

CP. 28/04 (OA 298/02)

v
05/08/04

Received by This Registry
from P.K. Deb. HC Adviser (T2C)
North Eastern Council Secretariat,
Shillong vide letter NO. NEC/T/PKD/
2004 dated 29/7/04. In this
connection informed that the
undersigned is not holding the
post of Deputy Commissioner
(border) and she is relieved on
as contemner NO. 3 at Play X.

Laid before Hon'ble court
for orders.

Dy. Registrar N. S. M. S.
5/8/04

No action is necessary
on the letter as cited as it is
not according to Rule 11 of
C.A.P (Contempt of Courts) Rules,
1992. Submitted for kind orders.

~~Done~~
15/8/04 We may file the letter
in C/P part
Hon'ble Member (A) K. V. S. S. S.
S. S. S.

D. NO = 1129 to 1131 dt. 22/7/04

19/8/04

Notice duly served on
resp. No 3

20/8/04

Notice duly served on
Respondent no 3 only.

24/9/04

B.R.

Notes of the Registry	Date	Order of the Tribunal
	27.9.2004	<p>Present: The Hon'ble Mr. Justice R.K. Batta Vice-Chairman.</p> <p>The Hon'ble Mr. K.V. Prahladan Member (A).</p> <p>Heard Ms. M. Bhattacharjee, learned counsel for the applicants as well as Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>It appears that inspite of directions from this Tribunal from time to time, the appropriate authority has not passed any order much less speaking order on the representation dated 27.2.2004 as also on the question of exploring possibility to depute the applicants in some other departments.</p> <p>Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents, has submitted before us that the process is on but no decision as yet, has been taken or scheme formulated. This process, in our opinion, cannot continue indefinitely and the respondents must take appropriate decision in the matter. Learned counsel for both the parties state that appropriate orders in the matter are to be passed by the Home Secretary (BM-III), Ministry of Home Affairs, Govt. of India.</p> <p>Taking into consideration that the matter is pending for almost a year now, we give last opportunity to the appropriate authority to pass appropriate speaking order in the matter within a period of six weeks from the date of receipt of the order. The present Contempt petition is disposed of in aforesaid terms. Respondents shall place the order passed on record at the end of expiry of six weeks and the matter be listed for reporting compliance of the order of this Tribunal after eight weeks from the date of receipt of this order. The</p>

Contd.

27.9.2004 C.P. is otherwise, disposed of but for the compliance report to be filed. In case, the applicants are still aggrieved they are free to take appropriate proceedings in accordance with law.

Copy of the order be sent to the Home Secretary (BM-III), Ministry of Home Affairs, Government of India.

[Signature]
Member (A)

[Signature]
Vice-Chairman

bb

16.12.04. Heard learned counsel for the parties.

Division Bench is not available to-day. The matter be placed before Division Bench on 4th January, 2005.

[Signature]
Vice-Chairman

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4.1.2005 Let the matter be placed before the next Division Bench.

bb

[Signature]
Member

28.9.04

Copy of the order has been sent to the office for issuance. The same to the applicant, to the Home Secy., (BM-II), Ministry of Home Affairs, New Delhi by post and copy to the Addl. C.G.S.C. by hand.

[Signature]
For Review Copy of 24/9/04

[Signature]
4/10/04

12.1.05

The letter No. 11013/11/2002-BM-III Dtd 2.12.04 received from Director (BM-II) Govt. of India / Bhareat Sarkar Ministry of Home Affairs / Grikh Mantralaya at Flag 'A'

Laid before the Bench for favour of orders.

[Signature]
Section Officer (S)
12/1/05
[Signature]
13/1/05

17.1.2005 Present: The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

The Hon'ble Mr. K.V. Prahladan
Member (A).

Heard Ms. M. Bhattacharjee,
learned for the applicants and also
Mr. B. C. Pathak, learned counsel for
the respondents.

The order in question dated 29.10.2004 does not at all explain about the possibilities explored in terms of order dated 8.8.2003 passed in O.A.298/2002. On the contrary it is stated in the order that Ministry of Home Affairs is not aware of any vacancy in NEC Secretariat as this Secretariat comes under the Department of Development of North Eastern Region. It may be mentioned here that in letter dated 24.2.2004 Annexure - R10 filed by the Under Secretary to the Govt. of India, Ministry of Home Affairs, respondents had categorically stated that the possibilities of accommodating the locally recruited staff of the office of the Commissioner (Border) is being examined separately and infact some efforts made in that direction were incorporated in the Affidavit dated 24.9.2004 filed by Under Secretary to the Govt. of India. The Joint Secretary who passed the order dated 29.10.2004 in question does not at all adhere to this aspect. We are not at all satisfied about the manner in which the order has been passed by Shri H.S. Brahma, Joint Secretary (BM) without reference to mentioning of efforts required to be made in terms of order dated 8.8.2003 in O.A.298/2002. A copy of the ^{said} order to be sent to him so that an appropriate order is passed by him. It is expected that high ranking officers of the Govt. of India examine the matters properly and thoroughly and

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Contd.

17.1.2005 pass appropriate orders. Paragraph 3 of the order dated 29.10.2004 is perfunctory in nature and without application of mind on the part of the Joint Secretary concerned. It is, therefore, directed to pass appropriate order within a period of four weeks from the receipt of this order. A copy of the order duly authentic^{ated} to be handed over to both sides and the same be also forwarded to Joint Secretary (BM), Ministry of Home Affairs, Govt. of India for compliance.

The matter be listed on 2.3.2005.

M. C. C. 18/1/05
(C.M. C. 2008)

*Copy received
Prager
28/1/05*

*(on behalf of B.C. Pathak
Advocate for the respondents)*

[Signature]
Member

[Signature]
Vice-Chairman

bb

*Order dt- 17/1/05
sent to D/section
for issuing to
resp. No-1 to 3, by
regd- A/D post. and
learned counsel
for both the parties
received by hand.*

2.3.2005

**Present: The Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman
The Hon'ble Mr. K. V. Prahladan, Member (A).**

Ms.M.Bhattacharjee, learned counsel for the applicants and Mr.B.C. Pathak, learned counsel for the alleged contemnors are present.

List on 10.3.2005.

27/1/05

[Signature]
Member

[Signature]
Vice-Chairman

bb

9-3-05

10.03.2005

Heard learned counsel for the parties. Order passed in separate sheets. The C.P. is disposed of in terms of the order passed in separate sheets.

*1 notice duly served -
no-2- no-3.*

1 Reply. has been.

Billed R- No 1, 2.

3/ NO reply. has been.

Billed R- NO-3.

[Signature]

[Signature]
Member (A)

[Signature]
Vice-Chairman

mb

15.3.05

*Copy of the order has
been handed over to
over to the applicant as
well as to the advocates
for the respondents.*

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

C.C.C./R.W.K. No. C.P. 28/2004

DATE OF DECISION 10.03.2005

Sri K.K. Roy & Ors. APPLICANT(S)

Mr. A.S. Bhattacharjee ADVOCATE FOR THE
Mrs. M. Bhattacharjee APPLICANT(S).

-VERSUS-

Union of India & Ors. RESPONDENT(S)

Mr. B.C. Pathak. ADVOCATE FOR THE
..... RESPONDENT(S).

THE HON'BLE MR. G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other benches ?
- Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No. 28/2004 (In O.A. No. 298/2002)

Date of Order : This the 10th day of March, 2005

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Krishna Kanta Roy,
Son of Late Priya Nath Roy,
Village - Botaghuli
P.O. - Panjabari, Guwahati - 781 037,
District - Kamrup, Assam.
2. Sri Nripen Kakati,
Son of Late Rejen Kakati,
Village & P.O. - Pub Borka,
District - Kamrup, Assam.
3. Sri Jatin Chandra Das
Son of Late Joy Ram Das,
Village - Pandu Bazar,
P.O. - Pandu Bazar, Guwahati - 781012.
4. Sri Munindra Chandra Das
Son of Late Chuni Ram Das,
Village - Debarkuchi,
P.O. - Shanikuchi,
District - Nalbari, Assam.
5. Sri Basanta Kumar Boro
Son of late Bela Ram Boro
Village - Bokrapara, Khanapara,
Guwahati - 781 022,
District - Kamrup, Assam.
6. Sri Narendra Nath Sarma,
Son of Late Rama Nath Sarma
Village & P.O. - Bongsar,
District - Kamrup, Assam.
7. Sri Bongshidhar Bayan
Son of Late Laghana Ram Bayan,
Village & P.O. - Mugdi,
District - Nalbari, Assam.
8. Sri Puna Ram Murari
Son of Late Vhenda Ram Murari
Village - Tengabari, Kalaigaon,
P.O. - Tangabari,
District - Darrang, Assam.

- 9. Sri Sankar Basfor
Son of Late Bhuzan Basfor,
Village & P.O. - Kamlal,
District - Darbhanga, Bihar.
- 10. Sri Nayan Babu Singh
Son of Late Hera Singh
Village & P.O. - Kamranga,
District - Cachar, Assam.
- 11. Sri Ramesh Chandra Daimary,
Son of Late Tarani Daimary,
Village - Lahoripar, P.O. - Rupali,
District - Barpeta, Assam.
- 12. Sri Ramesh Chandra Sarma,
Son of late Someswar Sarma.
Village - Barpratima,
P.O. - Saker Hati,
District - Kamrup, Assam.
(Working as LDC since 18.3.1983)
- 13. Sri Dwigen Das
Son of Late Ghana kanta Das,
Dergaon, District - Golaghat, Assam,
(Working as Driver since 9.11.1987).
- 14. Sri Bapan Chandra Nath,
Son of late Juran Chandra Nath,
Village - Dekargaon,
District - Darrang, Assam,
(Working as Driver since 1.8.2000)

... Petitioners

All the petitioners have been working under the Office
Of the Commissioner (Border) Government of India,
Ministry of Home Affairs, Bhangagarh, Guwahati - 5, Assam

By Advocate Mr. P.S. Bhattacharjee, Mrs. M. Bhattacharjee.

- Versus -

- 1. Sri H.S. Brahma,
Joint Secretary to the
Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
- 2. Shri Sushil Kumar,
Under Secretary to the
Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
- 3. Shri P.K. Deb,
Deputy Commissioner (Border)
Office of the Commissioner (Border)

N.E.C., Shillong.

Respondents/
Contemnors.

By Advocate Mr. B.C. Pathak.

ORDER (ORAL)SIVARAJAN, J (V.C.):

This Contempt Petition has been filed alleging that the directions issued by this Tribunal in the order dated 31.03.2004 in O.A. No. 65/2004 has not been complied with. Today, when the matter came up for consideration, Mr. B.C. Pathak, learned counsel for the respondents placed before us a copy of the order dated 18.02.2005 issued by the Government of India/Bharat Sarkar, Ministry of Home Affairs and submitted that the directions issued by this Tribunal has already been complied with. Mrs. M. Bhattacharjee, learned counsel for the applicants submitted that there is no proper disposal of the representation of the applicants by the respondents.

2. We have gone through the order dated 18.02.2005 placed before us by the Standing Counsel. It is stated that Office of the Commissioner (Border) was closed w.e.f. 29.02.2004 and the temporary posts were also abolished. It is also stated that the respondents were making sincere efforts to explore the possibilities to accommodate the staff of the Office of the Commissioner (Border) in CPWD, BSF, Assam Rifles, State PWD and various Public Sector Undertakings viz. NBCC, NPCC etc., however, all the agencies expressed their inabilities to accommodate them. It is also stated that representation of the applicants to accommodate them in NEC has been forwarded for consideration to NEC. It is further stated that a copy of the representation has already been forwarded to the Secretary, NEC by the erstwhile staff of the Office of the Commissioner (Border) on February 27, 2004 and that inspite of repeated reminders there is no response from the NEC.

3. The Standing Counsel for the Respondents stated that though the representation of the applicants forwarded to NEC, a Government agency for consideration and to intimate

gms


Requested by

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the result of the same to the respondents and to the applicants, the same has not been done inspite of repeated reminders from the respondents. If the facts stated are correct this is not what is expected from a responsible Government agency. We are sure that the NEC will look into the matter urgently and take a decision and the same will be communicated to the respondents and to the applicants within a period of three months from the date of receipt of a copy of this order. The respondents will forward a copy of the order to the Secretary, NEC for favour of necessary action.

4. We also find that a full-fledged Department of Boarder Management in the MHA was created on the recommendations of the Group of Ministers (GoM) and it would not be possible to monitor the progress of the work relating to the Indo-Bangladesh Border directly by the MHA. It is expected that the department of MHA may consider as to whether employment therein can be given to the applicants. The respondents will forward the order passed by this Tribunal in C.P. as well as in O.A. to Ministry of Home Affairs for necessary action.

With the above observations the C.P. disposed of.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

21 JUL 2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
AT GUWAHATI.

CONTEMPT PETITION No. 28 / 2004.

ARISING OUT OF O.A. No. 298 of 2002.

Krishna Kanta Roy & Ors.

--- Petitioners.

-Vs-

H. S. Brahma & Ors.

--- Respondents / Contempner.

I N D E X

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Filed by

Ms. M. Maitachari
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, AT GUWAHATI.

CONTEMPT PETITION No. 28 / 2004.

ARISING OUT OF O.A. No. 298 of 2002.

Filed by:-

Shri Krishna Narain Ray

Through: Ms. Madhuchandra Bhattacharya
Advocate.

21-07-2004.

IN THE MATTER OF :-

An application under Section 17 of the Administrative Tribunals Act, 1985 for deliberate and wilful non compliance of Order passed by the Central Administrative Tribunal, Guwahati Bench.

- AND -

IN THE MATTER OF :-

Judgment and Order passed on 8th August, 2003 in O.A. No. 298 of 2002.

- AND -

IN THE MATTER OF :-

Judgment and Order dated 27.2.2004 passed in O.A. No. 50 / 2004.

