

FORM NO. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App. / Misc Petn / Cont. Petn / Rev. App. 15/04.....

In O.A. 59/02.....

Name of the Applicant(s) ... S. B. Hognikar.....

Name of the Respondent(s) U. V. T. 901.....

Advocate for the Applicant ... T. P. P.

Counsel for the Railway / CGSC

ORDER OF THE TRIBUNAL

OFFICE NOTE

DATE

This Contempt proceeding has been filed by the petitioner praying for wilful disobedience of the order dated 7.8.2003 passed by this Hon'ble Tribunal in O.A. 59/2002.

1. Laid before the Hon'ble Court for further orders.

12/5/04

Section officer

AB

Notice & order sent mb to D/Section for issuing to contemners nos 1, 2 & 3 by regd. with A/D post.

(120) 15/04 A/D card return from R. No. 2, 3. (6)

Heard the applicant in person. It is stated that the order passed by this Tribunal dated 7.8.2003, passed in O.A. No. 59/2002 has not been complied with despite representations made before the Disciplinary Authority / Appellate Authority dated 16.8.2003 and 24.3.2004 (Annexures - P2 & P5).

Issue notice to show cause as to why contempt proceeding shall not be drawn up against the alleged contemners. Personal appearance of the contemners dispensed with for the time being.

List on 16.6.2004 for orders.

I.C. Ballekar
Member (A)

Jai
Member (J)

(20) 20/5/04 A/D card return from R. No. 2, 3. (6)

3115

posted A/D card
return from
respondent no. 1.

16/6/04

Rec'd
Prep
17/6/04

order dated 16/6/04,
sent to D/Section
for issuing to
~~respondent~~ applicant
by regd. with A/D
post.

17/6/04

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

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

Mr B.C.Pathak, learned counsel for
the alleged contemners submits that the
order of the Tribunal has since been
complied with but as there was a delay
in complying with the order he seeks
four weeks time to explain the delay.
The applicant is not present today.
Four weeks time allowed to file reply.
List ~~on~~ before the next Division
Bench for order.

Registry is directed to send a copy
of this order to the applicant so that
he can be present on that day.

K.V.Prahladan
Member (A)

B
Member (J)

pg

20.7.04

Panned over for the day.
Left on 21.7.04.

By order

20.7.2004 Present: Hon'ble Shri K.V. Sachidanandan,
Judicial Member
Hon'ble Shri K.V. Prahladan,
Administrative Member

Heard the applicant in person
and also Mr B.C. Pathak, learned Addl.
C.G.S.C. Orders passed separately.

K.V.Prahladan
Member (A)

Member (J)

nkm

16.8.04
Copy of the order
has been sent to the
Court for issue to the
applicant by post.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No.15 of 2004
(In O.A.No.59/2002)

Date of decision: This the 20th day of July 2004

The Hon'ble Shri K.V. Sachidanandan, Judicial Member

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

Shri S.B. Hazarika
C.I. Divisional Office (U/S)
Kohima, Nagaland.

.....Petitioner

The petitioner appears in person

- versus -

1. The Union of India, represented by
The Secretary,
Department of Posts,
Ministry of Communication,
New Delhi.

2. Shri Rakesh Kumar
Director of Postal Services
Nagaland, Kohima.

3. Shri A. Ghosh Dastedar
Chief Postmaster General
N.E. Circle, Shillong.

.....Respondents

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

.....

O R D E R (ORAL)

K.V. SACHIDANANDAN, JUDICIAL MEMBER

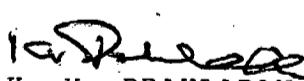
The Contempt Petition has been filed by the applicant for non-implementation of the court order dated 7.8.2003, but when the matter came up for hearing, learned counsel for the respondents and the applicant in person submitted that the order of the Tribunal has been complied with. The grievance of the applicant is that there was delay in compliance of the order which has put him to great difficulties and hardship for which he has to be compensated. The learned counsel for the respondents filed the written statement and also argued that the delay has been caused since there has been a change in the

Disciplinary Authority, the earlier authority having been transferred and a new incumbent was posted who had to study the entire matter afresh and then to pass the final order. That apart, the most important aspect pointed out is that the Disciplinary Authority was also busy with the intervening added duties of Postal Network and Mail arrangement during the Lok Sabha Election in addition to his compulsory duties of inspection tours outside the headquarter. Therefore, the delay has been caused.

2. In the affidavit the respondent 2 himself filed the affidavit narrating the entire facts and swore that there was no wilful intentions in disobeying the order and that he had the highest regard for the judicial forum and the judgment/order passed by this Tribunal and he also tendered his apology.

3. Accepting the reply affidavit, we are convinced that the delay has been genuinely caused and therefore nothing stands. Since the order of the Tribunal has been fully implemented, we are of the opinion that the Contempt Petition is to be closed. Accordingly the Contempt Petition is closed. Notice, if any, discharged.

No order as to costs.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(K. V. SACHIDANANDAN)
JUDICIAL MEMBER

P. D. C. S. & Staff
C. O. M. S. C. P.
Contempt Master

Rakesh Kumar
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

C.P. No. 15/2004
(In O.A. No. 59/2002)

Shri S B Hazarika

...Petitioner

-versus-

Union of India & others

...Respondents

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

I, Shri Rakesh Kumar, son of Late S P Verma, aged about 38 years, resident of Gulzar Bagh, Patna, District- Patna, Bihar, at present working as the Director of Postal Services, Nagaland Division, Kohima, do hereby solemnly affirm and state as follows:

1. That a copy of the Contempt Petition No. 15/2004 (referred to as the "petition") has been served on me. I have gone through the same and understood the contents thereof.
2. That the statements made in the said petition, which are not specifically admitted, are here hereby denied by me.

5

3. That before traversing the various paragraphs of the petition, I give a brief resume to the facts and the circumstances of the case and the present position of the matter as hereunder: •

a) That the present petitioner filed the above-noted O.A. No. 59/2002 in this Hon'ble Tribunal. The Hon'ble Tribunal after hearing both the sides passed the final order on 7.8.2003 and the copy was ready by 14.8.2003 and the same was submitted by the applicant vide his letter dated 16.8.2003 through speed post. By the said order dated 7.8.2003, this Hon'ble Tribunal directed the respondents to pass appropriate order in terms of Sub-Rule 4 of Rule 15 of the CCS(CCA) Rules, 1965 for imposition of appropriate penalty as per law. By the said order, the Hon'ble CAT set aside the Charge No.1 and also directed to impose appropriate penalty in respect of Charge No.2 as per law. By the said order the appellate order was also set-aside to the said extent.

b) That on receipt of the said order dated 7.8.2003, the local authority at Kohima took up the matter with the higher authorities at Shillong and elsewhere for necessary instruction as to whether the order of the Hon'ble Tribunal should be complied with and implemented or to go to the higher court for appeal/judicial review of the order. The higher authority took some time in examining the pros and cons of the matter and legal implications and thereafter passed the speaking order on 24.5.2004 and imposed the penalty of reduction of pay by three stages from Rs.6650/- to Rs.6125/- in the time scale of pay of Rs.5500-175-9000/- for a period of three years w.e.f. 1.6.2004 with cumulative effect. By the said order it was also fixed that the

applicant shall not earn any increment of pay during the period of reduction and that on expiry and that on expiry of this period the reduction will have the effect of postponing his future increments of pay.

The copy of the order-dated 24.5.2004 is annexed as **Annexure A**.

- c) That the answering respondent states that there has been some delay in passing the order. Such delay is unavoidable and beyond the control of the respondents. The delay caused is unintentional and very much casual in nature and mostly taken in exhausting procedure and passing the things through departmental system and different hierarchy. This is also attributable for the following facts:
 - i) The subject matter of the case of the applicant is complicated one and it took sufficient time for the authority to examine the same once again with care.
 - ii) The disciplinary authority is loaded with huge day-to-day routine works as the only authority responsible for all such work leaving little time for work for such other matter like departmental proceeding etc.
 - iii) The delay is also caused for the fact that there has been change of the disciplinary authority, the earlier authority having been transferred and a new incumbent was posted who had to study the entire matter afresh and then to pass the final order.

