

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

ORDER SHEET

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

In O.A. ... 116/03

Name of the Applicant(s) ... Union of India PWS

Name of the Respondent(s) ... Kirean Kalita

Advocate for the Applicant ... B.C. Patra, Addl. C.A.

Counsel for the Respondent Railway/ESSE. M. Chanda, G.N. Chakraborty, S. Chandling

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
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An application 26.5.2004 has been submitted by the Counsel for the Union of India PWS w/s 22(3)(f) of the CAT Act, 1985 and Rule 17 of the CAT Procedure Rules 1987 for Review the order dated 29.3.04 passed by this Honble Tribunal no.O.A.116/03.

Judgment delivered in open Court, kept in separate sheet. The R.A. is dismissed.

[Signature]
 Member (A)

mb

laid before the Honble Court for further orders.

Section officer.

[Signature]
 The above Revised application filed by Mr. B.C. Patra, Addl. C.A. without condonation of delay. The order dated 29.3.04 passed in O.A. No. 116/03 before the Honble Division Bench with Honble Sri K. Singh, M(3) submitted for bonam ob orders/circulation.
[Signature]
 N. J. J. 7/5/04

R.A. shall be sent to Honble Sri Kuldip Singh, Member (3) Principal Bench under Rule 49 (Appendix - IV) for consideration by circuit bench.

[Signature]
 7/5/04

[Signature]
 Honble Member (A)

28.504

Copy of the order
has been sent to
the office for
issuing the same
to the applicants
well as to the
responsible advocates
for the applicant.

HB

Further 2 COPY

Mr $\frac{B}{116126}$

Central Administrative Tribunal, Guwahati Bench

R.A. No.5 of 2004 In
OA No.116 of 2003

Guwahati this the 26th day of May, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR.K.V. PRAHLADAN, MEMBER (A)

Union of India & Others ..Review Applicants in
the RA.

Versus

Smt. Kiran Kalita ..Respondents in the RA.

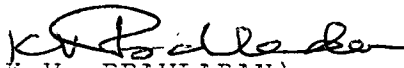
ORDER BY CIRCULATION


Hon'ble Mr. Kuldip Singh, Member (J)

The present RA No.5 of 2004 has been filed by the respondents for review of the order passed in OA No. 116 of 2003 on 29.3.2004.

2. By filing the present RA, the review applicants want to re-argue the whole case again by filing the RA, which is not permissible. While delivering the judgment, the parties were heard and only thereafter the judgment was given as such the RA has no merits. No error apparent on the face of record has been pointed out which may call for review of the order. Further, the RA does not come within the ambit of Order 47 Rule 1 CPC read with Rule 22 (3) (f) (i) of the Administrative Tribunals Act.

3. In view of the above, nothing survives in the RA, which is accordingly dismissed.


(K.V. PRAHLADAN)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

'Rakesh'

D.O. No. 18/5/2004/umf

By SPEED POST



केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
प्रधान न्यायपीठ
PRINCIPAL BENCH

कुलदीप सिंह
सदस्य
KULDIP SINGH
Member

दूरभाष Phone :
कार्यालय OFF : 3385059
निवास RES. : 2450101
कॉपरनिकस मार्ग, नई दिल्ली-110 001,
Copernicus Marg, New Delhi-110 001

Dated: 18.5.2004

To

The Deputy Registrar (J)
Central Administrative Tribunal,
Guwahati Bench,
Rajgarh Road, Bhangagarh,
Guwahati-781005.

Sir,

I am sending the judgment duly signed by the Hon'ble Mr. Kuldip Singh, Member (J) in RA No. 5 of 2004 in OA 116/2003 for taking necessary action at your end along with part 'A' files.

Kindly acknowledge the receipt of the same.

Yours faithfully,

(R.K. Sareen)

PS to Hon'ble Mr. Kuldip Singh, Member (Judl)

J
25.5.04
Hon'ble Member (A) has seen

Pl. list it tomorrow for pronouncement of orders.

