violated the judgment and order dated 8.4.2003 passed in OA No.226/02 passed by the Central Administrative Tribunal, Guwahati Bench and as such they are liable to be punished severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with provisions under Central Administrative Tribunal (Contempt of Courts) Rules 1992 as well as the provisions contained in the Contempt of Courts Act, 1971

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AFFIDAVIT

I Sri Binay Das, aged about 32 years, Son of Late Gobinda Das, at resident of Hengrabari, C.P.H.E. Office, Guwahati-6, do hereby solemnly affirm and state as follows;

1. That I am the petitioner and I am acquainted with the facts and circumstances of the case. I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 4, 5, 6
2 7 are true to my knowledge ; those made in paragraphs 1, 2, 3 being matters of records are true to my information derived therefrom. Annexures are true copies of the originals and grounds urged are as per the legal advice.

And I sign this affidavit on this the 1st day of Sept. of 2003.

Identified by me :

Usha Das
Advocate

Sri Binay Das.

Deponent

Solemnly affirm and state by the deponent who is identified by Miss Usha Das, Advocate, Guwahati, on this 1st day of September, 2003 at Guwahati

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.220/2002

Date of Order : This the 8th Day of April, 2003.

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

1. Binay Das
S/o Late Gobinda Das
Resident of Hengrabari
G.P.H.E. Office
Guwahati - 6.
2. Madhu Singh Hira
S/o Late Motiram Hira
Resident of Vill. & P.O:- Kaki No.1
District:- Nagaon, Assam. Applicant.

By Advocates Mr.S.Sarma & Ms.U.Das.

- Versus -

1. Union of India
Represented by the Secretary to the
Government of India, Ministry of Communication
Sanchar Bhawan, New Delhi -1.
2. The Chairman cum Managing Director
BSNL, New Delhi.
3. The Chief General Manager
Assam Telecom Circle
Guwahati - 7.
4. The Chief General Manager, Task Force
Guwahati - 1.
5. The Sub-Divisional Officer (Telecom)
Hojai Telephone Exchange
Nagaon.
6. Sri G.C.Sarma
Assistant Director Telecom (Legal)
Office of CGMT, Assam Circle
Guwahati. Respondents.

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

ORDERCHOWDHURY J.(V.C.):

The issue relates to conferment of temporary status. The two applicants earlier moved this Bench for appropriate directions for conferring them temporary status. By judgment and order in O.A.170/2000 dated 2.1.2001 the two applicants were directed to file representation individually with a

Attested
Advocate

similar direction to the respondents to scrutinize and examine each case in consultation with the records and to pass appropriate order thereafter. The respondents passed orders declining to confer temporary status. Hence this application.

2. The respondents submitted two sets of written statements one on behalf of the respondents dated 10.10.2002 and subsequently in view of the order of the Tribunal dated 31.1.2003, another ^{written} statement was submitted by the Assistant Director on 24.2.2003. In the written statement, the respondents admitted that the Committee found that the applicant No.1 worked in Task Force in the year 1994 and he worked for 250 days, but according to them, he was not eligible for conferring temporary status on the ground that he was not present on 1.8.1998. The respondents also in the written statement stated that the applicant No.2 never worked in the organisation. In view of the discrepancies in the written statement which was contrary to the written statement filed earlier by the respondents in O.A.170/2000 an opportunity was given to the respondents to explain vide order dated 31.1.2003 and pursuant to the said order the Assistant Director submitted his written statement and asserted that the written statement was filed on the basis of the instruction that he received. On perusal of the written statement and records it appears that in Annexure-R1 (page-6) of the written statement filed by the Assistant Director, it was indicated that the applicant No.2 completed 139 days in the year 1994 and 194 days in 1995 whereas in the communication dated 13.8.2001 sent by Divisional Engineer (P&A) which is annexed as Annexure-R3, the Committee found that the applicant No.2 worked for 196 days in 1994 and 219 days in the year 1995. The obvious discrepancies of the records makes it difficult to put complete credence on the records of the respondents. The reasons shown by the respondents in not granting temporary status to the applicant ^{No.1} though he completed 240 days of work

is difficult to accept. Similarly, the plea of the respondents that applicant No.2 did not at all work in their organisation or that he did not work 240 days under them and therefore the disentitlement to temporary status to applicant No.2 is also not acceptable.

For the reasons stated above, the action of the respondents refusing to grant temporary status to these applicants cannot be said to be sustainable and accordingly the same are set aside and the respondents are directed to consider the case of the applicants for conferment of temporary status on the basis of materials on record in the light of the observations made above and pass appropriate order as expeditiously as possible within^a period of two months from the date of receipt of the order.

The application is allowed to the extent indicated above. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

bb

certified to be true
[Signature]

2- 10/10/03
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati, 6/10/03

10/4/2003

Attested
[Signature]
Advocate.

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ANNEXURE -

2

Date. 16.6.2003.

To

The Chief General Manager,
Task Force,
Guwahati-1.