(iv) The officer who was dealing with the matter went on long leave and that post is still lying vacant. The acute shortage of staff in the office is another added reason for the delay.

(v) The delay is caused for the fact that the disciplinary authority was also busy with the intervening added duties of Postal Network and Mail arrangement during the Lok Sabha Election in addition to his compulsory duties of inspection tours outside the Headquarter.

(vi) The other cause of delay is also for the intervening annual closing of Accounts of the department during the month of March and April, 2004.

4. That with regard to the statements made in para 1.1 to 1.12 of the petition, I reassert and reiterate the foregoing statements made in this affidavit and deny the correctness of the said statements as clarified and explained hereinabove.

5. That with regard to the statements made in para 2.1 to 2.4 including the prayer portion of the petition including the prayer portion of the petition, I once again reassert the foregoing statements and say that it is not a case of disobedience or non-compliance of the court's order within the scope of Contempt of Courts Act, 1971.

The delay caused in the process of implementing order of the Hon'ble Tribunal has been explained and it is shown that the delay is very much casual and unintentional and bonafide beyond the control of the authority. The Hon'ble Supreme Court in "Kapil

Deo Prasad Sah & others -vs- State of Bihar & others" as reported in (1999) 7 SCC 569, has held and laid down law that for holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been willful disobedience of the judgment or order of the court. Willful would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of court's order must allege deliberate or contumacious disobedience of the court's order. But in the instant case, the respondents have not done anything deliberately or contumaciously as required by law for contempt of court. Even if there is any non-compliance, that is only a casual one and bonafide action of the respondents in exhausting the available legal remedies to them as a matter of right. Hence, such casual and bonafide action cannot be deliberate or contumacious as required by law. Therefore, I respectfully submit that the petition is liable to be dismissed with cost.

6. That under the above facts and circumstances of the case and the settled provisions of law, I am not liable for contempt of court as alleged by the petitioner. However, I respectfully submit that I have the highest regard to the judicial forum and the judgment/ order passed by it. I also know that as a responsible officer of the Govt. of India I am bound to obey any judgment/ order or direction of any court or judicial authority.

Under the facts and circumstances of the case and the provisions of law, and after hearing the parties, the Contempt Petition may be dismissed/ closed.

AFFIDAVIT

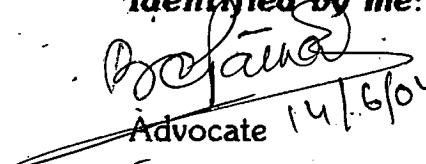
I, Rakesh Kumar....., son of Late Shri S.P. Verma aged about 38. years, resident of ...Gulzarbagh.....Patna..... District- Patna... (Assam) do hereby solemnly affirm and state as follows:

1. That at present I am working as the Director, Postal Services ^{Kohima} Nagaland division in the Office of and I am taking steps and looking after the court cases and hence, I am fully acquainted with the facts and circumstances of the case. I am implicated as respondent no. 2
2. That the statements made in para...1, 2, and 4..... of the petition are true to my knowledge and belief, those made in para.....—3—..... being matter of records, are true to my information derived therefrom and the rest are my humble submission and based on legal advice. I have not suppressed any material fact.

And I sign this affidavit on this 14th day of ~~July~~, 2004 at Guwahati.

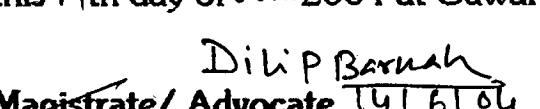

(Rakesh Kumar)

Identified by me:


B.C. Pathak
Advocate 14/6/04

DEONENT

Solemnly affirm and signed before me by the deponent who is identified by Sri B.C. PATHAK.....Advocate on this 14th day of June 2004 at Guwahati.


Dilip Barnah
Magistrate/ Advocate 14/6/04

DEPARTMENT OF POSTS : INDIA

OFFICE OF THE DIRECTOR POSTAL SERVICES
NAGALAND : KOHIMA - 797 001

No.Rule 14/S.B.Hazarika

Dated at Kohima the 24.05.04

CAT, Guwahati Bench in its judgement dated 07.08.2003 in OA No. 59/2002 has directed the disciplinary authority for appropriate order in terms of sub-rule 4 of Rule 15 for imposition of appropriate penalty as per law. It has specifically set aside the findings of disciplinary authority on charge No.1 dtd. 08.06.01 and also the orders of appellate order to the extent indicated above.

A) Vide office memo No. Diary/SDIPOs-Ukhrul/97 Dtd.19.02.98 of DPS, Manipur Imphal, it was proposed to hold an inquiry under Rule 14 of the CCS (CCA) Rules 1965 against Shri S.B.Hazarika, the then SDIPOs, Ukhrul Dn., Ukhrul. A statement of article of Charges and a statement of imputation of misconduct and mis-behaviour in support of article of charges and a list of documents by which and a list of witness by whom the article of charges were proposed to be sustained were also enclosed with the said memo.

2. Shri S.B.Hazarika was given an opportunity to submit within 10 days of the receipt of the memo a written statement of defence and to state whether he desires to be heard in person.

Statement of articles of charges framed against Shri S.B.Hazarika the then SDIPOs Ukhrul-Dn., Ukhrul, is follows

ARTICLE - I

Shri S.B.Hazarika, while working as SDIPOs Ukhrul Sub-Dn, during the period from 29-01-96 (A/N) to 31-01-98, he had shown to have inspected as many as 54 (fifty four) Post Offices in the year 1996, but had not submitted a copy of the inspection remarks in respect of forty five Post Offices, to the Supdt. of Post Offices, Manipur-Dn. Imphal. By his above acts, the said Shri S.B.Hazarika violated the provision of Rule-300 (2) of P & t Man. Vol VIII read with Dept. of Posts/New Delhi letter No. 17-3/92-Insprn. Dated 02-07-1992, and Rule-3 (1) (ii) of CCS (Conduct) Rules, 1964.

ARTICLE - II

Shri S.B.Hazarika, while working as SDIPOs ukhrul Sub Dn., during the period from 29-01-96 to 31-01-98, he had shown to have inspected the following EDBOs in Ukhrul Sub-Dn, on the date noted against each.

<u>Name of the EDBO</u>	<u>Date of inspn. shown by</u>
	<u>Shri S.B.Hazarika</u>
1. Chingjarai EDBO	25-02-1997
2. Sirarakhang EDBO	29-03-1997
3. Kamang Kakching EDBO	19-05-1997
4. Shangshak EDBO	10-06-1997

5. Nungshong EDBO
6. Pushing EDBO

15-07-1997
20-07-1997

But in fact, the said Shri S.B.Hazarika did not at all inspect the above mentioned EDBO either on the date noted against each or on any other date in the year 1997. Therefore, by his above acts, the said Shri S.B.Hazarika, violated the provisions of Rule 300 (1) of the P & T Man. Vol. VIII, Rule-3 (1) (i) of the CCS (Conduct) Rules, 1964 and Rule-3 (1) (iii) of the CCS (Conduct) Rules, 1964.

3. Shri Sunil Das, the then Supdt. of Post Offices, Agartala Division, was appointed as the inquiry officer to inquire into the charges framed against Shri S.B.Hazarika. After adducing both oral and documentary evidences, the inquiry officer submitted his enquiry report vide his letter No. SP-1/N9 dtd.27.09.2000.

4. The disciplinary authority, the then Director, Postal Services, Nagaland Dn., Shri F.P.Solo, after going carefully through the chargesheet, deposition of state witnesses, written briefs of the presenting officer (P.O) and the charged official (CO), the inquiry proceedings, report of the inquiry officer and the representation of the CO against the inquiry report, accepted the findings of inquiry officer in respect of the Article II of the charges but disagreed with the I.O in respect of I.Os findings on Article I of charges due to various reasons recorded in his punishment order dated 08.06.2001. CAT, Guwahati bench in it's judgement dtd.19.02.98 has specifically stated the Article -I is not proved and unsustainable in law and set aside the orders of disciplinary authority and appellate authority to that extent.

5. That leaves Article No.-II only for consideration. I.O in his inquiry report dated 29.09.2000 has concluded that charges framed under Article -II is partially proved to the extent that out of 6 GDSBO's (earlier known as EDBO) alleged not to have been inspected, non-inspection of three B.O's, namely Kamang Kanching, Pushing and Shangshak B.O's could only be proved.

