

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : _____
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

5/03 in O.A. 389/02

Applicant(s): Dr. J.K. Goyal

- Vs. -

Respondent(s): 1) C.S. Rao, Secretary, Govt. of India (2) P.K. Sarma, Chairman
3) D.K. Das, H.O. I (OM) Commissioner, Income Tax, Central Board of Direct Taxes

Advocate for the Applicant(s): B.K. Sharma, P.K. Tishani, S. Sarma

Advocate for the Respondent(s): CASE.

| Notes of the Registry | Date | Order of the Tribunal |
|---|---|--|
| <p>This Contempt petition has been filed by the counsel for the applicant praying for wilful and deliberate violation of the interim order dated 23.12.02 passed by this Hon'ble Court in O.A. 389/02.</p> <p>Filed before the Hon'ble Court for further orders.</p> <p><u>Section Officer</u></p> <p><u>Stamps & Enclchs taken. Notice prepared and sent to S/s for filing the Respondent No. 1 to 3 by Regd. A.D.</u></p> <p><u>27/1/03</u></p> <p>D/No <u>139 to 141</u></p> <p>Dtd <u>28/1/03</u></p> | <p>22.1.2003</p> <p>mb</p> <p>23.1.2003</p> | <p>Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.</p> <p>The Hon'ble Mr. S.K. Hajra Administrative Member.</p> <p>Pass over on the prayer of Mr. S. Sarma, learned counsel for the applicant. List on 23.1.2003 for admission alongwith O.A.</p> <p><u>Member</u></p> <p><u>Vice-Chairman</u></p> <p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.</p> <p>The Hon'ble Mr. S.K. Hajra, Administrative Member.</p> <p>Heard Mr. B.K. Sharma, learned Sr. counsel for the applicant.</p> <p>Issue notice to show cause as to why the contempt proceeding shall not be initiated. Returnable by four weeks.</p> <p>List on 20.2.2003 for reply.</p> <p><u>Member</u></p> <p><u>Vice-Chairman</u></p> |

3.2.03

Post the matter on 20.2.2003
alongwith O.A. as ordered earlier. In the
meantime, the respondents may file reply,
if any.

S. A.
Member

[Signature]
Vice-Chairman

mb

20.2.2003

Present : The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman.
The Hon'ble Mr. S. Biswas,
Administrative Member.

The respondents are yet to
file reply. They may file reply if any,
within three weeks from today. List the
matter on 21.3.2003 for orders.

17.2.03

Reply on behalf
Respondent No. 2 & 3.
has been submitted

[Signature]

mb

S. A.
Member

[Signature]
Vice-Chairman

21.3.2003

Respondent Nos. 2 and 3 have
submitted reply. Put up the matter
on 27.3.2003 for orders. The other
respondents may file reply, if any,
in the meantime.

[Signature]
Vice-Chairman

mb

27.3.2003

Present: The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman
The Hon'ble Mr. S. Biswas
Administrative Member.

Heard Mr. S. Sarma, learned counsel for the
applicant and Mr. A. Deb Roy, Sr. C.G.S.C. Also
perused the Contempt Petition as well as the
affidavit filed by respondent Nos. 2 & 3.

Considering the pleadings and upon hearing
counsel for the parties, we do not find any
justification to continue with the Contempt
Petition. Accordingly the C.P. is closed.

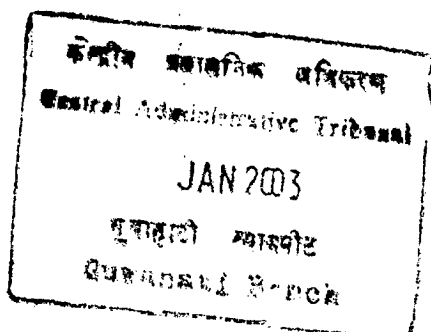
S. A.
Member

[Signature]
Vice-Chairman

bb

31/3/2003

Copy of the order has
been sent to the Office
for issuing the rule to
the 2 advocates for the
parties.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CONTEMPT PETITION No. 5 of 2003

IN THE MATTER OF :

An application under Section 17 of the Administrative Tribunal Act, 1985 read with Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

-AND-

IN THE MATTER OF :

Wilful and deliberate violation of the interim order dated 23.12.2002 passed by the Hon'ble Tribunal in OA No.389/2002 (JK Goyal -Versus- Union of India and others) and for the effective implementation and enforcement of the same.

IN THE MATTER OF :

Dr. J K Goyal,
Chief Commissioner of Income-tax,
Resident of Fancy Bazar, Guwahati-1.

Applicant

-Versus-

1. C.S. Rao ,
Secretary to the Government of
India, Department of Revenue,
Ministry of Finance, Govt of India,
North Block, New Delhi.

1. PK Sarma,
Chairman, Central Board of Direct
Taxes, Ministry of Finance,
North Block, New Delhi.

2. DK Das,
Chief Commissioner of Income-tax,
Shillong.

Respondents
Contemnors

The humble petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. That the petitioner preferred OA No.389/02 assailing the legality of the order dated 181/2002 dated 18.11.2002 issued by the Under Secretary to the Government of India, Ministry of Finance & Company Affairs, Department of Revenue, Central Board of Direct Taxes posting the applicant, who till now was the Chief Commissioner of Income-tax, Guwahati as Chief Commissioner of Income-tax (Officer on Special Duty), Guwahati, retrospectively with effect from 10.4.2002. The Hon'ble Tribunal vide its order dated 23.12.02 suspended the operation of the order dated 18.11.02 (Annexure-A/5 of the OA) posting the applicant as CCIT(OSD). As a result of the interim order of this Hon'ble Tribunal the applicant in the eye of law is now the Chief Commissioner of Income-tax, Guwahati. However, notwithstanding the interim order of this Hon'ble Tribunal the respondents/ contemnors are not allowing the applicant to discharge his duties as CCIT at Guwahati. Hence the present contempt

petition coupled with the prayer for adequate and effective implementation of the order in exercise of the powers under Rule 24 of the Central Administrative Tribunal(Procedure) Rules, 1987.

A copy of the order dated 23.12.02 passed in OA No. 389/2002 is annexed and marked as **ANNEXURE-CP/1**

2. That in the facts and circumstances it would be apposite to give the sequence of the events in the form of a list of dates so as to enable this Hon'ble Tribunal to appreciate the present case in wider perspective.

SEQUENCE OF EVENTS

18.2.02 When the applicant was posted as Chief Commissioner of Income-tax, Guwahati he was served with a show cause Memorandum dated 18.2.2002, which was accompanied by order of suspension of the same date(i.e. 18.2.2002). In the show cause Memorandum allegations were made against the applicant pertaining to errors committed by him while exercising his statutory powers in quasi-judicial capacity as Commissioner of Income-tax (Appeals) at Bhubaneswar.

*** Being aggrieved the applicant assailed the order of suspension in OA No.76/02.

10.4.2002 Hon'ble Tribunal by its order suspended the operation of the order of suspension dated 18.02.02.

*** Despite the interim order of this Hon'ble Tribunal the present applicant was not allowed to discharge his duties as Chief Commissioner of Income-tax, Guwahati and the interim order of the Hon'ble Tribunal was not given effect to by the respondents.

*** The applicant filed Contempt Petition No.21/2002 alleging violation of the interim order of this Hon'ble Tribunal dated 10.4.2002.

29.5.2002 The Hon'ble Tribunal issued notice in Contempt Petition No.21/02.

4.6.2002 Immediately after receipt of the notice in Contempt Petition No.21/2002 the respondent passed an order No.72/2002 transferring one D Chakraborty from the post of CCIT-(IV) Kolkata to the post of Chief Commissioner of Income-tax, Guwahati. Curiously in the order No72/2002 dated 4.6.2002 the post of CCIT, Guwahati was shown as a vacant post.

