

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. _____

Misc. Petition NO. _____

Contempt petition No. 10/05 m.O.A 110/03

Review Application No. _____

Applicants. Sujit Das

Respondents. U.O.I Jans

Advocates for the Applicant. S. Sarna, B. Devi

Advocates of the Respondents. Case B.C. Pathak, B. Pathak, D Boma
for Contempt No. 192.

Notes of the Registry	Dated	Order of the Tribunal
<p>This Contempt petition has been filed by the counsel for the petitioner praying for directed contempt proceedings against respondents for their willful and deliberate violation of order dated 19.3.04 passed in O.A. 110/03 by this Hon'ble Tribunal.</p> <p>and before the Hon'ble Court for further orders.</p> <p><u>for Section 1502</u></p>	23.3.2005	<p>Present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman</p> <p>The Hon'ble Mr. K.V. Prahladan, Member (A)</p> <p>Heard Ms. B. Devi, learned counsel for the applicant.</p> <p>Since it is stated that directions issued by this Tribunal in the order dated 19.3.04 (Annexure-1) passed in O.A. No. 110 of 2003 have not been complied with within the stipulated period, respondents will show cause as to why proceedings for contempt shall not be taken against them.</p> <p>Post on 25.4.2005. Respondents will file their affidavit within that time. Personal appearance is dispensed with for the time being.</p> <p><u>for Section 1502</u></p>

Member

Vice-Chairman

bb

Notice & order
sent to D/section
for issuing to
resp. Nos. ~~1~~ 2 by
regd. A/D post and
resp. No. 1 issuing
to by hand.

25.4.05.

Mr. S. Sarma learned counsel for the
applicant is present. Mr. B. Ethak,
learned counsel for BSNL seeks for
two weeks time.

Post the matter on 25.5.05.

Vice-Chairman

lm

25.5.2005

List the matter on 17.6.2005.

Member

bb

16.6.05

After hearing the counsel for
the parties at some length on the
question of preliminary jurisdiction
we feel that the parties have not
placed all the relevant records
before us. In the circumstances we
direct the parties to file all the
relevant papers, memoranda of the
Central Government and the BSNL
for a proper consideration of the
question of jurisdiction.

Post on 22.7.2005 for hearing.

Member

Vice-Chairman

pg

17.6.2005

Mr. B.C. Pathak, learned counsel
for the respondents seeks for adjourn-
ment. Post on 6.7.2005.

Member

Vice-Chairman

mb

6.7.2005

On behalf of Mr. B.C. Pathak,
learned counsel for the BSNL a represen-
tation is made that it may be taken on
another date. Post on 9.8.2005. Affid-
avit, if any.

Vice-Chairman

① Service report are
still awaited.

22/5/05

No. Affidavit has
been filed.

22/8/05

C.P. 10/2005

09.08.2005 Mr. S. Sarma, learned counsel for the applicant and Mr. D. Baruah, learned ~~xxx~~ on behalf of Mr. B.C. Pathak, learned counsel for the respondents are present

Post this case alongwith R.A. ^{7/2004 on} 16.8.2005.

9.8.05

Affidavit in reply
filed by the Respondents. 1.

[Signature]

[Signature]
Member

[Signature]

Vice-Chairman

mb

22.11.2005 Post before the next Division Bench alongwith R.A. 7/2004.

[Signature]

Vice-Chairman

mb

2.1.2006 In view of the order passed in R.A. 7/2004 the C.P. is disposed of.

[Signature]

Member

[Signature]

Vice-Chairman

mb

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

11 8 MAR 2005

गुवाहाटी न्यायापीठ
Guwahati Bench

*Filed by -
the petitioner
through
Bandana Devi
Advocate
18.3.05*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

C.P.No. 10 /05.

In OA No. 110/03.

Sri Sujit Das

-VS-

Union of India & Ors.

IN THE MATTER OF:

An application under Rule 17 of the Administrative Tribunal Act, 1985 for drawal of Contempt Proceeding against the Contemnors for their willful and deliberate violation of the judgment and order dated 19.03.04 passed in O.A No 110/03.

-AND-

IN THE MATTER OF:

An application under Rule 24 of the Central Administrative Tribunal (Procedure) Rules 1987 for implementation of the judgment and order dated 19.03.04 passed in O.A No 110/03.

-AND-

6

IN THE MATTER OF

Sri Sujit Das

Son of Late Ananta Das, Casual Mazdoor,
Under Sub Divisional Officer Haflong,

-----Petitioner

-VS-

1) Sri B.K.Sinha,

The Chief General Manager BSNL,

Assam Circle, Ulubari ,

Guwahati-7810070. Assam.

