

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. _____/

Misc Petition No. _____/

Contempt Petition No. 21 / 2002 in O.A. 76/2002

Review Application No. _____/

Applicants. Dr. J.K. Gogoi

-Vs-

Respondant(s) Dr. S. Narayan, Secretary, Dept. of Revenue
Ministry of Finance, Govt. of Assam

Advocate for the Applicant(s) B.K. Sharma, P.K. Tiwari, S. Sarma
V.K. Nair

Advocate for the Respondant(s) A.K. Choudhury Addl. C.A.

Notes of the Registry	Date	Order of the Tribunal
This Contempt Petition has been filed by the Counsel for the petitioner praying for willful and deliberate violation of the interim order dated 10.4.2002 in O.A. 76/2002 passed by this Hon'ble Tribunal.	29.5.02	Heard Mr. S. Sarma, learned counsel for the applicant. Issue notice to show cause as to why the Contempt Proceeding shall not be initiated. List on 28.6.2002 for orders.
Laid before the Hon'ble Court for further orders.	27.6.02	Written statement has been filed. The case may now be listed for hearing on 9.8.02. The applicant may file rejoinder if any, within two weeks.
<u>Amr.</u> In Section Officer		<u>mb</u> Member <u>mb</u> Vice-Chairman

Notice prepared and
sent to DLS for filing
the respondent No 1703
to Regd. A/D. 30/5

~~Ex~~ C.P. 21 of 2002

27.6.02

List on 28.6.02 alongwith M.P.
No. 79 of 2002.

Member

Vice-Chairman

lm

28.6.02

Passed in Misc. Petition and also
in view of the order passed in High Court
W.P.C. No. 3947/2002 dated 21.6.2002 the
C.P. stands dropped.

Vice-Chairman

lm

Order dtd 28/6/02
Communicated to the
parties concerned.

Recd by
AK Chatterjee
9/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

Contempt Petition 21 of 2002

IN THE MATTER OF :

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

- AND -

IN THE MATTER OF :

Willful and deliberate violation of the interim order of the Hon'ble Tribunal dated 10.4.2002 passed in O.A. No. 76/2002 (J.K. Goyal -Vs- Union of India & Ors.) and for the effective implementation/enforcement of the aforesaid interim order.

- AND -

IN THE MATTER OF :

Dr. J.K. Goyal, Chief Commissioner of Income Tax, resident of Uzan Bazar, Guwahati-1.

... Petitioner

- Versus -

1. Dr. S. Narayan, Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi.

Filed by
Usha Das,
Advocate
20/5/02

2. P.K. Sarma, Chairman, Central Board of Direct Taxes, Ministry of Finance, North Block, New Delhi.

3. S.D. Kapila, Director General (Vigilance), Central Board of Direct Taxes, North Block, New Delhi.

.... Respondents
Contemners

Humble Petitioner abovenamed

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner had assailed the legality of the order of his suspension in O.A. No. 76/2002. The Hon'ble Tribunal vide interim order dated 10.4.2002 stayed the operation of the order of suspension. The aforesaid order was dictated in the open Court in the presence of the learned Central Government Standing Counsel.

Copy of the interim order dated 10.4.2002 passed in O.A. No. 76/2002 is annexed as ANNEXURE-P/1.

2. That after getting information of the nature of interim order passed by this Hon'ble Tribunal on 10.4.2002, the Petitioner intimated the same to the Respondents. However, there was no response from the Respondents and no arrangement was made by them to ensure that the Petitioner attends his duties as Chief Commissioner, Income Tax, Guwahati.

3. That on strength of the interim order of this Hon'ble Tribunal, the Petitioner vide his letter dated 12.4.2002 intimated the Respondent No. 2 about his resumption of duties as Chief Commissioner of Income-tax, Guwahati. However, there was no cooperation from the Respondents and it is pertinent to mention that even the official vehicle meant for the Chief Commissioner, Income Tax, Guwahati was not made available to the Petitioner.

Copy of the letter dated 12.4.2002 is annexed as ANNEXURE-P/2.