Sub:- Judgment and order date 8.4.2003 passed in
OA No. 220/C2.

Sir,

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

That Sir claiming the benefit of the Scheme of 1989 and its subsequent clarifications, I preferred the above noted OA (OA No. 220/02) before CAT/CHY. The Hon'ble Tribunal was pleased to allow the said OA vide Judgment dated 8.4.03.

In that view of the matter, I request your honor to implement the said Judgment within the stipulated time forme.

Thanking you.

Sincerely yours

Sri Binay Das,
(Binay Das)

Attested
Advocate.

13 - Annexure 26 (3)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Guwahati Bench A. No. 170 OF 2000

Shri Binoy Das & others

- VS -

Union of India & others

IN THE MATTER OF

Show cause reply submitted by the Respondents.

The respondents beg to submit show cause reply as follows :

(a) That there is no scheme introduced in the department in 1999 for grant of temporary status to the casual labourers. However, as an one time exception, the TCHQ agreed to in principle, to confer Ty. Status to all casual labourers eligible and working in the department as on 1.8.98.

They were not in engagement as on 1.8.98 and hence they are not covered by the special relaxation.

(b) That Shri Binoy Das (Application No. 1) and Shri Madhu Singh Hira (Applicant No. 2) were occasionally engaged by the field Units for performance of work which was purely casual and intermittant in nature for which creation of regular post is not justified.

The applicants were not appointed by any authority nor their services were utilised against any sanctioned vacancy. No selection procedure was also followed before engaging the applicants by oral order.

The applicants were engaged for the following duration : -

Shri Binoy Das

Year 1993 Nil

Shri Madhu Singh Hira.

Aug. 1993 - 30 days

Contd..... 2/P

Shri Binoy Das
Year 1994 Nil

Shri Madhu Singh Hira

Jan. 30 days

July 31 "

Aug -26 "

Nov.-21 "

Dec- 31 "

139 days.

Year 1995 Jan.-31 days

Feb- 28 days

March 25 days
84 days

Jan.-31 days

Feb- 28 "

March 31 "

July-23 "

Aug.-31 "

Sept-15 "

Oct.-05 "

Dec.-30 "

194 days

Year 1996

Feb.-28 days

March-07 days
35 days

Jan.-25 days

Feb.-20 days

June-25 days

July-08 days
78 days

Year 1997 Nil

Nil

Year 1998 Nil

Nil

Year 1999 Nil

Nil

Year 2000 Nil

Nil.

From the above particulars, it is vividly clear that the ^{applicants} ~~applications~~ were not engaged for any departmental work on a continuous basis in any calendar year. The applicants have not been engaged for any work after July, 1996.

Attested Contd..... 3/P

W. D. S.
Advocate

(c) That the applicants have wrongly claimed that they are still in service with the respondent department. In fact they were never in departmental service. They were picked up from the market in random whenever additional labourers was needed for any local project/ Mtce work on a day to day basis. In any case, they were not engaged after July, 1996.

The applicants have not been engaged for any departmental work in the last 4 years. During this long period the applicants did not make any appearance or pressed for their reengagement. Their claim for re-engagement and/or grant of Ty. status is barred by limitation. The relaxation granted by TCHQ in 1999 ^{is} ~~does not covered by the onetime relaxation~~ also does not help the applicants in any way.

Verification

1) 8/2/93

2)

8/9/93

8/9/93

Attested

Wou

Advocate

- 4 -

- 16 -

21

V E R I F I C A T I O N

I, G.C. Sarma, Asstt. Director Telecom (Legal)
@ Guwahati being authorised do hereby solemnly declare
that the statements made in this show cause reply is true
to my knowledge , information and believe.

And I sign this verification on this 2nd day
of November, 2000.

Ganesh Ch. Sarma.
Declarant.

Attested
V. D. Sen
Advocate

- 17 -

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 170 of 2000.

Date of Order : This the 2nd Day of January, 2001.

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

1. Shri Binay Das and
2. Sri Madhu Singh Hira

Both the applicants are casual worker under SDOT, Hojai Sub-Division.

. . . Applicants.

By Advocate Sri S. Sarma.

- Versus -

1. Union of India
represented by the Secretary
to the Government of India,
Ministry of Communication, Sansar Bhawan,
New Delhi-1.
2. The Chief General Manager,
Assam Telecom Circle,
Guwahati-7.
3. The Sub Divisional Officer,
(Telecom), Hojai Telephone Exchange,
Nagaon.

. . . Respondents.

By Sri B.C. Pathak, Addl. C.G.S.C.

ORDERCHOWDHURY J. (V.C)

Conferment of temporary status and regularisation of their services are the key question involved in this application. The applicants are two in number. The applicant No. 1 stated in this application that he was initially appointed as casual worker in the month of January 1993 in the office of the Sub Divisional Officer, Micro Wave Project, Dimoruguri, Nagaon and thereafter he was placed under the direct control of one Junior Telecom Officer.

contd.

