

JORAK NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App/115/2004 Ptn/Cont. Petn/Rev. App

35/04.....

In O.A. 283/2002

Name of the Applicant(s) Arinor Zamal

Name of the Respondent(s) N. Brahma

Advocate for the Applicant M. P. Khan, Sh. Murtaza Ahmed, Bissuddin, R.S. Thakuri

Counsel for the Railway/Co. & C. C.

Chairman of the TRIBUNAL

OFFICE NOTE

DATE

This Contempt

17.8.04

List on 24.8.04 for orders

Petition has been
filed by the counsel
for the petitioners praying
non-compliance and
wilful disobedience
of the order passed
by this Hon'ble Tribunal
in O.A. 283/02.

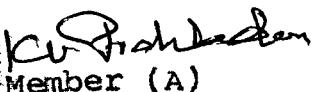
Case before
the Hon'ble Court
for further orders.

24.8.2004 present: The Hon'ble Shri D. C. Verma,
Vice-Chairman (J).

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

Mr. A.M. Ahmed, learned counsel for
the applicant is present.

It is noted that more than twelve
months have passed and notice has not
been issued. Learned counsel for the
applicant seeks ~~leave~~ and is allowed to
argue on the question of maintainability.
List on 15.9.2004.


K.V. Prahadan
Member (A)


Vice-Chairman

bb


Section Officer


DPO

10.11.04.

On the request of Sri S. Ghosh
 mentioning on behalf of learned counsel
 Sri A.A.Ahmed stand over to 14.12.04.

S. Ghosh
 Member

R
 Vice-Chairman

pg

14.12.04.

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

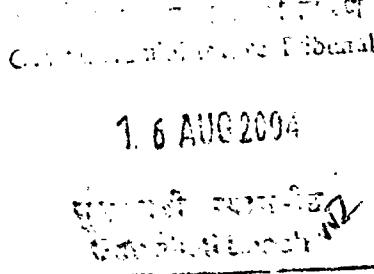
None present for the applicant.
 On 24.8.04 the learned counsel for the applicant sought to argue on the question of maintainability. Again on 10.11.04 on the request of learned counsel for the applicant the matter was adjourned to to-day. To-day no one has appeared on behalf of the applicant. It appears that the applicant is not interested ⁱⁿ prosecuting the matter. Hence C.P. is dismissed for non-prosecution.

23.12.04
 Copy of the
 order has been
 sent to the D/Sec
 for sending the
 same to the Parties.

ll
 23/12/04

lm:

R
 Vice-Chairman



Anisuz Zamal

Filed by the Petitioner
Shri Anisuz Zamal
through Md. Giashuddin
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI.

Contempt Petition No. 35 / 2004

In the matter of:-

An application under Section 17
of the Administrative Tribunal
Act, 1985.

And

In the matter of:-

Wilful disobedience and non-compliance
of the order, passed on 12.6.2003
by this Hon'ble Tribunal in Original
Application No. 283/2002.

And

In the matter of:-

Shri Anisuz Zamal,
S/o late Abul Mazid, working as
Gangman in Kampur Railway Station
at Kampur, N.F. Railway, Lumding.

..... Petitioner

- Versus -

1. Shri N. Brahma,

Senior Divisional Engineer,
N.F. Railway, Lumding.

.... Respondent
Contemner

The humble petition of the
petitioner above named:-

Ansug Samaj

MOST RESPECTFULLY SHEWETH :-

1. That your petitioner is a peace loving and law abiding citizen of India and is a permanent resident of Kampur Railway Station and he is working as Gangman under the Senior Divisional Engineer, Lumding, N.F. Railway Lumding.
2. That your humble petitioner begs to state that he was working as Gangman on 14.5.2002 and thereafter he was not allowed to ~~perform~~ ^{perform} his duty by the Gangmate as per the advice of the permanent way Inspector- 1 without any reason.
3. That your humble petitioner begs to state that he was not allowed to perform his duty and he was directed by the Gangmate to meet PWI- 1 and when the petitioner went to the office of the PWI- 1 , he was not entertained and he was not allowed to meet the PWI by the Time-keeper of the office.
4. That as the petitioner failed to meet the PWI- 1 Assistant Engineer and Senior Divisional Engineer, Lumding to ventilate his grievances, finding no other alternative, petitioner has filed an application before the Hon'ble Central Administrative Tribunal, Guwahati Bench, which was registered as O.A. No.283/2002. The said original application was listed for hearing on 12.6.2003 and the Hon'ble Tribunal was pleased to pass the judgment in favour of the petitioner and directed the Senior Divisional ~~Manager~~ Engineer,

Lumding to detail the petitioner at the place of work either at Kampur or at Laopani. It was further directed the Senior Divisional Manager to look after the grievances of the applicant and to take appropriate measure under the law for payment of the salary as admissible under the rules.