4. That when till 16.4.2002, the Petitioner was not allowed to discharge his duties as Chief Commissioner of Income-tax, then vide letter dated 16.4.2002, he informed the Respondent No.2 about the prevailing situation and explained to him in detail about the nature and effect of the interim order of this Hon'ble Tribunal passe din O.A. No. 76/2002. In the aforesaid letter, it was stated by the Petitioner that Shri D. Chakraborty, Chief Commissioner of Income-tax, Calcutta, who was authorised to act as Chief Commissioner of Income-tax, Guwahati, despite the interim order of this Hon'ble Tribunal dated 10.4.2002, is not willing to allow the Petitioner to resume his duties and from Calcutta itself, he is functioning as Chief Commissioner of Income-tax, Guwahati. The Petitioner also stated in the aforesaid letter that the copies of the interim orders of the Hon'ble Tribunal were sent to the Ministry/Board on 11.4.2002 itself, however, no appropriate action has been taken by the

competent authority in compliance of the interim order of the Hon'ble Tribunal.

Copy of the letter dated 16.4.2002 is annexed as ANNEXURE-P/3.

5. That the non-cooperation of the Respondents was not merely limited to not allowing the Petitioner to resume his duties as Chief Commissioner of Income-tax, but they also withdrew facility of the official telephone No. 519199 given to the Petitioner in his capacity as Chief Commissioner of Income-tax, Guwahati. In this connection, Petitioner gave necessary information to the Addl. Commissioner, Income-tax Headquarters, office of the Chief Commissioner of Income-tax, Guwahati vide his letter dated 2.5.2002. However, despite the information given to the Addl. Commissioner, Income-tax, no step was taken to restore the official telephone of the Petitioner.

Copy of the letter dated 2.5.2002 is annexed as ANNEXURE-P/4.

6. That despite the interim order of the Hon'ble Tribunal dated 10.4.2002, the Petitioner continued to remain under suspension till this very date. For the month of April, the Petitioner was paid the subsistence allowance vide F. No. B-50/PAY/SUB/CCIT/GHY/2001-02/959 dated 29.4.2002. Since this Hon'ble Tribunal by interim order dated 10.4.2002 stayed the operation of the order of Petitioner's suspension, therefore, Petitioner could not have been paid subsistence

allowance for the month of April 2002. The very fact that on 29.4.2002, the Petitioner was paid his subsistence allowance from 1.4.2002 to 30.4.2002 bears testimony to the fact that the Respondents not only ignored the interim order of this Hon'ble Tribunal, but they also wilfully and deliberately violated the same.

Copy of the statement dated 29.4.2002' releasing to the Petitioner subsistence allowance for the month of April 2002 is annexed as ANNEXURE-P/5.

7. That Shri D. Chakraborty, Chief Commissioner of Income-tax, Calcutta has continued to hold the additional charge of Chief Commissioner of Income-tax, Guwahati notwithstanding the fact that this Hon'ble Tribunal has stayed the operation of the order of Petitioner's suspension and legally the Petitioner is the Chief Commissioner of Income-tax, Guwahati. The fact that Shri D. Chakraborty, Chief Commissioner of Income-tax, Calcutta has continued to exercise the powers of Chief Commissioner of Income-tax, Guwahati can be seen from the order dated 23.4.2002 wherein Shri D. Chakraborty as Chief Commissioner of Income-tax, Guwahati placed the services of one Smt. Nidhi Sarma, Asstt. Commissioner of Income-tax to the disposal of Chief Commissioner of Income-tax, Guwahati until further orders in the capacity of Asstt. Commissioner, Income-tax (Officer on Special Duty).

Copy of the order dated 23.4.2002 is annexed as ANNEXURE-P/6.

8. That from the facts stated hereinabove, it is evident that the Respondents have continued to act in violation of the interim order of this Hon'ble Tribunal dated 10.4.2002 passed in O.A. No. 76/2002. Hence, this Hon'ble Tribunal may be pleased to pass appropriate orders for execution and/or enforcement/implementation of its interim order dated 10.4.2002. Moreover, the Respondents by their act of willful violation of the interim order of this Hon'ble Tribunal have committed contempt of this Hon'ble Tribunal and as such, they are liable to be prosecuted under the provisions of the Contempt of Courts Act, 1971.

