

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. CP 25/05/ COA 216/03

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): Smt. Sumitra Das

Respondant(S): Sri B.K. Sinha & Ors

Advocate for the Applicant(S): Mr K.K. Phukan & L.N. Dikongia

Advocate for the Respondant(S): Mr. B.C. Patlak,
Mr. B. Baruah

Notes of the Registry	Date	Order of the Tribunal
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25.8.2005

Heard Mr. K.K. Phukan, learned counsel for the applicant.

This contempt petition has been filed by the applicant u/s 17 of the A.T. Act, 1985 for institution of contempt proceedings against the respondents for deliberate disobedience of the order of the Hon'ble Tribunal dated 11.6.2004 which has passed in O.A No. 216/03.

And before Hon'ble Court for orders.

21.8.05
Section Officer(I)

Notice & order sent to D/section for issuing to resp. 1 by hand and other resp. Nos. 2, 3 by regd. A/D post.

D/No = 1317, 1316,
1315, DT = 31/8/05.

lm

Issue notice to the respondents show cause as to why contempt proceedings shall not be initiated against them.

Post on 28.09.2005. Personal appearance is dispensed with for the time being.

Vice-Chairman

Mr. K.K. Phukan learned counsel appearing for the petitioner and Mr. B. Baruah learned counsel for the Respondents. The counsel for the Respondents prays for time.

Post the matter on 7.10.05. The 1st Respondent will report compliance of the direction issued in the O.A. No. 216 of 03 on that day. The office will issue the order to the 1st Respondents directing for compliance.

Vice-Chairman

29/8/05.

12/9.

(2)

CP. 25/05

7.10.2005

Heard Mr.KK.Phukan, learned counsel for the applicant and Mr. B.C.Pathak, learned counsel for the respondents.

Mr.Pathak submits that a compliance report has already been filed. Mr.Phukan submits that he has received the said report only recently and the contentions have

to be verified from the client.

Post on 24.11.2005.

No Reply has been filed.

27.9.05

Member

Vice-Chairman

bb

24.11.2005

Counsel for the applicant is absent. Mr. B.C. Pathak, learned counsel for the respondents submits that order has already been complied with. Post before the Division Bench.

Vice-Chairman

9.3.2006 Present: Hon'ble Shri B.N. Som, Vice-Chairman (A)
Hon'ble Shri K.V. Sachidanandan, Vice-Chairman (J).

The contempt petition has been filed by the applicant in O.A. No.216 of 2003. Vide order dated 11.6.2004 in O.A.No.216/2003, this Court directed the applicant to make a comprehensive representation to the respondents and on receipt of such representation, the respondents were directed to dispose of the same. In compliance of the said order the 3rd respondent- Chief General Manager Telecom, Assam Circle, Guwahati has passed a considered order No.STES-21/558/8 dated 5.10.2005 which is marked as Annexure-R1. On a perusal of the said order, we are of the view that substantial compliance of the order

Vakalatnama
filed on behalf of
R.No. 3.

28/9/05

order dt. 28/9/05
sent to D/Section
for issuing to
1st respondent, by
hand.

28/9

6-10-05

Abhidavit in opposition
filed by the Respondant
No-3.

Abhidavit filed by the
R.No-3.

8.3.06

Notes of the Registry	Date	Order of the Tribunal
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9.3.2006

has already been passed and therefore the Contempt Petition will not stand on its legs.

Under the circumstances, the Contempt Petition is only to be closed and notice, if any, issued will be discharged. However, the applicant is at liberty to approach the appropriate forum if he has got any further grievance.

The Contempt Petition is accordingly closed. Notice issued is discharged.