2) Sri M.John Chrisostol,

The General Manegr BSNL,

Silchar,

----- Contemners.

The humble application on behalf of the petitioner
above named

MOST RESPECTFULLY SHEWETH:

1. That the petitioner praying for grant of temporary status and subsequent regularisation under the scheme of 1989, preferred the above noted OA No.110/03, before this Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said application vide judgment and order dated 19.03.04 directing the Respondents to grant the benefit of the scheme granting temporary status and other benefits flowing therefrom without any backwages.

A copy of the said judgment and order
2

b

dated 19.03.04 passed in OA No. 110/03 is annexed herewith and marked as Annexure-1.

2. That the petitioner communicated the said order to the contemnors with a prayer to implement the same through his representation dated 25.03.04, but nothing was communicated to him. In the mean time the Contemnors challenging the legality and validity of the judgment and order dated 19.03.04 preferred Review Petition before the Hon'ble Tribunal was registered and numbered as R.A No 7/04. The said Review application is yet to be heard and this Hon'ble Tribunal has not yet stayed the judgment and order dated 19.03.04.

A copy of the said representation dated 25.03.04 is annexed herewith and marked as ANNEXURE-2.

3. That the petitioner begs to state that the contemnors have also filed a Misc Case. No 62 of 04 condonation of delay in filing the Review Application, but the Hon'ble Tribunal has not yet condoned the delay in filing the said Review Application.

4. That the petitioner states that immediately after the aforesaid order dated 19.03.04 submitted the same before the authority concerned, but nothing has been communicated to him. Situated, thus the petitioner having no other alternative submitted a legal Notice dated 31.1.2005 to the Contemnors demanding implementation of the aforesad judgment and order. However, the respondents have not yet acted on the said notice.

A copy of the said legal notice is annexed herewith and marked as ANNEXURE-3.

X

5. That the petitioner begs to state that even after several rounds of litigation the respondents have not yet implemented the said Judgment and order dated 19.03.04 and inspite of having full knowledge of the said judgment and order same is yet to be complied with by granting him the benefit of the said scheme with retrospective effect and to regularise his service. Having not done so, the respondents/contemnors have committed contempt of Court and for that they are liable to be punished severely for such deliberate inaction and appropriate direction may be issued to them to regularise his service forthwith.

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 Lordship would graciously be pleased to draw up appropriate contempt proceeding against the contemnors for their willful and deliberate violation of the judgment and order dated 19.03.04 passed in O.A No 110/03 and to punish them severely and to pass an appropriate direction to regularise his service forthwith and/or pass any such order/orders as Your Lordships deem fit and proper.

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

8

DRAFT CHANGE

Whereas Sri B.K.Sinha, The Chief General Manager BSNL, Assam Circle, Ulubari, Guwahati-7810070. Assam. and Sri M.John Chrisostol, The General Manegr BSNL, Silchar, have willfully and deliberately violated the judgment and order dated 19.03.04 passed in OA No. 110/03 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench and as such they are liable to be punished under the provisions contained in Contempt of Courts Act for such act of willful and deliberate violation.

9

A F F I D A V I T

I Shri Sri Sujit Das Son of Late Ananta Das, Casual Mazdoor,
under Sub Divisional Officer Haflong, do hereby solemnly affirm
and declare as follows :

1. That I am the petitioner in the instant petition as such, I
am acquainted with the facts and circumstances of the case.

2. That the statements made in this affidavit and in the
accompanying application in paragraphs 5
_____ are true to my knowledge ;
those made in paragraphs 1-4 being matters of
records are true to my information derived there-
from. Annexures are true copies of the originals and grounds
urged are as per the legal advice.

And I sign this affidavit on this the 18 th day
of ... March of 2005.

Identified by me :

Bandana Devi

Advocate.

Sujit Das

Deponent

Solemnly affirm and state by the
deponent who is identified by Ms.
Bandana Devi, Advocate, on this the
17 th day of march 05" before me.

Siddhantha Saema
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.110 of 2003.

Date of Order ; This the 19th Day of March, 2004.

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

Shri Sujit Das,
S/o Late Ananta Das,
Casual Mazdoor, under Sub-Divisional Officer,
Haflong.

...Applicant

By Advocate Miss Usha Das.