R.K. Sareen
25.5.04
P.S. to the Hon'ble Member

yes
25.5.04

Centre for Administrative Tribunal Act
5 MAY 2004
গুৱাহাটী নং ১১৬
Guwahati Bench

Filed by
B. C. Pathak
Advocate

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(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

REVIEW APPLICATION No. 5 of 2004
In O.A. No. 116/2003

Union of India & others ... Petitioner/Respondents

-vs-

Smti Kiran Kalita ... Opposite party/Applicant

In the matter of:

An application under Section 22(3)(f) of the Central Administrative Tribunal Act, 1985 and Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for review the order dated 29.3.2004 passed by this Hon'ble Tribunal in O.A. No.116/2003.

The application of the above named petitioner/respondents -

MOST RESPECTFULLY SHEWETH:

1. That the Opposite Party/ Applicant (referred to as the OP) filed the O.A. No. 116/2003 in this Hon'ble Tribunal seeking payment of arrear salary and allowance for the period from 30.9.1997 to 31.8.1999 and from 1.9.1999 onward as per order dated 1.8.2001 passed in OA

No. 321/2000 with 12 % interest. The Petitioner/ Respondents (referred to as the Petitioner) filed their written statements in the case and stated that the respondent was retrenched from the afternoon of 30.9.1997 and the interim order was passed by the Hon'ble Tribunal on 3.10.1997 and as such there was no illegality committed by the petitioners. By the written statements it was also contended that the other 12 retrenched casual labourer were reengaged w.e.f. 18.11.1998 on the strength of interim order passed by this Hon'ble Tribunal but the case of the respondent was not considered as she was not a party in the said interim order. The direction of the Hon'ble Tribunal about the forced break in service towards the applicant/ respondent passed in OA No. 321/2000 has not been counted and the respondent was conferred temporary status as per Scheme w.e.f. 1.9.1999 notionally and with monetary benefit from 28.1.2002. As the respondent was not in engagement from 1.10.1997 to 27.1.2002, the claim of arrear payment for the said period was not granted on the basis of 'no work, no pay'. In the written statements it was also made clear that the order dated 31.7.2002 was wrongly issued and the same was corrected vide Office Order No. GMT(K)/CAO/Misc/3-4/9 dated 8.11.2002 that the respondent shall not be entitled to arrear pay as she was not in engagement.

2. That this Hon'ble Tribunal heard the parties and passed the final order on 29.3.2004. By the said order this Hon'ble Tribunal referred to the earlier order passed in OA No. 321/2000 wherein direction was given for conferment of temporary status by ignoring the forced break in service but the Tribunal did not pass any order for payment of arrear salary etc. for the period not in engagement or in break in service. By the said order dated 29.3.2004, this Hon'ble Tribunal held that the respondent was not entitled to arrear salary for the period 1.10.1997 to 31.8.1999 as no work, no pay. But this Hon'ble Tribunal held that the salary and allowances shall be paid from 1.9.1999 as financial approval was obtained from the competent authority and

direction was given to make the payment within 2 months from the receipt of the order.

The copy of the order-dated 29.3.2004 passed in OA No. 116/2003 is annexed as the ANNEXURE-R1.

3. That the petitioner inadvertently failed to raise the objection in their written statements that after the creation of Bharat Sanchar Nigam Ltd. (in short 'BSNL'), a company registered under the Companies Act and after the transfer of assets and liabilities by the Govt. of India, Department of Tele-communications w.e.f. 1.10.2000, no order/ judgment could be passed against the BSNL as the BSNL has not been brought under the jurisdiction of the Central Administrative Tribunal (CAT) by notification under Section 14(2) of the Central Administrative Tribunal Act, 1985 (referred to as the 'Act').
4. That after the judgment dated 29.3.2004, the copy of the judgment was formally issued by the registry of the Hon'ble Tribunal only on 2.4.2004 and the same was thereafter sent by the Addl. CGSC to the petitioner. On receipt of the copy of the judgment, the petitioner took up the matter with the competent authority to take a decision on the implementation of the order or to go for judicial review as the case may be. The competent authority however took a decision to prefer a Review Application in this Hon'ble tribunal itself and accordingly this Review Application has been filed within the period of limitation.
5. That the petitioner prefers this Review Application *inter alia* on the following:

