

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. 37/05 (OA 336/04)

Review Application No. _____

Applicant(s) H. Ghosh 2 ors.

Respondent(S) A. K. Jain 2 ors.

Advocate for the Applicants MS Usha Das.

Advocate for the Respondent(S) _____
CGSC
Rly St. Counsel

Notes of the Registry: Date _____ Order of the Tribunal

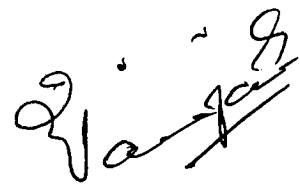
22.12.2005

Present : Hon'ble Mr. Justice G.
Sivaraman, Vice-Chairman.

Heard Ms. U. Das, learned counsel
for the applicants.

Issue notice to show cause as to
why contempt proceedings shall not be
initiated against the respondents for
non compliance of the directions issued
in the O.A.

Post on 9.2.2006. Counter
affidavit, if any, in the meantime.
Personal appearance is dispensed with
for the time being.


Vice-Chairman

mb

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

2/11/06. D/No = 7, 8
Dl = 3/1/06.

Contd.....

-2-
6.4.37/2005

2

Notice duly
Served on
resp. Nos. 1, 2.

25/11/05.

15.02.2006

Await service report. The Registry is directed to give a notice to Dr. M.C. Sarma, learned railway as an abundant caution. The Registry will ensure the acknowledgement of the receipt of the notices sent to the respondents.

Post on 7.3.2006.

14.2.06
causula reply
not yet filed.

Prd

mb

07.03.06.

Heard counsel for the parties. Hearing concluded. Judgment reserved.

Notice served.

17/07/06
(M.C. Sarma) Railway Counsel.

10.3.2006

Vice-Chairman Vice-Chairman

order pronounced, kept in separate sheets.

The C.P. is dropped in terms of the order. Notice, if any, is discharged.

Vice-Chairman(J) Vice-Chairman(A)

bb

6-3-06

No Counter reply
has been filed.

copy
Received copy
Usha Das
Advocate
13/3/06

13.7.06

C. Copy has been
collected by the Dy.
Shadry counsel and
copy of the order
has been handed
over to the Dy. Adv.
for the applicant.

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Contempt Petition Nos.36/05, 37/05 & 38/05
In Original Application Nos.336/04, 337/04 & 338/04.

Date of Order: This the 10th day of March 2006.

THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN (A)

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN (J)

1. Sri Habul Ghosh
2. Sri Haren Das
3. Sri Kishor Kumar Mandal
4. Sri Biren Boro
5. Sri Maina Boro
6. Sri Kripa Tewary
7. Sri Pradip Sarma
8. Sri Paneswar Boro
9. Sri Nagendra Boro
10. Sri Anil Kalita
11. Sri Bhogi Ram Basumatary

All are ex-casual workers under Alipurduar
Division, N.F.Railway.

..... Applicants in C.P. No.36/2005.

1. Shri Suren Ramchiary
2. Sri Ratan Boro
3. Sri Mizang Brahma
4. Sri Rajit Brahma
5. Sri Jaidev Swargiary
6. Sri Naren Ch. Basumatary
7. Sri Raj Kumar Mandal
8. Sri Biren Baishya
9. Sri Angat Das
10. Sri Radhe Shyam Mandal
11. Sri Monilal Nurzary
12. Sri Swargo Boro
13. Sri Ramesh Ch. Boro

14. Sri Biren Baishya
15. Sri Jogendra Pasi
16. Sri Ramjit Das
17. Sri Naren Ch. Boro

All ex-casual labourers in the Alipurduar
Division, N.F.Railway.

..... Applicants in C.P. No.37/2005.