The I.O has based his findings of non-inspection of 3 out of 6 GDSBO's alleged not to have been inspected on categorical oral and written statement of Shri L.Ito Singh, GDSBPM, Kamang Kakching B.O., Shri. Yarngai, GDSBPM, Pushing B.O and Shri V.S. Vareise, GDSBPM, Shangshak B.O that their offices were not inspected till 25.09.97, 09.1097 and Sept. 97 respectively. C.O has pleaded that the deposition of the three GDSBPM's suffered from shortcomings of (a) The original letter stated to be written by them to the SPO's, Imphal were not shown to them at the time of deposition. (b) The evidence are not conclusive. The C.O further added that inspection of a B.O cannot be confirmed only on the basis of oral statement of a BPM who does not constitute the establishment. There are other staff and equally relevant material. The I.O did not agree with the averments of the C.Os as photocopies of the letters written by 3 GDSBPM's of Kamang Kakching B.O, Pushing B.O and Shangshak B.O were shown to them at the time of deposition made before the I.O. and they admitted that these documents were written by them and sent by them to SPO's concerned. The I.O has further stated in his inquiry report that these evidences can not be stated to be non-conclusive simply on the ground that no other staff of these offices were produced as witness. I.O further held that GDSBPM's being in-charge of the respective B.Os are mainly concerned with the inspection and without them their offices can not be inspected while other staff of the establishment may or may not be present. He further stated that unless the veracity of the deposition of a witness is in question, no collaborative evidence is necessary. The other alleged shortcomings pointed out by C.O has been discussed in detail by the I.O in his inquiry report dtd.27.09.2000 and most of these were found to be extraneous and not having a bearing on the case.

(3)

6. After carefully going through the various records relevant to the case like the chargesheet, deposition made by state witnesses, written briefs of the P.O and the C.O, the inquiry proceedings, report of the inquiry officer, representation of the C.O against the enquiry report, the punishment order passed by my predecessor dtd.08.06.01 and the CAT judgement dtd.07.08.2003 in OA No.59/2002, I am of considered view that 3 B.Os namely Kamang Kakching B.O, Pushing B.O, Shangshak B.O were not inspected by the C.O on the dates shown by the C.O as reflected in his fortnightly diaries. The fact of non-inspection of 3 GDSBO's could not be established as GDSBPM's of Changaraj B.O, Sirarakhang B.O, Nungshang B.O could not attend the hearing on account of one reason or another. The charges of non-inspection and showing them as inspected falsely is a serious omission. One of the prime duties and responsibilities of an I.P.O is to inspect the Post Offices allotted to him and submit the inspection reports in time. But, Shri Hazarika failed to carry out this major duties and responsibilities of an I.P.O, while working as SDI(P), Ukhru sub-division between 29.01.96 to 31.01.98. Further, he tried to mislead the divisional office, Imphal that these three (3) offices were already inspected on different dates as mentioned in the article of Charges II (Para - 2). Such type of irresponsible behaviour and conduct is not expected out from a responsible officials of the department like that of an I.P.O. After going through the case very carefully and considering all relevant fact, I am of considered view that the following punishment should be imposed on Shri S.B.Hazarika so that this acts as a deterrence for his future work behaviour and conduct. It is hoped that he will take the punishment in the right spirit and try to transform himself in to a responsible and dedicated official of this department.

ORDER

Therefore, I, Shri. Rakesh Kumar, 'Director of Postal Services', Nagaland Division, Kohima and the disciplinary authority hereby order that the pay of Shri. S.B.Hazarika, the then SDIPO's Ukhru Sub-Dn., now posted as C.I, divisional office, Kohima (U/S) be reduced by three stages from Rs.6650.00/- to Rs.6125.00/- in the time scale of pay of Rs.5500-175-9000/- for a period of three years w.e.f 01.06.2004 with cumulative effect. It is further directed that Shri. S.B.Hazarika, C.I divisional office, Kohima, presently under suspension will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.

(Rakesh Kumar)

Director Of Postal Services.

Nagaland : Kohima - 797001.

Copy to :-

- 1) The CPMG (Inv.), N.E Circle for information.
- 2) The Postmaster, Kohima H.O for information and necessary action.
- 3) The DA(P), Kolkata (Through the Postmaster, Kohima H.O)
- 4) The Director of Postal Services, Manipur, Imphal for information.
- 5) Shri. S.B.Hazarika, C.I, divisional Office, Kohima (Presently under suspension)
- 6) PF of the official.
- 7) CR of the official
- 8) Office Copy.

Central Administrative Tribunal
Guwahati Bench

12 MAY 2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI-5

C.P. No. 15/04 in C.A. 59/02

CONTEMPT PETITION

U/S 23 OF THE CONTEMPT OF COURTS ACT, 1971 READ WITH SECTION
17 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985 AND FURTHER
READ WITH RULE 3 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CONTEMPT OF COURTS) RULES, 1992.

TITLE

SRI S. B. HAZARIKA

VS

THE UNION OF INDIA & OTHERS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI - 5.

14
Bhaktan
(Sant Bhaktan
Hazari)

Contempt petition (Civil) No/2004

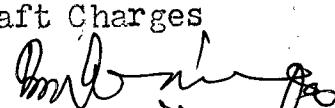
Original case No. O.A. 59 of 2002
(decided on 7.8.2003)

Title : Sri S. B. HAZARIKA

- VS -

THE UNION OF INDIA & OTHERS

INDEX

<u>Sl./No.</u>	<u>No. of the document</u>	<u>Description of documents.</u>	<u>page No.</u>
1.		Contempt petition	1 to 11
2.	Annexure P-1	CAT's order dtd. 7.8.03	12 to 20
3.	Annexure P-2	Representation to the disciplinary authority dated 16.8.03	21 to 22 XX XX
4.	" P-3	Telegrame to the disci- plinary authority dtd. 17.11.03	23
5.	" P-4	Representation dtd.	24
6.	" P-4	26.2.04 to the D/A <i>Postal Receipt</i>	24A
6.	" P-5	Representation to C.P.M.G. Shillong dtd. 24.3.04	25 to 27
7.	" P-6	Telegram to the C.P.M.G. Shillong dtd. 19.4.04	28
8.	" P-7	Govt of India's order dated 13.8.85	29 to 31
9.	" P-8	Govt of India's order dtd. 14.8.87	32
10.	" P-9	Draft Charges	33
Place : CAT, Guwahati			
Date : 11/5/04		Signature of petitioner	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALI BRANCH :: GUWAHATI-5

Shankar Bhakar Hazarika
15
C. B. Bhakar

Contempt petition (Civil) No. 15 of 2004

Original Application No. 59 of 2002

(Decided on 7.8.2003)

Sri S.B. Hazarika
C.I. Divisional Office (U/S)
Kohima, Nagaland
797001

..... Petitioner

(By the petitioner in person)

- VS -

1. Union of India

Represented by
The Secretary, Department of Posts,
Ministry of Communication
Dak Bhavan, Samsad Marg
New Delhi-110001.

2. Sri Rakesh Kumar ✓
Director of Postal Services,
Nagaland, Kohima
797001

3. Sri A. Ghosh Dastedar
Chief Postmaster General
N.E. Circle, Shillong
793001

..... Respondents.

Contd.....2

16
Bench: Mr. Justice

IN the matter of a petition under section 23 of the contempt of Courts, Act 1971 (Act 70 of 1971) read with section 17 of the Central Administrative Tribunal Act, 1985 (Act 13 of 1985) and further read with Rule 3 of the Central Administrative Tribunal (Contempt of Court) Rules, 1992 for initiating action for wilful disabidience of the order of the Hon'ble Central Administrative Tribunal, Guwahati Bench vide orders dtd. 7th August 2003 in O.A. No. 59 of 2002.

The petitioner most humbly and respectfully begs to state that the contempt petition has arisen in the following facts and circumstances :-

1.1. That, while the petitioner was working as Inspector of post office's (Complaints) commonly known as C.I. in the Divisional office, Kohima ; the Resp. No. 2 imposed a~~s~~ penalty of reduction of pay on him by six stages from Rs 6,550/- to Rs 5,500/- (Minimum stage) with cumulative effect for 3 years w.e.f. 1.6.2001 with a further direction that the petitioner shall not earn increments of pay during the period of the penalty vide order No. Rule 14 S.B. Hazarika dtd. 8.6.01 as a result of inquiry under Rule 14 of the CCS (CCA) Rules, 1965.