23

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The applicant was thereafter sent on transfer to Lanka Micro Wave Station, where he worked till December 1994 and shifted to SDOT Hojai Telephone Exchange on transfer. The applicant stated that he intermittently worked under the respondents without any break since 1993 and for that purpose he was paid in ACG-17 pay bills upto December 1994. After December 1994 that was on his transfer to Assam Circle he was drawing his pay under the Muster Roll Register maintained by the respondent No.3 till the filing of this application. The applicant No.2 was appointed as casual worker in the year 1981 under SDO(T) Nagaland. Thereafter, in 1991 he was transferred to Hojai Sub Division under SDO(T) and till the filing of this application he was working under the respondents. Since the cause of action and the reliefs sought for by the applicants are of similar nature leave was granted under Rule 4(5)(a) of the Central Administrative Tribunal(Procedure) Rules 1987 to put their grievance by the single application.

2. The respondents filed their written statement denying the claim of the applicants. The respondents however stated that these two applicants were occasionally engaged by the field units for carry out the works which were purely of casual nature and that these applicants were not appointed by the authority nor their services utilised for any sanctioned vacancies. The applicants countering the averments contained in the written statement submitted rejoinder alongwith the documentary evidence by Annexure RJ-1 to RJ-4 showing that both the applicants were appointed legitimately from the licit source and they were rendering continuous service on the respondents from their date of initial recruitment in

1981 and 1993 till filing of this application and their services were terminated only after filing of the written statement.

3. Heard Mr S.Sarma, learned counsel appearing for the applicants and Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents. Mr Sarma submitted that persons even junior to the applicants engaged as casual worker were given the temporary status on the strength of numerous orders from this Tribunal including the orders passed in O.A. 107/1998 and series of like applications those were disposed of on 31.8.1999. Mr Sarma further submitted that the respondents did not portray the true and correct position in its written statement. Mr Sarma also submitted that written statement was not to be given any credence since it was not properly verified as per law. Mr Pathak on the other hand referring to the written statement submitted that these applicants were not in regular roll. The averments made in the written statement cannot as such be accepted in view of the documentary evidence furnished in Annexure RJ-1 to RJ-4. The averments contained in the written statement also did not clearly verify the informations indicating the source of its informations. That apart the materials on record indicated that these applicants rendered their services to the authority for longer duration requiring consideration of their cases in the light of the decision rendered by the Supreme Court in series of writ petitions and considered in writ petition (C) No. 1280 of 1989 disposed of on 17.4.1990. Since the applicants also rendering their services the case of these applicants are required to be considered by the respondents in the light of the order rendered by the Supreme Court and other like applications disposed of by this Tribunal, more particularly,

Attested

Wm

cont. Advocate

O.A.107/1998 and host of other applications. The respondents are accordingly directed to examine the case of both applicants in the light of the order passed by this Tribunal. The applicants are also directed to file representation individually within a period of one month from the date of receipt of this order narrating full details of their cases. On receipt of such representation the respondents are directed to scrutinize and examine each case in consultation with the records and thereafter pass a reasoned order on merits of each case within a period of 3 months from the date of receipt of the representation.

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

Sd/ VICE CHAIRMAN

Certified to be true Copy

प्रमाणित प्रतिलिपि

[Signature]
11/07/01

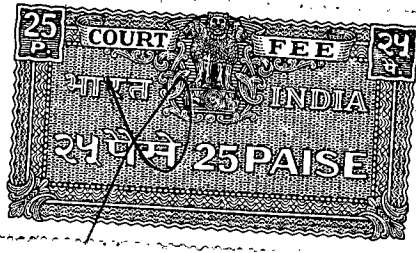
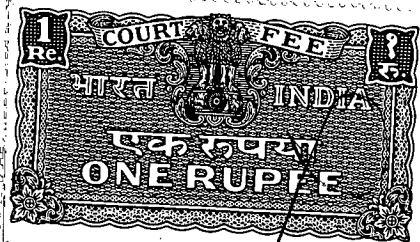
Section Officer (J)

जनसमाम सचिव (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
New Man Earth, Gurgaon-6
पञ्जाबी - गुरुगढ़, पञ्जाबी-6

[Signature]
9/11/2001

Attested
[Signature]
Advocate



Filed by —
The Respondent No-2 & 3.
Through
Hakdeb. S.
Advocate.
23.2.2004

DISTRICT: KAMRUP

Before The Central Administrative Tribunal.

Guwahati Bench, Guwahati.

C.P NO. 43/2003

Binoy Das.

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

IN THE MATTER OF:

Show-cause Reply on behalf of
the Respondents.

Show-cause Reply on behalf of the
Respondents No.2 and 3.

I. P. Boro. S/O Late Rati Ram Boro. aged about 56 years. presently serving as Divisional Engineer. N.E. Telecom Deptt.. B.S.N.L.. Uzan Bazar, Guwahati and a resident of Fatasil. Ambari. Guwahati in the District of Kamrup. Assam do hereby solemnly affirm and swear as follows:-

1. That I am the Respondent No.3 in the afore-said contempt case and has been authorised by the other

Contd...