-GROUNDS-

- (i) That the petitioner could not raise the objection to the original application with regard to the want of jurisdiction as settled by a series of decision of this Hon'ble Tribunal and Bombay and Delhi High Court that the CAT does not have jurisdiction to pass any order against the BSNL. The Hon'ble Tribunal should have taken judicial notice of the said settled position of law/decisions while passing the said order that there has not been any notification to bring BSNL within the jurisdiction of the Hon'ble CAT as required under Section 14(2) of the Act.
- (ii) That the Hon'ble Tribunal directed the petitioner to pay salary and allowances from 1.9.1999 only on the ground that approval has been taken from the competent authority for payment of salary and allowances from 1.9.1999 although the respondent was not in engagement from 1.9.1999 to 28.1.2002. But the settled position of law is that 'no work, no pay' principle is applicable in the case of casual labourer and that Courts shall not legitimize illegal acts of officers or no mandamus can be issued to direct the Govt. to refrain from enforcing law or to act contrary to law (as reported in AIR 1997 SC 2129 and AIR 1996 SC 2173).
6. That in view of the above facts and circumstances of the case and in any view of the matter, it is fit case where this Hon'ble Tribunal would be please to recall its decision dated 29.3.2004 passed in OA No. 116/2003 and after considering the above points and hearing both the side may pass such further or other order in the case and set aside the order on the point of jurisdiction and settled position of law and consequently dismiss the application on the ground of want of jurisdiction.

7. That if this Hon'ble Tribunal does not consider this review application and recall the order dated 29.3.2004, the petitioner would suffer irreparable loss and injury which may amount to mis-carriage of justice.
8. That the balance of convenience is also in favour of the petitioner as stated hereinabove and the respondent shall also not in any manner be affected as she has been conferred with temporary status and is working on regular basis.
9. That this petition has been made bonafide and for proper adjudication of the matter.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to issue notice to the OP, call for the record and after hearing the parties and perusing the records, may further be pleased to recall the order dated 29.3.2004 passed in OA No. 116/2003 and fix the matter for hearing and after hearing the parties shall also be pleased to dismiss the application on the ground of want of jurisdiction and other settled provisions of law and/or may pass such further or other order that Your Lordships may deem fit and proper.

Affidavit.....

AFFIDAVIT

I, Shri Kamakhya Ranjan Das, son of Late Dhirendra Ch. Das, aged about 48 years, permanent resident of S. C. Bylane - Atgaon, Guwahati - 1, at present working as S. D. E. / Legal, of the GMT/Kamrup, do hereby solemnly affirm and state that the statements made in the application in para 1, 3, 4 and 5 are true to my knowledge and belief, those made in para 2 being matter of records, are true to my information derived therefrom and the rest are my humble submission. I have not suppressed any material fact of the case.

And I sign this affidavit on this 4th day of May, 2004 at Guwahati.

Identified by me
Prakanta
 4/5/04
 Advocate

Kamakhya Ranjan Das.
 Deponent

Solemnly affirmed and signed before me by the deponent who is identified by Shri. B. C. Barua Advocate, on this 4th day of May, 2004 at Guwahati.

Dilip Barua
 Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.116 of 2003.

Date of Order : This, the 29th Day of March, 2004.

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER.

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

Miss Kiran Kalita,
Daughter of Late Chakradhar Kalita
Village: Surtarkuchi
P.O: Adabari, P.S: Mukalmua
District: Nalbari, Assam.

Applicant.

By Advocates Mr.M.Chanda, G.N.Chakraborty & S.Choudhury.

