

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

Org. App./Misc. Petn/Cont. Petn/Rev. Appl. 50/04

In O.A. 157/03

Name of the Applicant(s) Arima Talukder

Name of the Respondent(s) Shri A. Kumar & ors.

Advocate for the Applicant Mr. S. Sarma, Miss H. Das & B. Dey,

Counsel for the Railway/C.G.S.C. B.C. Pathak for Contemners Nos. 1, 2 & 3

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

09.11.2004

This contempt petition has been filed by the applicant Arima Talukder u/s 17 of the A.T. Act, 1985 for wilful and deliberate violation of the judgment w/order dated 26.2.04 passed by this Hon'ble Court in OA 157/03.

Heard Mr. S. Sarma, learned counsel for the applicant.

For the present notice be issued against contemner nos. 2 & 3 directing them to show cause as to why contempt proceedings should not initiated against them for not having complied with directions dated 26.2.2004 of this Tribunal in O.A. 100/2003 with O.A. 157/2003. Notice is returnable on 15.12.2004.

Member

Vice-Chairman

bb
15.12.2004

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

Learned Advocate Mr. B.C. Pathak, puts in appearance on behalf of the respondents and seeks six weeks time to file reply.

Stand over to 28.1.2005.

Vice-Chairman

bb

Notice & order sent to D/Section for issuing to resp. Nos. 1 to 3, by regd. A/D post.

8/11/04
Section Officer.

11/12/04

11-12-04

5/12-2004

28.1.2005 List before the next Division Bench.

10.3.05

No reply. No. seen.
Bilen.

5/12 awarded

mb

K. V. Prahlada
Member (A)

11.3.2005 Present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman
The Hon'ble Mr. K.V. Prahlada, Member (A).

At the request made by Ms. B. Devi, learned counsel appearing on behalf of Mr. S. Sarma, learned counsel for the applicant, ~~says~~ the case is adjourned to 15.3.2005 as Mr. S. Sarma is not keeping well.

K. V. Prahlada
Member

G. Sivarajan
Vice-Chairman

bb

15.03.2005 Present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. K.V. Prahlada, Member (A).

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

K. V. Prahlada
Member (A)

G. Sivarajan
Vice-Chairman

mb

23.3.05

Copy of the order has been sent to the office for issuing. The same to the applicant as well as to the L/Advocate for the Contemners.

HP Receipt
Recd
24/3/05

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.

C.P. 50/2004 (In O.A. 157/2003)

DATE OF DECISION 15.03.2005

Mrs. A. Talukdar

APPLICANT(S)

Mr. S. Sarma

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

Sri Amragh Kumar

RESPONDENT (S)

Mr. B.C. Pathak

ADVOCATE FOR THE
RESPONDENT(S)

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

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

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.

[Handwritten signature and initials]

5

CENTRAL ADMINISTRATIVE TRIBUNAL ::::GUWAHATI BENCH

Contempt Petition No. 50/2004 (In O.A. No. 157/2003)

Date of Order : This the 15th day of March, 2005

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

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

Mrs. Anima Talukdar
Daughter of Late Gopal Talukdar
Working as Casual Worker,
Under Executive Engineer,
Middle Brahmaputra Division,
Central Water Commission, Adabari, Guwahati.

... Petitioner

By Advocate Mr. S. Sarma.

- VERSUS -

1. Sri Amragh Kumar
The Director
Central Water Commission
New Delhi.
2. Sri M.P. Singh
The Superintending Engineer,
Hydrological Observation Circle,
Adabari, Guwahati.
3. Sri A.K. Sirvastav
The Executive engineer,
Central Water Commission,
Middle Brahmaputra Division,
Adabari, Guwahati.

... Respondents/
Contemnors.

By Advocate Mr. B.C. Pathak,

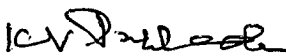
ORDER (ORAL)

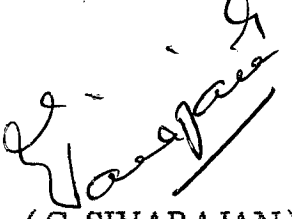
SIVARAJAN, J (V.C.):

This Contempt Petition has been filed alleging that the direction issued by this Tribunal in the order dated 26.02.2004 (Annexure – 1) in O.A. No. 157/2003 has not been complied with.