1. Sri Dhaneswar Rahang
2. Sri Lohit Ch. Boro
3. Sri Rati Kanta Boro
4. Sri Monorangen Dwaimary
5. Sri Manteswar Boro
6. Sri Joy Ram Boro
7. Sri Haricharan Basumatary
8. Sri Durga Ram Daimary
9. Sri Sanjit Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro
12. Sri Upen Narzary
13. Sri Tarun Ch. Boro
14. Sri Ramesh Ch. Ramchairy
15. Sri Monoranjana Deori
16. Sri Ram Nath Pathak
17. Sri Gopal Basumatary
18. Sri Malin Kr. Das
19. Sri Ranjit Swargiary
20. Sri Ratna Kanta Boro
21. Sri Nirmal Kr. Brahma
22. Sri Monoj Das
23. Sri Mrinal Das
24. Sri Sanjay Kr. Narzary
25. Sri Pankaj Baruah
26. Sri Ajit Kr. Sarania
27. Sri Sunil Ch. Boro
28. Sri Bipin Ch. Boro
29. Sri Nepolin Lahary
30. Sri Rajen Lahary

31. Sri Ansuma Swargiary
32. Sri Suren Daimary
33. Sri Raju Borah
34. Sri Pradip Das
35. Sri Robin Dwaimary
36. Sri Pradip Boro
37. Sri Chandan Dev Nath
38. Sri Kamaleswar Boro
39. Sri Phukan Boro
40. Sri Krishna Ram Boro
41. Sri Ratneswar Boro

All ex-casual labourers in the Alipurduar
Division, (BB/CON), N.F.Railway.

.....Applicants in C.P. No.38/2005.

- Versus -

1. Shri A.K. Jain,
General Manager (Construction)
N.F. Railway, Maligaon,
Guwahati, Assam.
2. Shri Arjun Rakshit,
Divisional Railway Manager,
Alipurduar Division, N.F.Railway,
Alipurduar, West Bengal.

.....Contemners/ Respondents
in all the petitions.

ORDER

B.N.SOM VICE CHAIRMAN (A)

All these three contempt petitions involve similar facts and arising out of the order dated 19.7.2005 passed by this Tribunal in O.A.336, 337 and 338 of 2004. We have disposed of all the Contempt Petitions by this common order.

2. For the purpose of adjudicating the matter we have examined C.P.36/2005 in detail.
3. The petitioner by filing the instant Contempt Petitions has brought to our notice the fact that the respondents/contemners had acted in a

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contemptuous manner in implementation of our order dated 19.7.2005 passed in O.A.337 of 2004. It is also the allegation that the respondents had acted willfully and their inactivity deserves appropriate action under the Contempt of Courts Act 1971.

4. The respondents have filed a detailed show cause reply dated 7.3.06 after receipt of our notice. It is their submission that they have taken all necessary steps to search the documents of the applicants in the O.A as directed by the Tribunal in consideration of their cases on merits. They have also disclosed that they have scrutinized the documents/xerox copies of the Casual Labour Register forwarded under XEN/Con/Bongaigaon letter No.E/BNGN/Con/CL/502 dated 5.1.1989 and the CL cards submitted by the applicants. The respondent after examining the records had passed a speaking order dated 10.2.2006 (Annexure-A) and the same was duly communicated to the applicant by his letter No.E/63/CON/I/Loose. He has further disclosed that he has found the applicant's case being not on merit and that the documents relied on by the petitioner to be fabricated, vague and false. He has, therefore, submitted that as the scrutiny of the records belied the claims of the applicant that the Contempt Petition is liable to be dismissed with cost.

5. The learned counsel for the petitioner has vehemently opposed the submission made in the reply stating that the respondents have not only not implemented the order of the Tribunal dated 19.7.2005, they have also acted arbitrarily and have not shown respect to the order dated 19.7.2005.