Respondent No.2 to swear this affidavit on his behalf and I am dealing with the case and am fully acquainted with the facts and circumstances of the case and as such am competent to swear this affidavit.

2. That a copy of the contempt petition has been served to me and have gone through the same and understood the contents of the same.

3. That, save and except what has been specifically admitted herein below, the rest of the statements are deemed to be denied.

4. That, with regard to the statement made in paragraph 1 of the contempt petition the deponent offers no comment since this Hon'ble Tribunal finally disposed of the original application No. 220/02 by passing a judgment dated 8.4.03 after considering all the grievances of the Petitioner.

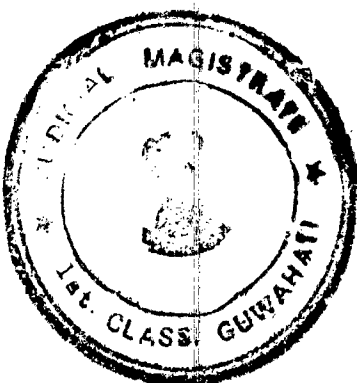
5. That, with regard to the statements made in paragraphs 2 and 3 of the contempt petition, the deponent offers no comment since the same are matters of record.

6. That, with regard to the statements made in paragraphs 4, 5, 6 & 7 of the contempt petition, the

Contd...

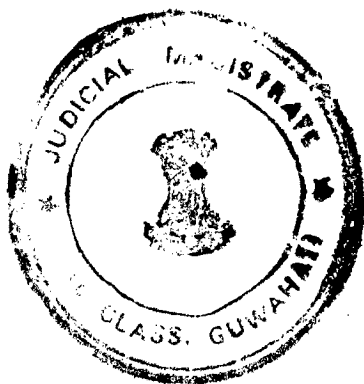
deponent most respectfully denied that the deponents has wilfully and deliberately violated the Hon'ble Tribunals Judgement and order dated 8.4.2003 passed in O.A. No. 220/02. In this regard the deponent respectfully states that the deponent become aware about the judgement in reference only on 16.4.2003 and thereafter the deponent informed the matter to the officer concerned, corporate office BSNL, New Delhi vide letter No. TF/NE/Genl-29/Vol.-III/21 dated 28.4.03 and sought for necessary instruction on the matter for consideration of the Petitioner's case as per the judgement and order dated 8.4.2003 passed in O.A. No. 220/02 by this Hon'ble Tribunal. Thereafter the deponent received a communication vide letter No.272-13/2003-Pers-IV dated 27.6.03 from the senior officer, corporate office BSNL, New Delhi directing the answering deponents to examine the claims of the Petitioner and to pass appropriate order and after receiving of the said letter dated 27.6.03 from the senior officer, corporate office BSNL, New Delhi and thereafter the answering deponent by a letter No. TF/NE/Genl-29/Vol.-IV/37 dated 8.7.2003 constituted a screening committee of 3 (three) persons under the Chairmanship of Mr. A.K. Basu, DE-TP-II, Guwahati for detailed scrutiny of the records relating to the Petitioner's case such as verification of payment particulars and accordingly the committee has scrutinised the payment particulars of the Petitioner and submitted the reports dated 11.7.2003 but the report was not

Contd...



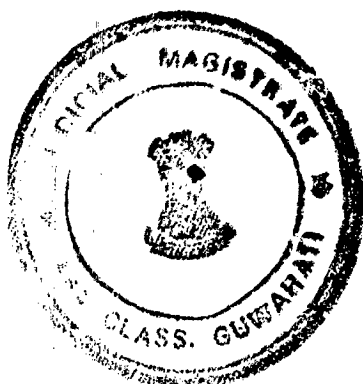
satisfactory and therefore, subsequently again the committee was requested for re-scrutinee and in this way the deponent requested for further sittings of the screening committee for another four times i.e. vide letters dated 16.7.03. 29.7.03. 5.8.03 and lastly on 5.9.03 and obtained reports of each and every sittings of screening committee and from the report of the screening committee it reveals that the Petitioner is not fall under the zone of consideration for confirment of temporary status. It is pertinent to mention here that for confirment of temporary status to the casual labours a scheme was introduced in the year 1989 and for implementation of the said scheme some rules and instructions has also been issued by the Department from time to time. The deponent further respectfully states that the Deputy General Manager, Admn. Deptt. of Telecommunication, Assam Telecom Circle issued a letter vide No. D.O. No. Estt-9/12/PART-1/23 dated 28.3.2000 to the C.G.M (Telecom). Taskforce, Guwahati directing him to constitute a committee of 3 (three) members for detailed scrutiny and examination in consultation with record in the matter and also provides some guidelines for measuring eligibility criteria for conferring temporary status to the casual labourers wherein sub clause -(v) of clause 3 one of the criteria was that the incumbent has to be in service as on 1.8.98 but your deponent while examined the case of the Petitioner it is found that the Petitioner was absent from his duty since March,1996 and

Contd...