*** Order dated 4.6.2002 resulted in the applicant filing a Misc. Petition No.79/2002 in Contempt Petition No.21/2002 before the Hon'ble Tribunal.

6.6.02 The applicant also filed a separate OA No.181/2002 assailing the legality of the order dated 4.6.2002 pursuant to which on the post of applicant at Guwahati Sri D Chakraborty was sought to be transferred.

7.6.2002 This Hon'ble Tribunal admitted the OA No.181/2002 and stayed the order dated 4.6.2002.

- 14.6.2002 The respondents filed WP(C) No.3947/02 before the Hon'ble Gauhati High Court assailing the legality of the interim order of this Hon'ble Tribunal dated 10.4.2002 passed in OA No.76/02 wherein this Hon'ble Tribunal had stayed the impugned order of suspension dated 18.2.2002.
- 21.6.2002 The Hon'ble Gauhati High Court admitted the WP(C) No.3947/2002 and stayed the operation of the order of this Hon'ble Tribunal dated 10.4.2002 passed in O/A No.76/2002.
- 28.6.2002 In view of the interim order of the Hon'ble High Court dated 21.6.2002 this Hon'ble Tribunal closed the Contempt Petition No.21/2002 and MP No.79/2002 which was filed in the Contempt petition.
- *** During this period the present applicant was not only made to vacate his official accommodation at Uzanbazar but also not provided any alternative accommodation in the New Guest House and presently he is living in a room in Hotel in Fancybazar. His residential telephone was also taken away as if the applicant has been dismissed from service.
- 6.8.2002 The Hon'ble Tribunal also dismissed the OA No. 181/2002 in view of the stay order granted by the Hon'ble High Court in WP(C) No.3947/2002.
- 27.8.2002 Hon'ble High Court vacated the interim order dated 21.6.2002 passed in WP(C) No. 3947/2002 pursuant to which the interim order of this Hon'ble Tribunal dated 10.4.2002 passed in OA No.76/2002 was stayed.

That as a result of the order of the Hon'ble High Court dated 27.8.2002 the earlier interim order passed by this Hon'ble Tribunal on 10.4.2002 became effective and operative and consequently the impugned order suspending the applicant ceased to become operative.

28.10.2002 The respondent issued Memorandum of charge against the applicant. This was done ignoring the plea of the applicant that he be provided with at least an opportunity of inspecting the documents so as to enable him to file an effective representation against the show cause notice.

6.11.2202 Representation submitted by the applicant against the Memorandum of Charge dated 28.10. 2002_ wherein he highlighted the fact that adequate opportunity of submitting an effective representation was not given to him against the show cause notice and Memorandum of charge was finalised by the respondents.

18.11.2002 In so called compliance of the order of this Hon'ble Tribunal dated 10.4.2002 the operation of the order of suspension dated 18.2.2002 was suspended with effect from 10.4.2002 until further orders. It is noteworthy that there was no revocation of the order of suspension and the order of suspension dated 18.2.2002 was suspended only with effect from 10.4.2002 i.e. the date on which this Hon'ble Tribunal had stayed the operation of the order of suspension.

- 18.11.2002 That vide another order No.181/2002 issued on the same date i.e. 18.11.2002 the applicant was posted as CCIT(OSD), Guwahati retrospectively with effect from 10.4.2002 until further orders.
- 10.12.02 OA No.389/2002 was filed by the applicant assailing the legality of the order dated 18.11.2002 posting him as CCIT(OSD). On the same date applicant also filed OA No.388/2002 for quashing of the Memorandum of Charge dated 28.10.2002.
- 23.12.2002 This Hon'ble Tribunal by its interim order suspended the operation of the order dated 18.11.2002 posting him as CCIT(OSD).
- 24.12.2002 The applicant informed the respondents about the interim order of this Hon'ble Tribunal dated 23.12.2002 passed in OA No.389/2002.
- 27.12.02 The applicant went to the Office of the Chief Commissioner of Income-tax, Guwahati. He was allowed to sit in the Chamber but files were not placed before him. The applicant has been continuously going to the office but till this date files have not been placed before him and as such he has not been allowed to discharge his duties as Chief Commissioner of Income-tax, Guwahati. It is pertinent to mention that CCIT, Shillong Sri DK Das, is regularly coming to Guwahati to discharge the duties of CCIT, Guwahati and till now files required to be cleared by the CCIT, Guwahati are cleared by the CCIT Shillong.

3. That the sequence of events shown above clearly demonstrate the contumacious conduct and behaviour of the respondents. The dates mentioned above show that on various occasions the respondents have delayed acting in compliance with the order of this Hon'ble Tribunal. Initially the order of this Hon'ble Tribunal dated 10.4.2002 passed in OA No.76/02 staying the operation of the order of the applicant's suspension dated 18.2.2002 was not acted upon. Even after filing of the Contempt Petition No.21/2002 the respondents passed the order dated 4.6.2002 transferring one D Chakraborty from the post of CCIT, Kolkata to the post of CCIT, Guwahati and in the said order the respondents showed the post of CCIT, Guwahati as vacant. Subsequently, when the Hon'ble Gauhati High Court vide its order dated 27.8.02 vacated its earlier interim order dated 21.6.02, the respondents remained obstinate and even though pursuant to the order of the Hon'ble Gauhati High Court dated 27.8.2002 the suspension of the applicant ceased to become operative, they treated the applicant to be on suspension.

4. That it was much later vide order dated 18.11.2002 the respondents suspended the operation of the order of suspension retrospectively with effect from 10.4.2002. In view of the fact that the Hon'ble Gauhati High Court vide order dated 27.8.2002 had vacated its earlier order dated 21.6.2002 delay of about two and half months in acting upon the order of the Hon'ble Gauhati High Court shows the obstinacy and intransigence of the respondents.

5. That yet another order passed by the respondents on 18.11.2002 posting the applicant as CCIT(OSD) only tantamount to circumventing the

interim order of this Hon'ble Tribunal dated 10.4.2002 passed in OA No.76/2002 and the order of the Hon'ble Gauhati High Court dated 27.8.2002. From the conduct and behaviour of the respondents the message is clear that even if the suspension of the applicant is stayed by the judiciary, the respondents would ensure that the applicant is not allowed to hold the office of the CCIT, Guwahati. The order dated 18.11.2002 posting the applicant as CCIT(OSD), Guwahati is the logical outcome of the contumacious behaviour of the respondents.

6. That be that as it may, the order of this Hon'ble Tribunal dated 23.12.2002 staying the order of the respondents dated 18.12.2002 posting the applicant as CCIT (OSD), Guwahati was duly communicated to the Respondents vide letter dated 24.12.2002. Moreover, the order of this Hon'ble Tribunal dated 18.12.2002 in OA No.39/2002 was passed in the presence of the counsel for the respondents. As such the respondents are aware of the nature of the order passed by this Hon'ble Tribunal on 18.11.2002.

A copy of the letter dated 24.12.2002 is annexed as **ANNEXURE-CP/2.**

7. That despite having the knowledge of the interim order of this Hon'ble Tribunal dated 23.12.2002 the respondents have not allowed the applicant to do the official work as CCIT, Guwahati. The applicant has been shown courtesy to the extent of allowing him to sit in the Chamber of CCIT, Guwahati, but files have not been placed before him. It is stated that Mr DK Das, CCIT, Shillong has been discharging the official duties of CCIT, Guwahati and even during these days he has been coming from Shillong to clear the files meant for CCIT, Guwahati. It is therefore,

stated that the applicant has not been allowed to function as CCIT, Guwahati by the respondents.