6. We have perused the order passed by the alleged contemner which is at Annexure-A. The direction issued to the respondents in O.A.336/2004 dated 19.7.2005 was as follows :

9

"As already noted, the only reason for rejecting the claim of the applicants is that the casual labour identity cards produced by the applicants the genuineness of which is doubtful. In the circumstances, as already discussed, the respondents are directed to consider the case of the applicants ignoring the identity cards and based on their own records namely, the xerox copies of the casual labour live register, the documents with reference to which the earlier written statements were filed and extracted hereinabove and to take a decision in the case of the applicants in all the three cases afresh within a period of four months from the date of receipt of this order. For the said purpose, the impugned orders all dated 18.3.2004 (Annexure-7 in O.A.Nos.336/2004 and 338/2004 and Annexure-11 in O.A.No.337/2004) are quashed. The concerned respondent will pass reasoned orders on merits as directed hereinabove."

From above it is clear that the respondents were directed to consider the case of the applicant based on their own records i.e. the xerox copies of the casual labour live register, the documents based on which the earlier written statements were filed and to take a decision in the case of the applicants afresh. From Annexure-A we find that the respondent No.1 had examined the case of Shri Ranjit Brahma alongwith other applicants to see whether they were included as casual labour with the Railways during the relevant period of time i.e. 5.1.85 to 31.8.85. It is the submission of the respondent that there is no evidence on record to show that the applicants were so engaged during the said period. It is further submitted that the same information was also communicated to Shri Ranjit Brahma by the General Manager/Con, the APO/CON by letter dated 18.3.04. He has further submitted that while scrutinizing the relevant records as directed by the Tribunal it came to the notice that whereas the identity card issued to Shri Ranjit Brahma shown to be issued by one S.S. Ghosh, the then AEN/CON/Bongaigaon, it is found on verification of records that during that period S.S.Ghosh was not AEN/CON but he was XEN/CON and that the signature of S.S.Ghosh as

available on record does not tally with the signatures on casual labour cards or the xerox copy of the live casual register purported to be signed by S.S.Ghosh. In the circumstances, a doubt had arisen in their mind whether forwarding of a photo copy of the live casual register on 5.1.89 was done by resorting some undesirable means. The alleged contemner therefore had sent the relevant records for opinion of the Forensic Expert, Guwahati and obtained his opinion which is enclosed as Annexure-B. In the said Annexure-B, the Scientific Officer, Questioned Documents Division, Forensic Science Laboratory, Assam, Guwahati has opined that the person whose signatures appeared on the documents in the official record do not bear resemblance to the signatures appearing on the xerox copy of the live casual labour register or on the casual labour card. He, the alleged contemner therefore, concluded that the signatures on the records relied on by the applicant being fictitious the records are also of doubtful nature. He has further submitted that there were no credible documents placed before him by the applicants to consider his claim nor the records maintained by the respondents bear any testimony to accept the claims made by the applicant.

7. The learned counsel for the applicant has drawn our notice to the decision in the case of Union of India and Ors. vs. Subedar Devassy PV (2006) 1 SCC 613 Civil Appeal No.1066 of 2000 decided on 10.1.2006 by the Apex Court where it is held that "in contempt proceedings court is concerned only with question whether the earlier decision has been complied with or not. It cannot examine correctness of decision, or traverse beyond it and take a different view from what was taken therein, or give additional directions or delete any direction." However, we do not feel that in the instant case before us there has been any case to consider if any attempt has been made to overreach the scope of the

court in this contempt proceeding and therefore not much benefit can be derived by the petitioner in this regard.

Having regard to the facts of the case as has been brought out in the speaking order passed by the respondent/ alleged contemner we find that they have substantially complied with the directions issued in this regard by the Tribunal and therefore nothing survives in the contempt petition for further adjudication. In this view of the matter the Contempt Petition is dropped. No costs. Notices may be discharged.