was also not in service on 1.8.98. It is further respectfully stated that since the Petitioner was absent from his duty since the year 1996 he was also not fall under the zone of condonation for conferring temporary status. The deponent further respectfully states that after the aforesaid scrutiny of the petitioner's case in the light of rules and instructions available on the subject, found that the petitioner Sri Binoy Das is not fall under the zone of consideration for getting benefit of temporary status under the scheme of 1989. However in compliance of the Hon'ble CAT's order dated 8.4.03 the deponent has passed a speaking order vide No. TF/NE/Genl.-29/Vol.-IV/38 dated 24.9.2003 stating inter-alia that the petitioner Sri Binoy Das worked in N.E. Task Force Circle (i) in 1994 for 250 days and (ii) the Petitioner worked in Assam telecom Circle in 1995 for 84 days and in 1996 for 35 days as per record and therefore he left the job from March, 1996 and he has not intimated to the office of the Respondents and also not mentioned any reason of his absence and also not in service on 1.8.1998 and therefore the petitioner is not entitled for confirmment of temporary status.

A copy of the aforesaid letter dated 28.4.03, letter dated 27.6.2003, letter dated 28.3.2000, letter dated 8.7.2003 and a copy of the aforesaid speaking order dated 24.9.03 are annexed hereto and marked as Annexures-



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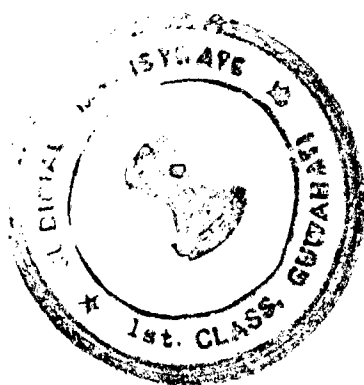
1.2.3.4 and 5.

The deponent craves leave of this Hon'ble Tribunal to produce the Rules and instructions for confirmment of temporary status to the casual labourers and the letters dated 16.7.03, 29.7.03, 5.8.03 and 5.9.03 alongwith the respective screening committee reports at the time of hearing if so desired by the Hon'ble Tribunal.

6. That your deponent most respectfully submits that the deponent is a responsible officer of the govt. of India and always shown highest respect for any order passed by the Tribunal or any court of law, as per the deponent's knowledge the deponent does not wilfully and deliberately violated the direction of this Hon'ble Tribunal's Judgement and Order passed in O.A. No. 220/03 on 8.4.03 as alleged in the contempt petition by the petitioner. The deponent further respectfully states that if this Hon'ble Tribunal comes to a conclusion that the deponent in any way violated the direction given in the judgement in reference the deponent begs unconditional apology before this Hon'ble Tribunal for the same.

7. That the statements made in paragraph

Contd...



(s) 1, 2, 3, 4, 5...and 7... are true to my knowledge and those made in paragraph(s) 6...and...are true to the records and the rest are my humble submission(s) before the Hon'ble Court.

And I sign this Affidavit on this 20th day of Feb. 2004 at Guwhati.

Identified by me:

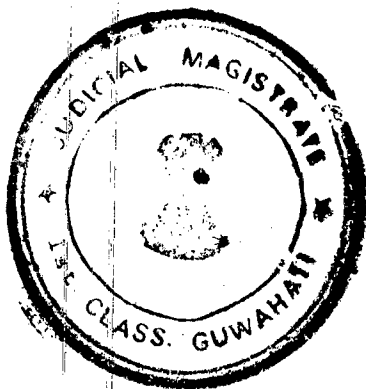
Alok Deb.

Advocate

Purna Boro
DEPONENT

[Signature]
Magistrate

Subd. Magistrate
1st Class. Guwahati.



Solemnly affirm and swear by the deponent before me who is identified by Alok Deb. Advocate on this 20th day of Feb. 2004 at Guwahti.

ANNEXURE - 2

HARAT SANCHAR NIGAM LIMITED

(A Govt. of India Enterprise)

O/o the Chief General Manager, Task force,
N.E. Telecom Region., Guwahati.

No. TF/NE/Genl-29/ Vol. -III/21

Dated at Guwahati, 25-04-2003
28

To

Asstt. Director General (Per.IV).
BSNL Corporate Office, Personnel-IV Section
Sanchar Bhawan, New Delhi-110001.

Sub: Hon'ble CAT, Guwahati bench order and implementation-- regarding.
Ref: No.272-64/2001-Pers-IV dt.06-11-2001

With reference to the above letter, I am directed to enclose herewith CAT order dt.08-04-2003 in respect of OA No 220/2002 (Shri Binay Das and Madhu singh Hira-Vs- Union of India) along with detail report, certified copy of Court order and Legal opinion.

CAT has directed to consider their cases for conferment of temporary status and Legal opinion are also in their favour.

In this regard kindly furnish guidelines to dispose the cases as early as.

No 2874
Divisional Engineer (Estt.) / VO
Tele No 2600500, FAX No 2519030
Guwahati

Enclo: As above.