1.2 That, the petitioner preferred an appeal against the order of penalty but the appellate authority rejected the appeal and upheld the order of penalty passed by the Disciplinary Authority (Resp. No. 2) Vide his appellate order No. Staff/109-14/2001 dtd. 29.1.2002.

1.3. That, the petitioner, being not satisfied with the appellate orders filed on application u/s 19 of the Central Administrative Tribunal Act 1985 before the Guwahati Bench of Central Administrative Tribunal assailing the legality and validity of the punishment order as well as of the appellate orders on the ground of arbitrariness and discrimination vide O.A. No. 59 of 2002.

1.4 That, the Division Bench of the Hon'ble Tribunal, after hearing the case, partially allowed the application by setting aside the impugned order of penalty and directed the Disciplinary Authority "to impose appropriate penalty as per Law in the light of the findings in respect of charge No. 2" "Keeping in mind the observations made" by the Tribunal. The appellate order was also set aside to that extent. However, no time limit was mentioned by the Hon'ble Tribunal in the said dated 7.8.2003.

Ans. to Ques. 2

A copy of the Tribunal's order dated 7.8.2003 is annexed herewith as Annexure P-1.

1.5. That, subsequently the petitioner forwarded a copy of the Tribunal's order to the Director of Postal Service, Nagaland, Kohima (Resp. No. 2) on 16.8.03 alongwith a covering representation to comply with the order which was received by the office of the Resp. No. 2 in time.

A copy of the representation dtd. 16.8.03 is annexed herewith as Annexure P-2.

1.6. That, when the Resp. No. 2 was silent on implementation of the CAT'S order even after expiry of 90 days the petitioner again made a telegraphic prayer to him to implement the order vide Telegram No. A-24 dated 17.11.03 (Receipt No. 77583) ; but to no response at all.

A copy of the Telegram dated 17.11.03 is annexed herewith as Annexure P-3.

1.7. That, he petitioner again made another representation on 26.2.04 to the Resp. No. 2 for complying with the order as the maximum period of 6 months allowed by the Govt. of India's order for complying with the CAT's orders expired.

19
Bablu

A copy of the representation dated 26th February 2004 is annexed herewith as Annexure P-4.

1.8 That, despite the aforesaid correspondences by the petitioner the Resp. No. 2 did not comply with the CAT's order. Further the petitioner made a representation on 24.3.04 to the Resp. No. 3 (Controlling authority of Resp. No. 2) for interfering into the matter, so that the order of the Hon'ble CAT, Guwahati may be complied with; but till date, nothing has been asserted by the respondent for complying with the Hon'ble Tribunal order.

A copy of the representation dated 24.3.04 is annexed herewith as annexure P-5.

1.9 That, when the said representation to Resp. No. 3 dtd. 24.3.04 also did not yield any result from Resp. No. 2, the petitioner again made a telegraphic prayer to the Resp. No. 3 as a reminder on 19.4.04 vide Telegram No. A-2 dated 19.4.04 (Rept No. 79457) but that also failed to move the Resp. No. 2

A copy of the Telegram No. A-24 dated 19.4.04 is annexed as annexure P-6.

Contd.....6

1.10 That, the order of the Tribunal dtd. 7.8.03 has neither been appealed against nor any review or revision petition has been filed against by the respondents of O.A 59 of 2002 till date.

1.11 That, the petitioner having turned all the stones have got tired of approaching the Resp. No. 2 and his controlling authority (Resp. No. 3) in getting the CAT's order implemented. But the respondents have paid no heed to the representations and requests of the petitioner and thereby disobeyed the Hon'ble Tribunal's by every means,

1.12. That, the petitioner is still under the perils of the impugned order of the Resp. No. 2 and the petitioner reasonably apprehends that the Resp. No. 2 who is a desperate man will never comply with the Hon'ble CAT's order unless his wilful and deliberate disobedience to comply with the CAT's order is put down by directing him to implement the order and to show cause of his negligence and disobedience.

GROUND

2.1 That, the para 13 of the Govt. of India Dept. of Per. & Trg. O.M. No. 11019/85 AT dtd. 13.8.1985 provides as follows :-

"13. The orders of the Tribunal shall be final and binding on both the parties. The order of the Tribunal should be complied with within the time limit prescribed in the order or within six months of the receipt of the order where no time-limit is indicated in the order".

Copy of the above orders dtd.

13.8.1985 is annexed herewith

as Annexure P-7.

2.2 That, the para 2 of the G.I. Dept of Per. & Trg. O.M. No. A-11019/69/87 AT dated 14th August 1987 provides as follows :-

"2. It is once again brought to the notice of the Ministries/Departments of Government of India that the judgements of the Central Administrative Tribunals would be complied with as promptly as possible within a minimum period of time. The orders of the Tribunal should be implemented within the time limit prescribed by the Tribunal itself or within six months of receipt of the order where no such time limit is indicated by the Tribunal."

Contd.....8

A copy of the above order is annexed herewith as Annexure P-8

2.3 That, by the above act of deliberate failure to carry out the above orders of the Govt. on the part of Resp. No. 2, the relation between the "master" and the "servant" has collapsed which results in non compliance of court's order and constitutes the commission of an offence of contempt of court under section 23 of the contempt of Court Act 1971.

2.4 That, this is an act of wilful disobedience on the part of Resp. No. 2 as it is not a casual, accidental, bonafide or unintentional act or genuine inability to comply with terms of the order which will be excluded from the conception of wilful disobedience. Even negligence and carelessness can amount to wilful disobedience particularly when the attention of the person is drawn to the Court's order. Disobedience of Court's orders strikes at the very root of the rule of law on which the system of Governance is based in our country. Punishment for contempt of court is necessary for the maintenance of effective legal system and to prevent perversion of the course of justice.

Case law relied upon supreme Court Case of
Kapildeo Prasad Sah VS State of Bihar (1999)
7 Sec 569 ; 1999 SCC (L & S) 1357 (2361)
Contd.....9

NATURE OF THE ORDERS SOUGHT
FROM THE TRIBUNAL

3. That, the petitioner humbly prays for the following orders from the Tribunal :-

- (1) an order directing the compliance of the Tribunal's order dated 7.8.2003 within a week of the receipt of orders on the contempt petition ;
- (2) an order punishing the respondentsXXXX under contempt of courts Act, 1971 for wilful disobedience of the Hon'ble CAT's order dated 7.8.2003.
- (3) and an order allowing the petitioner the cost of the petition as is considered reasonable by the Hon'ble Tribunal.

DRAFT CHARGES

4. That, the draft charges against the Respondents are furnished in a separate sheet attached to this petition as Annexer P-9.

PRAYER

5. That, the application is made bonafide and for the end of justice;

21
Om Bhikhu

In the premises it is most humbly
prayed that this petition may be
admitted and notice may be issued
to the respondents and upon hearing,
further be pleased to pass nece-
ssary orders as prayed for ;

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

Contd..... Affidavit



AFFIDAVIT

I, Shri Shanti Bhushan Hazarika S/O Late Khargeswar Hazarika aged about 54 years, by profession- C.I., Divisional Office, Kohima (U/S) and resident of Village Bhaluckmari, P.O. Goshai Bari, P.S. Nagaon (Sadar) District Nagaon, Assam do hereby solemnly affirm and declare as follows :-

1. That, I am the petitioner in the instant petition and as such I am acquainted with the facts and circumstances of the case and hence competent to swear this affidavit.
2. That, the statements made in this affidavit and in paragraphs 1.15 1.12 are true to my knowledge, those made in paras 2.1 - 2.4 are matters ~~as~~ of records and are true to my informations and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this affidavit on this 11th day of May 2004 at Guwahati.

Identified by me

H. S. T. S.
H. S. T. S.

Advocate, Guwahati.

Shanti Bhushan Hazarika
DEPONENT

Solemnly affirm and declare before me
by the deponent, who is identified by
S. N. Hazarika, on the 11th day of May,
2004 at Guwahati.