- Versus -

1. The Union of India,
represented by Secretary to the
Govt. of India,
Ministry of Communication,
Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom,
Assam Circle, Ulubari,
Guwahati.
3. The General Manager, Telecom,
Silchar SSA, Silchar-1.
4. The Sub-Divisional Officer, Telecom,
Haflong.

...Respondents

Sri A. Deb Roy, Sr.C.G.S.C.

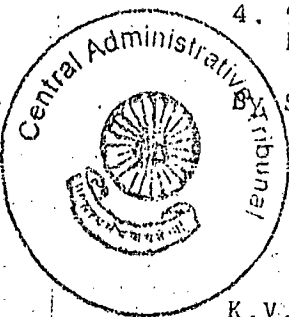
O R D E R (ORAL)

K.V.PRAHLADAN, MEMBER(A)

The applicant Sri Sujit Das joined the Telecom Department as a casual worker in 1987 and he continued as such till 1998. As per the letter issued by B.S.N.L dated 1.10.2001 in Annexure-9 since he has completed 240 days he is eligible for grant of temporary status in terms of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989".

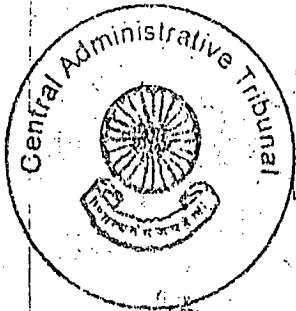
2. Heard Miss Usha Das, learned counsel for the applicant and Mr A. Deb Roy, learned Sr.C.G.S.C. for the respondents. Mr Deb Roy submitted that the applicant was not in engagement since 1993 and therefore no question of regularisation can arise.

Attended
Signature
Advocate



3. Considering the facts and circumstances of the case, the respondents are directed to re-engage the applicant as casual worker and consider his case for grant of temporary status and regularisation as per the scheme, since he was eligible for temporary status on 1.8.1998. The applicant is not eligible for any backwages, he will not be eligible to claim any arrears of pay and allowances. The above direction shall be completed within three months from the date of receipt of this order.

The application is accordingly allowed. No order as to costs.



Sd/MEMBER (ADM)

TRUE COPY
प्रतिलिपि

Section Officer (JI)
C.A.T. GUWAHATI BENCH
Guwahati-781005

HS
24/3

Attested
Advocate

To

Date : 25-03-2004

1. The Chief General Manager
Telecom, Assam Circle,
Ulubari, Guwahati.
2. The General Manager, Telecom,
Silchar SSA, Silchar- 1.
3. The Sub-Divisional Officer, Telecom
Haflong.

Sub : Judgement and order dt. 19-03-04 passed in OA No.110/2003.

Sir,

With due respect, I beg to lay the following few lines for your kind consideration and necessary action thereof.

Sir, I being aggrieved by the action of non-consideration of my case for grant of temporary status I approached the Hon'ble CAT, Guwahati Bench by way of filing OA No. 110/03.

The above noted OA came up for hearing on 19-03-04 and after hearing both the parties and after perusal of WS filed by the Respondents. The Hon'ble Tribunal was pleased to allow the OA and directed you to grant Temporary status and regularisation within 3 months from receipt of the judgement.

A copy of the Judgement and order dt. 19-03-2004 passed in OA No. 110/03 is enclosed herewith for your ready reference and prompt action.

In view of the above I pray before your Honour to grant me temporary status as per direction of the Judgement passed by the Hon'ble Tribunal.

Thanking you,

Yours faithfully,

Attested
[Signature]
Advocate

[Signature]

(SUJIT DAS)

From. S.Sarma Advocate,
Rehabari M.A Road,
Guwahati-781008. Assam.

31.01.05.

To,
The Chief General Manager
Assam Telecom Circle (BSNL)
Ulubari, Guwahati.

Sub:- Legal Notice

Sir,

Upon authority and as per instruction of my client Sri Sujit Das, S/o Lt. Ananta Das working under SDO Halflong as Casual Worker, I give you this notice as follows:

That my client aforesaid due to the harassment meted out to him in not regularising his service in terms of the scheme of 1989 had to approach the Hon'ble Central Administrative Tribunal for the fourth time by filing OA No.110/03. The Hon'ble Tribunal having noticed the apathy shown to him directed you to grant him temporary status under the scheme under the stipulated time frame vide it judgment and order dated 19.3.04. The said judgment is yet to be stayed by any competent court of law and as such same is still holding the field. Even though there is admission on your part regarding the eligibility criteria during the course of earlier proceeding in OA No.357/00 and same has been reflected in the judgment dated 5.7.01, you are yet to grant/provide him the benefits of the scheme even after the expiry of the stipulated period.

