

ORDER SHEET

Original Application No.

Misc. Petition No.

Contempt petition No.

Review Application No.

Applicants.

R. Rajkhowa

U. O. P. (U.M)

Respondents.

Advocates for the Applicant. M. Chanda, G.N. Chakrabarty, S. Nandy

Advocates of the Respondents. CAFL

Notes of the Registry	Dated	Order of the Tribunal
This Contempt petition has been filed by the Compt. for the petition for initiation of a Contempt proceeding against the alleged Contemnor for non-compliance of the order dated 6.10.2004 passed by this Hon'ble Tribunal in O.A 223/03.	12.4.05.	Present: Hon'ble Mr. Justice G. Sivaranjan, Vice-Chairman. Hon'ble Mr. K. V. Prahладan, Administrative Member.
Laid before the Hon'ble Compt for further order.	1m	Notice to the Respondents. Affidavit if any will be filed within one month. Personal appearance is dispensed with for time being. Post the matter on 12.5.05.

Kishore
Member

Vice-Chairman

for Section 8(2).

Steps taken on 19/4/05.
 19/4. Notice & order sent to D/Section for issuing to resp. No-1 by hand and resp. No-2 by regd. A/D post. C/ No-607 to 2014 D/ No-125147608

C.P. 15/2005

Notice duly
Served on
DESP. No-2

12.5.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Mr. K.V.prahladan
Administrative Member.

Respondents have filed their affidavit. It is stated that the matter is under process and that compliance can be final and completed only after getting the concurrence from the Corporate Office at New Delhi.

In the circumstances, we grant one month time from today to the respondents to comply with the direction issued in the O.A.

The C.P. is accordingly closed.

Copy of the order
has been sent to
the D/See. for /Family
the one to the D/Adm.
for the party,

16-12-1968
Member

Vice-Chairman

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1 APR 2005

গুৱাহাটী বৰ্ষায় ১৪
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 17 of the Administrative Tribunals Act, 1985)

Contempt petition No. 15/2005

In O.A No. 223 of 2003.

In the matter of:

Shri Rajen Rajkhowa.

----- Petitioner.

-Versus -

Union of India and Others.

----- Alleged Contemnors.

-And

In the matter of:

An application under Section 17 of the Administrative Tribunals Act, 1985 praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 06.10.2004 passed in O.A.No.223/2003.

-And -

In the matter of:

Shri Rajen Rajkhowa.
S/o- Deben Rajkhowa
Village- Gendhali,
P.O- Sonaguri,
Casual Worker,
New Telephone Exchange
Nagaon, Assam.

..... Petitioner.

-Versus-

1. Sri B.K. Sinha,

The Chief General Manager,

3
Filed by the petitioner
through Gurvita Nahai
Advocate
11.04.05

Assam Telecom Circle,
Ulubari, Guwahati-7.

2. Shri George T. Mathai,
Telecom District Manager,
Nagaon Telecom District,
Nagaon, Assam.

...Alleged Contemnors.

The humble petitioner above named-

Most respectfully sheweth:-

1. That your petitioner approached this Hon'ble Tribunal through O.A. No. 223/2003 against the impugned letter dated 15.02.02, whereby the claim of the petitioner for grant of temporary status have been rejected and also prayed for a direction upon the respondents for grant temporary status in the light of the direction contained in the judgment and order dated 27.07.2001 and 03.06.2003 passed in O.A. No.140/2000 and O.A. No. 105/2002

2. That the Hon'ble Tribunal after hearing the contentions of the parties was pleased to dispose of the Original Application vide order dated 06.10.2004 passed in O.A. No. 223 of 2003 directing the respondents as follows: -

"2. ----- the order dated 15.02.02 passed by the respondents is set aside and the respondents are directed to take necessary steps for conferment of temporary status to the applicant in the light of the decision rendered in O.A. No. 140 of 2000 keeping in mind the findings and observations made in O.A. No. 105 of 2002. The respondents are directed to complete the exercise with utmost expediency preferably within three months from the date of receipt of the order.

The application is allowed to the extent indicated with no order as to costs."

(Copy of the Judgment and order dated 06.10.2004 is annexed hereto and marked as Annexure-I).

3. That your petitioner thereafter approached the alleged contemnors for implementation of the Judgment and order dated 06.10.04 passed in O.A. No. 223/2003 through representation dated 05.11.2004, wherein the petitioner prayed for early implementation of the Judgment and order dated 06.10.2004 passed in O.A. No. 223 of 2003, but to no result.

(Copy of the representation dated 05.11.2004 is annexed hereto and marked as Annexure-II).