- AND -

IN THE MATTER OF :-

Judgment and Order dated 31.3.2004 passed in O.A. No. 65 / 2004.

- AND -

IN THE MATTER OF :-

Judgment and Order dated 12.5.2004 passed in Misc Petition No. 39 / 2004.

- AND -

IN THE MATTER OF:-

1. Sri Krishna Kanta Roy,
Son of Late Priya Nath Roy,
Village : Botaghuli,
P.O. Panjabari, Guwahati-781037,
Dist. - Kamrup, Assam.
2. Sri Nripen Kakati,
Son of Late Rajen Kakati,
Village & P.O. - Pub Borka,
Dist. - Kamrup, Assam.
3. Sri Jatın Chandra Das,
Son of Late Joy Ram das,
Village - Pandu Bazar,
P.O. - Pandu Bazar, Ghy.-781012,
Dist. - Kamrup, Assam.
4. Sri Munindra Chandra Das,
Son of Late Chuni Ram Das,
Village : Deharkuchi
P.O. - Shanikuchi
Dist. - Nalbari, Assam.
5. Sri Basanta Kumar Boró
Son of Late Bela Ram Boro,
Village : Bokrapara, Khanapara,
Guwahati- 781022,
District - Kamrup, Assam.
6. Sri Narendra Nath Sarma
Son of Late Rama Nath Sarma,
Village & P.O. - Bongshar,
District - Kamrup, Assam.
7. Sri Bongshidhar Bayan
Son of Late Laghana Ram Bayan,
Village & P.O. - Mugdi,
District - Nalbari, Assam.

Sri Krishna Kanta Roy

8. Sri Pua Ram Murari
Son of Late Vhenda Ram Murari
Village - Tangabari, Kalaigaon,
P.O. - Tangabari,
District - Darrang, Assam.
9. Sri Sankar Basfor
Son of Late Bhuzan Basfore,
Village & P.O. - Kamlal,
District - Darbhanga, Bihar.
10. Sri Nayan Babu Singh
Son of Late Hera Singh
Village & P.O. - Kamranga,
District - Cachar, Assam.
11. Sri Ramesh Chandra Daimary
Son of Late Tarani Daimary
Village - Lahoripar, P.O. - Rupali.
District - Barpeta, Assam.
12. Sri Ramesh Chandra Sarma,
Son of Late Someswar Sarma
Village - Barpratima,
P.O. - Saker Hati,
District - Kamrup, Assam.
(Working as LDC since 18.3.1983)
13. Sri Dwigen Das
Son of Late Ghana Kanta Das,
Dergaon, Dist. - Golaghat, Assam.
(Working as Driver since 9.11.1987)
14. Sri Bapan Chandra Nath
Son of Late Juran Chandra Nath,
Village - Dekargaon
District - Darrang, Assam.
(Working as Driver since 1.8.2000)

--- Petitioners.

All the petitioners have been working under the office of the Commissioner (Border) Government of India, Ministry of Home Affairs, Bhangagarh, Guwahati - 5, Assam.

15
Shri Krishna Kanta Das

- Vs -

1. Shri H. S. Brahma,
Joint Secretary to the
Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
2. Shri Sushil Kumar,
Under Secretary to the
Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
3. Shri P. K. Deb,
Deputy Commissioner (Border)
Office of the Commissioner (Border)
N.E.C. Shillong

Shri Krishna Kauler Ane

--- Respondents /
Contempner.

The humble petition of the
petitioner above named --

MOST RESPECTFULLY SHEWETH :-

1. That, to stop illegal infiltration of foreign nationals to India through the porous Indo-Bangla Border, the Government of India had decided to erect barbed wire fences on Indo-Bangla Border and also to build roads near Bangladesh Border for effective patrolling and better vigil by Indian Security forces and for the purpose of supervision, construction and subsequent maintenance of the proposed barbed wire fencing and the border roads, the office of Commissioner (Border) was established under Ministry of Home Affairs, Govt. of India with Headquarter at Guwahati in the year 1984.

2. That, as per Government of India plan, the Officer Cadre of the office of Commissioner (Border) were designated Group A & B staff and were filled up with deputationist from different other Government Departments / Organisations. The Ministerial and menial staff required for the Office of the Commissioner (Border), were recruited with the assistance and inputs from State Employment Exchanges in the cadre of Group C & D.

3. That, the petitioners beg to state that accordingly the present petitioners were duly appointed in the establishment as U.D.A., L.D.C., Peon, Chowkidar, Safaiwala, Driver etc. as Group C and D staff after their names were forwarded by Employment Exchanges and after they had gone through the due process of interview medical tests etc. in the years as indicated in particulars detailed in Annexures filed with this petition.

A copy of a list detailing the employment particulars of present petitioners are annexed herewith as "ANNEXURE No. 1."

4. That, the petitioners since their date of joining in service have been rendering their services without any break and were given same pay structure and other perks, emoluments and other allowances and benefits as any other Central Government employee.

5. That, after rendering uninterrupted unbroken long years of service in the Office of Commissioner (Border) it was a legitimate expectation of the Group C & D staff that their services would be regularised by the Ministry of Home Affairs. With this in view they had submitted a number of representatives through proper channel to the concerned authorities in the Ministry of home Affairs. However the authorities concerned kept on informing them that their case was under consideration but did not give a firm decision.

Shri Krishna Kaula Dutt

6. That, being aggrieved and finding no way out the petitioners approached the Central Administrative Tribunal by filing an application which was registered as O.A. No. 298 / 2002. It is pertinent to mention here that the Hon'ble CAT, Guwahati Bench was pleased to dispose off the matter on 8-8-2003 with a direction to the respondent Authorities to mitigate the situation either by devising a scheme or other suitable arrangement.

A copy of the said Judgment dated 8.8.2003 is annexed herewith as "ANNEXURE No. 2".

7. That, the petitioners beg to state that a copy of the said Judgment dated 8-8-2003 passed by the Hon'ble CAT, Guwahati Bench was submitted to the Respondent Authorities for their due consideration and necessary action.

8. That, the petitioners beg to state that on 24-2-2004 contrary to the expectation of the petitioners the Under Secretary to the Govt. of India to subvert the Judgment & Order of the Hon'ble Tribunal passed on 8.8.2003 issued an order whereby a decision was conveyed to **close the office of the Commissioner (Border) within 4 days** and it was conveyed that by 28-2-2004 the office of Commissioner (Border) will be closed and it was also directed through the aforementioned letter addressed to the deputy Commissioner (Border) to coordinate in the matter of closing of the office of the Commissioner (Border) and to hand over the entire office assets including records of the office to B.S.F.

A copy of the aforementioned letter is annexed herewith as "ANNEXURE No. 3".

9. That, the petitioners beg to state that being shocked, surprised and aggrieved by this abrupt order dated 24-2-2004 the present petitioners submitted one more O.A. before the Central Administrative Tribunal, Guwahati Bench and the same was accepted as O.A. No. 50/2004 and the Hon'ble CAT, Guwahati

Shri K. S. Sharma Kardey

Bench was pleased to direct the Respondents to treat the Original Application as supplementary representation of the Applicants and disposed off the representation with the below mentioned direction --

" The respondent Nos, 1, 2 & 3 are directed to take a decision and dispose of the representation of the applicants and consider the possibility of accommodating locally recruited staff be a detailed and speaking order to be passed within two weeks from the date of receipt of copy of this order. Till a decision is arrived by the Ministry of Home Affairs, status quo of the working of the employees shall be maintained."

A photocopy of the full text of the Judgment & Order dated 27.2.2004 is annexed herewith as "ANNEXURE No. 4".

10. That, the petitioners beg to state that after the Hon'ble CAT, Guwahati Bench passed its order the petitioners submitted a representation dtd. 27.2.2004 through the Deputy Commissioner (Border) to the Secretary, Border Management, Govt. of India, Ministry of Home Affairs forwarding the Judgment & Order dated 27.2.2004.

A photocopy of the representation dated 27-2-2004 is annexed hereto as "ANNEXURE No. 5".

11. That, the petitioners also beg to state that the Deputy Commissioner (Border) on 2-3-2004 also addressed a letter to the Joint Secretary (BM-III) Govt. of India, Ministry of Home Affairs wherein the Deputy Commissioner (Border) intimated the joint Secretary about the Hon'ble CAT's order and also sought clarifications regarding the winding up of the office of the Commissioner of Border MHA, Guwahati.

A photocopy of the letter dated 2-3-2004 is annexed hereto as "ANNEXURE No. 6".

Shri Krishna Kumar

Shri Krishna Kauri An

12. That, in flagrant violation and total disregard of the Hon'ble Court's direction and to subvert the Hon'ble Court's directions The Joint Secretary, Ministry of Home Affairs, Govt. of India vide his letter No. 11013 / 11 / 2002 BM-II dated 10th March, 2004 gave certain directions to the Deputy Commissioner (Border) wherein the following four points were clarified by the said official --

- (i) We have already mentioned very clearly that no salary will be paid after 29th February, 2004.
- (ii) Regarding deputationist you are directed to surrender them to their respective departments.
- (iii) Kindly hand over the Office files, documents and vehicles etc. to the BSF.
- (iv) You are also directed to surrender and hand over all the vehicles and other infrastructure equipments etc. to the BSF without further loss of time.

13. That, the petitioners beg to state that all the officers of the office of Commissioner (Border) in the A & B Cadre who were deputationists from different organisations of Govt. of India got themselves repatriated to their parent organisations and the charge of the office including office assets, files documents, cash - in - hand etc. were most irresponsibly and violating all administrative norms were handed over to one Group - C staff.

14. That, the present petitioners beg to submit that the Group C and D staff have been left to fend for themselves. While the entire responsibility and custody of the office of the Commissioner (Border) has been left on them no official communication or letter of closure of office have been communicated to them. The Group - C and D staff who were recruited directly from the North Eastern Region have been left to fend for themselves and no Order regarding their status have been Communicated to them. It is pertinent to mention here that the Group C and D staff who are the present petitioners have not received any

Notice or Order from any of their Higher authorities informing them if their services are still required or not nor any definitive Speaking Orders have been passed irrespective of the directions of the Hon'ble CAT Guwahati Bench passed on 8.7.2003 and further substantiated and specific directions were issued in its order dtd 27.02.2004.

15. That, in view of the intransigent attitude of the officials of the Ministry of Home Affairs, the present petitioners were left with no other alternative but to approach this Hon'ble Tribunal through another O.A. which was numbered as O.A. No. 65 of 2004.

16. That, the Hon'ble Tribunal was pleased to dispose off the O.A. on 31st march, 2004 with the following directions in para 4 of its Judgment & Order. The para 4 of the Hon'ble Tribunals Judgment & Order is reproduced as below :-

" In view of the circumstances we find that the O.A. can be disposed of at the admission stage itself with a direction upon the respondents to dispose off the representation of the applicant. Accordingly, respondents are directed to dispose off the representation of the applicants within a period of one month from the date of receipt of the order and also to explore the possibility to accommodate the applicants in some other departments under the control of the respondents as early as possible."

The full text of the Judgment & Order dated 31st March, 2004 is annexed herewith an "ANNEXURE No. 7."

17. That, it is pertinent to mention here that inadvertently in para 2 of the Judgment & Order dated 31st march, 2004 the applicants were wrongly described as casual labourers by the Hon'ble Tribunal Being aggrieved, the present applicants proffered a Misc Petition No. 39 / 2004 for modifying the word 'casual labourer' by the word 'temporary staff'.

Shri Krishna Kanta Prasad

18. That, vide its order dated 12.5.2004 this Hon'ble tribunal was pleased to substituted the word casual labourer by the word temporary staff. The relevant portion of the Hon'ble Tribunal's order dated 12.5.2004 is reproduced herein below :-

" In view of the above the word casual labourer is substituted as temporary staff in paragraph 2 of the order dated 31.3.2004 in O.A. No. 65 / 2004 so far as the other prayer in the Application is concerned we do not find any justification to pass any order in this Misc Petition."

A certified copy of the Judgment & Order dated 12.5.2004 is annexed herewith as "ANNEXURE No. 8."

19. That, the petitioners beg to state that in spite of receipt of this Hon'ble Tribunal's orders dated 27.2.2004 passed in O.A. No. 50 / 2004 and further order of the Hon'ble Tribunal dated 31st March, 2004 in O.A, No. 65 / 2004 wherein the Hon'ble Court was pleased to pass unambiguous, clear directions, the Respondents in flagrant wilful violation and total disregard of this Hon'ble Tribunal's orders and directions have not maintained the status quo in the matter and have not passed any "detailed and speaking order". Further no salaries since then have been paid to the staff even though no order of termination and or any letter of retrenchment have been issued to the Group C & D staff.

20. That, it is also respectfully submitted that the Respondents further have wilfully disregarded and violated the Hon'ble Tribunal's order by forcefully taking over the assets and records of the office of the commissioner of Border through personnel of Border Security Force.

21. That, in view of the above, the petitioners beg to submit that the respondents by their wilful and deliberate disregard of this Hon'ble Tribunal's Order and directions have committed contempt of this Hon'ble Tribunal and as such the respondents are liable to be punished as per the provisions of Sec 17 of the Administrative Tribunal's Act, 1985, read with Sec 12 of the Contempt of Court's Act, 1971.

Shri. Arishu Kauli, Puc

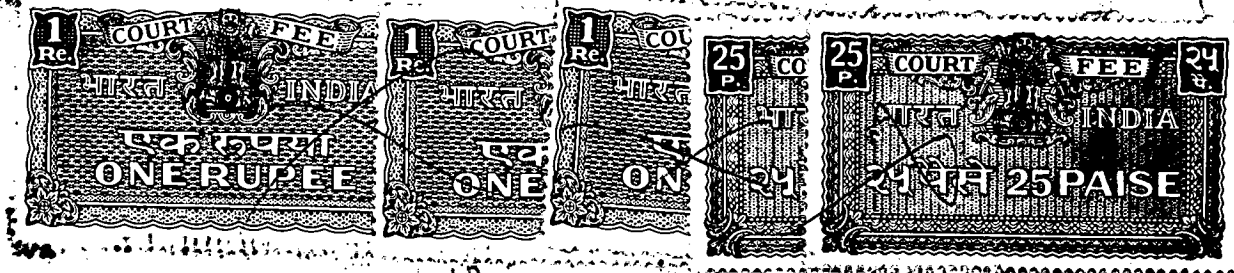
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22. That, this application is filed bonafide and for the ends of justice.