Vice-Chairman(J)



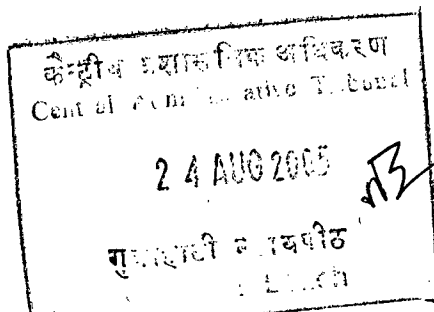
Vice-Chairman(A)

nkmm

16.3.06

Copy of the order has been sent to the office for issuing the same to the applicant as well as to L/Adv. for the Respon.

gfb



Filed by the Applicant
Through L.N. Dilling
Advocate S
24/8/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI

BENCH: GUWAHATI

Contempt Petition (Civil) No. 25 /2005

(Arising out of Order dated 11th June 2004
passed in O.A No. 216/2003)

IN THE MATTER OF :

An application under section 17
of the Administrative Tribunal
Act, 1985, contempt of court's
(C.A.T) Rule, 1997 read with
section 11 and 12 of the
contempt of Courts Act, 1971
for institution of contempt
proceeding against the
respondents.

- AND -

IN THE MATTER OF :

Willful and deliberate
disobedience of the order of
the Hon'ble Central
Administrative Tribunal,
Guwahati Bench dated 11th June
2004 passed in O.A. No. 216 of
2003.

-AND-

IN THE MATTER OF :

Smti Sumitra Das W/O Late Kala
Ram Das, R/O Village -
Sonitpur, P.O. Biswanath
Chariali, P.S. Chariali, Dist.
Sonitpur, Assam.

..... Applicant

-Vs-

1. Sri B.K. Sinha,
The Chief General Manager
Assam Circle, Bharat Sanchar
Nigam Ltd. Guwahati - 781007.

2. Sri P.K. Mukhopadhyay,
The Telecom District Manager
Bharat Sanchar Nigam Ltd.
Tezpur, District Sonitpur
Assam.

3. Sri J.N. Deuri,
The Divisional Engineer Bharat
Sanchar Nigam Ltd., T.D.M.
Tezpur, District Sonitpur
Assam.

..... Respondents

A.

DETAILS OF APPLICATION :-

The humble petition of the petitioner above named.

1. That the present petitioner/applicant is the petitioner in O.A. No. 216/03 which was filed before the Hon'ble Central Administrative Tribunal, Guwahati Bench, praying for fixation of his date of birth as 29.9.39 instead of 10.2.32 for payment of death-cum-retirement gratuity, pension, family pensions and other retirement benefits to the applicant, the legal heir of the Late Kalaram Das, Retired Line Inspector of Telecom.

2. That, the Hon'ble Central Administrative Tribunal, Guwahati Bench heard the original Application on 11th June 2004 and finally disposed of the same with a direction to the applicant to file a representation listing out all grievances before the respondents within two weeks from the receipt of this order and from the date of receipt of such representation, the respondents are directed to dispose of the said representation within a period of 4 (four) months.

A photo copy of the aforesaid order dated 11th June 2004 is enclosed herewith and marked a Annexure - A.

2

3. That the petitioner as per direction of this Hon'ble Tribunal's order dtd. 11th June 2004 passed in O.A No. 216/2003 submitted representations before the respondent authorities immediately after receiving the certified copy of the aforesaid Hon'ble Tribunal's order vide Registered Letter No. 2600, 2601 and 2602.

One Copy of the representations and a certificate from the Sub-Post Master, M.D.G Chariali are annexed herewith and marked as Annexure-B & C respectively.

4. That on receipt of the aforementioned representations submitted by the petitioner, the respondent authorities failed to dispose of the same till date. Thus the contemners by not complying with the direction of this Hon'ble Tribunal have shown total disregard to the sanctity attached to such direction and thereby lowered the dignity of the Hon'ble Tribunal.

5. That, the petitioner/ applicant respectfully states that contemners are primarily responsible for implementing the direction contained in the order dtd. 11/06/2004 but they having failed to carry out the same has rendered themselves liable for contempt of this Hon'ble Tribunal. Therefore it is an appropriate case

where this Hon'ble Tribunal shall draw up appropriate contempt proceeding against the contemnners and would be penalized them for such contempt.

6. That, if the Contemnners/ Respondents are not punished severally in accordance with the relevant provisions of law, the officers and administrators of the country who are already flouting the Hon'ble Tribunal's order will be encouraged to disregard and disrespect to the order of the Hon'ble Tribunal, which is the only ray of hope to the poor citizen in the present state of life.