8. That the respondents have further showed the contumacious behaviour by issuing the letter dated 26th December, 2002 to the applicant, wherein they have addressed him as CCIT (OSD), Guwahati in spite of the fact that this Hon'ble Tribunal by its order dated 23.12.2002 stayed the order dated 18.12.2002 posting the applicant as CCIT(OSD),Guwahati.

A copy of the letter dated 26.12.2002 is annexed herewith and marked as ANNEXURE-CP/3.

9. That in the facts and circumstances of the case this Hon'ble Tribunal may be pleased to initiate contempt proceeding against the respondents for their deliberate and wilful violation of the order of this Hon'ble Tribunal. The respondents have persisted in their contumacious behaviour and despite specific order of this Hon'ble Tribunal they have deliberately and wilfully acted against the same by treating the applicant as CCIT(OSD) and not the CCIT, Guwahati. This contumacious behaviour of the respondents deserve stern action by this Hon'ble Tribunal.

10. That this petition has been filed *bona fide* and for securing the ends of justice.

PRAYER

In the premises aforesaid, it is most respectfully prayed that your Lordships may be graciously pleased to -

- (i) Punish the respondents for committing contempt of this Hon'ble Tribunal by their act of violating

the interim order dated 23.12.2002 passed in
OA No.389/2002;

(ii) Pass necessary/appropriate order for
enforcement / implementation of the interim
order of the Hon'ble Tribunal dated 23.10.2002
passed in OA No.389/2002.

(iii) Pass such other order or orders as may be
deemed fit and proper in the facts and
circumstances of the case.

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

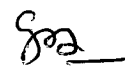
Affidavit..

AFFIDAVIT


I, Dr J.K. Goyal, aged about 57 years, son of Shri ML Goyal, Chief Commissioner of Income-tax, Guwahati, resident of Fancybazar, Guwahati, in the district of Kamrup, Assam, do hereby solemnly affirm and swear as follows

1. That I am the petitioner in the accompanying petition and as such, well conversant 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 petition in paragraphs 2,3,4,5, 7 and 9 are true to my knowledge, those made paragraphs 1,6 and 8 are true to my information being based on records, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. The annexures are true copies of their originals and I have not suppressed any material facts.


And I sign this affidavit on this the 15th day of January, 2003 at Guwahati.

 (J.K. Goyal)
DEPONENT

Identified by me


Advocate's clerk.

The deponent has solemnly affirmed and declared who is identified by Miss U. Das, Advocate


Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 389 of 2002.

Date of Order : This the 23rd Day of December, 2002.

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

J.K.Goyal

Resident of Fancy Bazar

Guwahati-1,

. . . . Applicant.

By Sr.Advocate Mr.B.K.Sharma, P.K.Tiwari, S.Sarma &
I.Purkayastha.

- Versus -

1. The Union of India
Represented by the Secretary
Department of Revenue, Ministry of Finance
Government of India, North Block
New Delhi.

2. The Chairman
Central Board of Direct Taxes
Ministry of Finance
North Block
New Delhi.

The Under Secretary to the
Government of India, Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi.

. . . Respondents.

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

ORDER

CHOWDHURY J.(V.C.):

The matter came up again today for consideration
of the prayer of the applicant for an interim order.

1. Notices were issued, Respondents appeared
through the Senior Central Govt. Standing Counsel Mr.A.Deb
Roy. Heard the learned counsel for the parties at length
and also perused the pleading. As per pleading ^{of} the
applicant while he was posted as Chief Commissioner of
Income Tax, Guwahati, was served with a show cause

Attested

Advocate

Contd./2

memorandum dated 18.2.2002. The applicant was also placed under suspension by the same. The applicant assailed the order of suspension in O.A.76/2002. The Tribunal by its order dated 10.4.2002 suspended the operation of the order dated 18.2.2002.

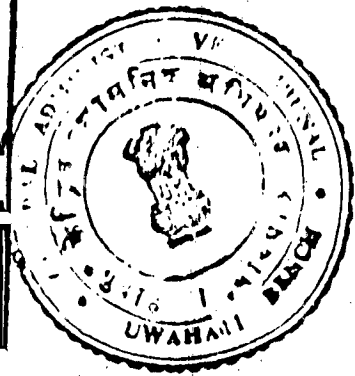
2. Being aggrieved the respondent authority moved the Hon'ble High Court by way of Writ Application. The High Court by its order dated 21.6.2002 in WP (C) No.3947/2002 passed a stay order suspending the order of The Tribunal. By its order dated 27.8.2002 the High Court, however vacated the interim order dated 21.6.2002 and thus the order of suspension became inoperative. By its order dated 18.11.2002 the authority initiated a disciplinary proceeding on 18.11.2002 suspending the operation of the suspension order dated 18.2.2002 w.e.f. 10.4.2002 till further orders subject to the outcome of the WP (C) No.3947/2002 pending before the High Court and any SLP that might be filed before the Hon'ble Supreme Court. The aforementioned order is followed by order No.A.22011/16/2002 Ad.VI(Pt.) dated 18.11.2002, Annexure-A/5 of the petition. The full text of the order is reproduced below :-

" ORDER NO.181 of 2002

Consequent upon the revocation of the operation of the suspension order dated 18.2.2002 (E.No.14011/5/2002-V&I) with effect from 10.4.2002 Shri J.K.Goyal (69002) CCIT is posted as CCIT (OSD), Guwahati with effect from 10.4.2002 and until further orders.

(P.C.BHATT)
Under Secretary to the Government of India"

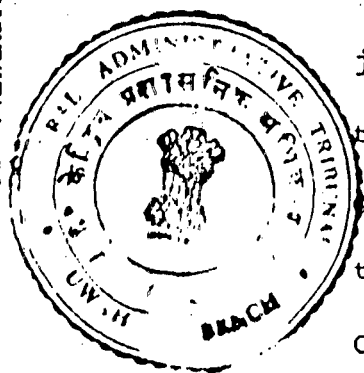
Contd./3



Attended
WDA
Advocate

3. The applicant assailed the action of the Respondents in the O.A. and also prays for an interim order for suspending the order posting him as CCIT (OSD). Mr.B.K.Sharma, learned Sr.counsel for the applicant stated and contended that the order of posting the applicant as CCIT (OSD) is per se illegal and arbitrary. Mr.B.K.Sharma submitted that the order runs counter to the order passed by the Tribunal on 10.4.2002 in O.A.76/2002 as well as the order of the High Court which also vacated the earlier interim direction suspending the order of the Tribunal. Mr.B.K.Sharma also referred to the statutory scheme enjoined in Chapter 13 of the Income Tax Act. The Govt. of India by notification dated 31.7.2001 specified the jurisdiction of the officers mentioned therein including that office of the Chief Commissioner of Income Tax, Guwahati. Mr.B.K.Sharma, learned Sr.Counsel submitted that the applicant is holding the public office of Chief Commissioner of Income Tax invested with the statutory power of exercise. By the impugned order of posting the applicant is placed as CCIT (OSD) a non-descriptive post, contended the learned Sr.counsel.