5. That the humble petitioner begs to state that as per the judgment of the Hon'ble Tribunal the respondent authority including the Assistant Divisional Engineer, N.F. Railway, Jagiroad to complete the disciplinary proceeding within a period of three months the respondents were also directed to take all necessary steps to restore the impasse and take appropriate steps for release of the salary/allowances etc to the applicant.

A copy of the order passed by the Hon'ble Tribunal is enclosed herewith and marked as Annexure- 1.

6. That the humble petitioner begs to state that after obtaining the certified copy of the judgment it was handed over to the contemner/ respondent No.1 on 18.6.2003 which was duly received by the respondent.

7. That the petitioner begs to state that in the order of the Hon'ble Tribunal dtd. 12.6.2003, it was clearly directed to the respondent to complete the departmental proceeding on the basis of show cause notice issued by him within the period of three months from the date of judgment. The departmental enquiry was

Anil Kumar

initiated by the Assistant Engineer, Jagiroad on the allegation of absence from duty on and from 15.5.2002 and written statement was submitted by him on 14.9.2002 but till today no enquiry was initiated to find out the actual fact of allegation.

8. That the petitioner begs to state that the allegation of unauthorised absence from duty against him is yet to be established even after the final order in O.A. No. 283/2002. In such circumstances his pay and salary cannot be withheld by the respondent for the period from 15.5.2002 under any authority of law. The dispute of unauthorised absent is a subject matter to be decided by holding an impartial departmental enquiry to ascertain the correct fact.

9. That your humble petitioner begs to submit that the action of the contemner for not complying with the order of the Hon'ble Tribunal is nothing but disrespect to the Hon'ble Tribunal for which he is liable under the provision of Section 17 of the Administrative Tribunal Act, 1985 and also liable ~~to~~ under the Contempt of this Tribunal.

10. That your humble petitioner begs to state that he has joined his duty as per the order of the Hon'ble Tribunal on 14.8.2003 at Laopani.

11. That the petitioner joined his service on 14.8.2003 for which he was paid his salary from 14.8.2003

Anisul Zaman

- 5 -

but the period of absence from 15.5.2002 are yet to be released by the authority.

12. That your humble petitioner begs to state that as the grievances for the petitioner's are not yet settled and the enquiry was not conducted by the department about the allegation of unauthorised absence, your humble petitioner submitted an application under registered post to the respondent on 19.3.2004. The said application is pending ~~in pending~~ in the office of the respondent and no order has been passed by the respondent on the application.

The copy of the application and the copy of the registered receipt is enclosed herewith and marked as Annexures 2 and 2A respectively.

13. That your humble petitioner begs to state that the respondent has not paid the full attention of the judgment passed by the Hon'ble Tribunal and shows disrespect to the Hon'ble Tribunal and so he has not complied the order of the Hon'ble Tribunal as yet. Moreover, the respondent is also not acted on the application of the petitioner submitted on 19.3.2004.

14. That the inaction of the respondent and defying the direction of the Hon'ble Tribunal he is liable under the Contempts of Courts Act and is also punishable for his wilful violation of the Tribunal's order as per law.

15. That your humble petitioner begs to state that the respondent is duty bound to maintain the dignity of the Hon'ble Tribunal but the respondent by his conduct shows disrespect to the Hon'ble Tribunal and lowered down the dignity of the Hon'ble Tribunal for which he is liable for punishment.

16. That the petition is made bona fide and for the ends of justice.

It is, therefore, prayed that your Lordships may be pleased to admit this petition, issue a show cause notice to the respondent(contemner) why a contempt proceeding shall not be initiated against the contemner and why punishment's shall not be imposed against the contemner as per law and after hearing the parties punishment shall not be imposed against the contemner and or pass necessary order or orders as your Lordships may deem fit and proper.

A F F I D A V I T

I, Shri Anisuz Zamal, son of late Abdul Mazid, aged about 41 years, resident of Kampur Railway Station, N.F. Railway, Lumding, District- Nagaon, do hereby solemnly affirm and declare as follows:-

1. . That I am the petitioner of the Contempt petition and as such, I am fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1 to 4, 6 to 8, 10, 11, 13 to 15 are true to my knowledge, those made in paragraphs 5, & 12 being matters of records of the case, are true to my information derived therefrom, which I believe to be true and ~~know~~ the rest are my humble submissions before this Hon'ble Court.

And

I set my hand to this affidavit today this
the 16th day of ^{August} ~~July~~, 2004 at Guwahati.