In the premises aforesaid it is respectfully prayed that this Hon'ble Tribunal may be pleased to issue notice upon the respondents to show cause as to why they shall not be punished for wilful and deliberate non-compliance of order & direction dated 27.2.2004 passed in O.A. No. 50 of 2004 and further order and direction passed on 31st March, 2004 in O.A. No. 65 / 2004 and on upon such cause or causes being shown and upon hearing the parties pass such order / orders ensuing appropriate and adequate punishment to the respondents for wilful and deliberate non-compliance of orders of this Hon'ble Tribunal and / or may be further pleased to pass any such order / orders as this Hon'ble Tribunal may deem fit and proper.

Shri Krishna Kanda Rao

AND FOR THIS ACT OF YOUR KINDNESS, YOUR PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY.



AFFIDAVIT

24

I, Shri Krishna Kanta Ray son of Late Priya Nath Ray, aged about 49 years, by caste Hindu, resident of Panjabari, P.O. Panjabari, in the district of Kamrup, do hereby solemnly affirm and state as follows :-

1. That I am authorised to swear this affidavit on behalf of the petitioners in the instant case and I am fully acquainted with the facts and circumstances of the case.

2. That the statements made in the affidavit and those made in paragraphs 3, 6 to 12, 16, 17, 18 are matters of records and true to my information gathered therefrom which I believe to be true and those made in paragraph 12, 4, 5, 13, 14, 15, 19, 20, 21, 22 are true to my knowledge and rests are my humble submission before this Hon'ble Court.

And accordingly I sign this affidavit on this 21st day of July 2004, at Guwahati.

Identified by me,
Ms. Madhuchandra Bhattacharya
Advocate
Tarikul Hossain
21.7.04.

Shri Krishna Kanta Ray
DEPONENT

Advocate's Clerk.

VERIFICATION

25

I, ~~xxx~~ Sri Krishna Kanta Roy, aged about 43 years son of *Let Priya Nath Roy* resident of Batahghuli, Pangabari, Dist. - Kamrup, Assam, do hereby solemnly affirm and verify that the statement made in paragraphs 3; 6 to 12, 16; 17, 18 are true to my knowledge and those made in paragraphs 1, 2 4, 5, 13, 14, 15, 19 to 22 are also true to my legal advice and the rests are my humble submission before this Hon^oble Tribunal. I have not suppressed any material facts of the case.

And, I sign this verification on this ~~the~~ 21st day of July, 2004.

Sri Krishna Kanta Roy

Signature

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating a contempt proceeding against the alleged Contemner/Respondents for willfull and deliberate non compliance of order of the Hon'ble Tribunal dated 8.8.2003 in O.A. No. 298/2002, 27.2.2004 in O.A. 50/2004 and 31.3.2004 in O.A. 65/2004 and further be pleased to impose punishment upon the alleged Contemner/ Respondents for willfull and deliberate non compliance of orders aforementioned.

Details of the Employee's Appointment

Sl. No.	Name of Employee	Date of appointment	Initial appointment	post held at present	Date of Order
1.	Krishna Kanta Roy	30.03.1985	LDC	UDA upto 31.3.07	Vide Order dtd. 23.8.01.
2.	Nripen Kakoti.	16.10.1984	Peon	LDC upto 31.3.07	Order dtd. 23.8.2001
3.	Jatin Ch. Das.	21.01.1985	Peon	LDC / UDC	23.8.2001
4.	Munindra Ch. Das.	01.10.1984	Peon	Drafty 1.3.1985	4.3.1985
5.	Basanta Kr. Boro.	02.01.1985	Gr.-D Peon	peon	21.1.1985
6.	Narendra N. Sarma.	22.05.1986	Peon	peon	2.7.1986
7.	Bongshidhar Bayan.	05.03.1985	Chowkidar (daily wage)	Gr.-D Peon 2.6.1986	Order dated 2.7.1986
8.	Puna Ram Murari.	-----	Peon (temporary basis) for 6 months	Peon (Confirmed)	26.5.1987
9.	Sankar Basfore.	23.10.1986	Safaiwala Gr. - D	Safaiwala	27.10.1986
10.	Nayan B. Singh.	24.11.1986	Chowkidar	LDC 16.10.01	Order dated 2.11.2001
11.	Ramesh Ch. Daimary.	01.03.1985	Driver		5.3.1985
12.	Ramesh Ch. Sarma.	18.03.1985	Peon	LDC upto 31-03.2007	Order dtd. 23.08.2001
13.	Dwijen Das.	09.11.1987	Driver	Driver	----
14.	Bapen Ch. Nath.	01.08.2000 (25.5.1992)	Driver	Driver	1.8.2000

Certified to be true copy

Ms. M. Bhattacharya
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 298 of 2002.

Date of Order : This the 21st Day of August, 2003.

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

THE HON'BLE MR N.D.DAYAL, ADMINISTRATIVE MEMBER.

1. Sri Krishna Kanta Roy
S/o Late Priya Nath Roy
Vill: Botaghuli, P.O:- Panjabari
Guwahati - 781 037.
2. Sri Nripen Kakati
S/o Late Rajen Kakati
Vill. & P.O:- Pub Borka
District:- Kamrup, Assam.
3. Sri Jatin Chandra Das.
S/o Late Joy Ram Das
Vill: & P.O:- Pandu Bazar
Guwahati - 781012.
District: Kamrup, Assam.
4. Sri Munindra Chandra Das
S/o Late Chuni Ram Das
Vill: Deharkuchi, P.O:- Shanikuchi
District:- Nalbari, Assam.
5. Sri Basanta Kumar Boro
S/o Late Bela Ram Boro
Vill: Bokrapara, Khanapara
District: Kamrup, Guwahati- 781 022.
- Narendra Nath Sarma
S/o Late Rama Nath Sarma
P.O. & Vill:- Bongshar
District:- Kamrup, Assam.
- Sri Bongshidhar Bayan
S/o Late Laghana Ram Bayan
Vill: & P.O:- Mugdi
District:- Nalbari, Assam.
8. Sri Puna Ram Murari
S/o Late Vhenda Ram Murari
Vill:- Tangabari Kalaigaon
P.O: Tangabari
District: Darrang, Assam.
9. Sri Sankar Basfore
S/o Late Bhuzan Basfore
Vill: & P.O: Kamlal
District: Darbhanga, Bihar.
10. Sri Nayan Baba Singh
S/o Late Bera Singh
Vill: & P.O:- Kamranga
District:- Cachar, Assam.
11. Sri Ramesh Chandra Daimary
S/o Late Tarani Daimary
Vill:- Lahoripar, P.O:- Rupohi
District: Barpeta, Assam.



All the applicants have been working under the Office of the Commissioner (Border), Govt. of India, Ministry of Home Affairs, Bhangagarh, Guwahati-781005. . . . Applicant.

Certified to be true Copy

Contd./2

Ms. M. Donatracanjan
Advocate

By Sr. Advocate Mr.D.C.Mahanta, Mr.B.Buragohain & Mr.R.C. Borpatragohain. A

- Vornun -

1. Union of India
Represented by the Joint Secretary
Government of India
(15-11 & BM) Ministry of Home Affairs
North Block, New Delhi - 110 001.
2. The Desk Officer (B.F.-Desk)
Govt. of India, M.H.A., North Block
New Delhi.
3. The Commissioner (Border)
Government of India
Ministry of Home Affairs, Bhangagarh
Guwahati - 5.
4. The Administrative Officer
Office of the Commissioner (Border)
Govt. of India, Ministry of Home Affairs
Bhangagarh, Guwahati - 781 005. . . . Respondents.

O R D E R

CHOWDHURY, J. (V.C.):

The applicants are eleven in number espousing a common cause. Considering the common interest in the matter and the nature of the reliefs prayed for, leave was granted to the applicants to present their grievances by this application.

The applicants are working in the office of the Commissioner (Border) Govt. of India, Ministry of Home Affairs, Bhangagarh, Guwahati i.e. respondent No.3. The office in question, was set up for the construction of Indo-Bangladesh border road and fencing. Pursuant to the above decision the applicants were appointed under the respondents in various posts like UDC, LDC, Peon, Chowkidar, Daftry, Safaiwala and Driver (Group 'C' & 'D') respectively in the year 1984. These persons, since then, are working with the best of their abilities. The applicant No.1 was appointed as LDC in a purely temporary capacity w.e.f.30.3.1985 vide order dated 10.4.1985 and his service was extended upto 31.3.2007 vide order dated 23.8.2001. The applicant No.2 was appointed as Peon on temporary basis



Contd./3

w.e.f.16.10.1984. By order dated 2.6.1986 he was allowed to officiate as LDC for a period of one year. Thereafter his service was extended upto 31.3.2007. vide order dated 23.8.2001. The applicant No.3 was appointed as Peon w.e.f.21.1.1985 in temporary capacity. Thereafter he was promoted to officiate as LDC and UDC by order dated 16.10.2001. Similarly, the other applicants were appointed in Group-'D' as Peon, Driver, Safaiwala and Chowkidar. The applicant No.10 was appointed as Chowkider on 21.11.1986, and he was promoted to the post of LDC w.e.f.16.10.2001. The thematic song of this O.A. is for regularisation of the services of the applicants. In support of their contention the applicants referred to the communication sent by the Administrative Officer, Office of the Commissioner (Border) addressed to the Desk Officer (BF-Desk), Government of India for regularisation of their service. By the aforesaid letter the Administrative Officer indicated about the anxiety of the fourteen nos. of adhoc staff. By the said communication it was also requested in the event of winding up of the office on completion of the work to initiate absorption of these staff against regular posts in other offices of the Ministry of Home Affairs. The applicants also referred to the communication sent by the Commissioner (Border) addressed to the Joint Secretary (NE), Ministry of Home Affairs. The

full text of the communication is reproduced below:-

"No.14013/29(00)93-CB Dated: November 13,2000

To

The Joint Secretary(NE)
Ministry of Home Affairs
North Block
New Delhi- 100 001.

Sub:- Regularisation of services of temporary staff of the Office of the Commissioner (Border), Ministry of Home Affairs, Guwahati.

Sir,

I am to state that the office of the Commissioner (border) has 14 nos. of directly recruited Group-C and Group-D staff appointed temporarily in the year 1985 at the time of creation of Office on the basis of the names

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sponsored by the Employment Exchange, Guwahati. These staff continue to remain temporary even after completion of 14/15 years of service and there is a strong resentment among the staff for non-declaring their services to enable them to get promotion and other benefits under ACP scheme. The matter was discussed in the 34th HLEC meeting at New Delhi and on the advice of the HLEC a detailed note along with bio-data and service particulars of these staff were forwarded to the Min. of Home Affairs, New Delhi for taking necessary action. Recently, the Govt. has approved the additional work for construction of IBB road and fence and as such there is a likelihood of the office being continue for another 8 to 10 years.

It is, therefore, requested that steps may be taken for regularisation of the services of the temporary staff of this office an early date.

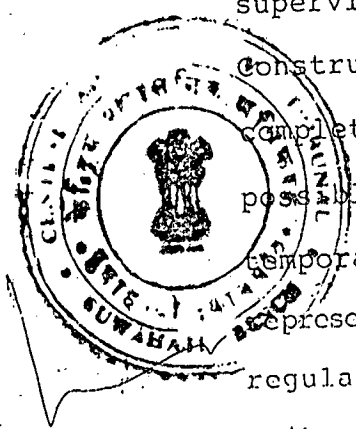
Yours faithfully,

Commissioner (Border)"

In response to the aforementioned communication Govt. of India by letter No.1/1/95-BF dated 24/28.11.2000 intimated as to the proposal for continuation of the 29 posts in the Office of the Commissioner (Border) including the 14 Group 'C' & 'D' staffs, beyond February, 2001 to March 2007 was referred to the Finance Commission. By the said communication the Govt. of India informed that the Office of the Commissioner (Border) was created temporarily for supervising the Indo-Bangladesh Border Roads and Fence Construction Project Work, which was scheduled to be completed by March, 2007, therefore, it would not be possible to declare the services of the 14 Group 'C' & 'D' temporary staff as permanent. These applicants filed representation before the authority for their regularisation and finally knocked the door of the Tribunal for redressal of their grievances.

2. The respondents submitted its written statement. In the written statement the respondents asserted that the Office of the Commissioner (Border) was set up in May, 1984 to liaise with the various construction agencies and the State Government for the purpose of construction of

Contd./5



Indo-Bangladesh border road and fencing in Assam, Meghalaya, Mizoram, Tripura and West Bengal and it was to be wound up after the project was over. It was asserted that the office was a temporary one and all the posts were manned by deputationists from other offices except for 15 nos. of Group 'C' and 'D' staff who were directly recruited on purely temporary basis at the time of setting up the through Employment Exchange, Guwahati. The term of appointment of the applicants itself indicated about the temporary nature of the posts. Those posts were created on temporary basis and were extended from time to time. It was stated in the written statement that the first phase of Indo-Bangladesh Border works is nearing completion and Govt. of India approved additional work for construction of Indo-Bangladesh Border road and fence with the time frame of 2001-2007. In view of the nature of the appointments and character of the project, the respondents stated that the services of the applicants as well as the posts would come to an end alongwith the termination of the Scheme.