9. That after passing of the interim order dated 10.4.2002 by this Hon'ble Tribunal, the Petitioner waited for a reasonable period so that Respondents act in compliance of the said order. However, till this very date, the Respondents have not implemented the interim order of this Hon'ble Tribunal. The Respondents therefore have committed contempt of this Hon'ble Tribunal and they are liable to be punished severely for their act of willful violation of the order of this Hon'ble Tribunal.

10. That the Petitioner files this petition bonafide for securing the ends of justice.

PRAYER

In the premises aforesaid, it is
most respectfully prayed that Your

Lordships may graciously be pleased to :

(i) Punish the Respondents for committing contempt of this Hon'ble Tribunal by their act of violating the interim order dated 10.4.2002 passed in O.A. No. 76/2002 ;

(ii) Pass necessary/appropriate order for enforcement/implementation of the interim order of the Hon'ble Tribunal dated 10.4.2002 passed in O.A. No. 76/2002.

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

And for this, the Petitioners as in duty bound, shall ever pray.

Affidavit.....

A F F I D A V I T

I, Dr. J.K. Goyal, aged about 57 years, son of Shri M.L. Goyal, resident of Uzan Bazar, Guwahati-1, do hereby solemnly declare and state as follows :

1. That I am the Petitioner in the accompanying petition and as such, well conversant with the facts and circumstances of the case. I am therefore competent to swear this affidavit.

2. That the statements made in this affidavit and in paragraph 2 and 8 to 10 are true to my knowledge ; those made in paragraph 1 and 3 to 7 are true to my information being based on records which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. The annexures are true copies of their originals and I have not suppressed any material facts.

And I sign this affidavit on this the 10th May 2002 at Guwahati.

Identified by me :

Siddhartha Sarma
Advocate & Clerk

J. K. Goyal

Deponent

*Solemnly affirm and state by the
deponent who is identified by
S. Sarma Advocate.*

S.

Applicant(s) J.K. Nayak

Respondent(s) H.O.I. Tomy

Advocate for Applicant(s) B.K. Sharma, P.K. Tiwari, S. Saini
V.K. Nair

Advocate for Respondent(s) Atul Case A.K. Chaudhary

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
This is not to be in form C.P. No. 53/- disposed 7.3.02	7.3.02	Pass over for the day. List on 18.3.2002 for admission.

O.A.76/2002

10.4.2002

Heard Mr.B.K.Sharma, learned

Sr.counsel for the applicant and also
Mr.A.K.Chaudhury, learned Addl.C.G.S.C.
appearing on behalf of the respondents on
the interim matter.

By order dated 18.2.2002 the
applicant was placed under suspension in
aid of power conferred by sub-rule 1 of
Rule 10 of the Central Civil Services
(Classification, Control and Appeal) Rules,
1965. The said communication was preceded
by show cause memo dated 18.2.2002

indicating that the suspension order was
directly related to the disposal of an
appeal by the applicant relating to block
assessment of one Shri Karuna Kar Mohanty,
earlier assessed by the then DCIT (Inv)
Circle-1, Bhubaneswar.

It was alleged that the applicant
passed the appellate order in unseemly
hurry, without properly appreciating the
evidences contained in seized papers and
without affording any opportunity to the AO
to be heard as prescribed under the Act. On
the own showing of the respondents the
applicant alleged that the suspension order
is directly attributable to its exercise of
quasi judicial power conferred by its
statute. It is also stated that against the
very order passed by the applicant, both
the revenue as well as the assessee had
preferred Appeals before the Income Tax
Appellate Tribunal under section 253 of the
Income Tax Act. I have also perused the
reasons assigned in the Show Cause



Attested

[Signature]
Advocate

Contd.

10 -

asking explanation from the official as to the grounds for holding the appellate authority guilty of unseemly hurry without properly appreciating the evidence and without affording the AO to be heard. It at best only shows that the officer passed a wrong order and erred in appreciation of facts and the law. It may be noted that the alleged ground of imputation pertains to exercise of quasi judicial power conferred on the Appellate Authority under section 251 of the Income Tax Act. There is an obvious distinction between judicial - quasi judicial function qua administrative function. An administrative decision is made according to the administration policy. In the former act, the authority attempt to find out the right result according to legal principles and norms. The expression quasi judicial is a sobriquet or a label for the exercise of power to administration. Such power is to be exercised in legal and judicial way - where he has the jurisdiction to err. These are only tentative view expressed while examining the interim prayer.