7. That, the present petitioner/ applicant has been filed bonafidely and in the interest of justice to safeguard and maintain the dignity and power of the Hon'ble Tribunal and to guarantee, belief and hope amongst the people. The applicant has no other remedy which is speedy, adequate and efficacious. The prayer for herein when granted will be complete and adequate.

8. That, in the manner stated above, the respondents had willfully and intentionally disobeyed the Hon'ble Tribunal's order and as such the Respondents/ Contemnners are liable to be punished in accordance with law.

8.

RELIEFS SOUGHT FOR / PRAYER

In the premises aforesaid, it is most respectfully prayed that your lordships may most graciously be pleased to :-

- (i) Take sub-moto cognizance of the offence of the Respondents/ Contemners under the contempt of courts (C.A.T) Rules, 1992.
- (ii) Issue process of the Hon'ble Tribunal compelling the respondents to appear in person before the Hon'ble Tribunal to answer the charges.
- (iii) Award appropriate punishment to the respondents after hearing of the case and to compel them to comply with the Hon'ble Tribunal's order at once.
- (iv) Issue any other order/ directions that this Hon'ble Tribunal may deems fit and just in the interest of justices.

- AND -

Award the cost of this petition

Identified by


Advocate

Deponent

V E R I F I C A T I O N

I Smti Sumitra Das, Wife of Late Kala Ram Das, be duly authorized and competent to sign this verification do solemnly affirm and declare that the statements made in para 1, 4, 68..... are true to my knowledge and belief, those made in para 2, 3..... being matter of records, are true to my information derieved from and the rest are my humble submission before the Hon'ble Tribunal, I have not suppressed and material facts.

That, I sign the verification today the 24th August at Guwahati.


স্মিট্রা দাস

DECLARANT

11

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal/s dated ~~11.06.2003~~ ~~passed~~ 11.06.2004 passed in O.A. No. 216/2003 and to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of order dated 11.6.2004 of the Hon'ble Tribunal.



BHARAT SANCHAR NIGAM LTD.

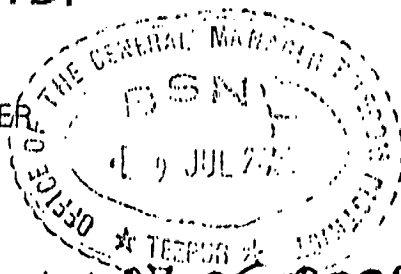
(AGovt. of India Enterprise)

DOT-CELL

OFFICE OF THE CHIEF GENERAL MANAGER,

ASSAM CIRCLE,

ULUBARI, GUWAHATI - 781007.



NO. : ASM/BSNL/DOT.CELL/FP/1CRD/TZ/107

Dated at Guwahati, 27-06-2003.

Consequent upon the enhancement of Dearness Allowance / Dearness Relief w.e.f. 01-07-2001, sanction is hereby accorded for payment of the following arrear amounts to Shri/Smt. Sumitra Das w/o Late Kala Ram Das Ex. LMI retired on 30-9-1977 & expired on 8-7-2003.

✓ Death cum Retirement Gratuity :

Amount due Rs. 16,800.-

Amount drawn Rs. Nil

Difference payable Rs. 16,800.-

✓ Leave Encashment :

Amount due Rs. 10,707.-

Amount drawn Rs. 25,312.-

Difference payable Rs. (-) 14,603.-

Commutation Dearness Relief :

Amount due Rs. 20,962.-

Amount drawn Rs. Nil

Difference payable Rs. 20,962.-

Total amount payable Rs. 10,724.-

(Rupees Ten Thousand Seven Hundred and twenty four only)

NON-PAYABLE COPY

Copy to :

1. Sri / Smt. Sumitra Das w/o Late Kala Ram Das Villa Santipur, P.O. Charali, Dist. Santipur.
2. A.O. (Cash) of G.M.T. / Santipur.

Accounts Officer (DOT-CELL)
O/o the CGMT, BSNL
Assam Telecom Circle,
Guwahati - 7

Accounts Officer (DOT-CELL)
O/o the CGMT, BSNL
Assam Telecom Circle,
Guwahati - 7

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 216 of 2003.