3. We have heard Mr.D.C.Mahanta, learned Sr. counsel for the applicants assisted by Mr. R.C.Borpatragohain, learned counsel and also Mr.B.C.Pathak, learned Addl.C.G.S.C. for the respondents at length. Mr.Mahanta referring to the Constitutional Scheme of rendering justice - social, political and economy, contended that there was no justifiable ground on the part of the respondents in not taking any positive steps for regularisation of the services of the applicants. The learned Sr.counsel in support of his contention, also referred to various decisions rendered by the Supreme Court to humanise justice. Mr. B. C. Pathak, learned Addl.C.G.S.C. did not dispute the legal policies for rendering justice and equity to all concerned. Mr.Pathak however, referred to the



ground realities and submitted that the applicants were appointed purely on temporary basis against project work. The posts are inextricably connected with the Scheme and since the project is temporary, question of creating permanent posts and for that purpose regularisation of services of the applicants does not arise, contended Mr.B.C.Pathak.

4. From the conspectus the following facts emerges:

The ten applicants were appointed during the period from 1.10.1984 to 24.11.1986. The applicant No.8 Sri Puna Ram Murari was appointed on 28.4.1987. The applicant Nos.7, 8 and 10 are ex-Home Guard personnels. Their recruitments were made through Employment Exchange. The persons were recruited for the task undertaken by the Govt. of India for the purpose of construction of Indo-Bangladesh border road and fencing in Assam, Meghalaya, Mizoram, Tripura and West Bengal. The Office of the Commissioner (Border) under Ministry of Home Affairs that was set up in May, 1984 is a temporary one created for the purpose to complete ^{the} mission undertaken. Materials indicated that the Office is a temporary one and the posts were manned by deputationists from other Offices save and except 15 nos. of Grade 'C' & 'D' staffs who were directly recruited through Employment Exchange. The posts were created on temporary basis and extended from year to year. Some of the applicants were given the benefits of promotion on temporary basis with the condition that the promotion would not bestow any right on them to claim regular appointment in the original temporary grade posts. The objective behind ^{is to} execute the construction of Indo-Bangladesh border road and fencing in the five border States. It thus appears that the appointments made were for the purpose of completing the project/scheme. Their appointments are therefore co-terminous of the Scheme itself. The objective of the



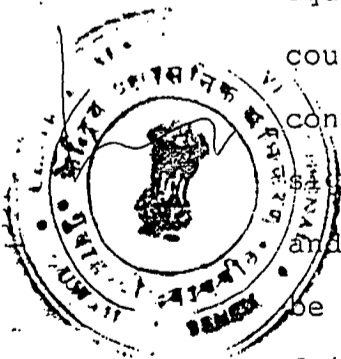
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project was, to meet the requirement. The appointments of the applicants shall continue with the project and the duration is to come to an end with the end of the project on fulfillment of the need.

5. On consideration of all the aspects of the matter, it would not be appropriate for us to issue direction on the respondents as prayed for in aid of Section 19 of the Administrative Tribunals Act, 1985 for absorbing the applicants. Any such direction will be contrary to this Scheme as well as the legal policies laid down by the Supreme Court consistently in this regard right from Jawaharlal Nehru Krishi Vishwa Vidyalaya vs. Bal Kishan Soni (1997) 5 SCC 86 to S.M.Nilajkar vs. Telecom, District Manager, Karnataka (2003) 4 SCC 27; Surendra Kumar Sharma vs. Vikas Adhikary and Another 2003 SCC (L&S) 600 and MD, U.P. Land Development Corporation and Another vs. Amar Singh and Others 2003 SCC (L&S) 690.

6. Though we refrain from making any direction on the authority for regularisation of the services of the applicants, we feel it necessary to express our view that the case in hand, deserves consideration for keeping them in employment. We have said so in consideration of the basic foundation of legal policy which is to provide benefit and well being of the denizen - "salus populi est suprema lake". The cardinal objective of legal policy is to render justice, equity and fair play. Our Republican Constitution does not countenance to do injustice. It is the basic policy of the consideration that law should afford equal direction for all signifying in the words of Prof.R.Dworkin - "equal concern and respect". There cannot be two opinions that law should be just. The Court or Tribunal is to assure that there is no failure of justice.

Considering all these aspects of the matter we leave the matter on the respondents to take care of the



situation. We hope and trust that the authority will continue to take the same care as it bestowed already on these persons for keeping the pot boiling. The Scheme is likely to be completed by 2007. Before drawing of the curtain and things fall apart, the respondents are to explore all possible measures to mitigate the situation with a healing touch either by devising a Scheme or other ^{suitable arrangement} as it deem fit and proper. With these observations we close the proceeding. The application thus stands disposed of.

There shall, however, be no order as to costs.

Sd- We - Chairman

Sd- Members (A)



Verified to be true Copy
 इत्यादि प्रमाणित

[Signature]
 20/7/04
 Section Officer (J)
 C.A.T. GUWAHATI BRANCH
 Guwahati-781005

(Through Fax at No. 011-2529421)

No. 11013/11/2002-BM-III
Government of India/Bharat Sarkar
Ministry of Home Affairs/Orih Mantralaya

North Block, New Delhi
Dated the 24th February, 2004

OFFICE ORDER

The office of the Commissioner (Border) was created vide Office Order No. VI-17019/8/84-O&O/FP-IV dated the 29th September, 1984 on temporary basis to look after the construction of border roads/fence along Indo-Bangladesh Border. It has been decided to close the office of the Commissioner (Border) and not to offer any extension beyond 28th February, 2004.

2. Deputy Commissioner (Border) is requested to coordinate in the matter of closing the office and handing over the entire office assets including the records of the office to BSF. The possibility of accommodating the locally recruited staff of the office of the Commissioner (Border) is being examined separately.

(Sushil Kumar)

Under Secretary to the Govt. of India

To,

Shri P.K. Deb,
Deputy Commissioner (Border),
Office of the Commissioner (Border),
Bhangarali,
GUWAHATI.

Certified to be true copy

Ms. M. Bhattacharya
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.50 of 2004.

Date of Order : This, the 27th Day of February, 2004.

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Shri Krishna Kanta Roy
2. Shri Nripen Kakati
3. Shri Jatin Chandra Das
4. Shri Munindra Chandra Das
5. Shri Bosanta Kumar Boro
6. Shri Narendra Nath Sarma
7. Shri Bangshidhar Bnyan
8. Shri Puna Ram Murali
9. Shri Sankar Basfore
10. Shri Nayan Baba Singh
11. Sri Ramesh Ch. Sarma
12. Sri Dwijen Das
13. Sri Bapan Ch. Nath
14. Shri Ramesh Chandra Daimary.

All the applicants have been working under the Office of the Commissioner (Border), Govt. of India Ministry of Home Affairs, Bhangagarh Guwahati-5.

Applicants.-

Mr. D.C. Mahanta, R.C. Barpatragohain & A. Buragohain.

Versus -

1. The Union of India
Represented by the Joint Secretary to the Government of India (15-11 & BM), Ministry of Home Affairs, North Block, New Delhi-110 001.
2. The Joint Secretary, Border Management Ministry of Home Affairs North Block, New Delhi-110 001.
3. The Under Secretary to the Government of India Ministry of Home Affairs North Block, New Delhi-110 001.
4. The Commissioner (Border) Represented by the Deputy Commissioner (Border) Bhangagarh, Guwahati-5.
5. The Administrative Officer Office of the Commissioner (Border) Govt. of India, Ministry of Home Affairs Bhangagarh, Guwahati-781005. . . . Respondents.

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

ORDER (ORAL)

In view of office order dated 24.2.2004, it has

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Ms. M. Bhattacharjee
Advocate.



been decided by the Ministry of Home Affairs that Office of the Commissioner (Border) would be closed and no further extension would be accorded beyond 28.2.2004. However, it is also stated that the possibility of accommodating the locally recruited staff is being examined separately. The apprehension of the applicants are that in the event, BSF takes control, they would not take them as there is no terms and conditions to decide about the future of this employees.

Keeping that view of the matter the respondents are directed to treat this O.A. as supplementary representation of the applicants. The respondent Nos.1, 2 & 3 are directed to take a decision and dispose of the representation of the applicants and consider the possibility of accommodating locally recruited staff by a detailed and speaking order to be passed within two weeks from the date of receipt of copy of this order.

Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents, is to be provided with a copy of this order enabling him to further communicate with the official respondents. Till a decision is arrived by the Ministry of Home Affairs, status quo of the working of the employees shall be maintained. In event, the applicants are still aggrieved, it is open to them to seek redressal of their grievances in appropriate forum.

The O.A. stands disposed of accordingly. Copy of this order be sent to the respondents alongwith the copy of the O.A.

Certified to be true Copy
 प्रमाणित प्रति

Sd - Member (J)

Sd - Member (A)

Section Officer (J)

C.A.T. GUWAHATI BANCH

Guwahati-781095



(Handwritten signature)
 20/7/04

The Joint Secretary
Border Management
Government of India, MHA,
North Block,
New Delhi-1.

Subject: Through Dy. Commissioner (Border)
Representation for accomodating the staff (IG) against the
vacancies in the NEC, Govt. of India, MHA, Taxation Building,
Shillong.

Ref: 1. The Judgement and order dtd. 8.8.2003 passed by the Hon'ble
Central Administrative Tribunal in Original Application No.
298/2003.
2. The Judgement and order dtd. 27.2.2004 passed by the Hon'ble
Central Administrative Tribunal in Original Application
No. 50/2004.

Sir,
With reference to the above we would like to lay before you the
following few points for your information and sympathetic consideration.

1. That we are serving in this office as UDA/LDA/Driver/Peon for last 18/20 years and we were duly selected and appointed by the concerned authority and we have been rendering sincere services to the fullest satisfaction of all concerned without any blemish what soever in the entire period.
2. That the Office of the Commissioner(Border) Guwahati, Assam created for the Construction as well as Maintenance and requires to be made a permanent establishment and as such we have been time and again making our earnest request to the concerned authorities, Ministry of Home Affairs, Government of India, through proper channel for making the Office of the Commissioner(Border) Guwahati, Assam a permanent establishment and to regularize our services in the said office.
3. That we have requested the concern authorities by submitting several representative both individually and jointly but up-till now our representations have not been considered subjecting to us to mental agony and insecurity in services.

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Ms. M. Bhattacharya
Advocate

4. That, or alternative remedy we approached the Hon'ble Central Administrative Tribunal by filing an Original application which was numbered as No. 298/2002 for declaring the office of the Commissioner(Border) Guwahati, Assam permanent establishment and regularization of the services of the employees working therein.

5. That considering the above aspects the Hon'ble Tribunal, Guwahati Bench was pleased to dispose of the matter on 8.8.2003 with a direction to the Respondents to take care of the situation and that authority will continue to take same case as it bestowed already on these persons for keeping the pot boiling as the scheme is likely to be completed by 2007.

A photo copy of the Judgement dtd. 8.8.2003 as annexed and marked Annexure-A.

6. That after passing the said Judgement we submitted an application on 14.8.2003 expecting that the respondent authority will take favourable action against us but no initiative had been done till-to-day.

7. That after about 7 months of passing of the said Judgement by this Hon'ble Tribunal without considering our case on 24.2.2004 the Under Secretary to the Govt. of India issued an office order whereby it is decided to close the Office of the Commissioner(Border) and not to offer any extension beyond 28.2.2004 and also directed the Deputy Commissioner(Border) to coordinate in the matter of closing the Office and handing the entire office assets including the records of the office to BSF.

8. That we were very much shocked and surprised that our services will end on 28.2.2004 as per letter dtd. 24.2.2004 issued by the Under Secretary to the Govt. of India to close the office of the Commissioner(Border) and not to offer any extension beyond 28.2.2004.

9. That being aggrieved by the order dtd. 24.2.2004 we preferred an application before the Central Administrative Tribunal Guwahati Assam bearing Original application No. 50/2004 to stay the impugned order dtd. 24.2.2004 till final disposal of the appeal and further be directed the respondent authority not to oust the applicants from services till final disposal of the matter by the Hon'ble Tribunal.

Page-3.

10. That the Hon'ble Tribunal was pleased to pass a judgement and order dtd. 27.2.2004 in O.A. 50/2004 to direct the respondents to treat the original application as supplementary representation of the applicants and dispose of the representation and consider the possibility of accommodating locally recruited staff by a detailed and speaking order to be pleased within two weeks from the date of receipt of the order dtd. 27.2.2004.

A copy of the Judgement and order dtd. 27.2.2004 is annexed herewith and marked as Annexure-B.

11. That if the Office of the Commissioner(Border) Guwahati is not made a permanent establishment and also if our services are not regularised we shall suffer an irreparable loss and hardship and shall have to face huge financial hardship.

12. That we have come to know recently that there are number of vacancies in the offices under the NEC, Secretariat Govt. of India, MHA, Taxation Building, Shillong and therefore considering uncertain position of our services, the concerned authority may consider our matter sympathetically in absorbing against the said vacancies in the offices under the NEC, Secretariat Govt. of India, Shillong.

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Under the above circumstance it is therefore earnestly prayed that your honour would be pleased to look into the matter with a pidious mind and to the needful in our favour so that conscionable justice is done in the light of the directions made by the Hon'ble CAT, on 8.8.2003 and 27.2.2004 and for which we shall ever pray.

With due regards.

Dated 27-02-2004

Yours faithfully,

Recruited Staff of Commissioner(Border)
Office, Guwahati.

Copy to:-

The Secretary, NEC, MILA, Taxation Building Shillong for favour of information and kind necessary action.

भारत सरकार
GOVERNMENT OF INDIA

Office of the Commissioner (Border)
Bhangagarh, GUWAHATI - 781 005

गृह मंत्रालय
Ministry of Home Affairs

No.14010/2/(00)86-CB.Pl.II

दिनांक Date 02-03-2004

आधिकारिक (मिनिस्टर) का कार्यालय
महानगर, गुवाहाटी - 781 005
29421
Telephone 529516

To

✓ The Joint Secretary, (BM-III)
Government of India
Ministry of Home Affairs
North Block, New-Delhi-1.