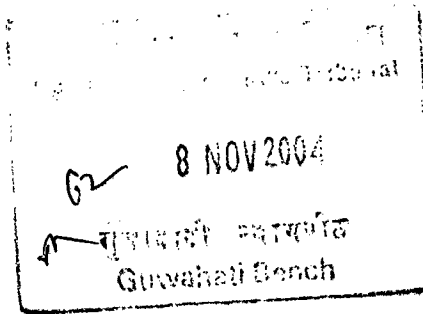
2. We have heard Mr. S. Sarma, learned counsel for the Petitioner and also Mr. B.C. Pathak, learned counsel for the Respondents. Mr. Pathak, learned counsel for the respondents has placed before us a copy of Memorandum dated 13.12.2004 and submitted that the direction issued by this Tribunal has been complied with. Mr. S. Sarma, learned counsel for the applicant submitted that this order is against him and he shall take up the matter before the appropriate forum. It is seen that direction issued by this Tribunal has been complied with by issuing the Memorandum dated 13.12.2004. Accordingly, we close the C.P. with liberty to the applicant, if he so advised, to pursue the matter before the appropriate forum.

The C.P. is accordingly closed.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN

/mb/



Filed by
the petitioner through
Advocate
Alsha Das
21/11/04

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

C.P.No. 50 /04

In O.A.No.157/03

Anima Talukdar

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

IN THE MATTER OF

An application u/s 17 of the
Administrative Tribunal Act, 1985
for willful and deliberate violation
of the judgment and order dated
26.2.2004 passed by this Hon'ble
Tribunal in OA NO.157/03.

-AND-

IN THE MATTER OF

(1) Anima Talukdar

D/o Late Gopal Talukdar

working as Casual Worker

Under Executive Engineer,

Middle Brahmaputra Division,

Central Water Commission, Adabari

Guwahati.

X

- 2 -

-VS-

(1) Sri *Amteagh Kumare*
The Director
Central Water Commission
New Delhi

(2) Sri M.P.Singh
The Superintending Engineer
Hydrological Observation Circle
Adabari, Guwahati.

(3) Sri A.K.Sirvastav
The Executive Engineer
Central Water Commission,
Middle Brahmaputra Division,
Adabari, Guwahati

.....Respondents/Contemners

The humble petition on behalf of the petitioner
above named:

1. That the petitioner approached this Hon'ble Tribunal aggrieved by the action of the Respondents in not considering him for regularisation in Group-'D' post in terms of OM dated 10.9.1993. The Hon'ble Tribunal after hearing both the parties and perusal of records was pleased to allow party directing the Respondents to treat the cases of the applicants beyond the scheme of 1997 and further directed to consider under the DOPT's scheme of 10.9.1993 within a period of two month from the date of receipt of a copy of the order.

A copy of the said judgment and order dated 26.2.2004 passed in OA NO.157/03 is annexed herewith and marked as Annexure-1.

3 -

2. That the applicant after receiving the copy of the order intimated the contemner No.2 through a letter dated 1.3.04 and a copy of judgment and order dated 26.2.04 passed in OA No.157/03 was enclosed with the aforesaid letter for necessary action.

A copy of the said letter dated 1.3.04 and the postal receipt is annexed herewith and marked as Annexure-2.

3. That the applicant begs to state that the Respondents knowing fully well about the directives passed by this Hon'ble Tribunal in OA No.157/03 have been sitting over the same. On 5.7.04 the applicant sent a legal notice through his counsel for implementation of the direction contained in the judgment and order passed by this Hon'ble in OA No.157/03 within a period of 15 days.

A copy of the legal notice dated 5.7.04 is annexed herewith and marked as Annexure-3.

4. That the petitioner begs to state that the directives passed by this Hon'ble Tribunal is very clear and ambiguous. The Respondents have been willfully and deliberately violated the judgment and order passed by this Hon'ble Tribunal and have been chosen not to implement the same and for which they are liable to be punished for their willful and deliberate violation of the aforesaid under section 17 of the Administrative Tribunal Act, 1985 read with provision under Central Administrative Tribunal

9

- 4 -

(Contempt of Court's) Rules 1992 as well as the provisions contained in the contempt of court's Act 1971.

5. That the petitioner begs to state that inspite of repeated requests the Respondents have acted contrary to the Annexure-1 judgment and they are continuing their such inaction even after expiry of the stipulated timeframe. It is therefore a fit case wherein this Hon'ble Tribunal can pass an appropriate order for drawing up of a contempt proceeding for such willful and deliberate violation of this Hon'ble Tribunal's order invoking section 17 of Administrative Tribunal Act, 1985.

6. That this petition has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that Your Lordships would graciously be pleased to initiate appropriate contempt proceeding against the contemnors for their willful and deliberate violation of the judgment and order dated 26.2.2004 passed in OA No.157/03 and to punish them severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with Central Administrative Tribunal (Contempt of Court) Rules 1992 as well as the provisions contained in the contempt of courts Act, 1971.