Date of Order : This, the 11th Day of June, 2004.

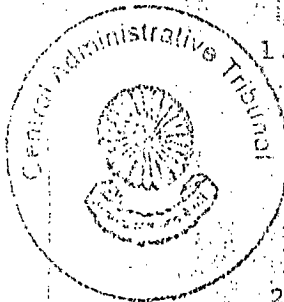
THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Smti. Sumitra Das
W/o Late Kala Ram Das
R/o Village: Sonitpur
P.O: Biswanath Chariali
P.S: Chariali
Dist: Sonitpur, Assam.

..... Applicant.

By Advocates Mr.K.K.Phukan, Mr.B.K.Bora & Ms.J.Likhok.

- Versus -



1. Union of India
Represented by the Secretary,
Department of Telecom
Government of India
Sanchar Bhawan
New Delhi - 110 001.
2. The Chairman
Bharat Sanchar Nigam Ltd.
Sanchar Bhawan
New Delhi - 110 001.
3. The Chief General Manager
Assam Circle, Bharat Sanchar Nigam Ltd.
Guwahati - 781 007.
4. The Telecom District Manager
Bharat Sanchar Nigam Ltd.
Tezpur, District Sonitpur
Assam.
5. The Divisional Engineer
Bharat Sanchar Nigam Ltd.
O/o the T.D.M., Tezpur
District Sonitpur, Assam.
6. The Sub-Divisional Engineer Phones (Gr)
Bharat Sanchar Nigam Ltd.,
Biswanath Chariali
Dist: Sonitpur, Assam.

Contd./2

bw
Certified to be true copy
Sd/-
24/8/05
Advocate

7. The Chief Accountant Officer (DOT CELL)
Bharat Sanchar Nigam Ltd.
Assam Circle
Guwahati - 781 001.

... Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

K.V.PRAHLADAN, MEMBER(A):

The applicant's husband retired as a Line Inspector on 30.9.1997 from the Office of the S.D.E. (Gr.), Biswanath Chariali. He expired on 8.7.2001. Before retirement a disciplinary proceeding was initiated against him regarding his date of birth in the service book which was recorded as 29.9.1939. Respondents claimed that applicant's husband was born on 10.2.1932 and he served seven years more beyond the retirement date. The applicant filed an Original Application No.100 of 2002 before this Tribunal and the Tribunal vide its order dated 21.2.2003 directed the excess payment of pay and allowances to the applicant's husband amounting to Rs.3,39,515/- to be written off since the disciplinary proceeding stood terminated.

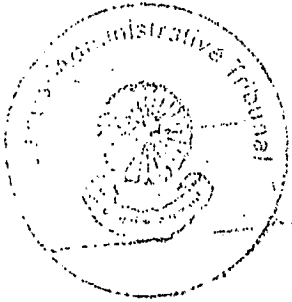
This O.A. is for the payment of retirement benefits to the applicant who is the legal heir of the deceased. As per Annexure - VIII the applicant has not been fully paid the retirement benefits i.e. D.C.R.G., Leave Encashment, Commutation, pension and family pension, which are yet to be settled by the respondents. The applicant may file a representation listing out all

Contd./3

grievances before the respondents within two weeks from the receipt of this order. Respondents, on receipt of such representation shall pass an order ^{that is to} ~~be~~ lawful, just and fair within a period of four months from the date of receipt of the representation.

The present application is thus disposed of. No costs.

Sd/MEMBER (ADM)



TRUE COPY

प्रतिनिधि

N. S. S. S.
28/6/04
Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

28/6

- 12 -

To,
The Chief General Manager,
Assam Circle,
Bharat Sanchar Nigam Ltd.,
Guwahati-7.

Dated 15/7/04

Sub: Prayer for fixation and payment of death-cum-retirement gratuity, pension, family pensions and other retirement benefits of Late Kala Ram Das who retired as Line Inspector from the Office of the SDE (Gr), Biswanath Chariali (BSNL) on 30.9.97.