Sub:- Wind up of Office of the Commissioner(Border) MHA, at
Guwahati – regarding clarification.

Ref:-No.11013/11/2002-BM-III. Dtd. 24-2-2004

Sir,

With reference to your letter under reference directing to wind up the office of the Commissioner(Border), Guwahati, I am to say that in accordance with the office manual as obtaining at present, three months prior notice is to be served to the department before finally ordering for its closure to ensure smooth and transparent settlement of assets and liabilities whereas only three to four days were given to complete the uphill job. It has also not been categorically spelt out as to how, when and where the permanent staff of the office will be accommodated. And this has made them insecure and as such compelled them to move court for protecting their basic rights the corollary of that is that the court has imposed stay order on the closure of the office instructing to maintain status quo. Moreover, I am looking after the works of the office in addition to my original works of NEC, stationed in Shillong. And the nature of my works in NEC demands frequent travelling at the work sites to assess the progress of works of various projects. So, it may not be possible for me to station at Guwahati to personally monitor settlement of assets and liabilities of the office. Moreover, I was on tour to Silchar and Kolkata from 24th February, 2004 to 2nd March, 2004.

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Ms. M. Mattachay
Advocate

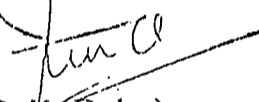
Page-2.

In view of these facts noted above, I would like to seek clarification on the following points.

- (i) In the absence of budget allocation, how the salary of the staff from march onwards, building rent, electricity bill, telephone bill, etc. from February, 2004 onwards will be paid.
- (ii) Whether to direct the deputationists i.e. one S.O. (Desk) and two Assistants to report for duties in their respective departments.
- (iii) If yes in case of (ii) above, who will list out the office files, documents and vehicles etc, for handing over to the BSF as specified in the letter vide reference in case of non-cooperation from the permanent staff which can not be completely ruled out.
- (iv) Monitoring of surrender of some items mentioned in (i) above and settlement of post-wind up items, if any.

An early reply is highly appreciated.

Yours faithfully,



(P. K. Deb.)

Deputy Commissioner (Border).

96

2/07/24
Office of Deputy Commissioner

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.65 of 2004.

Date of Order : This, the 31st Day of March, 2004.

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Shri Krishna Kanta Roy
2. Sri Nripen Kakati
3. Shri Jatin Chandra Das
4. Shri Munindra Chandra Das
5. Shri Bosanta Kumar Boro
6. Shri Narendra Nath Sarma
7. Shri Bongshidhar Bayan
8. Shri Puna Ram Murari
9. Shri Sankar Basfore
10. Shri Nayan Baba Singh
11. Shri Ramesh Chandra Daimary
12. Sri Ramesh Ch. Sarma
13. Sri Dwijen Das
14. Sri Bapan Ch. Nath.

All the applicants have been working under the Office of the Commissioner (Border), Govt. of India, Ministry of Home Affairs, Bhangagarh Guwahati-5. . . . Applicants.

By Advocate Mr.D.C.Mahanta, R.C.Barpatragohain, B.Buragebain,

- Versus -

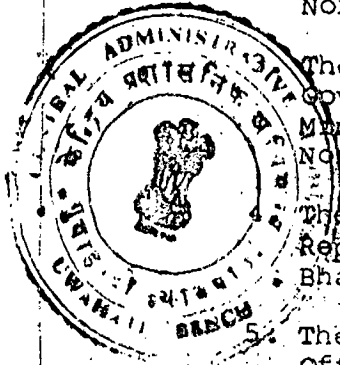
1. The Union of India
Represented by the Joint Secretary
to the Government of India (15-11 & BM)
Ministry of Home Affairs
North Block, New Delhi - 110 001.
2. The Joint Secretary, Border Management
Ministry of Home Affairs
North Block, New Delhi-110 001.

The Under Secretary to the Government of India
Ministry of Home Affairs
North Block, New Delhi-110001.

The Commissioner (Border)
Represented by the Deputy Commissioner (Border)
Bhangagarh, Guwahati-5.

5. The Administrative Officer
Office of the Commissioner (Border)
Govt. of India, Ministry of Home Affairs
Bhangagarh, Guwahati-781005. . . . Respondents.

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



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Contd./2

Certified to be true Copy

Ms. M. Mattochaji
Advocate

ORDER (ORAL)

KULDIP SINGH, MEMBER (J) :

We have heard Mr.D.C.Mahanta, learned counsel for the applicants and also Mr.B.C.Pathak, learned Addl.C.G.S.C. for the respondents.

2. The applicants were engaged as casual labourer by the respondents for a project of construction of wire fencing of Indo-Bangladesh Border. Their services have been disengaged since that project is handed over to Border Security Force.

Therefore, respondents are unable to keep the applicants engaged now.

O.A.50/2004

3. The applicants earlier filed an O.A. seeking regularization. The said O.A. was disposed vide order dated 27.2.2004 wherein the respondents were directed to decide the representation of the applicant and also to explore the possibility if the applicants can be engaged in some other departments under the control of the respondents. But by communication dated 10.3.2004 the respondents informed the concerned officer that they are unable to keep the applicants engaged and they will not be able to pay the salary to the applicants after 29th February, 2004 and their services have been dispensed with after 29.2.2004. The applicants still have grievances that their representation dated 27.2.2004 regarding exploring possibility to depute them in some other departments is still undecided.

In view of these circumstances we find that for
4. The O.A. can be disposed of at the admission stage itself with a direction upon the respondents to dispose of the representation of the applicant. Accordingly, respondents are directed to dispose of the representation of the applicants within a period of one month from the date of receipt of the order and also to explore the possibility to accommodate the applicants in some other departments under the control of the

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Contd./3

- 3 -

respondents as early as possible.

The O.A. is accordingly disposed of.



Sd/MEMBER (J)

Sd/MEMBER (Adn)

Certified to be true
প্রমাণিত প্রতিলিপি

[Signature]
20/7/05
Section Officer (J)

C.A.T. GUWAHATI BENCH
Guwahati-781005

ORDER SHEET

Orig. App/ Misc. App/ Petn/ Rev. Appl. 39/04

A. 65/04

Name of the Applicant(S) Shri Krishna Kant Roy & others

Name of the Respondent(S) Uo. I. O/S

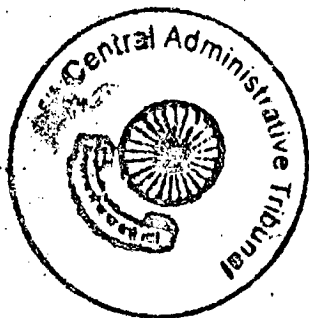
Advocate for the Applicant Mr. R.C. Barpatragohain
B.B. Gohain

Counsel for the Railway/ C.G.S.C. Case

OFFICE NOTE DATE M. PRER/2004 THE TRIBUNAL

12.05.2004 Present: The Hon'ble Sri Mukes Kumar Gupta, Judicial Member.

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



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

In this Misc. Petition prayer has been made to modify the word "temporary staff" instead of "Casual Labourer" in paragraph 2 of the Judgment and Order dated 31.3.2004 passed by this Hon'ble Tribunal. The petitioners also sought for a direction to regularise their services.

Learned counsel for the respondents stated that he has no objection for modification of the word but so far the regularisation of the services of the applicants is concerned, the same has been opposed by the counsel for the respondents.

Certified to be true Copy
M. M. Bhattacharya
Advocate

It is observed that the applicants earlier approached this Tribunal by way of O.A. No. 298 of 2002 which was disposed of on 8.8.2003. On perusal of the said order dated 8.8.2003, it appears that the applicants were engaged as temporary staff. In view of the above, the word "Casual Labourer" is substituted as "temporary staff" in paragraph 2 of the order dated 31.3.2004 in O.A. No. 65/2004. So far the other prayer in the application is concerned, we do not find any justification to pass order in this Misc. Petitioner.



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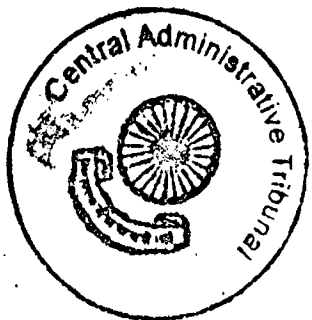
M.P.39/2004

12.05.2004

Accordingly, the order dated 31.3.2004 passed in O.A. 65/2004 ^{would stand} ~~is~~ corrected. The registry is directed to communicate the present order to both the parties.

M.P. is accordingly disposed of.

Sd/MEMBER(J)
Sd/MEMBER(Adn)



Verified to be true Copy
সত্যকপি

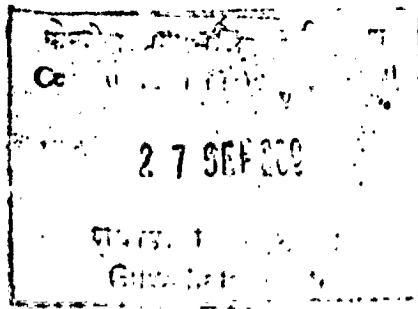
B. Bhattacharya 21.7.04

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

the

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Filed by:

[Signature]
27.9.04

Counsel

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI**

C.P NO. 28/ 2004

IN O.A. NO.298/2002

Shri Krishna Kanta Roy & 2 others..... Petitioners

- versus-

H.S. Brahma & 2 others

.... Respondent

Contemnors.

**(Affidavit-in- reply filed by Shri H.S. Brahma
Respondent No.1)**

I, H.S. Brahma, son of late Shri Mahim Chander Brahma, aged about 54 years, resident of D.I/148, Satya Marg, Chanakyapuri, New Delhi and at present working as the Joint Secretary, Govt. of India, Ministry of Home affairs, New Delhi do hereby solemnly affirm and state as follows:

1.That a copy of the contempt petition No.28/2004 (hereinafter referred to as the "petition") has been served on me along with the order dated 22.7.04 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as the "Tribunal") in the aforesaid application. I have gone through the same and understood the contents thereof. I have been implicated as the Respondent No.1 in the above noted petition and as such I am fully acquainted with the facts and circumstances of the case.

52
DATE: 11/11/03
BY: [Signature]
[Signature]

2. That before traversing the various paragraphs made in the petition, I beg to give a brief resume of the facts and circumstances in the matter including the steps taken by the Ministry of Home Affairs in compliance with the order passed by the Hon'ble Tribunal:

(a) That the petitioners filed the Original Application No. 298/2002 (hereinafter referred to as the "Application") thereby praying for regularization of their services by absorption against permanent vacancies and also for all service benefits. The respondents submitted their written statements and contested the case. This Hon'ble Tribunal, after hearing both the parties and perusing all the records and considering the various legal aspects of the matter passed the final order on 8.8.2003 thereby disposing of the matter with certain observations in the said final order. This Hon'ble Tribunal made it clear that while making the observation this tribunal refrains from making any direction on the authority for regularization of the services of the applicants. The relevant of the paragraph 6 of the said final order is quoted below:

"6. Though we refrain from making any direction on the authority for regularization of the services of the applicants, we feel it necessary to express our view that the case in hand deserves consideration for keeping them in employment. We have said so in consideration of the basic foundation of legal policy which is to provide benefit and well being of the citizen - *salous populi est suprema lex*. The cardinal objective of legal policy is to render justice, equity and

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fairplay. Our republican constitution does not countenance to do injustice. It is the basic policy of the consideration that law should afford equal direction for all signifying the words of Prof. R. Dworkin- *equal concern and respect*. There cannot be two opinion that the law should be just. The Court or Tribunal is to assure that there is no failure of justice.

Considering all these aspects of the matter, we leave the matter on the respondents to take care of the situation. We hope and trust that the authority will continue to take the same care as it bestowed on these persons for keeping the pot boiling. The Scheme is likely to be completed by 2007 before drawing of the curtain and things fall apart, the respondents are to explore all possible measures to mitigate the situation with a healing touch either by devising a scheme or other suitable arrangements as it deem fit and proper. With these observations we close the proceeding. The application thus stands disposed of."

- (b) That as per the observation made by the Hon'ble Tribunal the competent authority in the Ministry of Home Affairs took up the matter with utmost care so that some ways and means could be found out to accommodate the applicants in service elsewhere or in any other Department. Accordingly, specific steps were taken by the Ministry of Home affairs vide letter No.11013/11/2002-BM.III dated 29.9.2003 requesting various authorities of the Departments to explore possibility of accommodating the applicants in one of the offices of Border Fencing Project in Assam. By the said communication the authority also solicited reply on the issue at the earliest.

A Copy of the said letter dated 29.9.2003 is annexed hereto as **Annexure R1**.

- (c) That in response to the said letter dated 29.9.2003, the Director General of Assam Rifles, Shillong intimated the Home

54
20/10/03
Home Affairs
m.

Ministry vide letter No. 11.11011/35/2003-G (PE) dated 6.10.2003 that all the personnels of the force being combatised ones, there is no scope to consider any civil appointments in Assam Rifles at this stage. Accordingly, the authority of Assam Rifles negated the sincere attempts of the Home Ministry to accommodate the petitioners.

A copy of the said letter dated 6.10. 2003 is annexed hereto as **ANNEXURE R2**

(d) That the Home Ministry once again took up the matter with various authorities/departments if there could be any possibility to accommodate the petitioners in service on the Establishments of those departments and accordingly issued the faxed letter vide No.11013/11/2002-BM-III dated 28.10.2003. By the said letter requests were made to those Departments to explore the possibility of appointment of the petitioners.

A copy of the said letter dated 28.10. 2003 is annexed hereto as **ANNEXURE R3**

(e) That in the meantime, the Director General Border Security Force considered the request of the Home Ministry made vide letter dated 29.9.2003 and after detailed examination of the matter expressed their inability to induct the applicants on various grounds, like non-availability of sanctioned post, blocking of promotional avenues of the civilians, all future appointments needs to be combatised and civilian cadres are dying cadres in BSF etc. This was reflected in their decision vide note-sheet dated 30.10.2003.