Sd/ VICE CHAIRMAN (J)

Sd/ VICE CHAIRMAN (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

C.P. NO.37/05

IN OA NO.336/2004

Habul Ghose & 10 Ors.APPLICANTS

-VERSUS-

UNION OF INDIA & ORSRESPONDENTS

REPLY/REJOINDER BY THE CONTEMNER

The humble petition on behalf of the Respondents above named

MOST RESPECTFULLY SWEWETH:-

1. That it is humbly submitted that the Contemner/Respondents received the Hon'ble CAT's order dated 19.7.2005 (common judgement in OA Nos.336/04, 337/04 & 338/04) in the above contempt petition arising out of OA No.336, 337 and 338 of 2004 and have gone through the orders of the Tribunal along with the contents of the contempt petition filed by the above named Applicants.

2. That for brevity and clarity of the case the Respondent/Contemner submits as under:

2.1 That on receipt of the Hon'ble CAT's orders passed on 19.7.2005 in OA No.336/2004 by the Respondent's office on 17.8.2005 necessary steps were taken to ascertain whether the Applicants were engaged by the Railway Administration at any point of time as casual labours and to make thereafter further compliance as ordered by the Hon'ble CAT.

12
Filed By: 12/8/05
Advocate
General Manager,
N. F. Railway (Construction)
Morigaon Guwahat-781011.
KUMAR JAIN)

2.2 That it is submitted that the Respondents Railway Administration took all necessary steps to search out the documents of the Applicants in the aforementioned OA as directed by the Hon'ble CAT for consideration of their cases on merits. After search of records, all the documents that are available for scrutiny are (i) Zerox copy of Casual Labour Register forwarded under XEN/Con/Bongaigaon letter No.E/BNGN/Con/CL/502 dated 5.1.1989. (ii) CL Cards submitted by applicants all the records were re-examined and the Respondents in compliance of CAT's orders passed speaking orders rejecting the claims of Applicants and giving copy of the order to the Applicants vide this office letter No.E/63/Con/1 (OA No.336/04 DATED 10.2.2006.)

2.3 That it is humbly submitted that it would be evident from the documents, an example of which has been submitted alongwith this petition as Annexure 'A', that the claim of the Applicants is not rightful in nature; rather, the documents and claim for engagement as casual labour in the Railway by the Applicants are fabricated, concocted, vague and false and, hence, do not deserve any consideration on merits

3. That in this connection, it is humbly submitted that Casual Labour Cards submitted by the applicants in support of their claim to be ex.Casual Labours have been got verified by Forensic Experts. The report of Forensic Expert furnished vide No.FSL.1208/06/237 dated 27.2.06 clearly indicates that the signatures of the officers on the Casual Labour Cards and on the letter No. E/BNGN/Con/CL/502 dated 5.1.1989 forwarding the zerox copy of the Casual Labour register have been proved as forged. A photocopy of the report is enclosed as Annexure 'B'

11
Sd/-
Ashok Kumar Jain
F. Railway (Construction)
Moligaon, Gauhati-781011.

4. That it is submitted that since the contention /submission of the Applicants are not genuine as signature of the officers have been forged which has been verified with the records of the Respondents Railway Administration, through expert Government body of Director/FSL , Guwahati , the claim of the Applicants is not tenable in the eye of law and hence summarily be rejected ab initio and in limine. The contempt petition is, therefore, to be dismissed with cost to the Respondents.

5. That it is humbly submitted that although all necessary steps were taken immediately after receiving the Hon'ble CAT's orders in the aforementioned OA by conducting a special drive to search out the records of almost two decades old and also to obtain experts' opinion so as to ascertain the genuineness and the righteousness of the claim of the Applicants in the OA, there might have been a little delay in compliance which was beyond control and not at all deliberate and intentional as is evident from the submission in the foregoing paras.

6. That with the most placid and suave submission this contemner submits that even if there was any delay the same had been beyond the control of the Contemnners/Respondents which may kindly be condoned.