Anisuz Zamal

Deponent

Identified by me
Ali Mostafa Ahmed
Advocate

solemnly affirm and declare
before Ali Mostafa Ahmed,
Adv. on 16th August, 2004

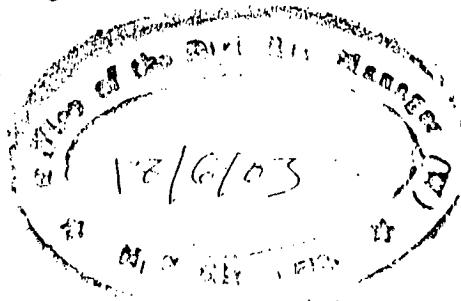
10

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating a contempt proceeding against the contemners for wilful disobedience and deliberate non compliance of order of the Hon'ble Tribunal dated 12.6.2003 passed in O.A. 283/2003.

And further be pleased to impose punishment on alleged contemners/defendants for wilful disobedience and deliberate non compliance of the order dated 12.6.2003.

To,



The SR. DEN/ Lumding, N. E. Rly
Dated Lumding the 17th June 2003

Sub: Application for Joining my duty as per Order dated 12/6/2003
passed by the Central Administrative Tribunal Guwahati in
OA 283/2002

Sir,

Most humbly and respectfully I beg to state the following few Line
for your kind consideration and necessary action. That Sir, I was not allowed
to perform my duty on and from 15/5/2002 by my P.W.I. on the pretext of
Transfer order. Hence I filed a case before the Central Administrative Tribunal
Guwahati on 2/9/2002 which was registered as OA 283/2002

The Honourable Tribunal after hearing the case finally on 12/6/2003
pass the order directing me to report for duty to your honour. A Certified copy
of the order is enclosed herewith for your use.

As such I may be allowed to join my duty as per Order of the Cen-
tral Administrative Tribunal.

Your's Faithfully

Anisur Ramil
17.6.03

Certified to be
true copy.

Anjana Patha.
Advocate.

- 9 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.283 of 2002

Date of decision: This the 12th day of June 2003

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

The Hon'ble Mr R.K. Upadhyaya, Administrative Member

Shri Anisuz Zaman
S/o Late Abdul Mazid,
Working as Gangman,
Kampur Railway Station, Kampur,
Nagaon, Assam.

By Advocate Mr Hasibur Rahman.

.....Applicant

versus -

1. The Union of India, represented by
The General Manager,
N.F. Railway,
Maligaon, Guwahati.
2. The Sr. Divisional Engineer,
N.F. Railway,
Lumding, Nagaon.
3. The Permanent Way Inspector, Grade-I,
N.F. Railway,
Chapormukh, Nagaon, Assam.
4. The Permanent Way Inspector (East),
N.F. Railway,
Chapormukh, Nagaon, Assam.
5. Shri Jauhar Jha, Gangman,
Posted at Kampur Railway Station,
Nagaon, Assam.

By Advocates Mr B.K. Sharma, Railway Counsel
and Mr S. Sarma.

.....Respondents

.....
O R D E R (ORAL)

CHOWDHURY, J. (V.C.)

The sole controversy rests on the issue of
discharging duties by the applicant at his place of work.
According to the applicant he is continuously reporting
at the place of work on and from 15.5.2002, but till
institution of this application he was not allowed to

work at Kampur by the Gang Incharge at the instance of the Permanent Way Inspector I. (PWI-I for short). According to the applicant he was unauthorisedly debarred from discharging his duties.

2. The respondents contested and filed their written statement denying and disputing the claim of the applicant. In the written statement the respondents contended that the applicant was not attending to his duties and as a matter of fact a disciplinary proceeding was initiated against him on 6.7.2002 for the alleged absence of the applicant from duty on and from 15.5.2002 and the disciplinary proceeding is pending.

3. We have heard Mr H. Rahman, learned counsel for the applicant as well as Mr S. Sarma, learned counsel for the respondents. Mr H. Rahman submitted that the respondents unauthorisedly were not allowing the applicant to discharge his duties. The learned counsel submitted that the applicant reported in his place of work at Kampur and thereafter on his transfer from Kampur to Laopani, the applicant reported to the Gang Incharge of Gang No.24 at Laopani on 15.9.2002 and was discharging his duties at Laopani with effect from 15.9.2002/18.9.2002 and thereafter he was not allowed to perform his duties nor was he paid his salary. Mr S. Sarma, learned counsel for the respondents, on the other hand submitted that the question of not allowing the applicant to perform his duties did not arise since he did not even report for his duties.

4. In our opinion, the entire issue requires to be decided on assessment of the facts. As a matter of fact, the disciplinary proceeding is pending on the same issue which.....