4. Mr.A.Deb Roy, learned Sr.C.G.S.C. appearing for the respondents stated that CBDT is the cadre controlling authority for IRS. CBDT takes approval of Finance and Company Affairs Minister for transfer and posting of IRS officers of the level of CCIT. The learned Sr.C.G.S.C. submitted that though there is no quota, the discretion is vested on the competent authority to post any officer



- 16 -

including CCIT as OSD on administrative grounds. The applicant is one of the 116 sanctioned posts of CCIT. On administrative ground he was duly posted ^{as} CCIT (OSD) by the competent authority as per law. The pay scale of the post of CCIT, Guwahati and CCIT (OSD), Guwahati is equivalent. Mr. A. Deb Roy also referring to communication sent to him by the respondents submitted that CCIT (OSD), Guwahati function within the parameters of statutory and non-statutory duties assigned to them by CBDT. The pay scale to a post is not decisive. The post of CCIT is a defined post with duties and responsibilities as indicated in Chapter XIII of the Income Tax Act, 1961 (As amended) as well as the rules made thereunder. The post of CCIT functions statutory power defined by the Statute. Mere parity or equivalence of pay scale does not make a post equivalent. The status and responsibility of a post is discernible from the duties and responsibilities assigned to the post. The statutory provisions reposing powers and responsibility on the CCIT is not rehearsed in details. In addition to the statutory powers, the CCIT also entrusted with the administrative power including the power of cadre control of the subordinate officers under him.

5. The great equality clause enshrined in Article 14 speaks of equality before the law as well as equal protection of the laws. "Equality is antithetic to arbitrariness Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore

Contd./5

Attested

W.D.

Advocate.

violative of Article 14 of the Constitution of India, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment....."(Ref: E.P.Royappa - Vs - State of Tamil Nadu, reported in AIR 1974 SC 555).

6. Mr.B.K.Sharma, learned Sr.counsel for the applicant, contended that the impugned order is nothing but a subterfuge to resurrect the earlier order of suspension. The learned Sr.counsel for the applicant contended that the impugned order was passed in an attempt to frustrate or stultify the order of the Tribunal and the High Court, and therefore tainted by illegality.

7. I have given my anxious consideration in the matter. The principle that law should be just is one of the facets of the legal policy. The function of the Court is to see that there is no failure of justice. It is also a principle of legal policy that the status and reputation of a person should not be impaired or endangered, except under clear authority of law. Doubtful penalisation needs to be avoided.

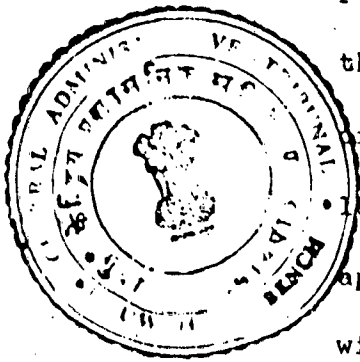
8. Admittedly, the applicant at the time of suspension was holding the post of CCIT, Guwahati. The order of suspension dated 18.2.2002 was suspended by the order of the Tribunal. Therefore the order of suspension is no longer subsisting. In answer to contention of Mr.A.Deb Roy, learned Sr..C.G.S.C. that pay scale of CCIT, Guwahati and CCIT (OSD) is equivalent it is to be said that the function of CCIT and CCIT (OSD) is not the same.



ATTACHED
u/s
1/2/2002

No statutory duties is vested upon the CCIT (OSD) in the scheme of the Income Tax Act, nor any administrative power. The two posts thus cannot be said to be equivalent.

Considering the facts, circumstances, prima facie case, balance of convenience and ends of justice, all in all, I am of the opinion that it is a fit case for passing an interim order. All things considered, I therefore, pass an interim order suspending the operation of the order No.A.22011/16/2002 Ad.VI(Pt.) dated 18.11.2002 (Annexure-A/5 of the petition) posting the applicant as CCIT (OSD), Guwahati as an interim measure with liberty to the respondents to come for alteration or modification of the interim order.



Sd/VICE CHAIRMAN

Certified to be true Copy

प्रमाणित प्रतिलिपि

bb

[Handwritten signature]
24/12/02

RECEIVED
NATIONAL ADMINISTRATIVE TRIBUNAL
GUWAHATI
24/12/02

Attested

[Handwritten signature]

Att: uate.

Annexure - CP/2

From,

Dr. J.K. Goyal
Chief Commissioner of Income Tax
Guwahati

Date : 24.12.2002.

To,

The Honourable Revenue Secretary,
Ministry of Finance,
North Block,
New Delhi.

Through - Proper Channel

Respected Sir,

As you are kindly aware, I had filed an OA bearing No. 389/2002 before CAT, Guwahati aggrieved by the order No. 181 dated 18.11.2002 of the CBDT, Ministry of Finance. A copy of Honourable CAT's order dated 23.12.2002 on the said application is enclosed herewith which is self explanatory and according to the same, I continue to be the Chief Commissioner of Income Tax, Guwahati.

This is for favour of your kind information and necessary action.

Thanking you

Yours faithfully

Gog
(Dr. J.K. Goyal)

Copy to -

1. CCIT, Shillong for favour of information and necessary action.
2. Addl. CIT Hqrs/PRO
Office of CCIT, Guwahati for favour of information and necessary action.

Staff car may be made available forthwith at my residence for commuting to/from office.

Gog
(Dr. J.K. Goyal)

Amended

W.Das
Advocate.

Confidential

F.No. C-14011/5/2002-V&L - 20-
Government of India
Ministry of Finance, Deptt. of Revenue
Central Board of Direct Taxes
North Block

New Delhi, dated the th 26 December, 2002

To

✓ Shri J.K. Goyal
Chief Commissioner of Income Tax (OSD)
Guwahati.

Sir,

(Through CCIT, Guwahati)

Sub : Memorandum of charge sheet issued under F.No. C-14011/5/2002/
V&L dated 28.10.2002- Written Statement of Defence - regarding

Kindly refer to your letter dated 6.11.2002 on the above subject.

2. The charge sheet dated 28.10.2002 was duly served on you on 1.11.2002. You were required to submit your written statement of defence accepting or denying the article of charge within 20 days from 1.11.2002. No such acceptance or denial has been received from your end till date.

3. You are hereby allowed 7 days from the date of receipt of this letter to submit your written statement of defence on the lines mentioned above in para 2, failing which it may be construed that you have nothing to say on the issue. In that case an oral inquiry may be instituted against you in terms of Rule 14(5)(b) of CCS (CCA) Rules, 1965. In case you desire to have inspection of the listed documents or require copies thereof, you may approach the DIT (Vig.) East, Kolkata in whose custody the listed documents are presently lying.

Yours faithfully,



(V.K. Singh)

Under Secretary to the Govt. of India

Copy to:

1. The Director of Income-tax (Vig.) East, Kolkata with reference to his letter no.DIT(V)/E/VI/104/2002-03/693 dated 20.12.02. He is requested to allow inspection/furnish copies of listed documents in case the CO approaches him for this purpose.

2. The DGIT (Vig.), New Delhi for information.

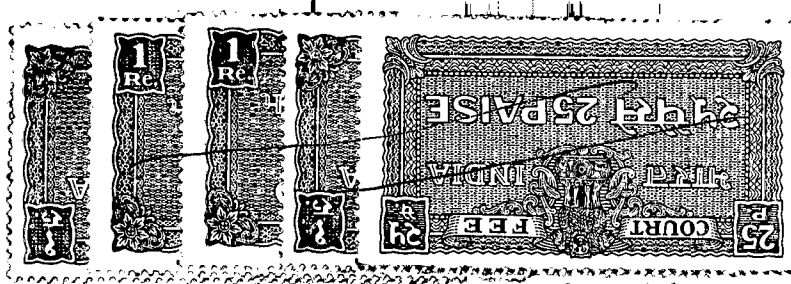
3. CCIT, Guwahati.

(V.K. Singh)

Under Secretary to the Govt. of India

Advocate

Dist.



VAKALATNAMA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
IN THE COURT OF AT GUWAHATI

C.L.NO. 5 OF 2003

J.K. Goyal

Appellant

Plaintiff/Petitioner

VERSUS

C.S. Rao & 2 Ors.