4. That the humble petitioner begs to state that more than 6 (six) months time have passed since the passing of the order but the alleged contemnors have not initiated any action for implementation of the Judgment aforesaid.
5. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the Judgment and Order dated 06.10.2004 passed by this Hon'ble Tribunal in O.A. No. 223 of 2003 which amounts to Contempt of Court. Therefore the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order of the Hon'ble Tribunal dated 06.10.2004 in O.A.No.223/2003 and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

Under the facts and circumstances stated above,
the Hon'ble Tribunal be pleased to initiate Contempt
proceeding against the Alleged Contemnors for willful non-

compliance of the order dated 06.10.2004 in O.A.No.223/2003 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

And for this act of kindness the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Sri Subrata Choudhury, presently working as Inspector, Headquarter Audit Unit, Central Excise, Bhangagarh, Guwahati, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 06.10.2004 passed in O.A. No.223/2003.

And I sign this Affidavit on this 11th day of April' 2005.

Identified by

Surajit Choudhury
Advocate

Rajen Rajahow
Deponent

The above named deponent solemnly affirmed and declared before Sri Subrata Nath, Advocate on the 11th day of April' 05, who is identified by Surajit Choudhury Advocate.

Subrata Nath
Advocate
11.04.05

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal dated 06.10.2004 passed in O.A. No 223/2003 and to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of order dated 06.10.2004 of the Hon'ble Tribunal.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.223 of 2003

Date of decision: This the 6th day of October 2004

The Hon'ble Justice Shri R.K. Batta, Vice-Chairman

Shri Rajen Rajkhowa

S/o Deben Rajkhowa,

Village- Gendhali, P.O.- Sonaguri,

Casual Worker,

New Telephone Exchange,

Nagaon, Assam.

.....Applicant

By Advocates Mr M. Chanda,

Mr G.N. Chakraborty and Mr S. Choudhury.

- versus -

1. The Union of India,
Ministry of Communication,
Department of Telecom, New Delhi,
Represented by the Secretary,
Telecom Commission, New Delhi.

2. The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati.

3. The Telecom District Manager,
Nagaon Telecom District,
Nagaon, Assam.

4. The Sub-Divisional Engineer (Cons.)
Nagaon Sub-Division,
Nagaon, Assam.

5. The Divisional Engineer (P&A),
Telecom District,
Nagaon.

.....Respondents

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

.....

O R D E R (ORAL)

BATTA. J. (V.C.)

The applicant impugns the order dated 15.2.2002 by which the claim of the applicant to grant temporary status was rejected. Mr M. Chanda, learned counsel for the applicant as also Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing on behalf of the respondents, have stated that the matter under consideration is covered by judgment dated 3.6.2003 of this Tribunal in Prabir Kumar Banerjee and

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True copy
for Advocate

others Vs. Union of India and others (O.A.No.105 of 2002).

It is further stated that the fact situation in the said O.A.105/2002 and the application under consideration is identical and in fact my attention has been drawn to page 31 of the application under consideration. It is also represented that three of the casual labourers similarly situated had filed O.A.105/2002, but the applicant at that time had not joined them and had filed a separate application which is under consideration. It is also submitted before me that in respect of the applicant in Prabir Kumar Banerjee and others Vs. Union of India and others (Supra) the directions of this Tribunal have already been complied with and the orders in respect of them have been placed on record. In view of the submissions that the matter under consideration is fully covered by judgment dated 3.6.2003 in Prabir Kumar Banerjee and others Vs. Union of India and others (Supra) the present application can be disposed of in similar terms.

2. In view of the above, the order dated 15.2.2002 passed by the respondents is set aside and the respondents are directed to take necessary steps for conferment of temporary status to the applicant in the light of the decision rendered in O.A.No.140 of 2000 keeping in mind the findings and observations made in O.A.105 of 2002. The respondents are directed to complete the exercise with utmost expediency preferably within three months from the date of receipt of the order.

TRUE COPY The application is allowed to the extent indicated
करिति with no order as to costs.

Sd/ VICE CHAIRMAN

Narayan H. H. 104

Section Officer (J)

C.A.T. GUWAHATI BANCH

Guwahati-105

16/11/04

To.

The Chief General Manager,
Assam Telecom Circle,
Ullubari, Guwahati.

Sub:- Order dtd. 06.10.20004 in O.A No. 223/2003 of CAT, Guwahati.

Sir,

Most respectfully I am enclosing herewith a copy of the order dtd. 06.10.04 of the Hon'ble CAT, Guwahati in O.A. No. 223/2003 and request you kindly to implement the judgment and order dated 06.10.2003 as early as possible.

This is for your kind information and necessary action.