Copy to :

The Sr. DDG (Pers.)
BSNL Corporate Office, Sanchar Bhawan,
New Delhi-1
of information and necessary action.

No 2874
Divisional Engineer (Estt.) / VO
Tele No 2600500, FAX No 2519030
Guwahati

*certified to be
true copy*
Sub.

o/c

29/4/03

29/4/03

BIHARAT SANCHAR NIGAM LIMITED
 [A Government of India Enterprise]
CORPORATE OFFICE
PERSONNEL - IV SECTION
 Statesman House, New Delhi-110001

No. 272-13/2003-Pers-IV

Dated : 27-6-2003

To

The Chief General Manager,
 Task Force,
 NE Telecom Region,
 Guwahati

Subject: CAT, Guwahati Bench Judgement dated 8.4.2003 in OA No. 220/2002 filed
 by Shri Binay Das and Shri Mahu Singh Hira, ex-casual labourers.

Sir,

Please refer to your letter no. TF/NE/Genl-29/Vol III/21 dated 28.4.2003 on the subject noted above. The matter has been examined in consultation with the Legal Division of BSNL. In the light of the Hon'ble CAT judgement dated 8.4.2003 you are requested to verify the records of Shri Binay Das and Madhu Singh Hira pertaining to their eligibility for grant of temporary status and pass an appropriate order after considering their cases. The decision taken in this matter may be communicated to this office.

Yours faithfully,

(P.S. Venkataraman)
 P.S. Venkataraman

Phone: 23734152
 Tele: 23734152

1 E (Estt) / V O

certified to be
 true copy
(Signature)

D.O.No.ESTE-9/12/PART-1/23

Government of India,
Deptt. of Telecommunications
O/O the Chief General Manager,
Assam Telecom. Circle,
Guwahati- 781007.

Dated the 28th March, 2000.

My dear

A list of casual Mazdoors working as on 1.8.98 was forwarded by your office for granting temporary status as per scheme pronounced by Telecom. Directorate in its letter no.269-10/89-STN dated 7.11.89 (copy enclosed). The names of casual mazdoors recommended by your SSA are given in Annexure "A". However, it is observed that apart from these names, additional numbers of Casual Mazdoors have approached Hon'ble CAT from your SSA for granting of Temporary Status to them. (As enclosed Annexure B).

2. The Hon'ble CAT has directed that the matter be sorted out by making detailed scrutiny and examination in consultation with the records and a speaking order be passed in every case individually. For this purpose, it is required that a committee comprising 3 members be constituted by you out of which one member shall be a nominee of Circle Office while 2nd member would be DE(P&A) of your SSA and 3rd member should be Accounts Officer from Finance side of your SSA. Mr. R. A. J. ADT.(XP), of Circle Office is hereby nominated as member for the aforeside committee for your SSA. The above mentioned committee should be constituted immediately so that it completes its task by 30.4.2000 positively.

3. Broad Terms of reference of the committee should be as under.

i) The committee shall interview all casual labourers appearing in Annexure A and B above and obtain their photograph (duly attested by the committee) as well as signatures.

ii) The engagement/payment record of each labourer shall be verified on the basis of payment particulars and signatures of labourers.

iii) A list of Mazdoors eligible for grant of Temporary Status should be prepared on the basis of guidelines for granting temporary status to Casual Mazdoors issued by Deptt. of Telecom vide letter no.269-10/89-STN dtd.7.11.89 and subsequent letter no.269-4/93-STN II dtd.17.12.93 and also 269-4/93-STN II dt.12.02.99 and 269-4/93-STN II(Pt) dt.13.2.2000 (copy enclosed).

Contd...P/2..

in (A)
in)
GM has seen
his letter. As advised
1. Chm's necessary
action may kindly be
taken in this regard as
certified to be
true copy
at Del.

86

-12:-

Further Directorate vide letter no.271-85/97-STN-JI dated.17.2.1998 (copy attached) observed that the casual labourers were being engaged on the basis of false certificates for attendance. Needless to mention the verification of records by the committee should be done strictly on the basis of authentic documents.

v) The committee should verify the number of casual labourers without temporary status who have completed 240 days in any preceding year and were in service as on 01.08.1998 as per following details.

Period of Recruitment	Numbers
-----	-----
A. upto 30.3.1985	
B. Between 31.3.1985 to 22.06.88	
C. From 23.06.1988 to 01.08.1998.	

The details of each casual labourer should be recorded separately in the format attached herewith as Annexure C (Page-1 and Page-2). More sheets can be attached if needed but recording of details has to be individually for each casual labourer. / *Regu*

vi) The committee shall submit the report to the SSA Head for further necessary action who will complete the formalities of declaring TSM to eligible Mazdoor subject to number authorised by Directorate. In respect of non-eligible mazdoors and the one's who have gone to the court, the speaking orders on their disengagement/non-confirmation of TSM status should be passed by each SSA head and delivered to him through Register letter/under receipt.