10

- 5 -

DRAFT CHARGE

Whereas Sri Amrugh Kumar, the Director, Central Water Commission, New Delhi, Sri M.P.Singh, the Superintending Engineer, Hydrological Observation Circle, Adabari, Guwahati, Sri A.K.Srivastav, the Executive Engineer, Central Water Commission, Middle Brahmaputra Division, Adabari, Guwahati, have willfully and deliberately violated the judgment and order dated 26.2.2004 passed in OA No.157/03 passed by the Central Administrative Tribunal, Guwahati Bench and as such they are liable to be punished severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with provisions under Central Administrative Tribunal (Contempt of Courts) Rules 1992 as well as the provisions contained in the Contempt of Courts Act, 1971.

- 6 -

AFFIDAVIT

I, Anima Talukdar, aged about 43 years, daughter of Late Gopal Talukdar, Casual Worker, under the Executive Engineer, Middle Brahmaputra Division, Adabari, Guwahati, do hereby solemnly affirm and state as follows:

1. That I am the petitioner and I am acquainted with the facts and circumstances of the case. I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 4, 5, 6

..... are true to my knowledge, those made in paragraphs 1, 2, 3 being matter of records are true to my information derived therefrom. Annexure are true copies of the originals and grounds urged are as per the legal advice.

And I sign this Affidavit on this the 8 th day of November of 2004.

Identified by me:

Anima Talukdar.

.....
DEPONENT

Usha Das.

Advocate

Solemnly affirm and declared before me by the deponent who is identified by Miss U. Das, Advocate, Guwahati on this the 8 th day of Nov., 2004 at Guwahati

Mein Kant Majumdar

Advocate

15
- 7 -
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure-1

Original Application No.100 of 2003
With

Original Application No.157 of 2003

Date of decision: This the 26th day of February 2004.

The Hon'ble Shri Shanker Raju, Judicial Member.

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

O.A.No.100/2003

Aibuddin Ahmed
S/o Late Rabiruddin Ahmed
Working as Work Charged Khalasi
Under D(S) K Subdivision,
Central Water Commission,
Nagaon.

.....Applicant

By Advocates Mr S. Sarma and Ms U. Das

- versus -

1. The Union of India,
Represented by Chairman
Central Water Commission,
New Delhi.

2. The Director,
Central Water Commission,
New Delhi.

3. The Superintending Engineer,
Hydrological Observation Circle,
Adabari, Guwahati.

4. The Executive Engineer
Central Water Commission,
Upper Brahmaputra Division,
Dibrugarh.

5. The Executive Engineer
Middle Brahmaputra Division,
Central Water Commission,
Guwahati.

.....Respondents

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

O.A.No.157/2003

Anima Talukdar
D/o Late Tapan Talukdar
Casual Worker
Working under the Executive Engineer,
Middle Brahmaputra Division,
Central Water Commission,
Adabari, Guwahati.

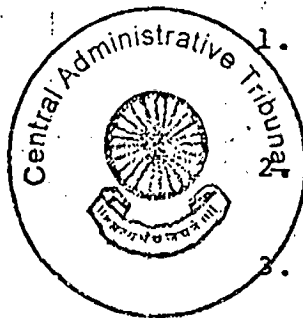
.....Applicant

By Advocates Shri S. Sarma and Ms U. Das.

- versus -

1. The Union of India, represented by the
Chairman, Central Water Commission,
New Delhi.

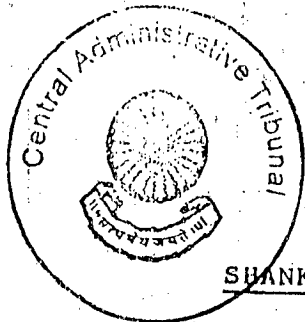
Attended
by
Advocate



2. The Director,
Central Water Commission,
New Delhi.
3. The Superintending Engineer
Hydrological Observation Circle,
Adabari, Guwahati.
4. The Executive Engineer,
Central Water Commission,
Middle Brahmaputra Division,
Guwahati.

..... Respondents

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



.....

O R D E R

SHANKER RAJU, MEMBER (J)

As the facts and law raised are identical the O.A.s are disposed of by this common order.