: 3 :

which requires to be resolved with utmost expedition.

Admittedly, the applicant is not placed under suspension.

Therefore, there cannot be any impediment in not allowing the applicant to work at the place of work. According to the applicant he has been unauthorisedly refused work at the place of work by the PWI I, N.F. Railway, Chaparmukh.

5. On hearing the learned counsel for the parties and on consideration of the fact and circumstances, we direct the applicant to report to the Senior Divisional Manager, N.F. Railway, Lumding on or before 16.6.2003 and the Senior Divisional Manager should direct the concerned authority to detail him at the place of work either at Kampur or Laopani. The Senior Divisional Manager will also look after the grievance of the applicant and take appropriate measure under the law for payment of his salary etc. as admissible under the rules. In the meantime, the competent authority, namely the respondent authority including the Assistant Divisional Engineer, N.F. Railway, Jagiroad are directed to complete the disciplinary proceeding expeditiously. Since the applicant has already submitted his written statement as far back as 14.9.2002, the respondents shall complete the proceeding preferably within three months from today. The respondents shall take all necessary steps to resolve the impasse and take appropriate steps for release of the salary/allowances etc. to the applicant in accordance with law.

6. The application thus stands disposed of. There

shall, however, be no order as to costs.

Sd/ VICE-CHAIRMAN

Sd/ MEMBER (A)

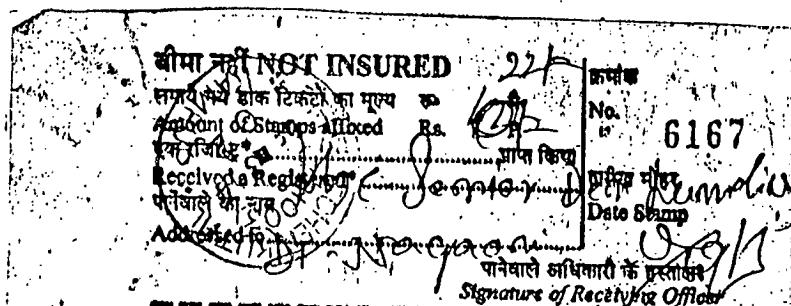
Section Officer (D)

T. GRANT BRANCH

Guwahati-781005

16/6/03

certified to
be true copy
Anjana Patra
Advocate



Certified to be
true copy
Anjana Patra
Advocate

To,

The Senior DEN Lumding,
N.F.Railway, Lumding, District,
Nagaon, Assam.

Sub:- Application for payment of Salary from 15.5.2002.

Sir,

Most humbly and respectfully I beg to state that the following few lines for your necessary action.

That, Sir, I was debarred from performing my duties illegally and unauthorisedly by the permanent way Inspector I Saparmukh, N.F.Railway. I file a case in the central Administrative Tribunal which was Registered as Original Application No. 283/03. The Hon'ble Tribunal was pleased to pass the Judgement and order on 12th day of June, 2003 directing the Railway authority to allow me to perform my duties. The Hon'ble Tribunal was pleased to pass further order directing the Assistant Divisional Engineer N.F.Railway Jagiroad to complete the Departmental Proceeding on the basis of show cause notice issued by him within the period of three month from the date of Judgement. The said direction was partly followed by your honour to allow me to join my duties from 14.8.03 at Laopani in Gang No. 24. The other part of law order, the direction of the Tribunal to complete the Departmental proceeding within three month were not complied with. The Departmental enquiry was initiated by the Asst. engineer Jagiroad, on the allegation of absence from duty on and from 15.5.02 and the written statement was submitted by me on 14.9.02 but till today no enquiry was initiated by your honour to find out the actual fact of allegation for which

*Certified to
be true copy
Anjana Patra
Advocate*

I am always ready to face the Departmental enquiry. The allegation of unauthorized absent against me is yet to be established even after the final order in O.A 283/02. In such circumstance my pay and salary can not with held by your honour for the period from 15.5.02 under any authority of law. The dispute of unauthorized absent is a subject matter to be decided by holding and impartial Departmental enquiry to ascertain the correct fact for which the Hon'ble Tribunal was pleased to directed your honour to complete the enquiry within a period of three month from 12.6.03 which is already over.

It is therefore prayed to your honour to kindly look in to the matter and to release unauthorized salary from 15.5.02 to 13.10.03 which is with held by your honour without any authority of law even after the order dated 12.6.03. I hope and pray to your honour to take necessary action for release of my salary as mention above and not compel me to go to the Tribunal again for redressal of grievance.

Your faithfully,

Anisuz Zamal
(Anisuz Zamal) 19.3.04
Gang No. 24 at Laopani.

Certified to be
true copy
Anjana Patra
Advocate