VERIFICATION

I, Shri Ashok Kumar Jain Son of Shri Bimal Prasad Jain aged about 58 years , by profession the General Manager(Construction), North East Frontier Railway Maligaon, Guwahati-781011 do hereby solemnly affirm and verify that the contents of paragraphs 1 to 2.3 are matters derived from official records and true to my knowledge, information and belief and the paras 3, 4 & 5 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this verification on this _____ day of

_____ March, 2006.

Place:

Maligaon.

Date:

Signature of the Contemner

To

The Deputy Registrar,
Central Administrative Tribunal,

(Construction)
ASHOK KUMAR JAIN

12
General Manager
N. E. Railway (Construction)
ASHOK KUMAR JAIN
Maligaon, Guwahati-781011.

N.F. RAILWAY

REGISTERED WITH A/D

Office of the
General Manager/Con,
Maligaon, Guwahati-11
Dated: 10-02-2006

No.E/63/CON/I/Loose

ORDER

WHEREAS, in the year 1987, Railway Board vide letter No.E(NG)II/28/CL/2 dated 4.3.1987 provided the opportunity to call ex-casual labourers engaged with the NF Railway for enlistment of their names in the Supplementary / Live Casual Labour Register. For the aforesaid purpose all the Ex-casual labourers were asked to submit application within 31.3.1987, so that their cases can be examined and considered by the Administration.

WHEREAS, in the year 1998 Railway Board launched a special drive vide Board's letter No.(NG)II/98/CL/32 dated 9.10.1998 for regularization of all the Ex.casual Labourers borne on live/Supplementary Register against regular vacancies. As a result of the aforesaid special drive all the Ex-casual labourers were regularized.

WHEREAS, in the case of Sri Nagendra Boro it was found that there is no evidence, whatsoever, to show that Sri Nagendra Boro during the relevant period of time., i.e 9.2.87 to 31.12.87 was engaged with the Railways as casual labour & consequently, the party never represented also before the Railway administration.

WHEREAS, it was only in the year 2002 that Sri Nagendra Boro alongwith other applicants filed OA No.259/02 before the Guwahati Bench of the Central Administrative Tribunal. The OA No. 259/02 was disposed of by the Tribunal vide order dated 25.8.2003 with direction that the applicants may submit individual representation to the Railways within six weeks from the date of the order.

WHEREAS, pursuant to the aforesaid order of the Tribunal Sri Nagendra Boro submitted an application dated 26.3.04 For General Manager/Con, the APO/CON by letter dated 18.3.2004 informed Sri Nagendra Boro that the relevant records regarding his claim of being Ex-casual labour were looked into and it was found that the genuineness of his casual service was not established and therefore, your claims for re-engagement is rejected.

WHEREAS, subsequently alongwith 11 other applicants Sri Nagendra Boro referred OA No.336/04 before the Guwahati Bench of the Central Administrative Tribunal seeking absorption with Railways in Group-D post. The Tribunal disposed of

[Signature]
10/2/10

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the Original Application by its common order dated 19th July, 2005. The operative portion of the order is quoted hereinbelow:-

".....The respondents are directed to consider the case of the applicants ignoring the identity card and based on their own records, viz., the Xerox copy of the Casual Labour Live Register, the documents with reference to which the earlier written statements were filed and extracted hereinabove and to take a decision in the case.... Afresh within a period of four months from the date of receipt of this order".

WHEREAS, in compliance of the order of the Tribunal the matter was reconsidered and the case of Sri **Nagendra Boro** was examined in detail. For the said purpose all the relevant records and materials were looked into and verified. As a result, certain shocking facts were noticed.

WHEREAS, the identity card of Sri **Nagendra Boro** was shown to have been issued by S.S.Ghosh, the then AEN/BG/CON/Bongaigaon. It is worthwhile to note that in the photo copy of Identity Card the period of employment of Sri **Nagendra Boro** is from 9.2.87 to 31.12.87. However, during the aforesaid period S.S.Ghosh was promoted and functioning as XEN/CON/BNGN. His signature as AEN/CON/Bongaigaon during the relevant period is definitely not genuine as he was working as XEN/CON during that period.. Moreover, the signature of S.S.Ghosh as available on official records does not tally with signatures on Casual Labour Cards purported to be signed by S.S.Ghosh.