Another authority, namely, National Buildings Construction Corporation Ltd. (NBCC), in response to the letter dated 28.10.2003 informed the Home Ministry that there is a

ban order currently in force against the fresh recruitment in the NBCC. The said authority also informed that they are having surplus employees and are advising them for availing voluntary retirement scheme that are not in a position to accommodate any official in their establishment. This was communicated vide No. DGM:PMG:MOH:2003:3095 dated 4.11.2003.

The copies of the note sheet dated 30.10.2003 and the letter dated 4.11.2003 are annexed as **Annexure R4 and R5** respectively.

- (f) That the Home Ministry once again, as part of their relentless effort, issued reminders through fax to some other authorities reminding about the letters dated 29.3.2003 and 28.10.2003 and requested to expedite the process of exploring the possibility of accommodating the petitioners in those establishments. This was done vide letter No. 11013/11/2002-BM.III dated 21.11.2003. In response to such communications, the authority of the National Projects Construction Corporation (NPCC) Ltd., wrote to the Home Ministry vide their letter No. VI.40-Min.corrsp./2003 dated 27.11.2003 informed that they were not in a position to accommodate any officials and they are not having any such work.

The copy of the said reminder dated 21.11.2003 and the letter-dated 27.11.2003 are annexed as **ANNEXURE R6 and R7** respectively.

- (g) That the Home Ministry, as a part of their sincere and continuous effort to accommodate the petitioners again issued reminders to the Central Public Works Department (CPWD) vide their letter No. 11013/11/2002-BM.III dated 10.12.2003 and

Handwritten signature and stamp: Ministry of Public Works

No.11013/11/2002-BM.III dated 27.1.2004 and requested the said authority to inform their view in this regard.

The copy of the said reminders dated 10.12.2003 and 27.1.2004 are annexed as **ANNEXURE R8** and **R9** respectively.

(h) That as explained hereinabove and as explicit from the record, the Home Ministry and the authorities under it has left no stone unturned in its attempt to explore possibilities to accommodate the petitioners in the case in any employment under any such Departments including the Public Sector Undertaking but it has not been possible to accommodate the petitioners so far although the all out efforts are still continuing as it is reflected in paragraph 2 of the Office order No. 11013/11/2002-BM.III dated 24.2.2004.

The copy of the office order dated 24.2.2004 is annexed hereto as **ANNEXURE R10**

3. That with regard to the statements made in Para **1,2,3,4 and 5** of the petition, I say that the petitioners were appointed temporarily against the temporary posts created for a time bound project works under a scheme. It was well known to the petitioners that their appointments are temporary and liable to be terminated by the closure/completion of the project works. The law in this regard is also well settled by a plethora of decisions of the Hon'ble Supreme Court; hence, I have no other comment to offer against these statements.

4. That with regard to the statements made in **para 6,7 and 8** of the petition, I say that in view of the final order dated 8.8.2003 and

Handwritten signature and initials, possibly "R. Singh", with a date "12/12/04" and the word "Sirs" written vertically.

the exercise carried out by the respondents as stated hereinabove the respondents have not done anything illegal or contrary to law or anything such which may amount to contempt of court.

5. That with regard to the statements made in **para 9,10 and 11** of the petition, I say that a detailed speaking order was issued on 12.3. 2004 in compliance with the order dated 27.2.2004 passed in O.A. No.50/2004. In this connection I also say that this instant petition has been filed with the alleged non- compliance of the order dated 8.8.2003 passed in OA No.298/2002 and not against the order dated 22.2.2004 passed in OA. No 50/2004. Hence, these statements have no relevance with the instant petition. Moreover, no such alleged representation dated 27.2.2004 was received by the concerned section of the Ministry of Home Affairs.

6. That with regard to the statements made in **para 12,13,14,15,16,17 and 18** of the petition, I reiterate and reassert the forgoing statements and state that the respondents have not done anything contumacious that may be considered as contempt of court. Hence, I deny the allegations as baseless and unconnected with the present petition.

7. That with regard to the statements made in **para 19,20,21,22** including the **prayer portion** of the petition, I say that in view of the explanation given hereinabove and the actions taken by the respondents towards compliance of the observation made by the Hon'ble Tribunal, the respondents have not done anything which may be termed as willful violation or disobedience of any court order/judgment. Moreover, law is well settled that 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 the court's order must allege deliberate or contumacious disobedience of the court's order. (Kapil Deo Prasad Sah & others-vs- State Of Bihar & others as reported in 1999(7) SCC 569). I respectfully state that in the instant petition, there is absolutely nothing to show

that there has been any deliberate or contumacious disobedience of the Court's order. The law is also well settled that the 'question relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescriptions and qualifications and other conditions of service including avenues of promotion and the criteria to be fulfilled for such promotions pertaining to the field of policy is within the exclusive discretion and jurisdiction of the State, subject of course to the limitations and restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals at any rate to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its view for that of the State. Similarly, it is well open and within the competency of the state to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications/eligibility criteria and other conditions of service including the avenues of promotion from time to time as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate Departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service as may be required from -time to time by abolishing the existing cadres/posts and creating new cadres/post. There is no right in any employees of the State to claim that rules governing the conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued

at a particular point of time, a Govt. servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service? (As reported in 2003(2) SCC 632-P.U. Joshi & Ors-vs- Accountant General, Ahmedabad & ors etc.). In view of the above settled position of law, the respondents are not liable of any contempt of court as defined in law.

8. That in case this Hon'ble Tribunal comes a finding that the respondent is liable for contempt of court (civil contempt), in that case I respectfully submit that I have the highest regard to the authority, power of the court and I know that I am bound by the order/judgment passed by any such court except the right of appeal and judicial review and I hereby seek unqualified apology and to exonerate me from the charges of contempt of court.

9. That the statements made in this affidavit in paras 3-7 are true to my knowledge and belief, those made in paras 1-2 being matter of records are true to my information derived there from and the rest are my humble submission before this Hon'ble court. I have not suppressed any material fact.

And I sign this affidavit on the 21st day of September 2004, at Guwahati,

Identified by me


DESPONENT

Advocate

Solemnly affirmed and signed before me by the deponent, who is identified by Shri B.C. Pathak Advocate on this 21st the day of September, 2004 at Guwahati.

Advocate

-10-

No.11013/11/2002-BM.IIII
Government of India
Ministry of Home Affairs

New Delhi Dated 29/09/03

To

The ADG (Border)
CPWD, Nirman Bhawan,
NEW DELHI.

P B No 11
30/9/03

IG (Pers.),
BSF, C. G. O. Complex,
Lodhi Road,
NEW DELHI.

P B No 8
30/9/03 *Shy*
30/9/03

Chief Engineer,
Border (Roads),
State PWD, Assam,
Chandmari,
GUWAHATI

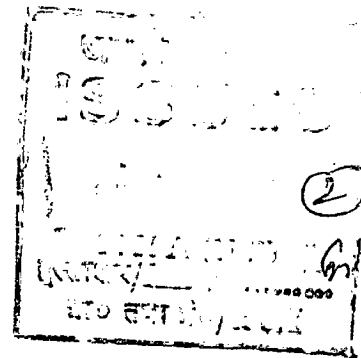
By Post
30/9

Dy. General Manager (C & M),
NPCC Ltd, NPCC,
Plot No.67-68, Sector-25,
FARIDABAD.

By Post
30/9

The Director General,
Assam Rifles,
NEW DELHI.

Shy
30/9



Sir,

The Office of the Commissioner (Border) was created at Guwahati on temporary basis to co-ordinate and supervise the work relating to the Indo-Bangladesh Border roads/fence construction project and its continuance was being approved by the Ministry of Finance on year to year basis. There are 19 posts out of which 4 posts are held by deputationists and the remaining posts are held by locally recruited persons. The continuance of these posts is sanctioned up to February, 2004.

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2. Now, it has been decided to wind up the Office of the Commissioner (Border). With the closing down of the office, the posts held by the deputationists would be reverted back to their parent office and the locally recruited staff would have to be retrenched. The following 14 locally recruited officials have been working in this office for the last 18-19 years and are fully conversant with the activities related to border fencing.

1.	J.C. Das	UDC
2.	K. K. Roy	UDC
3.	R. Sarma	LDC
4.	N. Kakoti	LDC
5.	N. B. Singh	LDC
6.	D. Das	Driver
7.	R.C.Daimarsy	Driver
8.	B.C. Nath	Driver
9.	M.C. Das	Daftry
10.	N. Sarma	Peon
11.	B.K. Bora	Peon
12.	B. Bayan	Peon
13.	P.K. Murari	Peon
14.	S. Basfor	Safaiwala

As these staff members are well conversant with the border fencing work, you are requested to explore the possibility of accommodating these officials in one of the offices of border fencing project in Assam. Kindly communicate your views on this issue at the earliest.

Yours faithfully, ←

P
29/9
(P.K.PATHAK)
Director (BM)

o/c

2003

214 -12-

FILE: 02

Annexure - R2

W/G/BM/III
13/10

Tele : 0364-705024
Fax : 0364-230146

TO BE FAXED

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793 011

Ob Oct 2003

31

II.11011/35/2003-G(PE)

Director (BM)
Government of India
Ministry of Home Affairs
New Delhi - 110001

CIVIL EMPLOYMENT IN ASSAM RIFLES

Sir,

1. Please refer to your letter No. 11013/11/2002-BM.III dated 29 Sep 2003.

2. I am directed to say that, this Force is being combatised in terms of MHA order in vogue and hence there is no scope to considered any civil appointment in Assam Rifles at this stage.

3. Further, it is stated that, Assam Rifles is not taking up border fencing as none of its battalions are deployed on Indo-Bangladesh border.

Yours faithfully,

(K Sreenivasa Rao)
Lt Col
SO1 (G)
for DG Assam Rifles

7/10
W/BM/III
P.E. put up. 13/10
M/PN

26

(THROUGH FAX)

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

SHRI S. DAS,
CHIEF ENGINEER (BORDER ROADS)
STATE PWD, ASSAM,
CHANDMARI,
GUWAHATI. (Fax No.0361-2660342)

DY. GENERAL MANAGER (C & M),
NPCC LTD, NPCC,
PLOT No.67-68, SECTOR-25,
FARIDABAD. (Fax No.0129-5064129 & 2230891)

SHRI S. SHANKAR,
DIRECTOR (PROJECTS),
NBCC, NBCC BHAWAN,
LODHI ROAD, NEW DELHI. (Fax No.011-24366995)

INSPECTOR GENERAL (PERS),
BORDER SECURITY FORCE,
CGO COMPLEX,
NEW DELHI.

No.11013/11/2002-BM.III

DATED THE 28th OCTOBER, 2003

REFERECE THIS MINISTRY'S LTTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF

27

BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER
HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO
EXPEIDTE YOUR VIEWS.

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

Handwritten signature

132

NOTE-SHEET NO.

DIRECTORATE GENERAL BORDER SECURITY FORCE
(STAFF SECTION)

Subject : RETRENCHMENT OF EMPLOYEES OF
OFFICE OF COMMISSIONER (BORDER)

Director (BM), MHA may kindly refer to his Letter No 11013/11/2002-BM-III dated 29Sept' 2003.

2. In this regards it is to inform that the case regarding retrenchment of existing 14 locally recruited Officials of Office of the Commissioner (Border) was examined in detail with relevant policies/instructions on the subject and regretted to say that these Officials can not be inducted in BSF due to following reasons :-

a) The civilian posts sanctioned for HQ DG BSF are very limited.

b) There is a great stagnation in the civilian cadre for promotion to the next higher Grade.

c) Almost all civilian posts of HQ DG BSF stand combatised in BSF. As per Govt's Orders all future vacancies meant for direct entry shall be filled up in combatised rank only.

d) Therefore, the civilian cadre in BSF is dying one.

e) Induction of above personnel in BSF will adversely affect on the promotional prospect of existing civilian staff.

3. In view of above it is requested that the case may be taken up with some other department to explore the possibility for retrenchment of 14 Officials as mentioned in your letter

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F. Pathak
m.p.n.
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P.L. Rep. case

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RECEIVED
Ministry of Home Affairs
New Delhi

30/10

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उत्कृष्टतापरक दल
Team in pursuit of excellence

नेशनल बिल्डिंग्स कंस्ट्रक्शन
कार्पोरेशन लिमिटेड
(भारत सरकार का उद्यम)
NATIONAL BUILDINGS
CONSTRUCTION
CORPORATION LIMITED
(A Government of India Enterprises)



An IS/ISO 9001
Company
(For Consultancy & Project Management Division)

No.DGM:PMG:MOH:2003: / 3095

November 4, 2003

The Under Secretary
to the Govt. of India.
Ministry of Home Affairs
North Block
New Delhi

Kind Attn: Shri Sushil Kumar

SUB: INDO BANGLADESH BORDER FENCING WORK TRIPURA.

Dear Sir,

Please refer to your Letter No.11013/13/2002 - BM-III dated 28.10.03 on the above captioned subject. In this connection it is to inform you that ban on fresh recruitment has been imposed in NBCC by Ministry of Urban Development & Poverty Alleviation. The above ban is still in existence on fresh recruitment in this Corporation.

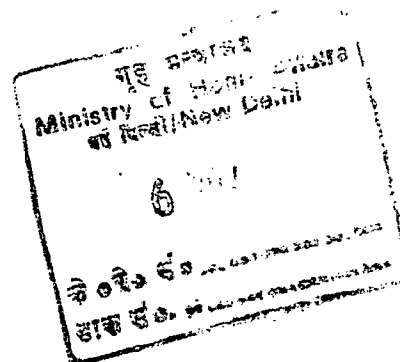
This Corporation is already over burdened with surplus employees and we are making all out efforts to encourage our employees to opt for voluntary retirement under the Voluntary Retirement Scheme. Hence it is not possible for this Corporation to accommodate officials of the Commissioner (Border) Guwahati to any of the works of Border Fencing Projects in Assam.