Respondent

Defendant/Opposite Party

Know all men by these presents that the above named: petitioner

do hereby nominate, constitute and appoint Sri B.K. Sharma, Sr. Advocate
P.K. Tiwari, S. Sharma & Mrs. U. Das
Advocate and such of the undermentioned Advocates as shall accept this Vakalatnama to be
my/ our true and lawful Advocate to appear and act for me/ us in the matter noted above and in
connection there with and for that purpose to do all acts whatsoever in that connection
including depositing or drawing money, filling in or taking out papers, deeds of composition,
etc. for me/ us and my/ our behalf and I/We agree to ratify and confirm all acts do done by
the said advocates as mine/ ours to all intent and purposes. In case of non-payment of the
stipulated fee in full, no Advocate will be bound to appear or act on my/ our behalf.

In witnesses whereof I/We hereunto set my our hand this
15th day of Jan 2003.

- | | | |
|----------------------------|---------------------------|-------------------------|
| (1) Mr. P.K. Goswami | (9) Mr. M.K. Choudhury | (17) Mr. U.K. Nair |
| (2) Mr. P.C. Deka | (10) Mr. B.M. Sarma | (18) Mr. D.K. Sarmah |
| (3) Mr. J.M. Choudhury | (11) Mr. G.K. Thakuria | (19) Mrs. N.S. Thakuria |
| (4) Mr. A.K. Bhattacharyya | (12) Mr. M. Chanda | (20) Mr. U.K. Goswami |
| (5) Mr. B.K. Sharma | (13) Mr. B.K. Baishya | (21) Mr. A. Rahman |
| (6) Mr. L. Talukdar | (14) Mr. Siddhartha Sarma | (22) Mr. M. Dutta |
| (7) Mr. P.K. Tiwari | (15) Mr. P.C. Kalita | (23) Mr. S. Das |
| (8) Mr. T.N. Srinivasan | (16) Mr. K. Paul | (24) Miss. U. Das |

Sri B.K. Sharma Senior Advocate, leads me/ us in this case.

Received from the executant,
Sharma
and accepted.
Advocate

Accepted
P.K. Tiwari
Advocate

Accepted
Sharma
Advocate

24

Notice

Date - 16/1/03

From, Usha Das.
Advocate

To,
Mr. A.K. Choudhury
Addl. C.G.S.C.
CAT, Bhy

Sub: C.P. 5/03
J.K. Goyal
- 13 -
C.S. Rao & 2023.

Sir, Please find herewith a copy
of C.P. being filed today. Kindly
acknowledged the receipt thereof.

Thanking You.

Received copy

Sincerely Yours
Usha Das
Advocate

Addl. C.G.S.C.
CAT, Bhy

I undertake to
serve a copy of C.P.
~~being~~ on Mr. A.K.
Choudhury, Addl. C.G.S.C.
CAT, Bhy.

Usha Das.
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
 Central Administrative Tribunal
 GUWAHATI BENCH GUWAHATI
 17 MAR 2003
 C.P. NO.05/03
 Guwahati Bench

Filed by
 Arif 17/3/03
 (A. DEB ROY)
 Sr. C. G. S. C.
 A. T., Guwahati Bench

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OA NO.389/02

In the matter of :
 Dr. J.K. Goyal,
 Chief Commissioner of Income-tax,
 Uzan Bazar, Guwahati-I

.....Applicant

Versus

Union of India & ors.

.....Respondents

AFFIDAVIT

REPLY ON BEHALF OF THE RESPONDENT NO.2-IN CP NO.05/03 IN OA NO.389/02

I, P.K. Sarma, presently working as Chairman, Central Board of Direct Taxes, Department of Revenue in the Ministry of Finance and Company Affairs, Government of India, North Block, New Delhi do hereby solemnly affirm and state as under:

That the answering respondent has gone through the contents of the Contempt Petition and has fully understood the same. At the very outset the answering respondent denies each and every allegation and averment of law and facts made against him in the contempt petition, save and except specifically admitted hereinafter.

Para 1&2: The applicant has misunderstood the situation that arose immediately after the suspension and the subsequent events. In this context the respondents beg to submit that the order of suspension dated 18.2.02 of the applicant was immediately followed by another order by which Shri E.J. Mawlong, CCIT Shillong had assumed the additional charge of the CCIT, Guwahati prior to 10.4.02 – date on which the Hon'ble Tribunal had passed the impugned order suspending the order of suspension of the applicant. Vide order dated 10.4.02, while suspending the order of suspension dated 18.2.02, the Hon'ble Tribunal had not directed to allow the applicant to join as CCIT Guwahati.. As a matter

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- 22 - 26

of fact, the post of CCIT Guwahati was never left vacant and the post was held by several others in succession as per incumbency chart of CCIT, Guwahati. The charge of CCIT, Guwahati was not held by the applicant at any point of time subsequent to transfer of charge to Sh. E.J. Mawlong, CCIT on 18.2.02.

In OA-389/02 the applicant assailed the legality of the order No.181/02 dated 18.11.02 regarding his posting as CCIT(OSD), Guwahati w.e.f. 10.4.02. This order of posting of the applicant was passed by the CBDT, New Delhi being the cadre controlling authority of the IRS after approval of the competent authority. The competent authority at its discretion can post any officer of IRS level including CCIT as OSD on administrative grounds. This is a well established practice in the Department.

Under the above premises, the respondents beg to submit as under:-

1. The order of posting of the applicant as CCIT(OSD), Guwahati was passed to honour the interim order passed by the Hon'ble Tribunal on 10.4.02. The allegations against the alleged contemnors are unfounded and baseless since full regard was given to implementation of the order of the Hon'ble Tribunal in letter and spirit. ✓
2. Consequent upon the interim stay granted by the Hon'ble Guwahati High Court vide order dated 21.06.2002 against the impugned interim order dated 10.04.2002, this Hon'ble Tribunal by their order dated 06.08.2002 was pleased to dismiss the OA No.181/2002 and also vacated the stay order dated 07.06.2002.
3. Consequent upon the vacation of the interim stay order by the Hon'ble High Court on 27.08.2002 in Misc. case No. 1043/2002 in WP (C) No. 3947/2002, the Respondents by order dated 18.11.2002 have suspended the operation of the order of suspension in compliance of order dated 10.04.2002 in OA No. 76/2002 passed by this Hon'ble Tribunal. The Respondents by another order vide order No. 181/2002 dated 18.11.2002 {F. No. A-22011/16/2002-Ad-VI (Pt.)} posted the applicant as CCIT (OSD), Guwahati, w.e.f. 10.04.2002 the date on which this Hon'ble Tribunal passed the impugned interim order in question.
4. Since, the question of Applicant's joining as CCIT, Guwahati was already raised before the Hon'ble Guwahati High Court the same question should not be raised again before this Hon'ble Tribunal.
5. As regards withdrawal of official residence and official Telephone No. 519199, the Respondents hereby clarify that the Applicant after joining as the CCIT,

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- 23 - 3

Guwahati was staying in a transit camp meant for touring officers. The transit Camp had one bedroom with attached bathroom and kitchen facility and was neither a Guest House nor an official accommodation suitable to the status of the CCIT. Since this was not an official allotment the Applicant was all along drawing the House rent Allowance as well. It was during the tenure of the Applicant and prior to his suspension on 18.02.2002, that the process of de-hiring the said Red Cross Bhawan was set in motion and the land and building committee also recommended on 20.09.2001 and 18.01.2002 the de-hiring of the said building. The Applicant cannot plead ignorance of all these developments, more so when he was officially informed about the de-hiring process, which naturally called for shifting of all Govt. assets including the telephone as indicated by the Applicant. Therefore, the submissions of the Applicant are not correct and they are misleading, being far from truth.