That apparently the action/inaction on your part in not implementing the direction contained in the judgment has made you liable to be proceeded under the Contempt of Courts Act for your such willful negligence. The sequence of events and the facts narrated above clearly indicate the intention as well as the willful and deliberate violation of the directives contained in the judgment and my client aforesaid now has left with no option than to approach the Hon'ble Tribunal seeking redressal of his grievances invoking the contempt jurisdiction.

In that view of the matter I give you this notice making a demand that the services of my client be regularised with retrospective effect providing all consequential service benefits including fixation of seniority within a period of 15 days from the date of receipt of this notice failing which instruction of my client is to initiate appropriate contempt proceeding against you.

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

Thanking you.

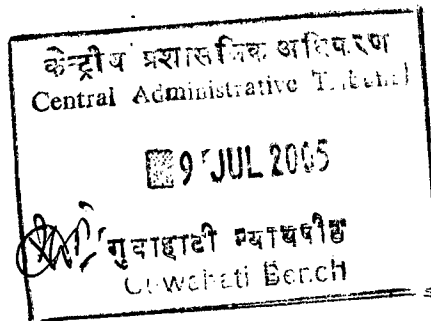
Sincerely

yours

S.Sarma
Advocate

Attested

Advocate



Filed by
the Respondent No.1 through
Dilip Baruah
Advocate
9-8-2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

C.P. No. 10/2005
(In O.A. No. 110 of 2003)

Shri Sujit Das ...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 Achaldeo Narayan, aged about 58 years, resident of Motehari (Bihar), at present at Panbazar, Guwahati-1, 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. 10/2005 (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 here 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 the Petitioner/ Applicant filed the O.A. No. 110/2003 in this Hon'ble Tribunal seeking grant of temporary status under the Casual Labour (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989 with retrospective effect from 1992 with all arrears of pay and also seeking regularization of his service from 1995.
 - (b) That the respondents contested the case by filing their written statements in the case and stated that the petitioner/applicant could not fulfil the required criteria of the Scheme of 1989 and as a result he was duly informed about the decision and finding of the verification committee.
 - (c) That this Hon'ble Tribunal was pleased to pass the final order in the case on 19.3.2003 after hearing both the parties and allow the application in favour of the petitioner/applicant. By the order-dated 19.3.2004, this Hon'ble Tribunal directed the respondents to re-engage the applicant as casual worker and to consider his case for grant of temporary status and regularization as per the Scheme since the

applicant was eligible for temporary status on 1.8.1998.

(d) That after the judgment dated 19.3.2004, the copy of the judgment was ready for the respondents by 24.3.2004 and ultimately the copy of the order was received by the Department and the Department took some time to decide on the matter as to whether could be implemented or should be taken up for judicial review in the next higher court. The Department ultimately decided to go for judicial review in the High Court and handed over the brief to their Advocate for taking steps. But the Advocate of the petitioner suggested the Department to file a Review Application in this Hon'ble Tribunal before approaching the Hon'ble High Court. In the process, there has been some delay in moving the files from various channels and official hierarchy. Accordingly, the Review Application has been filed in this Hon'ble Tribunal which has been registered as R.A. No. 7/2004 alongwith a petition for condoning the delay vide M.P No. 62/2004.

(e) That the R.A. No. 7/2004 alongwith the M.P No. 62/2004 are pending to be heard by this Hon'ble Tribunal. The petitioner/applicant has already been duly intimated about the filing of the RA No.7/2005 in OA No. 110/2003 vide letter No. STES-21/450/23 dated 7.8.2004. The said letter was dispatched through registered post but the same was returned unserved by the Postal Department. On receipt of the said returned letter, the respondents immediately took

steps on 31.8.2004 to communicate to the General Manager, BSNL, Silchar Telecom District (Respondent /Contemnor NO.2) vide letter No. STES-21/450/24 dated 31.8.2004 thereby requesting to serve the letter dated 7.8.2004 personally to the petitioner/applicant with acknowledgement. Thereafter the letter dated 7.8.2004 was personally served on the petitioner/applicant and he received the same on 18.9.2004 with due acknowledgement.

The copies of the letter dated 7.8.2004, envelope with postal remark, letter dated 31.8.2004 and the acknowledgement dated 18.9.2004 are annexed hereto as Annexure A, B, C and D respectively.

(f) That while the above noted process was going on the petitioner has filed the instant contempt petition before this Hon'ble Tribunal alleging willful violation of the order of this Hon'ble Tribunal.