WHEREAS, the records pertaining to the Live Register have also been examined. It is found that the purported Live Register of Casual Labourers was forwarded purportedly by late S.S.Ghosh as Executive Engineer/BG/CON/Bongaigaon by forwarding letter dated 5.1.89. However, the signature of late S.S.Ghosh on the aforesaid forwarding letter has been verified by other available records related to late S.S.Ghosh and there are strong reasons to believe that the signature of late S.S. Ghosh on the aforesaid forwarding letter are forged because the same do not tally with his signature on other available records, authenticity of which is doubtful. Therefore, the aforesaid forwarding letter and the Live Register of the Casual Labourers are fabricated documents and no reliance can be placed on the same.

Further, this may be noted that in accordance with the Railway Board's Circular communicated to all Zonal Railways vide No.E(NG)II/96/CL/61 dated 3.9.96 an action plan was drawn to ensure absorption of all casual labour on roll and also whose names were kept in the live casual labour register and supplementary live casual register and

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the entire process of which were to be completed by the December/1997 so that a position of no casual labour is achieved. To ensure the said action plan a massive drive was launched by the Railway Administration to ensure whether any casual labour was borne on live register/supplementary live casual labour register, who was earlier at any time were engaged by Railway, and to consider their cases on merits. But as per available records in this office you did not make any representation at that time to any of the competent railway authority in regard to your claim as your name was actually not available on supplementary/casual labour live register.

WHEREAS, there is no other relevant authentic material available on record by which it can be held that Sri **Nagendra Boro** was engaged as a casual labour with the railways at any point of time. There are reasons to believe that Sri **Nagendra Boro** without having been engaged as casual labourer with the Railways at any point of time, with the connivance of certain persons indulged in fabrication and forgery of records and thereafter belatedly made an attempt in the year 2002 to get a permanent job in the Railways.

For the aforesaid reasons, the case of Sri **Nagendra Boro** for absorption in the Railways cannot be entertained and the same is hereby rejected.

(A. Saikia)

Dy. Chief Personnel Officer/Con
N.F. Railway, Maligaon, Guwahati-11
For General Manager/Con

To
Sri **Nagendra Boro**,
Sastrapara (Barigaon),
P.O. Ratanpur, Darrang
PIN: 784523

Answer B

X

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72

OFFICE OF THE DIRECTOR : FORENSIC SCIENCE LABORATORY :
ASSAM : GUWAHATI-781019

FORENSIC
Gram:
GUWAHATI
Tel No. 2381305, 2381696, 2381385
Fax No. (0361 - 2381305)
E-mail : fslassam @ sify. com.

By Special Messenger
By Registered A.D.

No. FSL. 1208/06/ 237/

Dated Guwahati, the 27/2/2006.

From : The Director-Cum-Chemical Examiner to the Government of Assam,
Forensic Science Laboratory, Assam, Kahilipara, Guwahati-19

To : The Dy. Chief Personnel Officer/Gen.
N. E. Railway, Mullanpur,
Guwahati - 781011.

Please find herewith the enclosed Opinion No. FSL/QDS-18/06, dated 23.02.06 in connection with a demonstrational enquiry, P. S. Case No. NIL, U/S - NIL, received vide your memo No. E/63/CON/10089 dated 08.02.06, through messenger. Please acknowledge receipt.

The documents are returned herewith.

For all future correspondences or summons the Opinion number may please be quoted and Dr. IMSI TILAKA DAS, M.Sc., Ph.D., Scientific Officer, Questioned Documents Division, Forensic Science Laboratory, Assam, Kahilipara, Guwahati-19 may be summoned for evidence, if necessary.