2. The applicant in O.A.No.100 of 2003 had earlier approached this Tribunal in O.A.249 of 1993. Having regard to their working till 1992 directions have been issued by the Tribunal on 7.12.1993 to appoint them as Khalasis against available vacancies or in the alternative be appointed as casual workers in the seasonal works. As the services of the applicants was to be dispensed with, R.A. 15 of 1994 filed by the applicants was disposed of on 28.6.1994 with a direction to the respondents not to terminate their services and to consider them for regularisation in Group 'D' post in terms of O.M. dated 10.9.1993.

3. Subsequently, complying with the directions of the court the respondents have framed a Scheme known as "Grant of Temporary Status and Regularisation of Seasonal Khalasis in the Work Charged Establishment of Central Water Commission, 1997". This Scheme was to be in effect

*Attended
names
Advocate*

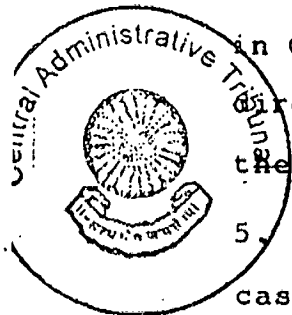
from 1.6.1997. Accordingly by an order dated 5.5.2003 the applicants have been re-engaged as Work Charged Seasonal Khalasis in the scale of pay of 2550-3200. The Scheme stipulated that whosoever has completed 120 days of service prior to commencement of the Scheme would be conferred with temporary status and on availability of posts would be regularised.

4. The applicant in O.A.157 of 2003 earlier filed O.A.201 of 1993 which was disposed of by this Tribunal on 16.11.1993 with directions to the respondents to dispose of the application for regularisation of the applicant. On review in R.A.13 of 1993, by an order dated 28.6.1994 directions have been issued to the respondents not to terminate her service and consider her for regularisation in Group 'D' post. Being aggrieved with the Scheme *ibid*, a direction has been sought for to accord her the benefit of the 1993 Scheme.

5. In the above O.A.s treating the applicants as casual workers directions have been issued to consider their cases under the DOPT's Scheme of 10.9.1993.

6. Learned counsel for the applicants states that once they have been absorbed as casual workers the Scheme of 1997 would not apply and their cases ought to be considered under the DOPT's Scheme of 10.9.1993 as they completed the requisite period of service.

7. On the other hand the respondents have filed their reply in O.A.100/2003 and adopted the same in O.A.157/2003 as despite our orders no reply has been filed in O.A.157/2003.

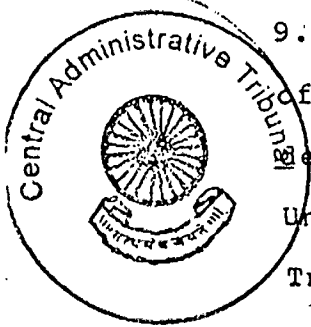


Attended
was
Advocate

8. The learned counsel for the respondents contends that the applicants were engaged on Work Charged Establishment as Seasonal Khalasis and the Scheme of DOPT of 10.9.1993 would not apply to such Work Charged Seasonal Khalasis as the staff does not belong to regular establishment of the Department and their payment is borne out from projects. Accordingly it is stated that a decision has been taken to frame the Scheme of 1997 in which the case of the applicants for grant of temporary status has been considered and for regularisation as per the Scheme their cases would be considered.

9. We have carefully considered the rival contentions of the parties and perused the materials on record. As per decision of the Full Bench in Mahabir and others Vs. Union of India and others, 1997-2001 Administrative Tribunal Full Bench Judgments 99, a casual labourer is a person who has been engaged for execution of work on emergent basis of a temporary nature. Their services are dispensed with the moment the work at hand is completed. Moreover, a casual worker is a worker who has been asked to perform duties of a casual nature and is not a regular employee. Moreover, it is no more res integra that the cases of the applicants in hand had proceeded in review on the premises that they are casual workers. Accordingly directions have been issued not to terminate their services and consider them for engagement for regularisation under DOPT's Scheme of 10.9.1993. The Scheme of 10.9.1993 envisages casual worker with temporary status eligible for regularisation.

10. We find that the decision in the Review Application has not been carried to the High Court and has attained.....



*Attended
14/05/2015
Advocate*

attained finality. Accordingly, giving no interpretation to the status of the applicants would amount to sitting over the decision of the Tribunal in a co-ordinate Bench. Accordingly, we hold that once the Tribunal earlier in review has assigned nomenclature of casual employee to the applicants and they had worked for the requisite days and on employment as on 1.9.1993 the Scheme of DOPT of 10.9.1993 is applicable and as per directions of the Tribunal (Supra) is to be applied to them.