Instead of passing any interim order, though I would have preferred for disposal of the OA on merit, but that is not immediately possible since the other member consisting of this Bench is not inclined to take up the matter. The hearing of the application is likely to take some more time, therefore the interim application is taken up.

The alleged imputation are based on assessment records which are presently pending before the Income Tax Appellate Tribunal. There is thus no scope for the applicant to deflect or interpolate the evidence and all the materials on which the alleged misconduct is based.

Contd.



Attested
[Signature]
Advocate.

11 -

Contd.

Considering all aspects of the matter, the factors like the balance of convenience, irreparable loss and the public interest, I, therefore, pass the interim order suspending the operation of the order No. F.No.C-14011/5/2002-V&L dated 18.2.2002 until further orders. It will, however, always be open to the respondents to come for alteration and or modification of the interim order, if they are so advised.

List the case for order on 11.5.2002 for fixing a date of hearing.



Sd/ VICE CHAIRMAN

Certified to be true Copy
प्रमाणित प्रतिलिपि

bb

11/4/02
Control Room, Guwahati
Guwahati Branch, Guwahati
গুৱাহাটী শাখা, গুৱাহাটী

Attested
Associate.



डॉ. जे. के. गोयल, भा.रा.से.
Dr. J. K. Goyal, I.R.S.

F.No.JKG/CCIT/GHY/2002-2003/449

To
The Chairman,
Central Board of Direct Taxes,
North Block, NEW DELHI-110001.

Sir,

I have resumed my duties as Chief Commissioner of Income-tax, Guwahati in the afternoon of 10th. April, 2002 by virtue of the order of the Hon'ble Central Administrative Tribunal, Gauhati Bench, Guwahati in OA No.76/2002, dated 10-04-2002 whereby the operation of the order of Ministry of Finance dated 18-02-2002 passed from F.No.14011/5/2002 has been suspended.

This is for your kind information and necessary action.

Yours faithfully,

(J.K. GOYAL)

Memo No.JKG/CCIT/GHY/2002-2003/450-60

Date : 12-04-2002.

Copy to :-

1. All Members, Central Board of Direct Taxes, New Delhi.
2. The Joint Secretary (Admn.), Central Board of Direct Taxes, North Block, NEW DELHI-110001.
3. The Zonal Accounts Officer, Central Board of Direct Taxes, Dhankheti, Shillong-793003.
4. The Field Pay Unit, Guwahati.
5. Shri D. Chakraborty, Chief Commissioner of Income-tax-IV, Aayakar Bhawan, P-7, Chowringhee Square, Kolkatta-69.
6. Shri K.R. Das, Addl. Commissioner of Income-tax, Hqrs., O/o. the Chief Commissioner of Income-tax, Guwahati.

(J.K. GOYAL)

Attested
Advocate.

Gurgaon
16.04.2002

To,

The Honourable Chairman
CBDT, North Block, New Delhi

Sir,

By virtue of Order dt. 10.4.2002 passed by Hon'ble CAT, Gurgaon in OA No 76/2002 pronounced in Open Court in the presence of Addl C.G.S.C. and the officers of the Department, the operation of order dt. 18.02.2002 under Rule 10(2) of the CCS (CCA) Rules, 1965 from F.No 14011/S/2002 of the Ministry of Finance stands suspended. As a natural consequence, I resumed my duties as CCIT, Gurgaon. However Shri D. Chakrabarty CCIT Kolkata, who signed the reply on behalf of the respondent in the said OA as CCIT Gurgaon (Addl Charge) is of the opinion, as communicated to me orally by the Addl CIT Hqs c/o the CCIT, Gurgaon more than once, that I cannot function Gurgaon unless the Government so orders.

Copies of the order of the Hon'ble CAT have been sent to the Ministry/Board the departmental officers as well as by me on 11.04.2002 and thus preventing me from functioning as CCIT - Gurgaon amounts to wilful disobedience of the order of the Honourable Court.