- Versus -

1. The Union of India
Represented by the Secretary
Government of India
Ministry of Telecommunication
New Delhi.

2. The General Manager
Kamrup Telecom District (BSNL)
S.R.Bora Lane
Ulubari, Guwahati-781007.

3. The Divisional Engineer
Central Telegraph Office
Panbazar, Guwahati-781001.

4. The Chief General Manager (BSNL)
Assam Telecom Circle
S.R..Bora Lane
Ulubari, Guwahati-781007.

Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

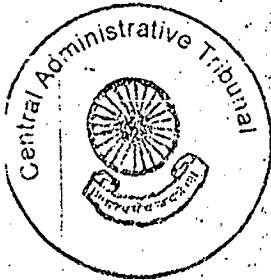
ORDER (ORAL)

KULDIP SINGH, MEMBER (J):

We have heard Mr.M.Chanda, learned counsel for the applicant and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents.

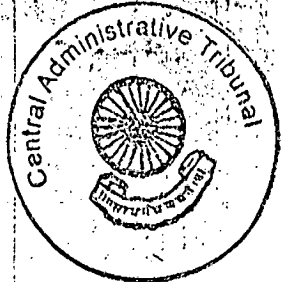
2. The applicant has filed this O.A. seeking declaration to the fact that the applicant is entitled to arrear payment of salary and allowances w.e.f. 30.9.1997 to 31.8.1999 and further be pleased to declare that she is also entitled to payment of arrear salary with effect from 1.9.1999 to till date of actual payment of arrear salary

Contd./2



and allowances in terms of the judgment and order dated 1.8.2001 in O.A.321/2000 passed by the Tribunal.

3. The applicant was initially appointed as casual labourer in the year 1993 by the Senior Superintendent of Tele-Traffic cum Superintendent, CTO, Guwahati, thereafter she was working continuously. But her service was terminated vide order dated 30.9.1997. However, applicant filed an O.A., wherein an interim order was passed against the retrenchment of the applicant. But the department did not assign any work to the applicant meaning thereby that the applicant did not work w.e.f.01.10.1997 to 31.8.1999. In O.A.312/2000, which was allowed, the respondents were directed as under :



"7. In this circumstances, it is difficult to accept the reasonings given by the respondents in the order dated 27.12.2000 in not giving the applicant temporary status. The respondents are accordingly directed to consider the case of the applicant afresh taking her engagement as continuous nature and not treating her retrenched on 30.9.97 and take necessary step for granting her temporary status with utmost expedition within a period of two months from the date of receipt of the copy of the order. While considering the case of the applicant the respondents also take note the Office Memo No.ESTT-9/12/PT/KTD/40 dated 15.2.2001. I also direct the respondents not to take into account her forced break in service, as was done in the other cases in granting temporary status as Casual Labourers."

By the aforesaid order the respondents were directed to consider the case of the applicant afresh by taking her engagement as continuous nature and not treating her retrenched on 30.9.1997 and take necessary step for granting her temporary status with utmost expedition within a period of two months from the receipt of the order. Respondents have thereafter passed an order, which is Annexure-E, Page 22, whereby they have obtained financial approval of the competent authority for payment of pay and allowances w.e.f.1.9.1999. However, for the period 1.10.1997 to 31.8.1999, the respondents on the principle of 'no work no pay' have not sanctioned any amount to the

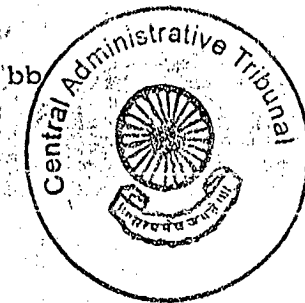
ku Contd./3

applicant. In our view also casual labourer is entitled for payment only when duty is performed. Since no work was assigned by the respondents and the applicant did not perform any duty, ^{As such} we are of the opinion that the applicant is not entitled for any arrear salary during the period from 1.10.1997 to 31.8.1999. As the respondents have already obtained financial approval of the competent authority for payment of pay and allowances w.e.f 1.9.1999, the same shall be paid in any case within a period of one month from the date of receipt of copy of the order.

The application is allowed to the extent indicated above. No order as to costs.

Sd/MEMBER(J)

Sd/MEMBER(Adn)



TRUE COPY

प्रतिलिपि

N. S. S.
24/10/99

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

KS
2/4