This issues with the approval of Competent Authority.

Thanking you.

Yours faithfully,

(Signature)
(AJAY PAL)
DY. PROJECT MANAGER (PMG)



*Pl. part. up.
Reply from other
astics have also been
received.
M. P. N. 7/11*

34

(THROUGH FAX)

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

SHRI S. DAS,
CHIEF ENGINEER (BORDER ROADS)
STATE PWD, ASSAM,
CHANDMARI,
GUWAHATI. (Fax No.0361-2660342)

DY. GENERAL MANAGER (C & M),
NPCC LTD, NPCC,
PLOT No.67-68, SECTOR-25,
FARIDABAD. (Fax No.0129-5064129 & 2230891)

No.11013/11/2002-BM.III

DATED THE 21st NOVEMBER, 2003

REFERECNE THIS MINISTRY'S LTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDER DATED 28th OCTOBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS.

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

*Office
24/11/03*

नेशनल प्रोजेक्ट्स कन्स्ट्रक्शन कारपोरेशन लिमिटेड
(भारत सरकार का उद्यम)



Phone : 0129-2231269
: 0129-2234790
: 0129-2234750
: 0129-2231271
: 0129-2231272
Fax : 0129-2230891
: 0129-2234760
Gram : NAPROCON
E-mail : npcc_co@naprocon.com
Website : www.naprocon.com

जल संसाधन मंत्रालय

National Projects Construction Corporation Limited

A (Government of India Enterprise)
Ministry of Water Resources
Corporate Office :

Plot No. 67-68, Sector-25, Faridabad - 121004 (Haryana)



Ref. No. YAB/Min Const/2003

Date : 27/11/2003

Shri Sushil Kumar
Under Secretary to the Govt. of India
Ministry of Home Affairs,
NEW DELHI.

Sub: Accommodating 14 officials of the office of the Commissioner
(Border), Guwahati to any of the office of Border Fencing Project
in Assam-reg.

Dear Sir,

We are in receipt of your Fax No.11013/11/2002/BM-iii dated 28.10.2003
wherein request has been made to accommodate 14 Officials of the Office of
the Commissioner(Border) Guwahati to any of the office of Border fencing
Project in Assam.

In this context we are sorry to state that at present we are not in a
position to accommodate any officials as requested for in Border Fencing
Project, Assam since we do not have any such work with us.

Thanking you,

Yours faithfully,

(A. K. BHALLA)
DY. GENERAL MANAGER (P&A)

mpn
27/11

Annexure - R8

39
A

THROUGH FAX

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
 DIRECTOR GENERAL (WORKS),
 CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
 NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

No.11013/11/2002-BM.III

DATED THE 10th DECEMBER, 2003

REFERECNE THIS MINISTRY'S LTTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDERS DATED 28th OCTOBER, 2003 AND 21st NOVEMBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS. *By Return fax.*

Shree
15/12/03

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

(THROUGH FAX)

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

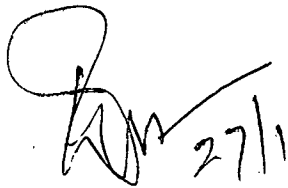
No.11013/11/2002-BM.III

DATED THE 27th JANUARY, 2004

REFERECE THIS MINISTRY'S LTTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDERS DATED 28th OCTOBER, 2003, 21st NOVEMBER, 2003 AND 10th DECEMBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS.



(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA



(Through Fax at No.0361-2529421)

No.11013/11/2002-BM-III
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi.
Dated the 24th February, 2004

OFFICE ORDER

The office of the Commissioner (Border) was created vide Office Order No.VI-17019/8/84-G&O/FP-IV dated the 29th September, 1984 on temporary basis to look after the construction of border roads/fence along Indo-Bangladesh Border. It has been decided to close the office of the Commissioner (Border) and not to offer any extension beyond 28th February, 2004.

2. Deputy Commissioner (Border) is requested to coordinate in the matter of closing the office and handing over the entire office assets including the records of the office to BSF. The possibility of accommodating the locally recruited staff of the office of the Commissioner (Border) is being examined separately.

JK

Sushil Kumar

(Sushil Kumar)

Under Secretary to the Govt. of India

गृह विभाग
ISSUED
To,
MHA (N B)
भारत सरकार/Initials
श्री. प. क. डे. /R & I

Shri P.K. Deb,
Deputy Commissioner (Border),
Office of the Commissioner (Border),
Bhangagrah,
GUWAHATI.

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Copy to:

1. Principal Accounts Officer, Ministry of Home Affairs, New Delhi.
2. Regional Pay & Accounts (IB), Shillong.
3. Director of Audit, AGCR, New Delhi.
4. CPWD [Shri ~~K.N. Agrawal~~, ADG(Border)], Nirman Bhawan, New Delhi. *M. K. L. Mehta*
5. Fin. V Desk, Ministry of Home Affairs, New Delhi.
6. Under Secretary (Budget-I), MHA

9/25/02
[Signature]
[Signature]

SC Sushil Kumar

(Sushil Kumar)
Under Secretary (BM-III)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

C.P NO. 28/ 2004

IN O.A. NO.298/2002

Shri Krishna Kanta Roy & others..... Petitioners

- versus-

H.S. Brahma & 2 others

**.... Respondent
Contemnors.**

**(Affidavit-in- reply filed by Shri Sushil Kumar,
Respondent No.2)**

I, Shri Sushil Kumar, son of late Shri Mangal Dass, aged about 50 years, resident of WZ-35, Krishna Puri, Tilak Nagar, New Delhi and at present working as the Under Secretary, Govt. of India, Ministry of Home affairs, New Delhi do hereby solemnly affirm and state as follows:

1. That a copy of the contempt petition No.28/2004 (hereinafter referred to as the "petition") has been served on me along with the order dated 22.7.04 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as the "Tribunal") in the aforesaid application. I have gone through the same and understood the contents thereof. I have been implicated as the Respondent No.2 in the above noted petition and as such I am fully acquainted with the facts and circumstances of the case.

Filed by: 23

22.7.04
Sushil Kumar

Sushil Kumar

2. That before traversing the various paragraphs made in the petition, I beg to give a brief resume of the facts and circumstances in the matter including the steps taken by the Ministry of Home Affairs in compliance with the order passed by the Hon'ble Tribunal:

(a) That the petitioners filed the Original Application No. 298/2002 (hereinafter referred to as the "Application") thereby praying for regularization of their services by absorption against permanent vacancies and also for all service benefits. The respondents submitted their written statements and contested the case. This Hon'ble Tribunal, after hearing both the parties and perusing all the records and considering the various legal aspects of the matter passed the final order on 8.8.2003 thereby disposing of the matter with certain observations in the said final order. This Hon'ble Tribunal made it clear that while making the observation this tribunal refrains from making any direction on the authority for regularization of the services of the applicants. The relevant of the paragraph 6 of the said final order is quoted below:

"6. Though we refrain from making any direction on the authority for regularization of the services of the applicants, we feel it necessary to express our view that the case in hand deserves consideration for keeping them in employment. We have said so in consideration of the basic foundation of legal policy which is to provide benefit and well being of the citizen – *salous populi est suprema lex*. The cardinal objective of legal policy is to render justice, equity and fairplay. Our republican constitution does not countenance to do

injustice. It is the basic policy of the consideration that law should afford equal direction for all signifying the words of Prof. R. Dworkin- *equal concern and respect*. There cannot be two opinion that the law should be just. The Court or Tribunal is to assure that there is no failure of justice.

Considering all these aspects of the matter, we leave the matter on the respondents to take care of the situation. We hope and trust that the authority will continue to take the same care as it bestowed on these persons for keeping the pot boiling. The Scheme is likely to be completed by 2007 before drawing of the curtain and things fall apart, the respondents are to explore all possible measures to mitigate the situation with a healing touch either by devising a scheme or other suitable arrangements as it deem fit and proper. With these observations we close the proceeding. The application thus stands disposed of."

- (b) That as per the observation made by the Hon'ble Tribunal the competent authority in the Ministry of Home Affairs took up the matter with utmost care so that some ways and means could be found out to accommodate the applicants in service elsewhere or in any other Department. Accordingly, specific steps were taken by the Ministry of Home affairs vide letter No.11013/11/2002-BM.III dated 29.9.2003 requesting various authorities of the Departments to explore possibility of accommodating the applicants in one of the offices of Border Fencing Project in Assam. By the said communication the authority also solicited reply on the issue at the earliest.

A Copy of the said letter dated 29.9.2003 is annexed hereto as **Annexure R1**.

- (c) That in response to the said letter dated 29.9.2003, the Director General of Assam Rifles, Shillong intimated the Home

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See Vol 1/107

Ministry vide letter No. 11.11011/35/2003-G (PE) dated 6.10.2003 that all the personnels of the force being combatised ones, there is no scope to consider any civil appointments in Assam Rifles at this stage. Accordingly, the authority of Assam Rifles negated the sincere attempts of the Home Ministry to accommodate the petitioners.

A copy of the said letter dated 6.10. 2003 is annexed hereto as **ANNEXURE R2**

(d) That the Home Ministry once again took up the matter with various authorities/departments if there could be any possibility to accommodate the petitioners in service on the Establishments of those departments and accordingly issued the faxed letter vide No.11013/11/2002-BM-III dated 28.10.2003. By the said letter requests were made to those Departments to explore the possibility of appointment of the petitioners.

A copy of the said letter dated 28.10. 2003 is annexed hereto as **ANNEXURE R3**

(e) That in the meantime, the Director General Border Security Force considered the request of the Home Ministry made vide letter dated 29.9.2003 and after detailed examination of the matter expressed their inability to induct the applicants on various grounds, like non-availability of sanctioned post, blocking of promotional avenues of the civilians, all future appointments needs to be combatised and civilian cadres are dying cadres in BSF etc. This was reflected in their decision vide note-sheet dated 30.10.2003.

Another authority, namely, National Buildings Construction Corporation Ltd. (NBCC), in response to the letter dated 28.10.2003 informed the Home Ministry that there is a

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Sundar Kumar

ban order currently in force against the fresh recruitment in the NBCC. The said authority also informed that they are having surplus employees and are advising them for availing voluntary retirement scheme that are not in a position to accommodate any official in their establishment. This was communicated vide No. DGM:PMG:MOH:2003:3095 dated 4.11.2003.

The copies of the note sheet dated 30.10.2003 and the letter dated 4.11.2003 are annexed as **Annexure R4 and R5** respectively.

- (f) That the Home Ministry once again, as part of their relentless effort, issued reminders through fax to some other authorities reminding about the letters dated 29.3.2003 and 28.10.2003 and requested to expedite the process of exploring the possibility of accommodating the petitioners in those establishments. This was done vide letter No. 11013/11/2002-BM.III dated 21.11.2003. In response to such communications, the authority of the National Projects Construction Corporation (NPCC) Ltd., wrote to the Home Ministry vide their letter No. VI.40-Min.corrsp./2003 dated 27.11.2003 informed that they were not in a position to accommodate any officials and they are not having any such work.

The copy of the said reminder dated 21.11.2003 and the letter-dated 27.11.2003 are annexed as **ANNEXURE R6** and **R7** respectively.

- (g) That the Home Ministry, as a part of their sincere and continuous effort to accommodate the petitioners again issued reminders to the Central Public works Department (CPWD) vide their letter No. 11013/11/2002-BM.III dated 10.12.2003 and No.11013/11/2002-BM.III dated 27.1.2004 and requested the said authority to inform their view in this regard.

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The copy of the said reminders dated 10.12.2003 and 27.1.2004 are annexed as **ANNEXURE R8** and **R9** respectively.

(h) That as explained hereinabove and as explicit from the record, the Home Ministry and the authorities under it has left no stone unturned in its attempt to explore possibilities to accommodate the petitioners in the case in any employment under any such Departments including the Public sector Undertaking but it has not been possible to accommodate the petitioners so far although the all out efforts are still continuing as it is reflected in paragraph 2 of the Office order No. 11013/11/2002-BM.III dated 24.2.2004.

The copy of the office order dated 24.2.2004 is annexed hereto as **ANNEXURE R10**

3. That with regard to the statements made in Para 1,2,3,4 and 5 of the petition, I say that the petitioners were appointed temporarily against the temporary posts created for a time bound project works under a scheme. It was well known to the petitioners that their appointments are temporary and liable to be terminated by the closure/completion of the project works. The law in this regard is also well settled by a plethora of decisions of the Hon'ble Supreme Court; hence, I have no other comment to offer against these statements.

4. That with regard to the statements made in **para 6,7 and 8** of the petition, I say that in view of the final order dated 8.8.2003 and the exercise carried out by the respondents as stated hereinabove the respondents have not done anything illegal or contrary to law or anything such which may amount to contempt of court.

Submitted (13/11)

5. That with regard to the statements made in **para 9,10 and 11** of the petition, I say that a detailed speaking order was issued on 12.3. 2004 in compliance with the order dated 27.2.2004 passed in O.A. No.50/2004. In this connection I also say that this instant petition has been filed with the alleged non- compliance of the order dated 8.8.2003 passed in OA No.298/2002 and not against the order dated 22.2.2004 passed in OA. No 50/2004. Hence, these statements have no relevance with the instant petition. Moreover, no such alleged representation dated 27.2.2004 was received by the concerned section of the Ministry of Home Affairs.

6. That with regard to the statements made in **para 12,13,14,15,16,17 and 18** of the petition, I reiterate and reassert the forgoing statements and state that the respondents have not done anything contumacious that may be considered as contempt of court. Hence, I deny the allegations as baseless and unconnected with the present petition.