Encls:-

- (1) Opinion No. FSL/QDS-18/06,
dt. 23.02.06.
- (2) Documents stamped and marked Q1 to Q50
in 20 vols and S1 to S7 and A1 to A18 in 13 sheets
and one vol.

[Signature]
27.2.06
Director-Cum-Chemical Examiner to the
Government of Assam, Forensic Science
Laboratory, Assam, Kahilipara, Guwahati-19

8

17

GOVERNMENT OF ASSAM
OFFICE OF THE DIRECTOR, FORENSIC SCIENCE LABORATORY, ASSAM,
KAHILIPARA, GUWAHATI.

To,

The Dy. Chief Personnel Officer/Con.,
N. F. Railway, Maligaon,
Guwahati - 781011.

OPINION

NO. FSL/QDS:-18/06

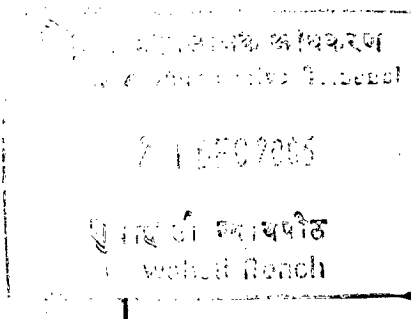
Dated 23/02/06

The documents in connection with a departmental enquiry received vide Memo No. IE/63/CON/I/Loose dtl. 8.2.06, have been carefully and thoroughly examined.

2. The person who wrote the blue enclosed signatures stamped and marked S1 to S3 and A1 to A8 did not write the red enclosed signatures similarly stamped and marked Q1 to Q15.
3. The person who wrote the blue enclosed signatures stamped and marked A4 to A13 did not write the red enclosed signatures similarly stamped and marked Q16 to Q25.
4. The person who wrote the blue enclosed signatures stamped and marked S4 S7 and A14 did not write the red enclosed signatures similarly stamped and marked Q26 to Q35.
5. The person who wrote the blue enclosed signatures stamped and marked A15 to A18 did not write the red enclosed signatures similarly stamped and marked Q36 to Q50.

Tilakadas
Dr. (MS) TILAKA DAS, M.Sc., Ph.D.,
Scientific Officer,
Questioned Documents Division,
Forensic Science Laboratory, Assam,
Kahilipara, Guwahati-19.

AR.



Filed by 18
the petitioners through
Alsha Das,
Advocate
21/12/05

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

CP NO. 37/05
IN OA NO. 336/2004

HABUL GHOSH & ORS

.....APPLICANTS

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

IN THE MATTER OF

An application under section 17 of the
Administrative Tribunal Act, 1985 for drawing up
contempt proceeding against the contemnors for
their willful and deliberate violation of the
judgment and order dated 19.7.2005 passed in AO
No. 339/2004, by their Hon'ble Tribunal.

AND

IN THE MATTER OF

- 1) Shri Habul Ghosh
- 2) Shri Haren Das
- 3) Shri Kishor Kumar Mandal
- 4) Shri Biren Boro
- 5) Shri Maina Boro
- 6) Shrin Kripa Tiwary
- 7) Shri Pradip Sarma
- 8) Shri Paneswar Boro
- 9) Shri Nagendra Boro
- 10) Shri Anil Kalita
- 11) Shrti Bhogi Ram Basumatary

.....Petitioners/Applicants

-Versus-

1. Shri A. K. Jain

The General Manager (Construction)

N. F. Railway, Maligaon.

Guwahati, Assam

2. Shri Arjun Rakshit

The Divisional Railway Manager,

Alipurduar Division, N.F. Railway,

Alipurduar

.....Contemners/Respondents

The humble petition on behalf of the petitioners above named

MOST RESPECTFULLY SWEWETH

1. That the petitioners/applicants claiming the benefit of the regularization preferred the above noted OA No. 336/2004. The Hon'ble Tribunal was pleased to allow the said OA vide its judgment and order dated 19.7.2005 quashing the orders dated 18.3.2004 directed the respondents to pass reasoned orders on merit within a period of 4 months.