6. The effect of Hon'ble Tribunal's Interim order dated 23.12.02 suspending the operation of the order No.181/02 dated 18.11.02 does not place the applicant as CCIT, Guwahati. Such postings are made by specific order of the competent authority.
7. In view of the order of the Hon'ble Tribunal dated 18.11.02, the applicant has now been posted as Chief Commissioner of Income Tax, Jalpaiguri vide order dated 14.2.03 (Annexure RC-1) after approval of the Competent Authority.
8. Subsequent to the order of the Hon'ble Tribunal dated 18/11/02, action was initiated by the respondents for issuing fresh orders of posting of the applicant. As per the procedure, the matter had been submitted for the approval of the competent authority and after obtaining the same, the applicant has been posted as CCIT, Jalpaiguri vide order dated 14.2.03 (Annexure -RC-1).

Paras 3 & 4: The allegations and averments made by the applicant are denied as baseless. The Respondents have full regard and respect for the Hon'ble Tribunal and have fully implemented its directions. The Contempt Petition 21/02 has already been closed by the Hon'ble Tribunal. Further the Hon'ble Tribunal has already dismissed the OA No.181/02 filed by the applicant challenging the order dated 4.6.02 transferring Shri D. Chakraborty to the post of CCIT Guwahati. Subsequent to the order of the Hon'ble High Court dated 27.8.02 the Respondents have implemented the interim order of the Hon'ble Tribunal dated 10.04.2002 and posted the applicant as CCIT (OSD), Guwahati w.e.f. 10.04.2002. Consequently, full pay and allowances of the Applicant have been released for the month of November, 2002 and his arrear bill w.e.f. 10.04.2002 has also been

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cleared. The delay, if any, has been caused due to procedural formalities and for this delay the Respondents tender unqualified apology before this Hon'ble Tribunal.

Para 5: The allegations and averments made by the applicant are denied as baseless. The Respondents have full regard and respect for the Hon'ble Tribunal and have fully implemented its directions.

Para 6 Vide his letter dated 24.12.2002, the applicant has claimed that he continues to be the CCIT, Guwahati. As stated earlier, the applicant has misunderstood the situation that arose immediately after the suspension and the subsequent events. As a matter of fact, the order of suspension was immediately followed by another order dated 19.02.2002 by which Shri E.J. Mawlong, CCIT, Shillong was directed to hold the Additional Charge of the CCIT, Guwahati. After retirement of Shri E.J. Mawlong, CCIT, Guwahati on 28.02.2002 the charge of this post was taken over by Shri D. Chakravorty, as CCIT, Guwahati by an order of the Board dated 28.02.2002. Therefore, the post of CCIT, Guwahati was never left vacant after suspension of Shri J.K. Goyal, CCIT on 18.02.2002. Vide order dated 23.12.2002, the Hon'ble Tribunal suspended the order dated 18.11.2002 posting the applicant as CCIT, (OSD) Guwahati, subsequent to which, in compliance with the order of the Hon'ble Tribunal dated 23.12.02, the applicant has now been posted as Chief Commissioner of Income Tax, Jalpaiguri vide order dated 14.2.03 (Annexure RC-1) after approval of the Competent Authority. The applicant did not have the charge of CCIT, Guwahati at any point of time subsequent to his suspension and therefore, the presumption that the applicant continued to be the CCIT, Guwahati is not correct.

Para 7: As stated above, the applicant's claim that he is entitled to function as CCIT, Guwahati is not correct.

Para 8: The allegations of the applicant are strongly denied. The letter dated 26.12.02 has been issued only because of the time taken for communication of order of this Hon'ble Tribunal dated 23.12.02. The Respondents have full respect and regard for the directions of the Hon'ble Tribunal and have already complied with its directions in order dated 23.12.02 by posting applicant as CCIT, Jalpaiguri vide order dated 14.2.03 (Annexure RC-1).

Para 9: In view of the facts already stated above the allegations and averments of the applicant are denied.

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Para 10: In view of the facts stated above it is clear that the Respondents have full regard and respect for the Hon'ble Tribunal and have duly implemented all its directions. Any delay in the same has been due to the procedural formalities for which the Respondents offer unconditional and unqualified apology.

In the premises as aforesaid it is most humbly and respectfully submitted before the Hon'ble Tribunal that the allegations by the applicant are not correct and on certain points are misleading, being far from truth. The Respondents/alleged contemnors fervently pray and urge upon the Hon'ble Tribunal to drop the Contempt Proceedings against them.

AND for this act of kindness the Respondents/Alleged contemnors as are duty bound shall ever pray.



(P.K. Sarma)

Chairman (CBDT)

VERIFICATION:

I, P.K. Sarma, presently working as Chairman, Central Board of Direct Taxes, Department of Revenue in the Ministry of Finance and Company Affairs, Government of India, North Block, New Delhi do hereby verify that the contents of the foregoing paras are true and correct and based on official records. I further verify that I have not concealed any material facts.

Verified at New Delhi on this day of February, 2003.


(P.K. Sarma)

Chairman (CBDT)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

C.P. NO.05/03

IN

OA NO.389/02

In the matter of :
Dr. J.K. Goyal,
Chief Commissioner of Income-tax,
Uzan Bazaar, Guwahati-I

.....Applicant

Versus

Union of India & ors.

.....Respondents

AFFIDAVIT

I, P.K. Sarma, presently working as Chairman, Central Board of Direct Taxes in the Ministry of Finance & Company Affairs, Department of Revenue, North Block, New Delhi, do solemnly affirm and declare as under:

1. That in my official capacity I am fully conversant with the facts of the present case and am therefore, competent to swear this affidavit .
2. That the Annexure is true copy of its respective original.



(P.K. Sarma)
Chairman (CBDT)

VERIFICATION :

Verified at New Delhi on this the day of February, 2003 that the contents of the counter reply are true and correct. No part of it is false and nothing material has been concealed therefrom.



(P.K. Sarma)
Chairman (CBDT)

Annexure - RC-1


F.No.A.32011/20/2001-Ad.VI
Government of India
Ministry of Finance & Company Affairs
Department of Revenue
(Central Board of Direct Taxes)

New Delhi, the 14th February, 2003.

ORDER NO.15 of 2003

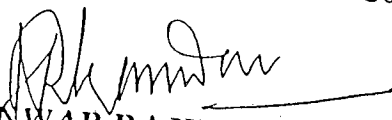
The following postings and transfers in the grade of Chief Commissioners/Directors General of Income Tax are hereby ordered with immediate effect and until further orders: -

| SL. No. | NAME OF THE OFFICER | CODE | FROM | TO | REMARKS |
|---------|-------------------------|-------|---------------------|-----------------------|--|
| 1. | SHRI J.K. GOYAL | 69002 | CCIT(OSD), GUWAHATI | CCIT, JALPAIGURI | VACANT POST |
| 2. | SHRI U.P. SINGH | 69024 | CCIT-II, AHMEDABAD | DGIT(INV.), AHMEDABAD | VACANT POST |
| 3. | SHRI DIBAKAR CHATTERJEE | 69031 | CCIT-XI, KOLKATA | CCIT, GUWAHATI | VACANT POST |
| 4. | SMT. RASHMI CHOUDHARY | 70011 | CCIT, LUCKNOW | CCIT-XII, DELHI | VICE SHRI A.S. NARANG TRANSFERRED |
| 5. | SHRI P.K. MISHRA | 70017 | CCIT, SHIMLA | CCIT, BHUBANESHWAR | VACANT POST |
| 6. | SHRI A.S. NARANG | 68005 | CCIT-XII, DELHI | CCIT-II, DELHI | VACANT POST |
| 7. | SHRI B.M. SINGH | 70006 | CCIT-V, MUMBAI | CCIT, SHIMLA | VICE SHRI P.K. MISHRA TRANSFERRED |
| 8. | SHRI A.K. LUTHRA | 70019 | CCIT-X, KOLKATA | CCIT, DEHRADUN | VACANT POST |
| 9. | SHRI P.N. PATHAK | 69004 | DGIT(INV.), LUCKNOW | CCIT, LUCKNOW | VICE SMT. RASHMI CHOUDHARY TRANSFERRED |