Sir,

I have the honour to state that my husband Late Kala Ram Das was the regular employee of your Department. He first worked under Master Roll and thereafter he was appointed as Line Workman w.e.f. 05.02.1962 vide order No. Q-413/9 dated 10.02.1962 issued by the S.D.O., Telegraphs, Guwahati. He rendered his services in different places and under different capacities and lastly he retired on 30.9.97 as Line Inspector from the office of the SDE, Phones, Biswanath Chariali at the age of superannuation counting his death of birth as 09.9.1938 which was ^{recorded} in his service book and which was duly verified by the authority concerned time to time.

But at the verge of retirement of my said husband a disciplinary proceeding was drawn against him alleging inter alia that said Late Kala Ram Das during his service period submitted false information by recording different dates of birth on different documents, over stayed in service by changing and correcting his date of birth as 09.9.39 in place of 10.2.32 and de-

Certified to be true copy
Advocate
24/8/05

ceived the department knowingly and intentionally for his personal gains and as such violated rules 3(1)(1) & (111) of CCS (Conduct) Rules, 1954.

During pendency of the aforesaid disciplinary proceeding, said Kala Ram Das died on 8.7.2001 and on his death the said disciplinary proceeding could not be concluded and in terms of the OM No. 11012/7/99-Estt(A) dated 20.10.1999 the disciplinary proceeding stood terminated and vide order dated 19.1.2001 the said disciplinary ^{proceeding} was accordingly closed.

In this regard Hon'ble Central Administrative Tribunal, Guwahati Bench vide Judgment and order dated 21.2.2003 passed in OA No.100/2002 directed the authority concerned to take prompt measures for settling the claim of retiral benefits accrued to late Kala Ram Das.

Thereafter the alleged excess payment of pay and allowances to the said Kala Ram Das was written off since the proceeding itself stood terminated but vide letter under Memo No. ASN/DOF/CELL/FP/KRD/TZ/107 dated at Guwahati 27.06.2003 settled the Death-cum-Retirement Gratuity, Leave Encashment, Commutation, Pension, Family Pension etc. on the basis of the alleged date of birth i.e. 10.02.32.

AS the disciplinary proceeding itself was dropped, the charges levelled against late Kala Ram Das were not proved. Without proving the charges, disputed date of birth i.e. 10.02.32 cannot be taken into consideration for fixation of death-cum-retirement gratuity.

leave encashment, commutation, pension, family pension etc. On being aggrieved at and dissatisfied with the aforesaid settlement of retiral benefits, O.A. No. 216/2003 was filed before the Central Administrative Tribunal, Guwahati Bench for redressal of his grievances and the said Hon'ble Tribunal was asked to pass judgment and order dtd. 11.6.2004 directing the appellant to file a representation listing out all grievances before the respondent authorities. Hence this representation.

It is, therefore, prayed that your honour may be pleased to look into the matter and consider the date of birth i.e. 29.9.39 as the basis for determining the date of retirement gratuity, leave encashment, commutation, pension, family pension etc. and be pleased to make payment as early as possible and for which act of your kindness I shall ever remain grateful to you.

Yours faithfully

(Smt Sumitra Das)
W/o Late Kala Ram Das
Ex-Bde Inspector,
SDE (Phone-2), Biswanath
Chariali.

Copy to:

-15-

Annexure - C

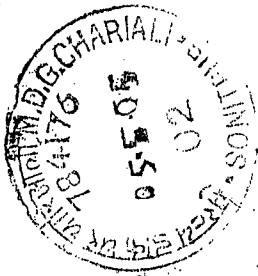
मुख्या दफ्तर चारिआली 784176
M.D.G. CHARIALI
SONITPUR

19

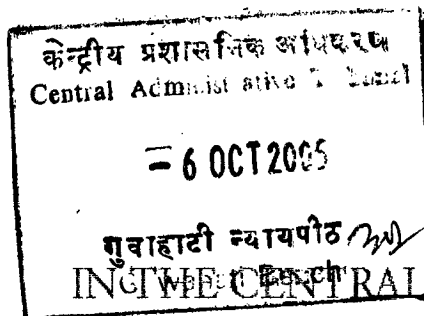
Certified That the following
Rgd letters were issued from this MDC
Chariali on 15/7/04.