In this connection please note that any delay in deciding the representations of each individual labourer may attract 'Contempt of the Court' proceedings.

vii) The above instructions and term of reference are being issued with the specific approval of CGMT Assm Telecom.Circle.

It is requested that the necessary action may kindly be initiated so as to complete the task positively before 30.4.2000.

In case of any queries please write to and call the under-signed on 540167(O) / 524524(R).

With regards...

SA/2
(Mahesh Shukla)
Dy. General Manager (Admn)

To, Shri.....
Chief General Manager, ..Task Force, Guwahati
Telecom-District-Manager,

ontd...P/3...

- 12 -

BHARAT SANCHAR NIGAM LIMITED
(A Govt. Of India Enterprise)
OFFICE OF THE CHIEF GENERAL MANAGER TASK FORCE
PANBAZAR: GUWAHATI-1

No. TF/NE/Genl-29/Vol-IV/37

Dated: 08-07-2003

OFFICE MEMO

The Chief General Manager, Task Force, NE Telecom Region, Guwahati is pleased to constitute a screening committee consisting of the following officers to scrutinize the payment particulars of Shri Binay Das, ex-casual labour. Payment particulars are available with A.O., T/F, Panbazar, Guwahati.

1. Shri A.K. Basu, DE(TP-II), Guwahati : Chairman.
2. Shri B. Baghabati, SDE(TP-II), Guwahati: Member.
3. Shri J. Biswas, Sr.AO(CA), Guwahati. : Member.

The Committee will meet on 11-07-2003 at 11-00 hrs. in the office of DGM, T/F, Shillong at Panbazar, Guwahati and submit the report on 11-07-2003 positively. Matter may be treated as urgent.

Copy to:

All the members.

[Signature]
D.E.(Admn.)
O/o the CGM, NE T/F,
Guwahati.

[Signature]
D.E.(Admn.)
O/o the CGM, NE T/F,
Guwahati.

*Certified to be
true copy*

[Signature]



- 13 -

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ANNEXURE-5

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
O/O THE CHIEF GENERAL MANAGER, TASK
FORCE,
NE TELECOM. REGION, H.C. ROAD,
UZANBAZAR, GUWAHATI-1.

No. TF/NE/Genl-29/ Vol. -IV/38

dated 24-09-2003

O R D E R

Sub: Grant of temporary status to the casual labourer.

Ref: Hon'ble CAT, Guwahati order dt. 08-04-2003 in OA No. 220/2002.

As per direction of the Hon'ble CAT, Guwahati order under reference, the case of conferment of temporary status in respect of Shri Binay Das Ex: casual labourer has been considered in the light of rule and instruction available on the subject.

Shri Binay Das worked in NE Task Force circle (i) in 1994 for 250 days. and (ii) he worked in Assam Telecom. Circle in 1995 for 84 days and in 1996 for 35 days as per record. Then he left the job from March'1996 and did not intimate his where about upto 01-08-1998. His case is not falling in the condonation zone also.

After examining all the relevant points and merit of the case, finally it is found that Shri Das Ex: Casual labourer is not fit for conferment of temporary status.

do
(Purna Boro)

Divisional Engineer (Estt.)
Tele No 2600500, FAX No 2519030
Guwahati

Copy to :

1. Shri Binay Das Ex: Casual labourer,
S/o Late Gobinda Das, R/o Hengrabari,
C.P.H.E. Office, Guwahati-6.
2. The ADG (Pers.IV), BSNL Corporate office, New Delhi.
3. The Registrar of the CAT, Guwahati Bench.

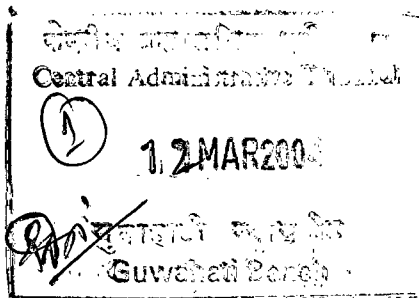
For their information and necessary action.

do
(Purna Boro)

Divisional Engineer (Estt.)
Tele No 2600500, FAX No 2519030
Guwahati

*certified to be
true copy*

Deh



Filed by —
The Respondent No-2 and 3
Through
Advocate
12.3.2003
Inna Boro

DISTRICT: KAMRUP

Before The Central Administrative Tribunal.

Guwahati Bench, Guwahati.

C.P NO. 43/2003

Bimoy Das.

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

IN THE MATTER OF:

Additional Show-cause Reply on behalf of
the Respondents No. 2 and 3.

Additional Show-cause Reply on behalf of
the Respondents No. 2 and 3.

I. P. Boro, S/O Late Rati Ram Boro, aged about 56 years, presently serving as Divisional Engineer, N.E. Telecom Deptt., B.S.N.L., Uzan Bazar, Guwahati and a resident of Fatasil, Ambari, Guwahati in the District of Kamrup, Assam do hereby solemnly affirm and swear as follows:-

1. That I am the Respondent No.3 in the afore-said contempt case and has been authorised by the

Contd...