MAGISTRATE

*Divisional Judicial Magistrate
(S) No. 1, Guwahati*

Agencies P.L.

12 SL. No. 125

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 59 of 2002.

Date of Order : This the 7th Day of August, 2003.

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

The Hon'ble Mr N.D.Dayal, Administrative Member.

Shri S.B.Hazarika, Son of Late Khargeswar Hazarika, C.I.(Postal), Divisional Office, Kohima. Applicant

Applicant appeared in person.

- Versus -

1. Union of India, represented by the Director General of Posts, Dak Bhawan, New Delhi-1.
2. The Chief Postmaster General, North Eastern Circle, Shillong-793001.
3. The Director of Postal Services, Manipur, Imphal-795001.
4. The Director of Postal Services, Nagaland, Kohima-797001.
5. The postmaster, Kohima Post Office, Kohima, Nagaland.

By Shri A.K.Choudhuri, Addl.C.G.S.C.

ORDER

CHOWDHURY J.(V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and is directed against the order imposing a penalty of reduction of pay by six stages vide order dated 8.6.2001 passed by the Director of Postal Services which was upheld by the Chief Postmaster General in appeal vide order dated 29.1.2002 finding the following circumstances.

A disciplinary proceeding was initiated against the applicant by memo dated 19.2.98 for the alleged misconduct as cited in the communication. The full text of the article of charges are reproduced below :

W.H.G.
10/5/08

27

Article-I : Shri S.B.Hazarika, while working as SDIPOs Ukhru Sub-Dn, during the period from 29-01-96(A/N) to 31-01-98, he had shown to have inspected as many as 54 (fifty four) Post offices in the year 1996, but had not submitted a copy of the inspection remarks in respect of each of those 54 (fifty four) Post Offices, to the Supdt. of Post Offices, Manipur division, Imphal or any other appropriate authority in place of the Supdt. of Post Offices, Manipur-Dn. Imphal. Similarly the said Sri S.B.Hazarika had shown to have inspected as many as 70 (seventy) Post Offices during the period from 01-01-97 to 31-12-97, but had not submitted a copy of the inspection remarks in respect of 45 (forty five) Post Offices, to the Supdt. of Post Offices, manipur-Dn. Imphal or any other appropriate authority in place of Supdt. of Post Offices, Manipur-Dn. Imphal. By his above acts, the said Sri S.B.Hazarika violated the provision of Rule 300(2) of P&T Man. Vol.VIII read with DEpt. of Posts, New Delhi letter No.17-3/92-Inspn. Dated 02-07-1992 and Rule 3(1)(ii) of CCS (Conduct) Rules 1964.

Article : Shri S.B.Hazarika while working as SDIPOs Ukhru Sub-Dn., during the period from 29-01-96 to 31-01-98, he had shown to have inspected the following EDBOs in Ukhru Sub-Dn. on the date noted against each.

<u>Name of the EDBO</u>	<u>Date of Inspn. shown by Shri S.B.Hazarika</u>
1. Chingjarai EDBO	25-02-1997
2. Sirirakhang EDBO	29-03-1997
3. Kamang Kakching EDBO	19-05-1997
4. Shangshak EDBO	10-06-1997
5. Nungshong EDBO	15-07-1997
6. Pushing EDBO	20-07-1997

But, in fact, the said Sri Hazarika did not at all inspect the above mentioned EDBOs either on the date noted against each or on any other date in the 1997. Therefore, by his above acts, the said Sri S.B.Hazarika, violated the provision of Rule 300(1) of the P&T Man. Vol.VIII, Rule 3(1)(i) of the CCS(Conduct) Rules 1964 and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964."

The applicant submitted his written statement and the disciplinary authority appointed Enquiry Officer to enquire into the charges. The Enquiry Officer on completion of, the enquiry submitted his report exonerating the applicant from the charge No.1, wherein he held that charge No.1 was not proved and Article-II of the charge was partially proved to the extent of three EDBOs out of six may not to have been inspected. A copy of the enquiry report was supplied to

Chd
10/10/98

Appendix B-1

14

26

charged official for submitting his representation. The disciplinary authority disagreed with the findings as regard the charge No. I and found the applicant guilty of the charge No. I by assigning reasons therefor and accepted the findings of the enquiry officer in respect of Article No. II accordingly imposed the punishment of reduction of pay. The applicant preferred an appeal and the appellate authority on consideration of the same rejected the appeal. Hence this application assailing the legality and validity of the order as arbitrary and discriminatory.

2. The respondents contested the application and submitted its written statement denying and disputing the contention raised by the applicant. In the written statement the respondents asserted that applicant was given full opportunities to defend his case and after enquiry and on consideration of the report of the enquiry officer as well as evidence on record the disciplinary authority found the applicant guilty of the charge and imposed the punishment which was upheld by appellate authority. It was asserted that the respondents although acted lawfully and therefore question of interference under Section 19 of the Administrative Tribunals Act does not arise.

3. The applicant conducted the case in person. Referring to the pleadings the applicant contended that he was denied with the procedural safeguard that caused miscarriage of justice. The applicant contended that the enquiry officer fixed the date of enquiry from 15.9.99 to 20.9.99 for evidence vide notice dated 12/23.9.99 with a direction to respondent No. 4 to relieve the applicant. The applicant could not present himself before the enquiry for hearing at Imphal since he was not released by the respondent No. 4 and conducted the enquiry ex-parte even

Affd
10/10/99

29

15

without giving further opportunity to the applicant to cross examine the witness. The enquiry was held on 16.9.99, 17.9.99 and 18.9.99 in the absence of the delinquent officer. Shri Hazarika invited our attention to the records of the proceeding and contended that he was also denied reasonable opportunity to examine witness. He particularly mentioned the name of N.C.Halder but the department failed to produce the said witness, thereby causing grave prejudice to the case of the applicant. Mr A.K.Choudhuri, learned Addl.C.G.S.C referring to the records submitted that the applicant was given full opportunity in the enquiry and the applicant failed to avail of the opportunity. The applicant was aware of the hearing at Imphal but without any just cause avoided to appear before the enquiry authority. Mr Choudhuri also stated that due notice was sent to Sri Halder, the witness for the applicant but he did not appear. It was for the applicant to cause production of his witness and the department was eager to extend all possible help.

4. We have perused the records and on consideration of materials on record it did not appear to us that there was any lapses on the part of the department in providing the procedural safeguard to the applicant. The applicant was made aware of the date of hearing and it was for him to appear in the enquiry proceeding and defend his case along with his witness. The contention of the applicant on that count therefore fails. Shri Hazarika further submitted that the disciplinary authority as well as the appellate authority faltered in the decision making process and acted arbitrarily in imposing the punishment. The applicant next contended that the respondents authority examined four departmental witnesses at Imphal in the absence of the applicant. For the sake of fairness the

Officer
Topper
Pef

Annexure P-1.

Enquiry Officer was duty bound to provide an opportunity to cross examine the witnesses by recalling them. The appellate authority considered the appeal of the applicant but did not find any illegality in relying upon the testimony of these witnesses. Admittedly, the applicant was made aware of the enquiry it was his duty to be present there or otherwise intimate the enquiry officer for postponement of the proceeding but he did not ask for any adjournment. The Enquiry Officer recorded the testimony of the witnesses also those who were present. The applicant even thereafter did not make any request for recalling of those witnesses subsequently when he attended the enquiry. Therefore we do not find any illegality on that count also. Shri Hazarika strenuously urged that the disciplinary authority fell into an obvious error in rejecting the finding of the enquiry officer as regards to the charge No. I. Shri Hazarika contended that the disciplinary authority under the rules was free to disagree with the findings of the enquiry authority on any article of charge and record his own finding on such charge if the evidence on record is sufficient for the purpose. Emphasising on the statutory provision mentioned in 15(2) Shri Hazarika contended that the disciplinary authority while disagreeing must satisfy as to the materials in support of the conclusion on the basis from the materials on record. In other words Shri Hazarika contended that the finding holding the applicant guilty in charge No.1 is contrary to the finding of the Enquiry Officer and is perverse. The disciplinary authority is armed with the power to differ with the finding of the enquiry authority in terms of sub-rule 2 of Rule 15 of the CCS(CCA) Rules. That power is not absolute. The disciplinary authority can act as such only on the basis of the materials