- ① RL-Nv-2600 AHC.G.M.T. Orissa-Chali-7.
- ② RL-Nv-2601 AHC TDM TEZPUR.
- ③ RL-Nv-2602 AHC D.E. (Telecom) TEZPUR.

5/5/05
SUB POST-MASTER (HSG II)
MUKHYA DAKGHAR
CHARIALI - 784176



Certified to be true copy
Advocate
24/8/04



C. P. No. 25/2005

Smti Sumitra Das

.....Petitioner

-Vs-

Sri J. N. Deori & 2 Others

.....Respondents/Contemnors

(Affidavit-in-opposition filed by Sri J.N. Deori, the Respondent No. 3)

I, Sri Jagannath Deori, S/o Late Lama Chandra Deori, aged about 57 years resident of Kamar Chuburi BSNL Colony, Tezpur in the District of Sonitpur (Assam), do hereby solemnly affirm and state as follows:

- (1) That I have been implicated as respondent No.3 in the above noted case and a copy of the said contempt application has been served on me. I have gone through the said application and understood the contents thereof.
- (2) That at present I am working as Divisional Engineer in the office of the Telecom District Manager, Tezpur, Bharat Sanchar Nigam Limited (hereinafter referred to as the "BSNL") and discharging my duties including legal matter falling under my jurisdiction. As such I am fully acquainted with the facts and circumstances of the case in hand.
- (3) That, in this connection beg to state that the Hon'ble CAT may not exercise jurisdiction including this

application for contempt as the Hon'ble Gauhati High Court in a Division Bench hearing the WP(C) No.1603/2004, 3150/2004, 3158/2004, 3117/2004 and 2918/2004 has held that the Hon'ble CAT has no jurisdiction against BSNL. I crave the leave of the Hon'ble Tribunal to allow me to rely upon and produce the copy of such order of the Hon'ble High Court on the point of jurisdiction at the time of hearing of this application.

- (4) That applicant filed an Original Application in this Hon'ble CAT, which was registered as OA No.216/03. The Hon'ble Tribunal heard both the parties in the above case and finally disposed of the said O.A. vide order dated 11.6.2004. By the said order dated 11.6.2004 the Hon'ble Tribunal directed the applicant to file a representation listing out all her grievances to the respondents and the respondents have also been directed to consider the said representation and pass necessary order within a period of four months from the date of receipt of the said representation. The local authority of BSNL took up the matter with the different authorities in the official hierarchy including the Corporate Office at New Delhi. In the process in routing the matter in different stages through the various authorities and in processing the matter in the Corporate Office, New Delhi there has been some considerable delay in disposal of the representation. Ultimately the Corporate Office took certain decision in the matter and instructed steps to be taken in the matter as per their direction. However, the local authority in the meantime, has calculated the Death cum Retirement Gratuity (referred to as the "DCRG") etc. and made arrangement for payment of the same to the applicant.

- (5) That as direction given by this Hon'ble Tribunal and in compliance of the said direction, the competent authority of BSNL has already passed a speaking order vide No.STES-21/558/8 dated 5.10.2005. The order has also been communicated to the petitioner through the registered post on 5.10.2005. By the said speaking order the BSNL has made it clear that all the calculations has been made by taking the date of birth as 29.9.1939 and the dated of supperannuation as 30.9.1997 and all the DCRG has been paid including the pension. The family pension has been considered only after the death of the employee w.e.f. 8.7.2001 and the same is also being paid regularly. After the coming of the BSNL, the family pension is now being paid by the Department of Telecommunications, Govt. of India and not by the BSNL.

That being the position the order of the Hon'ble Tribunal has duly been complied with. The said speaking order dated 5.10.2005 may kindly be treated as an integral part of statements in this para of this affidavit.

Copies of the said speaking order and the postal receipt dated 5.10.2005 are annexed as Annexure R1 and R2 respectively.

- (6) That with regard to the statement made in para 1, 2, 3, 4 and 5 of the application I say that in view of the facts and circumstances as stated herein above, the averments made in these paras can not sustain in law and therefore there is no such ground to alleged that he respondents has committed any contempt of court.