11. In the result the O.A.s are partly allowed and the impugned orders are quashed. The respondents are directed to treat the cases of the applicants beyond the Scheme of 1997 and be considered under the DOPT's scheme of 10.9.1993 within a period of two months from the date of receipt of a copy of this order. However, such consideration shall be strictly in accordance with the provisions of the DOPT's Scheme of 10.9.1993 as well as suitability of the applicants to the post.

Copy of this order be placed on record of each case.

Sd/MEMBER (J)

Sd/MEMBER(ADM)

Certified to be true Copy
प्रमाणित प्रतिलिपि

N. S. Sanyal
27/2/04
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

LS
27/2/04

*Attested
was
Advocate*

688
12 -
Annexure - 2

REGISTERED POST

To

Dated : 01.03.2004

The Executive Engineer,
Middle Brahmaputra Division,
Central Water Commission,
Adabari, Guwahati-14.

Sub:- Order dtd.26.02/04 passed in O.A. No.157/2003.

Sir,

With due respect, I state that I approach the Hon'ble Tribunal aggrieved by the action of non-consideration of my case for regularization under the scheme of DOPT of 10.9.93 as I have completed the requisite period of service.

That on 25/2/2004 the O.A. came up for hearing and after hearing; the Hon'ble Tribunal passed the Judgment on 26/2/04. The Hon'ble Tribunal was pleased to allow the O.A. directing you to consider my case under the DOPT's scheme of 10.9.03 within a period of 2(two) months from the date of receipt of the order. A copy of the Judgement and order dt.26/2/04 passed in O.A. No. 157/2003 is enclosed herewith for your knowledge and kind consideration.

Sir, I hope that you would be kind enough to consider my case for regularization under the scheme of 1993 as per direction of the Hon'ble Central Administrative Tribunal, Guwahati Bench.

Thanking you.

Enclo:- 1. Copy of Judgment and
Order dated 26.02.2004
Passed in OA No.157/2003

Yours faithfully,

ANIMA
21/03/2004
(ANIMA TALUKDAR)
W/C. KHALASI

*Attested
W/O
Advocate*

Sri Siddhartha Sarma

Advocate,

Gauhati High Court, Guwahati.

13

Amexhu-3

M. A. Roa

Guwahati.

Q: 0361

Ref. No.

Date: 5-7-03

To,
The Superintending Engineer,
Hydrological Observation Circle,
Adabari, Guwahati.

Sub:- Legal Notice.

Sir,

Upon authority and as per instruction of my client, Anila Talukdar, Daughter of Late Tapan Talukdar, casual worker, working under the Executive Engineer, Middle Brahmaputra Division, CWC Adabari, I give you this notice as follows;

That my client aforesaid claiming the benefit of the 1993 scheme for grant of temporary status preferred the Original Application which was registered and numbered as O.A No 157/2003, before the Central Administrative Tribunal, Guwahati Bench. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said client to provide its judgment and order dated 26.02.2003, directing you to provide all the benefits of the said scheme of 1993 to my client within a period of two months. The said period of two months is over but as on date you have not issued any order granting her the benefit of the said scheme and regularising her service. In fact my client aforesaid is entitled to the said benefit w.e.f, 1993 itself as she was in service at the time of issuance of the said scheme. It was denied to her illegally without any basis. The Hon'ble Tribunal notified the above facts as well as the verdict given by the Hon'ble Tribunal earlier in O.A No 201/93 as well as R.A 13 of 1993, directed you to provide the benefit of the scheme of 1993 to my client.

In view of the above, I give you this notice making demand that my client be provided with all the benefits of the scheme of 1993 with retrospective effect, i.e. w.e.f. 1993 and to regularise her service accordingly w.e.f. 1993 and to allow her all the other consequential benefits and arrears within a period of 15 days from the date of receipt of the notice failing which instruction my client is to initiate appropriate contempt proceedings for willful and deliberate violation of the judgments mentioned above.

I hope and trust that there would be no such occasion for any further litigation dragging you unnecessarily.

Thanking you,

Sincerely yours,

Attended
was
Advocate

S. Sarma, Advocate.

भारतीय डाक



INDIA POST

GUWAHATI GPO, (781001)

RL 7933

PA : PRAI

To: TO THE CHPD, ENGG., HYDROLOGICAL CIRCLE
CHY CENTRAL WATER CO, PIN:M.

Wt: 20 grams

PG: 0.00, Amt: 22.00, 05/07/2004, 10:53:19

HAPPY NEW YEAR 2004

GUWA

RL

PA

###

Pre

###

05/0

Wt: 2

Attended
works
Advocate