Attn'd
Top Secy
Top Secy

17 Appendix P-1

on record and reach at his own findings if the evidence on record is sufficient for the purpose. The finding and recommendation of the Enquiry Officer are not ipso facto binding on the disciplinary authority. The disciplinary authority is required to consider the findings of the enquiry authority and is empowered with the discretion and freedom to depart from the findings. The discretion however, is not unfettered. The disciplinary authority may disagree and record his own finding if the evidence on record is sufficient to reach such finding or conclusion. The Enquiry Officer on assessment of the materials on record found that the charge containing Article No.1 was not established. The enquiry authority to that extent evaluated to the deposition of SW-4 who was crucial in establishing the Article-I of the charge. The enquiry authority did not act only on the mere ipse dixit of the witnesses to the effect that the charged officials did not submit the inspection report in the year 1996-97. In the absence of any documentary evidence in support of the statement the enquiry officer was not inclined to accept the same. The Inquiry Officer while reaching the said conclusion he also referred to the fact that the documents were requisitioned but not produced to support the same. The Enquiry Officer on the basis of requisition of the charged official requisitioned the documents pertaining to monthly tour T.A. advance made in Divisional office, Imphal. The enquiry authority held adverse inference for non production of the records. The disciplinary authority also agreed with the department ought to have produced the additional documents and also found that by order dated 22.10.99 called for the file but found fault with the enquiry authority that it did not specifically asked the P.O. to produce the documents. The disciplinary authority acted upon the mere word of the SW-4 without any supporting document. The disciplinary authority while holding

Affidavit
Copy sent to
Abd

Appendix B-1

the charge No.1 proved based on the oral statement of SW-4 without any support of documentary evidence and found fault with the order of enquiring authority on the score that in the absence of any specific direction to the P.O. to produce the documents non production of the documents was not fatal. In this case the enquiry officer allowed the prayer of the charged official for additional documents and made requisition for the same and an order was made by the Enquiry Officer. It was incumbent upon on the part of the respondents authority to produce the same on whose possession documents are/were kept. The aforesaid act of the enquiry officer was a direction under sub-rule 12 of Rule 14 and therefore there was not justification on the part of the authority in not producing the same at the time of enquiry for correct appraisal of the fact. Failure to produce the documents/evidence called for adverse inference. The statement of the SW-4 was based on documents. The documents were not claimed to be a privileged documents or related to State security. The respondents did not assign any reason for non production of the said documents. In the circumstances adverse inference drawn by the Enquiry Officer against the department for non production of documents cannot be said to be perverse, unreasonable or unjustified. The other ground for rejection of the finding of the enquiry officer in respect of charge No.1 was that the enquiry was held whereby the delinquent officer was given opportunity to prove his innocence. In other words according to the disciplinary authority it was the burden of the charged official to disprove the allegations and prove his innocence. The disciplinary authority in coming to the said conclusion fell into obvious error in overlooking the scheme of the statutory

Officer
10/5/99
10/5/99

33

19

rules. As per scheme of the rules the burden rests on the department to prove and establish the charge of misconduct on preponderance of probability. It is not for the delinquent officer to disprove the allegation. The disciplinary authority in its decision making process for rejecting the findings of the Enquiry Officer on this count fell into error by taking into consideration irrelevant and extraneous considerations overlooking relevant considerations. The finding of disciplinary authority in the facts and circumstances of the case as regard the charge No.1 is perverse and therefore unsustainable in law. The appellate authority also fell into same error in upholding the finding and the disciplinary authority in respect of charge No.1. The finding of disciplinary authority dated 8.6.2001 upheld by the appellate authority as per order dated 29.1.2002 in respect of article No.1 of the charge is therefore unsustainable in law wherein both the authorities held that article of charge was established in respect of charge No.1 is therefore liable to be quashed and accordingly quashed. On consideration of the materials on record the findings of the Enquiry Officer, disciplinary authority and the appellate authority, we do not find any illegality as regards their finding in respect of article No.2. The Enquiry Officer rightly considered the evidence on record and reached his own conclusion. The article II was partially proved. There was material to show that out of six offices alleged to be not inspected by the applicant, there were evidence to arrive conclusion that atleast three offices, namely, Kamang Kakching, Shangshak, Nungshong and Pushing EDBOs were rightly found to be not inspected. The disciplinary authority rightly addressed its mind to the relevant facts and on consideration

Att Ad
B
10/10/02

Annexure B-1.

20
3

of the facts situation aggrieved with the finding of the enquiring officer and held that article II of the charge against the charged official was partially proved. No illegality is discernible in holding the applicant guilty in charge No.II.

5. On consideration of all aspects of the matter we partially allow this application in view of our conclusion that article NO.I was not proved and applicant was found to be guilty in respect of article II we are of the opinion that matter should now be sent back to the disciplinary authority for appropriate order in terms of sub-rule 4 of Rule 15 for imposition of appropriate penalty as per law. Consequently

the order of disciplinary authority dated 8.6.2001 in respect of its finding on charge No.1 is set aside and respondents are directed to impose appropriate penalty as per law in the light of the findings in respect of charge No.2 as per law keeping in mind the observations made by us. The appellate order is also accordingly set aside to the extent indicated.

The disciplinary authority is now directed to pass appropriate order as per law on the basis of its finding in respect of charge No.2.

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

Certified to be true Copy

প্রাপ্তি প্রতিপাদিত

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

16/8/2003

Attested
16/8/2003 Adh

File No. 8-2.

21



REGISTERED

REGD. NO. (CS/2001)

16-8-2003

Counter No. 1, IP-Block, 16

To: DIRECTOR, NAGALAND

AGM, P.O. 797001

To

The Director of Postal Services,
Nagaland, Kohima - 797001.

Postal Service, 16/08/2003, 10:58
Date of issue

Subject :- Implementation of the orders of the
C.A.T. Guwahati Bench dated 7th Aug.
2003 in O.A. No. 59 of 2002.

Sir,

I am sending herewith a copy of the orders of the Hon'ble C.A.T. Guwahati Bench, dated 7th August 2003, in O.A. No. 59 of 2002 for your kind perusal and disposal please.

In the order the Hon'ble C.A.T. Guwahati has set aside the orders No. Rule-14/S.B.Hazarika dated 8-6-01 passed by the Director of Postal Services Kohima imposing the penalty of reduction of pay by six stages for 3 (three) yrs with cumulative effect with further directions not to earn increments of pay during the currency of the penalty w.e.f. from 01-6-01 and also has set aside the appellate orders No. staff/109-14/2001 dtd. 29-01-2002 passed by the Chief P.M.G. Shillong with directions for issuing "appropriate orders in terms of sub-rule 4 of Rule 15" as indicated therein.

In view of the above position of the Case, as the above order has the effect of vacating the penalty and "imposition of appropriate penalty as per Law" if any imposed as directed by the Hon'ble C.A.T. shall have only the prospective effect and NOT retrospective effect, necessary orders may kindly be issued implementing the orders of the C.A.T. as early as possible, as I and the members of my family are badly suffering owing to acute financial hardships as I am under suspension since 1-3-02 without subsistence allowance being increased from 50% (fifty percent) to 75% from 1-6-02.

Date :- 16-8-2003

Yours faithfully

(S. B. HAZARIKA)

C.I. (U.S.) Divisional Office,
Kohima - 797001.

Enclos.

Copy of the C.A.T.'s order dtd. 7-8-03 in 5 leaves on 9 pages.

--

Contd .. P/2.

-- P/2 --

Raj
Copy to :-

1. The Postmaster, Kohima-797001 for information and necessary action please. It is to be noted that the Postmaster, Kohima is the respondent No.5 in the Case because of being the D.D.O. and the authority effecting the punishment order passed by the Director of Postal Services, Nagaland, Kohima who is respondent No.6 in the Case. Hence, responsibility for implementing the C.A.T.'s order on the part of the Postmaster, Kohima is to the extent of stopping the reduction of pay forthwith and to draw and disburse the difference of pay and allowances leaving the question of "imposition of appropriate penalty as per Law" to the D.P.S., Kohima as dictated by the C.A.T.. A copy of the C.A.T.'s order is enclosed for necessary action please.