- (7) That with regard to the statement made in para 6, 7 and 8 including the prayer portion I say that as the respondents has already implemented and complied with the order of this Hon'ble Tribunal and made all arrangement for payment of DCRG and therefore this contempt petition is liable to be closed.
- (8) That I also respectfully state that the law with regard to contempt of court is well by the Hon'ble Supreme Court in "Kapil Deo Prasad Sah & others -vs- State of Bihar & others" as reported in (1999) 7 SCC 569, wherein the Hon'ble Apex Court has laid down law that *".....For holding the respondents to have committed contempt, civil contempt at all, that it has to be shown that there has been willful disobedience of the judgment or order of the court.....whether disobedience is willful in a particular case depends on the facts and circumstances of that case.....Willful would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the orders"*. But in the instant case, the respondents have not done anything deliberately or contumaciously which may amount to contempt of court as required by law. Even if there is any non-compliance, that is only a casual one and bonafide action on the part of the respondents. Hence, such casual and bonafide action cannot be deliberate or contumacious as required by law.
- (9) 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 all the judicial forums and the judgment/ order passed by it including this Hon'ble Tribunal. I also know that as a responsible officer of the Govt. of

India and representing the BSNL 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.

- (10) That the statements made in para 1, 2, 3, 4, 6 to 9 are true to my knowledge and belief, those made in para 3 and 5 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 the 5th day of October, 2005 at Guwahati.

Jagannath Deora

Identified by me:

DEPONENT

B.C. Pathak

Advocate

Solemnly affirmed and signed before me by the deponent who is identified by Sri B.C. Pathak, Advocate on this 5th day of October, 2005 at Guwahati.

Advocate



BHARAT SANCHAR NIGAM LIMITED
(A GOVT OF INDIA ENTERPRISE)
OFFICE OF THE CHIEF GENERAL MANAGER TELECOM.
ASSAM CIRCLE, GUWAHATI - 785007

No.- STES-21/558/8

Dated: - 5th Oct' 2005

OFFICE ORDER

Whereas, one Smti. Sumitra Das, W/o Late Kalaram Das, who was a Line Inspector and died on 8.7.2001, filed an Original Application in the Hon'ble Central Administrative Tribunal, Guwahati Bench (in brief "CAT") vide OA. No. 216/2003. After hearing the parties the Hon'ble CAT passed the final order on 11.6.2004 in the said case. By the said final order the Hon'ble CAT directed the applicant to file a representation listing out all the grievances and also directed the respondents to consider the said representation and pass necessary order within a period of four months from the date of receipt of the representation. Accordingly the said case was disposed of.

As per direction of Hon'ble CAT the applicant, Smti Sumitra Das preferred a representation dated 13.7.2004 which was received by the concerned authority on 19.7.2004. The said representation was processed through different administrative hierarchy and a decision was taken to refer the matter to the higher authority of the Corporate Office at New Delhi. Accordingly the matter was referred to the Corporate Office, New Delhi and in the process there had been some delay in considering the representation of Smti. Sumitra Das and in passing a speaking order. The delay caused in the matter relates to a dispute on the matter of date of birth of the deceased husband of the applicant. The actual date of birth of the applicant as recorded in the service book was 10.2.1932 whereas the said date was overwritten and corrected as 29.9.1939. This was a serious matter to be investigated. A disciplinary proceeding was drawn against the said deceased employee while he was in service but during the pendency of

Certified to be true Copy.