(KANWAR RAJINDER SINGH)
 Director to the Government of India

Copy to:-

1. Officers concerned.
2. All Chief Commissioners/Directors General of Income Tax.
3. Principal Chief Controller of Accounts, New Delhi.
4. Zonal Accounts Officer, CBDT, C/o CCIT concerned.
5. DIT(IT)/DIT(RSP&PR)/DIT(Audit)/DIT(Vlg.)/DIT(Systems)/DIT(O&MS)/ DIT(Spl.Inv.)
6. PSs to FCAM/ MOS(R)/ Secy.(R)/ AS(R)/ Chairman, CBDT/ Members, CBDT/JS(Admn.) CBDT/JS(R)/DS(Hqrs/Admin.)/Directors, CBDT/DSs CBDT.
7. US(Hqrs/Per)/ Pers.DT/US (Ad.VI(A)/ Ad.VII/ ITCC/ OT/ Computer Cell/ Hindi Section.


(KANWAR RAJINDER SINGH)
 Director to the Government of India

Arunesh Deb Ray, B.A. (Distn) LLB

Advocate, Gauhati High Court
Central Administrative Tribunal
Sr. Central Govt. Standing Counsel
Guwahati Bench, Guwahati - 781 005

Residence

Hengrabari Housing Colony
L.I.G. - 3 (Top floor)
Guwahati - 781 006
☎ : 265334(R), 221358 (C)

Ref. No.....

Date.....

To,

Shri S. Sarma
Advocate.


Sub: Copy of ~~written statement in O.A / M.P.~~ ^{of reply} in C.P. 5/2003
(in O.A. 389/2002)

Sir,

Please find herewith a copy ^{of reply} which is being filed today.

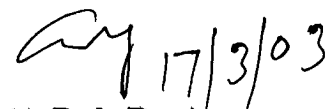
Please acknowledge receipt.

Yours Sincerely,


(A. Deb Roy)
Sr.C.G.S.C.

C.A.T., Guwahati Bench.

Undertake to serve copy to Shri S. Sarma, Adv.


(A. Deb Roy)
Sr.C.G.S.C.

C.A.T., Guwahati Bench.

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MAR 2003
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

C.P. NO. 05/2003

IN

OA NO. 389/2002

In the matter of:

Dr. J.K. Goyal,

Chief Commissioner of Income-tax,

Fancy Bazar, Guwahati - I

..... Applicant

Versus

Union of India and others

..... Respondents / Contemners

REPLY ON BEHALF OF THE RESPONDENT NO. 3 IN
C.P. NO. 05/2003 IN O.A. NO. 389/2002

I, Dilip K. Das, presently working as Chief Commissioner of Income-tax, Shillong do hereby solemnly affirm and state as under:

That the answering respondent has gone through the contents of the Contempt Petition and has fully understood the same. At the very out set the answering respondent denies each and every allegation and averment of law and facts made against him in the contempt petition, save and except specifically admitted hereinafter.

Para 1 & 2: The applicant has misunderstood the situation that arose immediately after the suspension and the subsequent events. In this context, the humble petitioner begs to submit that the order of suspension dated 18-02-2002 of the applicant was immediately followed by another order by which Shri E. J. Mawlong, CCIT, Shillong had assumed the additional charge of the CCIT, - Guwahati prior to 10-04-2002 - date on which the Hon'ble Tribunal had passed the impugned order suspending the order of suspension of the applicant. Vide

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order dated 10-04-2002, while suspending the order of suspension dated 18-02-2002, the Hon'ble Tribunal had not directed to allow the applicant to join as CCIT, Guwahati. As a matter of fact, the post of CCIT, Guwahati was never left vacant and the post was held by several others in succession as per incumbency chart of CCIT, Guwahati. The charge of CCIT, Guwahati was not held by the applicant at any point of time subsequent to transfer of charge to Shri E. J. Mawlong, CCIT on 18-02-2002.

In OA-389/2002 the applicant assailed the legality of the order No. 181/02 dated 18-11-2002 regarding his posting as CCIT(OSD), Guwahati w.e.f. 10-04-2002. This order of posting of the applicant was passed by the CBDT, New Delhi being the cadre controlling authority of the IRS after approval of the competent authority. The competent authority at its discretion can post any officer of IRS level including CCIT as OSD on administrative grounds. This is a well established practice in the Department.

Under the above premises, the respondents beg to submit as under:

1. The order of posting of the applicant as CCIT(OSD), Guwahati was passed to honour the interim order passed by the Hon'ble Tribunal on 10-04-2002. The allegations against the alleged contemnors are unfounded and baseless since full regard was given to implementation of the order of the Hon'ble Tribunal in letter and spirit.
2. Consequent upon the interim stay granted by the Hon'ble Gauhati High Court vide order dated 21-06-2002 against the impugned interim order dated 10-04-2002, this Hon'ble Tribunal by their order dated 06-08-2002 was pleased to dismiss the OA No. 181/2002 and also vacated the stay order dated 07-06-2002.
3. Consequent upon the vacation of the interim stay order by the Hon'ble High court on 27-08-2002 in Misc. Case No. 1043/2002 in WP(C) No. 3947/2002, the respondents by order dated 18-11-2002 have suspended the operation of the order of suspension in compliance of order dated 10-04-2002 in OA No. 76/2002 passed by this Hon'ble Tribunal. The respondents by another order vide order No. 181/2002, dated 18-11-2002 {F. No. A-22011/16/2002-Ad-VI (pt.)} Posted the applicant as

CCIT(OSD), Guwahati w.e.f. 10-04-2002 the date on which this Hon'ble Tribunal passed the impugned interim order in question.

4. Since, the question of applicant's joining as CCIT, Guwahati was already raised before the Hon'ble High Court the same question should not be raised again before this Tribunal.
5. As regards withdrawal of official residence and official Telephone No. 519199, the respondents hereby clarify that the applicant after joining as the CCIT, Guwahati was staying in transit camp meant for touring officers. The transit camp had one bedroom with attached bathroom and kitchen facility and was neither a Guest House nor an official accommodation suitable to the status of the CCIT. Since this was not an official allotment the applicant was all along drawing the House rent Allowance as well. It was during the tenure of the applicant and prior to his suspension on 18-02-2002, that the process of de-hiring the said Red Cross Bhawan was set in motion and the land and building committee also recommended on 20-09-2001 and 18-01-2002 the de-hiring of the said building. The applicant cannot plead ignorance of all these developments, more so when he was officially informed about the de-hiring process, which naturally called for shifting of all Govt. assets including the telephone as indicated by the applicant. Therefore, the submissions of the applicant are not correct and they are misleading, being far from truth.
6. The effect of Hon'ble Tribunal's interim order dated 23-12-2002 suspending the operation of the order No. 181/2002 dated 18-11-2002 does not place the applicant a CCIT, Guwahati. Such postings are made by specific order of the competent authority.
7. In view of the order of the Hon'ble Tribunal dated 23-12-2002, the applicant has now been posted as Chief Commissioner of Income-tax, Jalpaiguri vide order dated 14-02-2003 (Annexure RC-1) after approval of the Competent Authority.
8. Subsequent to the order of the Hon'ble Tribunal dated 23-12-2002, action was initiated by the respondents for issuing fresh orders of posting of the applicant. As per the procedure, the matter had been submitted for the approval of the competent

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authority and after obtaining the same, the applicant has been posted as CCIT, Jalpaiguri vide order dated 14-02-2003 (Annexure - RC- I).