Bondu ¹ _{to}

(S. B. HAZARIKA) 16/8/83
C.I. (U.S.) Divisional Office,
Kohima - 797001.

--

*Officer
to
Post
ASL*

ED850793830IN

TO

S. Chondhury

Dx. S. Pos.

Kohima,

DATE

26/2

RECEIVED

26

To

The Director of Postal Services,
Nagaland, Kohima - 793001.Sub:- Implementation of C.A.'s orders No
O.A. No. 59 dtd. 8/8/2003.Reff:- Your Case mark No. Rule-14 / S. B. Nagarika
dtd. 8-6-2001.

Sir,

Most humbly and respectfully I beg
to state that the above mentioned C.A.'s orders of
the Guwahati Bench has not yet been imple-
mented although it was to be implemented
within the time - limit of six months as per
Govt. of India's orders No. 6-1, D.R.H. & T.S.,
O.A. No. 4-11019/34/85-AT dtd. 13.8.85 and
6-1, D.R.H. & T.S., O.A. No. 4-11019/39/87-AT
dtd. 14/8/87. The copies of the above orders are
enclosed for ready reference and your kind
perusal.

I have, therefore, requested you kindly to
implement the C.A.'s orders within 10 (ten) days
from the date of this Notice failing which I shall
be constrained to file a Contempt Petition before
the Tribunal under relevant laws for initiating
action for disobedience of the order of the
Hon'ble Tribunal.

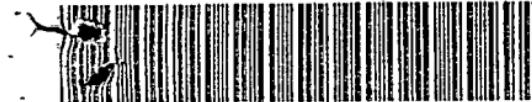
Faithfully,

Yours faithfully,
S. B. Nagarika(S. B. Nagarika)
C.I., D.V.L. Office Kohima
C.P. at Tinsukia

Date - 26/2/2004.

Attn
10/5/04

EMS SPEED POST



O. ED850601693IN

DATE 24/3

TIME HRS

WEIGHT 50 GMS

CHARGE 30/-

SIGNATURE



CUSTOMER COPY

DEPARTMENT OF POSTS - INDIA
SPEED POST RECEIPT

भारतीय डाक



24/3

TO	A. Ghosh	39
TEL.	<input type="text"/>	PIN <input type="text"/>
SENDER	S.B. Hengareka	
TEL.	<input type="text"/>	PIN <input type="text"/>

For enquiry, please contact your Speed Post Centre.

To

Sri A. Ghosh Dastidar,
 Chief Commissioner General,
 A.F. Corps,
 Shillong - 793 001.

Sub:- Malfunctioning by DTS & Dy. S.Ps, Nagaland,
 Kohima.

Reff:- Fresh.

Sir.

Most humbly and respectfully I beg to lay
 the following few lines on the above subjects for
 favour of your kind perusal and sympathetic
 orders please.

That, the DTS, Kohima imposed a penalty of
 reduction to lower stage of pay by six stages from
 Rs. 6,550 to the minimum stage of Rs. 5,500/- with
 cumulative effect from 1.6.01 for 3 yrs with further
 directions not to take increments of pay during the
 currency of the penalty etc. vide his order No. Rule
 14/S.B. Nagaland dtg. 8.6.01. The order was appealed
 against to the P.R.C. Shillong but was rejected. Both
 the punishment order & the appellate order were
 agitated before the Hon'ble Central Administrative
 Tribunal of Guwahati Bench which set aside the
 punishment order and the appellate order and directed
 the Disciplinary Authority to issue appropriate orders
 as per law keeping in view the observations made by
 the Division Bench vide their order dated 7/8/2003
 in O.A. No. 59 of 2002 without, however, mentioning the
 time-limit in their order for implementation.

That, the order of the Hon'ble CA, Guwahati was
 furnished to the DTS, Nagaland alongwith a copy
 representation dtg. 16.8.03 for implementation of the
 order which was received by the DTS, Kohima in
 time.

Attached

Copy
 to S.P. for

Par. 5

That, as per order of the Govt. of India, dated 26.8.1985, O.P. & T.O., O.P. No. 1-1019/34/85-AT dated 13.2.85 and its remainder No. 6.1, Dated 27.8.85 & T.O. O.P. No. 1-1019/89/87-AT dated 14.8.1987 the orders of the CAT shall be final and binding on both sides which should be implemented within the time-limit mentioned in the order or within six months where no time-limit is mentioned in the order (Copies of the Govt. orders are enclosed as ready reference for perusal).

That, I made another representation on 26/2/86 after the expiry of 8 months for implementation of the CAT's order to the D.P.S. Nagaland, but to no avail.

That, I made repeated representations to the Dy. C.M.S., Kohima verbally on phone but he pleaded ignorance and did not take steps to help the D.P.S. Kohima in implementation of the order though it is his implied duty to advise the D.P.S. Kohima in settling personal malus of his staff. It is clear that, the D.P.S. D.P.S. is not taking interest to help the D.P.S. in formulating solution of administrative problems.

That, till date the orders of the CAT has not been implemented by the D.P.S. Nagaland though the maximum time-limit of 8 months have expired long back in February 1986, despite of repeated reminders. Such attitude of D.P.S. Nagaland exhibits only despotism & which as he has no regard to anybody viz. Victim, CAT or Govt. order and exercises his powers in an arbitrary and unfettered manner as if the sky is the limit of his power which is not only prejudicial but also harmful besides being injurious to the employed of a Welfare State like India. The D.P.S. Nagaland has also no regard to the rules of law regarding the rights & freedoms of the citizens of the Country and so he needs be restrained.

That, at present I am under Suspension at Imphal in connection with a Court Case at Imphal and not possible to move without permission of the

Attorney
Topper

Contd. 3.

Answer P-5.

27

(3)

43

Court to pursue my cause in the Hon'ble Central Administrative Tribunal, Guwahati, by filing a Contempt petition for taking action for disobedience of its order. As penalty is still current even during the period of my suspension, it causes extreme hardship on my part which is another impediment to move C.A.T at Guwahati for enforcement of implementation of the order.

I have, therefore, earnestly prayed you that unless the matter is intervened into by your kindself at the very stage the merits of your humble petition will easily be evaded at the hands of these despotic DIs and Dy. S. Ios of Kohima who need be backed as required.

A Keroxen copy of the C.A.'s order dtd. 2/8/03 and representations for implementation dtd. 16/8/03 and 26/2/04 are enclosed as ready reference for favours of your kind personal please.

Thanking you.

Enclo: to State above.

Yours faithfully,

S. B. Hazarika

(S. B. HAZARIKA)
C.I. (U/S), Kohima

Now at Jaydal in
C/o U. Baruahatty,
Actos, 1st Sub-Deva,
Jaydal - ₹9500/-

Date - 24/03/04

Attached

10/5/04
P.M.

A/B (Bill)

BHARAT SANCHAR NIGAM LIMITED

(A Govt. of India Enterprise)

दर सचार दिभाग

LECOMMUNICATIONS

Hand Telegram

Agartala P.O.

28

Serial No. 79457

Received Rupees 23/- (Twenty three)

being the cost of Inland Telegram No. A-22.....

classed..... X booked at 09.35 hrs.....

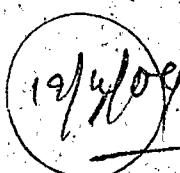


Shillong

Harkha 14/04
Signature of Booking Clerk

प्रतियम और नियम के अधीन स्कूल तार सदा सर होने से पा वितरण प्रशावित होने पर वाली या उसके परिणामस्वरूप नुकसान को शतिरूप देने के लिए नहीं है।

transmission subject to Indian Rules. The Government is liable to compensation for any loss, arising or resulting from any affecting transmission or gram).