40
P. V. Boro

Respondent No.2 to swear this affidavit on his behalf also and I am dealing with the case and am fully acquainted with the facts and circumstances of the case and as such am competent to swear this affidavit.

2. That a copy of the order dated 24.2.2004 in C.P. No. 43/03 has been served upon me and have gone through the same and understood the contents of the same.

3. That your deponents respectfully state that they are employees of the Bharat Sanchar Nigam Limited (BSNL), a Govt. of India undertaking and presently holding the post of Chief General Manager and Divisional Engineer, Task Force, N.E. Telecom Region, Bharat Sanchar Nigam Limited, Guwahati-1 and as such, the deponents are officers employed under Bharat Sanchar Nigam Limited.



4. That the deponents respectfully states that the Bharat Sanchar Nigam Limited is a Corporation, incorporated under the Companies Act, having a distinct Legal entity and is a Govt. of India Enterprise extending the services of the telecommunication since 1st October, 2000 within the territory of India.

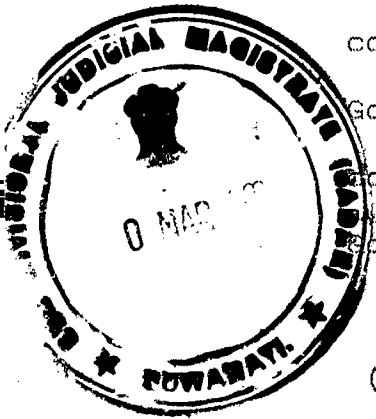
5. That your deponents respectfully state that

Contd...

51/10/19
P. V. Rao

the BSNL is a newly constituted Corporation and is not covered by the provisions of Section 14 (1) of the Act and could be brought within the Tribunal's jurisdiction only through a notification to be issued by the Central Govt. as per the provisions of Section 14 (2) which reads as follows :-

(2) "The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government."



(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub section apply to any local or other authority or Corporation (or Society), all the jurisdiction, powers and authority exercisable immediately before that date by all courts (excepts the Supreme Court) in relation to."

The deponents further respectfully state that the Division Bench of Delhi High Court in case of

Contd....

42
S. Narayana

Ram Gopal Varma -vs- Union of India (as reported in AISLJ 2002 (1) 353 held that since the notification U/S.14(2) of the Administrative Tribunals Act had not issued by the Central Government to apply provisions of sub section 3 to MTNL, Central Administrative Tribunal was not vested with any jurisdiction to entertain any petition related to any service dispute in MTNL and since the Bharat Sanchar Nigam Limited is also similarly situated with the earlier case referred to above, the Central Administrative Tribunal has no jurisdiction to entertain any petition related to any service dispute in Bharat Sanchar Nigam Limited.

6. That the deponents respectfully state that the deponents are officers of Bharat Sanchar Nigam Limited, a newly constituted Corporation and there is no notification under sub section 2 of the Section 14 of the Administrative Tribunal's Act, 1985 has been issued by the Central Govt. till date and therefore the Central Administrative Tribunal has no jurisdiction to entertain applications against the officers of Bharat Sanchar Nigam Limited due to requirement of statutory notification and the O.A. No. 220/03 and the Contempt Petition No. 43/03 are filed before this Hon'ble Tribunal without considering the facts that this Tribunal has no jurisdiction to entertain cases by or against BSNL and as such the same is not maintainable and the order dated 8.4.03 in OA No.305/02 passed by the Hon'ble Tribunal is

Contd...

4B
Kavara

ultravirus and as such the same is bad in law and therefore the Contempt proceeding is liable to be dismissed due to want of jurisdiction.

7. That the deponents respectfully submit that the Contempt Petitioner has filed the Contempt Petition vide No. 43/2003 before this Hon'ble Tribunal, against the deponents in violation of well settled provisions of Sec. 14 (2) of A.T. Act, 1985 and violating the process of law and the action on the part of the Petitioner is illegal, ultravies and in violation of provision of law and as such the same is liable to be dismissed.

8. That your deponents most respectfully submit that the deponents are responsible officers of the Govt. of India and always shown highest respect for any order passed by the Trubunal or any court of law having proper jurisdiction and as per the deponents knowledge the deponents do not wilfully and deliberately violated the direction of this Hon'ble Tribunal's Judgement and Order passed in O.A. No. 220/03 on 8.4.03 as alleged in the Contempt Petition by the Petitioner.

9. That the statements made in paragraph (s) 1,2,3,4,and 6 are true to my knowledge and those made in paragraph (s) 5 and 8 are true to the records and the rest are my humble submission before the Hon'ble Court.

Contd...





- 6 -

44 Boro
Lura

And I sign this Affidavit on this 11th day of March, 2004 at Guwahati.

Identified by me:

Alok Deb,
11.3.2004
Advocate

Lura Boro
DEPONENT

11.3.04
Magistrate

RECEIVED
Guwahati



Solemnly affirm and swear by the deponent before me who is identified by Alok Deb, Advocate on this 11th day of March, 2004 at Guwahati.