Paras 3 & 4 : The allegations and averments made by the applicant are denied as baseless. The respondents have full regard and respect for the Hon'ble Tribunal and have fully implemented its directions. The Contempt Petition 21/2002 has already been closed by the Hon'ble Tribunal. Further the Hon'ble Tribunal has already dismissed the OA No. 181/2002 filed by the applicant challenging the order dated 04-06-2002 transferring Shri D. Chakraborti to the post of CCIT, Guwahati. Subsequent to the order of the Hon'ble High Court dated 27-08-2002 the respondents have implemented the interim order of the Hon'ble Tribunal dated 10-04-2002 and posted the applicant as CCIT(OSD), Guwahati w.e.f. 10-04-2002. Consequently, full pay and allowances of the applicant have been released for the month of November, 2002 and his arrear bill w.e.f. 10-04-2002 has also been cleared. The delay, if any, has been caused due to procedural formalities and for this delay the respondents tender unqualified apology before this Hon'ble Tribunal.

Para 5 : The allegations and averments made by the applicant are denied as baseless. The Respondents have full regard and respect for the Hon'ble Tribunal and have fully implemented its directions.

Para 6: Vide his letter dated 24-12-2002, the applicant has claimed that he continues to be the CCIT, Guwahati. As stated earlier, the applicant has misunderstood the situation that arose immediately after the suspension and the subsequent events. As a matter of fact, the order of suspension was immediately followed by another order dated 19-02-2002 by which Shri E. J. Mawlong, CCIT, Shillong was directed to hold the Additional Charge of the CCIT, Guwahati. After retirement of Shri E. J. Mawlong, CCIT, Guwahati on 28-02-2002 the charge of this post was taken over by Shri D. Chakraborti, as CCIT, Guwahati by an order of the Board dated 28-02-2002. Therefore, the post of CCIT, Guwahati was never left vacant after suspension of Shri J.K. Goyal, CCIT on 18-02-2002. Vide order dated 23-12-2002, the Hon'ble Tribunal suspended the order dated 18-11-2002 posting the applicant as CCIT(OSD), Guwahati, subsequent to which, in compliance with the order of the Hon'ble Tribunal dated 23-12-2002, the applicant has now been posted as Chief Commissioner of Income-tax, Jalpaiguri vide order dated 14-02-2003(Annexure RC-I) after approval of the Competent Authority. The applicant did not have the charge of CCIT, Guwahati at any point of time subsequent to his suspension and

therefore, the presumption that the applicant continued to be the CCIT, Guwahati is not correct.

Para 7: As stated above, the applicant's claim that he is entitled to function as CCIT, Guwahati is not correct as stated above.

Para 8: The allegations of the applicant are strongly denied. The letter dated 26-12-2002 has been issued only because of the time taken for communication of order of this Hon'ble Tribunal dated 23-12-2002. The respondents have full respect and regard for the directions of the Hon'ble Tribunal and have already complied with its directions in order dated 23.12.2002 by posting applicant as CCIT, Jalpaiguri vide order dated 14-02-2003 (Annexure RC-1).

Para 9: In view of the facts already stated above the allegations and averments of the applicant are denied.

Para 10: In view of the facts stated above it is clear that the respondents have full regard and respect for the Hon'ble Tribunal and have duly implemented all its directions. Any delay in the same has been due to the procedural formalities for which the respondents offer unconditional and unqualified apology.

In the premises as aforesaid it is most humbly and respectfully submitted before the Hon'ble Tribunal that the allegations by the applicant are not correct and on certain points are misleading, being far from truth. The respondents/alleged contemnors fervently pray and urge upon the Hon'ble Tribunal to drop the Contempt Proceedings against them.

AND for this act of kindness the respondents/alleged contemnors as are duty bound shall ever pray.

Verification.....

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

I, Dilip Kumar Das, working as Chief Commissioner of Income-tax, Shillong, do hereby solemnly affirm and state as follows:-

1. That, I am fully acquainted with the facts and circumstances of the case.

2. That, the statements made in this Verification and in Paragraphs 1 to 6, 8, 9, 10 of the accompanying Written Statement of Defence are true to my knowledge, those made in Paragraphs 7 are being matter of records of the case, are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

I sign this Verification on this 13th day of February, 2003 at Guwahati.

Dilip Kumar Das
DEPONENT

Annexure - RC-1
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F.No.A.32011/20/2001-Ad.VI
Government of India
Ministry of Finance & Company Affairs
Department of Revenue
(Central Board of Direct Taxes)


- 34 -

New Delhi, the 14th February, 2003.

ORDER NO.15 of 2003


The following postings and transfers in the grade of Chief Commissioners/Directors General of Income Tax are hereby ordered with immediate effect and until further orders: -

| SL. No. | NAME OF THE OFFICER | CODE | FROM | TO | REMARKS |
|---------|-------------------------|-------|---------------------|-----------------------|--|
| 1. | SHRI J.K. GOYAL | 69002 | CCIT(OSD), GUWAHATI | CCIT, JALPAIGURI | VACANT POST |
| 2. | SHRI U.P. SINGH | 69024 | CCIT-II, AHMEDABAD | DCIT(INV.), AHMEDABAD | VACANT POST |
| 3. | SHRI DIBAKAR CHATTERJEE | 69031 | CCIT-XI, KOLKATA | CCIT, GUWAHATI | VACANT POST |
| 4. | SMT. RASHMI CHOUDHARY | 70011 | CCIT, LUCKNOW | CCIT-XII, DELHI | VICE SHRI A.S. NARANG TRANSFERRED |
| 5. | SHRI P.K. MISHRA | 70017 | CCIT, SHIMLA | CCIT, BHUBANESHWAR | VACANT POST |
| 6. | SHRI A.S. NARANG | 68005 | CCIT-XII, DELHI | CCIT-II, DELHI | VACANT POST |
| 7. | SHRI B.M. SINGH | 70006 | CCIT-V, MUMBAI | CCIT, SHIMLA | VICE SHRI P.K. MISHRA TRANSFERRED |
| 8. | SHRI A.K. LUTHRA | 70019 | CCIT-X, KOLKATA | CCIT, DEHRADUN | VACANT POST |
| 9. | SHRI P.N. PATHAK | 69004 | DCIT(INV.), LUCKNOW | CCIT, LUCKNOW | VICE SMT. RASHMI CHOUDHARY TRANSFERRED |


(KANWAR RAJINDER SINGH)
 Director to the Government of India

Copy to:-

1. Officers concerned.
2. All Chief Commissioners/Directors General of Income Tax.
3. Principal Chief Controller of Accounts, New Delhi.
4. Zonal Accounts Officer, CBDT, C/o CCIT concerned.
5. DIT(IT)/DIT(RSP&PR)/DIT(Audit)/DIT(Vlg.)/DIT(Systems)/DIT(O&MS)/ DIT(Spl.Inv.)
6. PSs to FCAM/ MOS(R)/ Secy.(R)/ AS(R)/ Chairman, CBDT/ Members, CBDT/JS(Admin.) CBDT/JS(R)/DS(Hqrs/Admin.)/Directors, CBDT/DSs CBDT.
7. US(Hqrs/Per)/ Pers.DT/US (Ad.VI(A)/ Ad.VII/ ITCC/ OT/ Computer Cell/ Hindi Section.


(KANWAR RAJINDER SINGH)
 Director to the Government of India