7. That with regard to the statements made in **para 19,20,21,22** including the **prayer portion** of the petition, I say that in view of the explanation given hereinabove and the actions taken by the respondents towards compliance of the observation made by the Hon'ble Tribunal, the respondents have not done anything which may be termed as willful violation or disobedience of any court order/judgment. Moreover, law is well settled that 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 the court's order must allege deliberate or contumacious disobedience of the court's order. (Kapil Deo Prasad Sah & others-vs- State Of Bihar & others as reported in 1999(7) SCC 569). I respectfully state that in the instant petition, there is absolutely nothing to show

Sumit Singh

that there has been any deliberate or contumacious disobedience of the Court's order. The law is also well settled that the 'question relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescriptions and qualifications and other conditions of service including avenues of promotion and the criteria to be fulfilled for such promotions pertaining to the field of policy is within the exclusive discretion and jurisdiction of the State, subject of course to the limitations and restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals at any rate to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its view for that of the State. Similarly, it is well open and within the competency of the state to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications/eligibility criteria and other conditions of service including the avenues of promotion from time to time as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate Departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service as may be required from -time to time by abolishing the existing cadres/posts and creating new cadres/post. There is no right in any employees of the State to claim that rules governing the conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Govt. servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. (As reported in 2003(2) SCC 632-P.U. Joshi & Ors-vs- Accountant general, Ahmedabad & ors etc.).

Substituted

In view of the above settled position of law, the respondents are not liable of any contempt of court as defined in law.

8. That in case this Hon'ble Tribunal comes a finding that the respondent is liable for contempt of court (civil contempt), in that case I respectfully submit that I have the highest regard to the authority, power of the court and I know that I am bound by the order/judgment passed by any such court except the right of appeal and judicial review and I hereby seek unqualified apology and to exonerate me from the charges of contempt of court.

9. That the statements made in this affidavit in paras 3-7 are true to my knowledge and belief, those made in paras 1-2 being matter of records are true to my information derived there from and the rest are my humble submission before this Hon'ble court. I have not suppressed any material fact.

And I sign this affidavit on the 24th day of September 2004, at Guwahati,

Identified by me


DESPONENT

Advocate

Solemnly affirmed and signed before me by the deponent, who is identified by Shri B.C. Pathak Advocate on this 24th the day of September, 2004 at Guwahati.

Advocate

325

23

No.11013/11/2002-BM.IIII
Government of India
Ministry of Home Affairs

New Delhi Dated 29/09/03

To

The ADG (Border)
CPWD, Nirman Bhawan,
NEW DELHI.

PB No 11
30/9/03

IG (Pers.),
BSF, C. G. O. Complex,
Lodhi Road,
NEW DELHI.

PB No 8
30/9/03
30/9/03

Chief Engineer,
Border (Roads),
State PWD, Assam,
Chandmari,
GUWAHATI

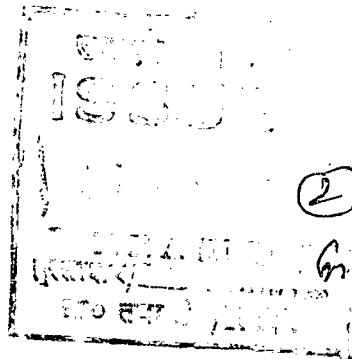
By Post
30/9

Dy. General Manager (C & M),
NPCC Ltd, NPCC,
Plot No.67-68, Sector-25,
FARIDABAD.

By Post
30/9

The Director General,
Assam Rifles,
NEW DELHI.

By Post
30/9



Sir,

The Office of the Commissioner (Border) was created at Guwahati on temporary basis to co-ordinate and supervise the work relating to the Indo-Bangladesh Border roads/fence construction project and its continuance was being approved by the Ministry of Finance on year to year basis. There are 19 posts out of which 4 posts are held by deputationists and the remaining posts are held by locally recruited persons. The continuance of these posts is sanctioned up to February, 2004.

-11-

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(2)

2. Now, it has been decided to wind up the Office of the Commissioner (Border). With the closing down of the office, the posts held by the deputationists would be reverted back to their parent office and the locally recruited staff would have to be retrenched. The following 14 locally recruited officials have been working in this office for the last 18-19 years and are fully conversant with the activities related to border fencing.

1.	J.C. Das	UDC
2.	K. K. Roy	UDC
3.	R. Sarma	LDC
4.	N. Kakoti	LDC
5.	N. B. Singh	LDC
6.	D. Das	Driver
7.	R.C.Daimarsy	Driver
8.	B.C. Nath	Driver
9.	M.C. Das	Daftly
10.	N. Sarma	Peon
11.	B.K. Bora	Peon
12.	B. Bayan	Peon
13.	P.K. Murari	Peon
14.	S. Basfor	Safaiwala

As these staff members are well conversant with the border fencing work, you are requested to explore the possibility of accommodating these officials in one of the offices of border fencing project in Assam. Kindly communicate your views on this issue at the earliest.

Yours faithfully,

P
29/9

(P.K.PATHAK)
Director (BM)

o/c

2003

TO BE FAXED

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793 011

06 Oct 2003

Tele : 0364-705024
Fax : 0364-230146

II.11011/35/2003-G(PE)

Director (BM)
Government of India
Ministry of Home Affairs
New Delhi - 110001

CIVIL EMPLOYMENT IN ASSAM RIFLES

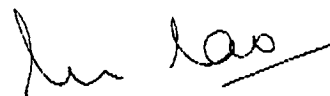
Sir,

1. Please refer to your letter No. 11013/11/2002-BM.III dated 29 Sep 2003.

2. I am directed to say that, this Force is being combatized in terms of MHA order in vogue and hence there is no scope to considered any civil appointment in Assam Rifles at this stage.

3. Further, it is stated that, Assam Rifles is not taking up border fencing as none of its battalions are deployed on Indo-Bangladesh border.

Yours faithfully,



(K Sreenivasa Rao)
Lt Col
SO1 (G)
for DG Assam Rifles

(31)

7/10
S.B.M./III
P.C. put up.
M. PN
19/10

35

26

(THROUGH FAX)

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

SHRI S. DAS,
CHIEF ENGINEER (BORDER ROADS)
STATE PWD, ASSAM,
CHANDMARI,
GUWAHATI. (Fax No.0361-2660342)

DY. GENERAL MANAGER (C & M),
NPCC LTD, NPCC,
PLOT No.67-68, SECTOR-25,
FARIDABAD. (Fax No.0129-5064129 & 2230891)

SHRI S. SHANKAR,
DIRECTOR (PROJECTS),
NBCC, NBCC BHAWAN,
LODHI ROAD, NEW DELHI. (Fax No.011-24366995)

INSPECTOR GENERAL (PERS),
BORDER SECURITY FORCE,
CGO COMPLEX,
NEW DELHI.

No.11013/11/2002-BM.III

DATED THE 28th OCTOBER, 2003

REFERECE THIS MINISTRY'S LTTER OF EVEN NUMBER DATED 29TH SEPTemper, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF

27

BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER
HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO
EXPEIDTE YOUR VIEWS.

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

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NOTE-SHEET NO.

DIRECTORATE GENERAL BORDER SECURITY FORCE
(STAFF SECTION)

Subject : RETRENCHMENT OF EMPLOYEES OF
OFFICE OF COMMISSIONER (BORDER)

Director (BM), MHA may kindly refer to his Letter No 11013/11/2002-BM-III dated 29Sept' 2003.

2. In this regards it is to inform that the case regarding retrenchment of existing 14 locally recruited Officials of Office of the Commissioner (Border) was examined in detail with relevant policies/instructions on the subject and regretted to say that these Officials can not be inducted in BSF due to following reasons :-

- a) The civilian posts sanctioned for HQ DG BSF are very limited.
 - b) There is a great stagnation in the civilian cadre for promotion to the next higher Grade.
 - c) Almost all civilian posts of HQ DG BSF stand combatised in BSF. As per Govt's Orders all future vacancies meant for direct entry shall be filled up in combatised rank only.
 - d) Therefore, the civilian cadre in BSF is dying one.
 - e) Induction of above personnel in BSF will adversely affect on the promotional prospect of existing civilian staff.
3. In view of above it is requested that the case may be taken up with some other department to explore the possibility for retrenchment of 14 Officials as mentioned in your letter

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 P. P. Patil
 C. M. P. N.
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 P. P. Patil
 case

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RECEIVED
 Home Affairs
 New Delhi

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(THROUGH FAX)

FROM : HOME NEW DELHI.

TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS);
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

SHRI S. DAS,
CHIEF ENGINEER (BORDER ROADS)
STATE PWD, ASSAM,
CHANDMARI,
GUWAHATI. (Fax No.0361-2660342)

DY. GENERAL MANAGER (C & M),
NPCC LTD, NPCC,
PLOT No.67-68, SECTOR-25,
FARIDABAD. (Fax No.0129-5064129 & 2230891)

No.11013/11/2002-BM.III

DATED THE 21ST NOVEMBER, 2003

REFERECNE THIS MINISTRY'S LTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDER DATED 28TH OCTOBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS.

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

*Office
24/11/03*

*Repl. up
as*

नेशनल प्रोजेक्ट्स कन्स्ट्रक्शन कारपोरेशन लिमिटेड
(भारत सरकार का उद्यम)



Phone : 0129-2231269
: 0129-2234790
: 0129-2234750
: 0129-2231271
: 0129-2231272
Fax : 0129-2230891
: 0129-2234760
Gram : NAPROCON
E-mail : npcc_co@naprocon.com
Website : www.naprocon.com



जल संसाधन मंत्रालय
National Projects Construction Corporation Limited

A (Government of India Enterprise)
Ministry of Water Resources
Corporate Office :

Plot No. 67-68, Sector-25, Faridabad - 121004 (Haryana)

Ref. No. VADP/Min/Constr/2003

Date : 27.11.2003

Shri Sushil Kumar
Under Secretary to the Govt. of India
Ministry of Home Affairs,
NEW DELHI.

Sub: Accommodating 14 officials of the office of the Commissioner
(Border), Guwahati to any of the office of Border Fencing Project
in Assam-reg.

Dear Sir,

We are in receipt of your Fax No.11013/11/2002/BM-III dated 28.10.2003
wherein request has been made to accommodate 14 Officials of the Office of
the Commissioner(Border) Guwahati to any of the office of Border fencing
Project in Assam.

In this context we are sorry to state that at present we are not in a
position to accommodate any officials as requested for in Border Fencing
Project, Assam since we do not have any such work with us.

Thanking you,

Yours faithfully,

(A. K. BHALLA)
DY. GENERAL MANAGER (P&A)

imp-2
27/11

Annexure R8

33

THROUGH FAX)

FROM
TO

HOME NEW DELHI.

SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

No.11013/11/2002-BM.III

DATED THE 10th DECEMBER, 2003

REFEERECNE THIS MINISTRY'S LTTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDERS DATED 28th OCTOBER, 2003 AND 21st NOVEMBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS. *By Return fax.*

Sushil Kumar

(SUSHIL KUMAR)

UNDER SECRETARY TO THE GOVT. OF INDIA

Chice
10/12/03

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(THROUGH FAX)

FROM : HOME NEW DELHI.
TO : SHRI K.N. AGRAWAL,
DIRECTOR GENERAL (WORKS),
CENTRAL PUBLIC WORKS DEPARTMENT (CPWD),
NIRMAN BHAWAN,
NEW DELHI. (Fax No.011-23011134)

No.11013/11/2002-BM.III

DATED THE 27th JANUARY, 2004

REFERECNE THIS MINISTRY'S LTTER OF EVEN NUMBER DATED 29TH SEPTEMPER, 2003 AND SUBSEQUENT REMINDERS DATED 28th OCTOBER, 2003, 21st NOVEMBER, 2003 AND 10th DECEMBER, 2003 REQUESTING TO EXPLORE THE POSIBILITY OF ACCOMMODATING 14 OFFICIALS OF THE OFFICE OF THE COMMISSIONER (BORDER), GUWAHATI TO ANY OF THE OFFICES OF BORDER FENCING PROJECT IN ASSAM. YOUR VIEWS IN THE MATTER HAVE NOT YET BEEN RECEIVED. YOU ARE REQUESTED TO EXPEIDTE YOUR VIEWS.

Sushil Kumar

(SUSHIL KUMAR)
UNDER SECRETARY TO THE GOVT. OF INDIA

[Signature]
27/1

(Through Fax at No.0361-2529421)

No.11013/11/2002-BM-III
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi.
Dated the 24th February, 2004

OFFICE ORDER

The office of the Commissioner (Border) was created vide Office Order No.V-17019/8/84-G&O/FP-IV dated the 29th September, 1984 on temporary basis to look after the construction of border roads/fence along Indo-Bangladesh Border. It has been decided to close the office of the Commissioner (Border) and not to offer any extension beyond 28th February, 2004.

2. Deputy Commissioner (Border) is requested to coordinate in the matter of closing the office and handing over the entire office assets including the records of the office to BSF. The possibility of accommodating the locally recruited staff of the office of the Commissioner (Border) is being examined separately.

o/c

Sushil Kumar

(Sushil Kumar)

Under Secretary to the Govt. of India

To,

Shri P.K. Deb,
Deputy Commissioner (Border),
Office of the Commissioner (Border),
Bhangagrah,
GUWAHATI.

MHA (N & I)
R & I
MHA (N & I)
R & I

gm US

Copy to:

1. Principal Accounts Officer, Ministry of Home Affairs, New Delhi.
2. Regional Pay & Accounts (IB), Shillong.
3. Director of Audit, AGCR, New Delhi.
4. CPWD [~~Shri K.N. Agrawal~~, ADG(Border)], Nirman Bhawan, New Delhi. *M. K. L. Mehta*
5. Fin. V Desk, Ministry of Home Affairs, New Delhi.
6. Under Secretary (Budget-I), MHA

9/2/10
[Handwritten signature]
[Handwritten initials]

SC *[Handwritten signature]*

(Sushil Kumar)
 Under Secretary (BM-III)