This is brought to your kind notice for favour of kind information and necessary action of the Ministry/Board.

Thanking you

Encl: Copy of order as well as
copy of the letter for
Hon'ble Revenue Secretary

Yours faithfully,
(J.K. Goyal)

Copy in advance to the Hon'ble Revenue Secretary for favour of information and necessary action.

(J.K. Goyal)

Attested
(Signature)
Advocate.



CHIEF COMMISSIONER OF INCOME TAX
GUWAHATI

ANNEXURE—

P/4

10

To:

The Addl CIT Hqs
of CCIT, Ghy.

My residential telephone bearing
no 519199 has been out of order
since the month of March, 2002 for
which information has been given by
me to you/PRO/PRI a number of
times, but of no avail

You may like to take corrective
measures

Corr. 02/05/02.
(J.K. Goyal)

Attended
Wan
Advocate.

F.No.B-50/Pay/Sub/CCIT/GHY/2001-02/ 959 Dt. 29/04/02

OFFICE OF THE
CHIEF COMMISSIONER OF INCOME TAX,
SAIKIA COMMERCIAL COMPLEX,
G. S. ROAD, GUWAHATI.

- (a) Statement of various payment made under FR 53 for the period from 01/04/2002 to 30/04/2002 in favour of Sri Jugal Kishore Goyal, CCIT.

i) Subsistence allowance @	Rs. 11463/-
Rs. 11463/-	
ii) D.A @ 49% on Rs.11463/-	Rs. 5617/-
iii) P.P. @ Rs.250/-	Rs. 250/-
iv) H.R.A @15% on Rs.22925/-	Rs. 3439/-
v) S.C.A @200/-	Rs. 200/-
Total	Rs.20969/-

Deduction

i) CGHS	Rs.150/-	
ii) CGEGIS	Rs.120/-	
iii) A.P.Tax	Rs.185/-	
		Rs. 455/-
	Net payable	Rs.20514/-

- b) Arr. D.A. for the period from 01/01/2002
31/03/02. Rs. 2157/-

Sikidar

(S. Sikidar)

Drawing and Disbursing officer
O/o The Chief Commissioner of income tax,
Guwahati.

Attested
Wam
Advocate.

Government of India : Ministry of Finance
 Department of Revenue
OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX
 "Saikia Commercial Complex"
 (2nd Floor) : 'Sreenagar' ; G. S. Road : Guwahati - 781 005

ORDER

Dated, Guwahati the 23rd April, 2002

ESTABLISHMENT ::::::::::::::: GAZETTED

Smt. Nidhi Sharma, ACIT whose services has been placed under the disposal of the Chief Commissioner of Income Tax, Guwahati vide Board's Order No. 51 of 2002, dated 02-04-2002 in F. No. A-22013/2/2002-Ad.VI is hereby posted temporarily as ACIT(OSD) in the O/o the Chief Commissioner of Income Tax, Guwahati, untill further order. She is also directed to hold the charge of ACIT, Circle- Imphal in addition to her own, relieving Shri A.J. Singh, ITO of his additional charge.

Sd/-

(D. Chakravarti)

Chief Commissioner of Income Tax,
Guwahati

Memo No. E-168/DCIT-ACIT(posting)/CCIT/GHY/2001-02/725-74 dated 23rd April, 2002

Copy to :-

1. The Deputy Secretary, Ad. VI, CBDT, New Delhi.
2. The D.G, N.A.D.T, Nagpur
3. The CCIT, Shillong.
4. All Cs.I.T/Cs.I.T(A) in N.E. Region
5. All Addl. CsIT / Sr. A.R. ITAT / JCsIT in this Region.
6. All others Heads of Offices in NER
7. The ZAO, CBDT, Shillong.
8. Field Pay Units, Guwahati..
9. The AD (OL), Guwahati for Hindi version.
10. The Secretary, IRS Association, N.E. region.
11. The General secretary, ITGSF/TEF, N.E. Circle, Guwahati.
12. Person concerned.

(S. Das)

Asstt. Commissioner of Income Tax (Admn.), Hqrs.,
For Chief Commissioner of Income Tax, Guwahati

Attested

[Signature]
 Advocate.