भेजने के व्यौरे
Sent particularsतारीख-मोहर
Date-stamp

Date-stamp

श्रेष्ठी Class	समय Time	सं० No.	मूल तारधर Office of Origin	तारीख Date	संदेश अनुदेश S.I.	शब्द Words
-------------------	-------------	------------	-------------------------------	---------------	----------------------	---------------

भेजा गया/दिया

A. GHOSH DASTIDAR
CHIEF POSTMASTER GENERAL SHILLONG

= KINDLY REPLY. REPRSENTATION
DATED 24 MARCH CATS ORDER
STILL NOT CLEARED WITH BY
DPS KOHIMA RELIEF SOLICITED =

S.B. HAZARIKA

(प्रेषक/From)

भेजने वाले के हस्ताक्षर/Sender's Signature:

नाम/Name:

पता/Address:

प्रभासमु सन्त/MGIP Sant.—81 Telecom/44—(CTS-1/CA/1/25-11-86) 24.4.87/1,00,00,000

तार से न भेजा जाए
Not to be telegraphed

(28-4-74-MI)

R. Hazari

TOP SECRET

X/28, Donyakhal

A/B (Bill)

Aravalli P. S.

29

N

Establishment and Functions of Central Administrative Tribunal

G.I., Dept. of Per. & Trg., O.M. No. A-11019/37/85-AT,
dated 13-8-1985

The question of establishing Administrative Tribunals as a measure to provide speedy and inexpensive relief to the Government servants in the matter of deciding their complaints and grievances on recruitment and conditions of service has been under consideration of Government. As a first step in this direction the Administrative Tribunals Act, 1985 (13 of 1985), was enacted early this year. The Act provides for the establishment of Administrative Tribunals for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union and the States. In pursuance of the provisions of the Act, it has been decided to establish the Central Administrative Tribunal to adjudicate the complaints and grievances of the employees in services and posts under the Union. The Central Administrative Tribunal shall have the Principal Bench located at Delhi and a number of additional Benches elsewhere.

2. The Central Administrative Tribunal with its Principal Bench and the additional Benches shall be established on the 2nd September, 1985. On and from the date, all the jurisdiction, powers and authority exercisable immediately before that date by all courts in the country (except the Supreme Court under Article 136 of the Constitution) in relation to recruitment and matters relating to all service matters in respect of officers belonging to All India Services or of members of the civil service of the Union or holding a civil post under the Union or a civil post connected with defence or in the defence services shall vest with the Tribunal. As a corollary, on and from the 2nd September, 1985, no court (except the Supreme Court under Article 136 of the Constitution) shall have or be entitled to exercise any jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or such service matters. Further, every suit or other proceedings pending before any court or other authority immediately before the 2nd September, 1985, shall stand transferred to the Tribunal on this date except the appeals pending before a High Court or the Supreme Court.

*Att'd by
WPSO/CB*

3. The Tribunal shall have no jurisdiction over the following categories of employees:—

- (a) any member of the naval, military or air forces or of any other armed forces of the Union;
- (b) *Deleted.*
- (c) any officer or servant of the Supreme Court or any High Court;
- (d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof, in the case of Union Territory having Legislature, of that Legislature.

4. A person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievance. The application shall conform to the format prescribed in the pro forma specially designed for the purpose. The application can be sent by registered post or presented personally or through an agent at the appropriate Bench of the Tribunal within whose territorial jurisdiction the office where the applicant is working is situated. The applicant has also the option to file the application at the Principal Bench at Delhi. The territorial jurisdiction of the Additional Benches is given in Section 3.

5. The exact locations of the Benches with their postal addresses is in Section 5.

6. An application fee of rupees fifty has been prescribed which shall have to be remitted along with the application in the form of a Bank Draft or an Indian Postal Order. No other fee is required to be paid.

7. ***

8. In order to ensure speedy settlement of cases, a special procedure has been devised. Full details are available in the Central Administrative Tribunal (Procedure) Rules, 1985. It will be in the interest of the applicant to ensure that the application filed is in the prescribed format and the accompanying documents are complete in all respects. Once the registry is satisfied at the completeness of the application, it will be placed before the Tribunal for final hearing without going through the stage of formal admission. The Tribunal shall decide every application on a perusal of documents and written representations and oral arguments if any, shall be allowed in the special circumstances of the case. It is, therefore, in the interest of the applicant to ensure that full and complete material is placed before the Tribunal.

9. The Act provides limitation of time on applications to the Tribunal. Ordinarily, the Tribunal shall admit applications which have been filed within one year from the date of the final order which has been the cause of the grievance. However, under Section 21 (2) of the Administrative

At Hellyd
10/5/04
AAB

Tribunals Act, the Tribunal may accept applications in respect of a grievance which has arisen by reason of any order made within a period of three years preceding the date of the establishment of the Tribunal. The Tribunal may admit time-barred applications provided sufficient cause for not making the application within the prescribed period is given to the satisfaction of the Tribunal.

10. The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government. All proceedings before the Tribunal shall be judicial proceedings within the meaning of Sections 198, 219 and 228 of the Indian Penal Code. The Tribunal shall have powers and authority to punish in respect of contempt of itself as a High Court.

11. A person making an application to the Tribunal may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

12. Central Government Counsels are being appointed in different Benches of the Central Administrative Tribunal to defend the cases on behalf of Government of India. As per Section 23 (2) of the Act, the Central Government may appoint any person (not necessarily a legal practitioner) to act as a presenting officer. The various Ministries may earmark one or two senior officers of the different Departments under their control by designation in respect of each Bench of the Central Administrative Tribunal who can act as presenting officer whenever there is need. The particulars of such posts may please be forwarded to this Department for issue of a notification, authorising the holders of such posts to function as presenting officers so that they will be competent to appear before the Benches to present the case on behalf of the concerned Departments. In respect of any particular application, if it is considered necessary to appoint a specific or a particular presenting officer, the proposal should be made to the Department of Personnel and Training well in advance who after considering the merits of the proposal may issue notification appointing such person as the presenting officer in the case. It is reiterated that unless a notification under the Act is issued by this Department, no person shall be competent to act as presenting officer.

13. The orders of the Tribunal shall be final and binding on both the parties. The order of the Tribunal should be complied with within the time-limit prescribed in the order or within six months of the receipt of the order where no such time-limit is indicated in the order.

Attad
b
TOP Ad

Amarat R. S.

32

8

GOVERNMENT OF INDIA'S ORDER

Judgments of the CAT be final and to be complied with within the stipulated time-limit.—1. This Department is getting a number of references regarding implementation of the judgments pronounced by the various Benches of the Central Administrative Tribunal. It may be mentioned that the Central Administrative Tribunal was established with effect from 1-11-1985, with a view to provide speedy and inexpensive relief to the Government servants in the matter of deciding their complaints and grievances on recruitment and conditions of service. With this end in view, it was, *inter alia*, mentioned in this Department's O.M. No. A-11019/37/85-AT, dated the 13th August, 1985 (Section 1) *vide* paragraph (13) which is reproduced below—

~~"The orders of the Tribunal shall be final and binding on both the parties. The order of the Tribunal should be complied with within the time-limit prescribed in the order or within six months of the receipt of the order where no such time-limit is indicated in the order."~~

2. It is once again brought to the notice of Ministries/Departments of the Government of India that the judgments of the Central Administrative Tribunal should be complied with as promptly as possible within a minimum period of time. The orders of the Tribunal should be implemented within the time-limit prescribed by the Tribunal itself or within six months of the receipt of the order where no such time-limit is indicated by the Tribunal.

3. It is requested that the contents of this OM may kindly be brought to the notice of all concerned and compliance ensured.

[G.I., Dept. of Per. & Trg., O.M. No. A-11019/69/87-AT, dated the 14th August, 1987.]

Attn: R.S.
BB
Top Secy
AB

33
19

ANNEXURE - 9

**DRAFT CHARGES AGAINST
THE RESPONDENTS.**
(Kindly see para 4)

1. That the delay is deliberate on the part of the respondents. Having acknowledge receipt of the Hon'ble Tribunal order, the respondents attempted nothing for implementation of the same.
2. That, the respondents on not a single "occasion either considered single of the representation of the petitioner nor communicated with their intention thereto.
3. That delayed justice is no justice on the last stage of the service, the petitioner has been suffering a lot for the negligence of the respondents.
4. That wilful delay in implementing the Hon'ble Tribunals order clearly indicates the disobedience of the Tribunals order by the respondents.
5. That complete silence of the respondents on the Hon'ble Tribunal's order proves the misuse of executive powers and contempt of Court.

Shankar Bhushan Hazarika