Encl.: - Order dtd. 06.10.04

Yours faithfully,

Sri Rajen Rajkhowa

(Sri Rajen Rajkhowa)
Casual Worker.

Encl. - Order Rajen Rajkhowa
Date 05.11.2004
To - General Manager
CAT - Ullubari (Assam)
File No. 482140

True Copy
Sankha
Advocate

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Filed by BK Sinha
Through B.C. Pathak
12/5/2005
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

C.P. No. 15/2005

(In O.A. No. 223 of 2003)

Shri Rajen Rajkhowa ...Petitioner

-versus-

Shri B.K. Sinha & another

...Respondents/ Alleged
contemnors

(Affidavit-in-reply filed by the Respondent No.1)

I, Shri B.K. Sinha, son of Sri Achaldeo Nayagan
aged about 58 years, resident of Panbazar BSNL
gurants at present working as
Chief General Manager, Assam Circle, Bharat
Sanchar Nigam Ltd., Ulubari, Guwahati-7, do hereby
solemnly affirm and state as follows:

1. That a copy of the Contempt Petition No. 15/2005 (referred to as the "petition") has been served on me. I have gone through the same and understood the contents thereof.

2. That the statements made in the said petition, which are not specifically admitted, are hereby denied by me.
3. That before traversing the various paragraphs of the petition, I give a brief resume to the facts and the circumstances of the case and the present position of the matter as hereunder:
 - a) That after receipt of the order dated 6.10.2004 passed in OA No. 223/2003 the matter was processed in the Office. The concerned authority in the legal cell, after going through the records of the case and the order dated 6.10.2004 took a decision to go for judicial review by filing a writ petition in the Hon'ble Gauhati High Court against the said order. Accordingly, the matter was referred to the counsel of the BSNL vide communication No. STES-21/472/12 dated 2.12.2004. When the BSNL counsel was examining the matter, his mother fell seriously ill and she ultimately expired on 2.2.2005. In the process the matter was further delayed and the BSNL counsel could resume his duties only by the month of March 2005. Thereafter, the BSNL counsel took some time to go into the matter and in taking a complete decision as to whether it would be fit case to approach the Hon'ble Gauhati High Court for judicial review by filing a writ petition or to advise the BSNL authority to comply with the order. The said counsel also took some time in going though the records of the connected cases (OA.105/2002) which were not readily available with him. Moreover, the order dated 6.10.2004 should not have been passed in view of the changed circumstances when the BSNL came into existence w.e.f. 1.10.2000 and the BSNL being not amenable to the jurisdiction of the

Hon'ble Tribunal as no notification has been issued by the Central Government as required under section 14(2) of the Administrative Tribunal Act, 1985.

The copy of the said letter dated 2.12.2004 is annexed hereto as Annexure R1.

- b) That the counsel for the BSNL ultimately gave his legal opinion and opined that it is not a fit case to challenge the order dated 6.10.2004 passed in the above-noted OA and therefore suggested for compliance of the order vide his opinion dated 9.5.2005. On receipt of the said legal opinion the competent authority of the BSNL has immediately taken up the matter with the Corporate Office of the BSNL at New Delhi for their concurrence on the compliance of the order dated 6.10.2004. The competent authority of the BSNL at the Assam Circle level has already taken a decision to comply with the order at their level.
- c) That the competent authority is also making arrangements to find out the job requirement/vacancy where the petitioner could be placed in compliance of the order of this Hon'ble Tribunal.
- d) That while the above noted process was going on the petitioner has filed the instant contempt petition before this Hon'ble Tribunal. It may also be kindly be noted here that although the order was passed on 6.10.2004 the copy of the same was ready only by 11.11.2004 and the same was received by the BSNL authorities only thereafter. By the order-dated 6.10.2004 this Hon'ble Tribunal directed the respondents to complete the process of conferment of temporary status to the applicant

within 3 months from the date of receipt of the order. That way also the time for compliance was running upto 11.2.2005. But for the reasons as stated above the matter was delayed for some genuine and unavoidable, unforeseen difficulties. Under the above facts and circumstances and when the matter is under the process the petitioner has filed the instant contempt petition on 12.4.2005.