Bishash Pathak
Advocate

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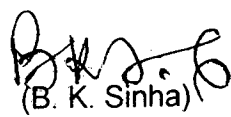
the said proceeding relating to the correction of date of birth without any authority, the said employee expired on 8.7.2001. As a result, the disciplinary proceeding was closed and could not be proceeded against the employee in the matter of correction of date of birth. As per original entry in service book indicating the date of birth as 10.2.1932, the dated of superannuation of the said employee was to be determined as 28.2.1990. But the employee was allowed to continue by mistake beyond the said date of superannuation. On scrutiny, when the said mistake was detected the aforesaid disciplinary proceeding was initiated to ascertain the correct position which ended without any result. On the other hand if the date of birth of the said employee is taken as 29.9.1939, the date of superannuation was to be fixed as on 30.9.1997. On the death of the employee, it was incumbent on the part of the department to settle the Death cum Retirement Gratuity (DCRG) benefits and accordingly due process was initiated and the matter was taken up with the higher authority indicating the anomalous situation with regard to the date of birth and continuation of the employee in service to a controversial date of superannuation. The competent authority in the BSNL has communicated the local office here that the settlement of DCRG benefit of the said employee should be calculated treating the dated of superannuation as 28.2.1990 and the family pension should be paid taking 30.9.97 as the dated of entitlement. This was communicated vide No. 250-14/2002/Pers-III dated 24.4.2003. This letter 24.4.2003 created some more problem in determining the actual date of superannuation and the various calculations to be made in connection with DCRG. The whole process therefore delayed though it was unexpected and beyond the control and power of the lower authorities. However the matter was decided and all the calculations were made taking 30.9.1997 as the date of superannuation and on the basis of last pay certificate granted to the employee. Accordingly all the payment like leave encashment, commutation, pension, family pension etc. has already been calculated and paid and being paid to Smti. Sumitra Das. At present the family pension is being paid at the rate of Rs. 1350/- per month to Smti Sumitra Das regularly.

As per direction of Hon'ble CAT, Smti Sumitra Das submitted her representation where she has made a mention regarding the long service rendered by her deceased husband and the disciplinary proceeding initiated against him with regard to the controversy of his date of birth. Mention has also been made about the death of her husband as on 8.7.2001 and closure of the disciplinary proceeding by order dated 19.1.2001 (which should be 19.11.2001). It has also

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been mentioned that Hon'ble CAT vide order dated 21.2.2003 passed in O.A. 27
No. 100/2002 regarding the direction given by the Hon'ble CAT in that case.
Smti. Sumitra Das also made a categorical mention about the calculation of
DCRG alleging that calculation of DCRG has been made on the basis of
10.2.1932 as the date of birth. She has also alleged that the DCRG can't be
calculated taking 10.2.1932 as the date of birth as the disciplinary proceeding
against her husband was dropped. In her prayer she has demanded that the
date of birth of her husband be considered as 29.9.39 and all the benefits of
DCRG be calculated on that basis only.

As stated hereinabove, the competent authority of BSNL makes it clear here that
the employee died on 8.7.2001 and 30.9.1997 was taken as date of
superannuation. That being the actual position all the calculation and payments
has been made on the basis of 30.9.97 as the date of superannuation. Hence
the entire allegations and the confusion created by such allegations are baseless
and can't sustain in law. The competent authority makes it clear that the
employee was not absorbed in the established of BSNL as his controversial
dated of superannuation ended on 30.9.1997 where as the BSNL come into
existence on 1.10.2000. That being the position the monthly family pension now
being paid is also directly made by the Deptt of Telecommunication (cell) and
BSNL has nothing to do with such action of the Deptt of Telecommunication. The
BSNL therefore is not answerable for the ~~erstwhile employee~~ of Deptt of
Telecommunication who had never been absorbed in BSNL. As per records of
the BSNL there is no mistake in calculation of the DCRG of late Kalaram Das,
the husband of Smti. Sumitra Das. Accordingly the representation of Smti
Sumitra Das stands disposed of.

To,
Smti Sumitra Das
W/o Lt. Kalaram Das
Ex-line Inspector
Vill- Sonitpur. PO.- Biswanath Chariali.
Dist. - Sonitpur. (Assam)


(B. K. Sinha)
Chief General Manager Telecom
Assam Circle, Ulubari,
Guwahati-781007.

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ANNEXURE : R2



NPO GURAHATIPO (781431)

RL-AD 3775

PA : PCN

To: SMT. SUMITRA DAS,

BISWANATH CHARALI, PIN:

Nt:38qr2as

PS:0.00, Ant:33.00, 05/19/2005, 19:44:16

HAVE A GOOD DAY

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Bibhash Pathak
Advocate