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 19.3.2004 passed in OA No. 110/2003 that may amount to contempt of court. As explained hereinabove, the respondents have a legal duty to exhaust all the legal remedies and avenues available to them under the process of law and to defend their actions in the court of law.

The answering respondents including me have exactly done the same and have not done anything beyond the said scope within the parameters of law.

5. That I also respectfully state that the delay caused in the process of exhausting judicial remedies available to the respondents. 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 of 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 425 _____ are true to my knowledge and belief, those made in para 3 _____, 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 9th the day of August, 2005 at Guwahati.

Identified by me:

Bibhash Pathak

Advocate

B.K. Sinha

DEPONENT

Solemnly affirmed and signed before me by the deponent who is identified by Sri Bibhash Pathak, Advocate on this 9th day of August 2005 at Guwahati.

Advocate



BHARAT SANCHAR NIGAM LTD.

(A Govt. of India Enterprise)

**Office of the Chief General Manager Telecom.
Assam Telecom. Circle, Ulubari, Guwahati-781 007.**

REGISTERED WITH A/D.

No. STES-21/450/23

Dated at Guwahati the 07.08.2004.

To
Shri Sujit Das
S/O Late Gopesh Ch. Das
Vill & P.O. – Katigarh
Dist. – Cachar (Assam)

Sub: Judgment & order dated 19/03/2004 passed in OA No. 110/2003 by
the Hon'ble Tribunal.

Ref: your re-presentation dated 25/03/2004.

With reference to the subject cited above it is intimated that
Review application has been filed by the respondents before the Hon'ble
Tribunal against the order dated 19/03/2004 in OA No. 110/2003 delivered
by the Hon'ble CAT.

This is in compliance to your re-presentation dated 25/03/2004.

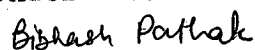

(S. C. Das)

Asstt. Director Telecom (Legal)


Copy to:

1. GMTD/Silchar for information with reference to his letter No.
CAT/GH-OA/110/03/SC/8 dated 30/06/2004 as the previous
decision has been changed and RA has been filed instead of Writ
Petition.

Certified to be true Copy.



Advocate


For CGMT, Assam Circle
Ulubari, Guwahati.

dc

ANNEXURE : B

2

STES-21/450/23

7/8/04

101

~~SM SUJIT DAS
S/O KATE MADESH CH
WILL & P.O. - KATI
DIST. CACHAR (~~

3553

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भारत संचार निगम लिमिटेड
(भारत सरकार का उद्यम)
Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)

कापालय मुख्य महाप्रबन्धक

Office of the Chief General Manager

पुस्तक एवं संस्करण परिचय : १९७५-८० ई. २००७-०८ ई.

Received from
W. 5/1/87



INDIA

22-0-0

ONE PISTACE

H1567

16 SEP 1914

Certified to be true Copy.

Bibhash Pathak
Advocate

BHARAT SANCHAR NIGAM LTD.

(A Govt. of India Enterprise)

**Office of the Chief General Manager Telecom.
Assam Telecom. Circle, Ulubari, Guwahati-781 007.**

No. STES-21/ 450/ 24

Dated at Guwahati the 31.08.2004.

Recd
To
The General Manager
B. S. N. L.
Silchar Telecom District
Silchar.

Sub: Order & Judgment dated 19/03/2004 passed in OA No. 110/2003 filed
by Shri Sujit Das.

Ref: This office letter No. STES-21/450/23 dated 07/08/2004.

With reference to the above cited letter it is intimated that the letter addressed to Shri Sujit Das could not be delivered by the postal authority stating that the addressee is not known and the registered letter received back from Katigarha Post Office.

It is therefore requested kindly to deliver the letter enclosed herewith to the addressee under receipt and acknowledgement may kindly be forwarded to this office for record.

Enclo: 1. Letter addressed to Shri Sujit-
Das on dtd. 07/08/04.

(G. C. Sarma)
Asstt. Director Telecom (Legal)

Certified to be true Copy.

Bishesh Pathak
Advocate.

✓

For kind attention
to DE. (H.O. Secy.)
SILCHAR.

RECEIPT

Received the letter No. STES-21/450/23 Dated at ^{Guwahati} Silchar, the 07-08-2004
issued by ADT (Legal), O/O the CGMT, BSNL, Assam Circle/ Guwahati.

Signature: *Sujit Das*

Designation :

Date : 18/9/04

18/9/04

Certified to be true Copy

Bishal Pathak
Advocate