4. That with regard to the statements made in para 1, 2, 3, 4 and 5 of the petition including the prayer portion of the petition, I say that that the respondents have not done anything which may amount to deliberate and willful disobedience of the order dated 6.10.2004 passed in OA No. 223/2003 that may amount to contempt of court. As explained hereinabove there has been some procedural delay due to genuine difficulties and in taking final decision whether to go for judicial review of the order or not and ultimately now it has been decided to comply with the order of this Hon'ble Tribunal. However, the compliance could be finalized and completed only after getting the concurrence from the Corporate Office at New Delhi.
5. That I also respectfully state that the delay caused in the process of implementing order of the Hon'ble Tribunal has been explained and it is shown that the delay is very much casual and unintentional and bonafide beyond the control of the authority. The Hon'ble Supreme Court in "Kapil Deo Prasad Sah & others -vs- State of Bihar & others" as reported in (1999) 7 SCC 569, has held

and laid down law that for holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been willful disobedience of the judgment or order of the court. 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 court's order must allege deliberate or contumacious disobedience of the court's order. But in the instant case, the respondents have not done anything deliberately or contumaciously as required by law for contempt of court. Even if there is any non-compliance, that is only a casual one and bonafide action of the respondents in wanting to exhaust the available legal remedies to them as a matter of right. Hence, such casual and bonafide action cannot be deliberate or contumacious as required by law.

6. That under the above facts and circumstances of the case and the settled provisions of law, I am not liable for contempt of court as alleged by the petitioner. However, I respectfully submit that I have the highest regard to the judicial forum and the judgment/ order passed by it. I also know that as a responsible officer of the Govt. of India I am bound to obey any judgment/ order or direction of any court or judicial authority. In case this Hon'ble Tribunal comes to a finding that I am otherwise liable for contempt of court, in that case I hereby extend my unqualified apology and I may kindly be exonerated from the alleged charge of contempt of court.

7. That the statements made in para 1, 2, 3(b), 3(c), 4 are true to my knowledge and belief, those made in para 3(a) and 3(d), being matter of records are true to my information derived therefrom and the rest are statements made on legal advice and humble submission. I have not suppressed any material fact.

And I sign this affidavit on this 12th the day of May, 2005 at Guwahati.

Binoy Kumar Singh

DEPONENT

Identified by me:

D. C. Pathak
Advocate

Solemnly affirmed and signed before
me by the deponent who is
identified by Sri B.C. Pathak,
Advocate on this 12th day of May
2005 at Guwahati.

Philip Barnak
Advocate 12/5/05

BHARAT SANCHAR NIGAM LTD.
(A Govt. of India Enterprise)
Office of the Chief General Manager Telecom.
Assam Telecom. Circle, Ulubari, Guwahati-781 007.

✓/R No. STES-21/472/12

To

Shri B. C. Pathak
Addl. CGSC,
CAT, Guwahati Bench
Guwahati.

Dated at Guwahati the 02.12.2004.

Sub: Filing of case against Judgement and order dated 06/10/2004 delivered by Hon'ble CAT in OA No.223/2003 filed by Shri Rajen Rajkhowa, Sir,

Kindly find herewith one copy of Judgment and order dated 06/10/2004 in OA No. 223/2003 delivered by Hon'ble CAT.

In this connection I am directed to intimate you that the Hon'ble CAT in their Judgment and order dated 06/10/2004 had referred the Judgment and order in OA No. 105 of 2002 and in OA No. 140/2002 and directed the respondent to take necessary action for conferment of the applicant as temporary status keeping in mind the findings and observation in OA No. 140/2002.

The following points may please be for defending the case.

1. The applicant was never engaged on daily wage basis, but only on contract basis w. e. f. 01/10/93 for offering A/C plants of H.T Exchange Nagaon. He was never paid at the Govt. prescribed rate or daily wages basis i.e not on same terms and conditions applicable to the daily rated Casual Mazdoor's.

2. The engagement of the applicant as contract Job was discontinued w. e. f. 1998. Hence, as per rules the applicant cannot be made conferment as TSM.

3. As per BSNL letter No. 272-102/2001 Pers- IV dated 06/03/2003 it was stated clearly that permission was granted to circles for the grant of temporary status to casual labours who are still working under the department and eligible for conferment of temporary status as on 01/08/1998. The applicant was not working as on 01/08/98 and therefore his claim cannot be entertained.

It is further mentionable that being BSNL is a PSU, CAT cannot adjudicate the service matter pertaining to employees of BSNL in terms of Rule 14 (2) of at Act 1985. The matter may please be strongly opposed.

Contd.P/2.

Dilip Baruah
Certified to be true Copy.
Dilip Baruah
Advocate

Page-2.

It is therefore requested, kindly to file case against the Judgment and order dated 06/10/2004 delivered by Hon'ble CAT in OA No. 223/2003 covering the points as stated above and defend the case at the best possible way.

With regards.

Enclo:

1. Judgment & order dated 06/10/04 in OA No. 223/2003.
2. Bsnl letter No. 272-102/2001 Pers-IV dated 06/03/2002.
3. Para-wise Comments in OA No. 223/2003.

Sincerely yours

(S. C. Das)
Asstt. Director Telecom (Legal)