A copy of the order dated 19.7.2005 is annexed
herewith and marked as Annexure-1

2. That the petitioners beg to state that in at the time of hearing of the said OA, the respondents have produced all the records relating to the applicants/petitioners before the Hon'ble Tribunal and basing on the records produced by the respondents the Hon'ble Tribunal was pleased to pass detailed speaking order allowing the OA. Immediately on receipt of the copy of the judgment and order passed by the Hon'ble Tribunal the petitioners communicated the respondents on 2.8.2005. The petitioners repeatedly kept on pursuing the matter before the concerned authority praying for implementation of the judgment and order dated 19.7.2005.
3. That the petitioners beg to state that 4 (four) months have already elapsed but till date the respondents have passed any orders as directed by the Hon'ble Tribunal.

4. That the petitioners beg to state that the respondents /contemnors have knowledge about the passing of the said order dated 19.7.2005 passed in AO No.336/2004, but in spite of this the respondents/contemnors have acted in a contemptuous manner. The respondents for such inaction and willful violation of the said judgment and order made themselves liable to be punished under Contempt of Court's Act.
5. That the petitioners beg to state that the contemnors have acted in violation of the judgment and order in not passing reasoned orders considering the case of the petitioners within the stipulated time frame and as such they are liable to be punished severely for their such action invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with provision under Central Administrative Tribunal (Contempt of Court's) Rules 1992 as well as the provisions contained in the Contempt of Court's Act, 1971.
6. That this application has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that your Lordships would graciously be pleased to initiate appropriate contempt proceeding against the contemnors for their willful and deliberate violation of the order dated 19.7.2005 passed in OA No.336/2004, by this Hon'ble Tribunal, and to punish them severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with Central Administrative Tribunal (Contempt of Court) Rules 1992 as well as the provisions contained in the Contempt of Courts Act, 1971 and/or may be pleased to pass any such order /orders as may be deemed fit and proper.

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

DRAFT CHARGE

Whereas 1. Shri A.K. Jin, the General Manager (Construction), N.F. Railway, Maligaon, Guwahati. Assam, and, 2. Shri Arjun Rakshit, the Divisional Railway Manager, Alipurduar Division, N.F. Railway, Alipur have willfully and deliberately violated the order dated 23.12.2004 passed in OA No. 339/2004, passed by this Hon'ble Tribunal and as such they are liable to be punished severely invoking the power under section 17 of the Administrative Tribunal Act, 1985 read with provisions under Central Administrative Tribunal (contempt of Courts) Rules 1992 as well as the provisions contained in the Contempt of Courts Act, 1971.

- 5 -

AFFIDAVIT

I, Shri Biren Boro, S/o. Sri. Upan Boro, aged about 35 years, resident of Rangia, Vill - Kalmomi, P.O. - Pitambari, who is one of the Petitioners in the present Contempt Petition and taking steps in the matter and hence competent to sign this affidavit do hereby solemnly affirm and state that the statement in paragraphs 4 to 6 are matter of records, are true to my information derived there from and the paragraph 1 to 3 are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this affidavit on this 15th day of December, 2005 at

Identified by me

Usha Das.
Advocate

Shri Biren Boro

DEPONENT

Solemnly affirm and state by
the deponent, who is identified
by Miss Usha Das, Advocate,
on this th day of December,
2005 at Guwahati

Nabin Ch. Das
Advocate
15/12/05

12 set
6-
Annexure-1
23

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Original Application Nos. 336, 337 & 338 of 2004.

Date of Order: This, the 19th day of July, 2005.

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

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

1. Sri Habul Ghosh
2. Sri Haren Das
3. Sri Kishor Kumar Mandal
4. Sri Biren Boro
5. Sri Maina Boro
6. Sri Kripa Tewary
7. Sri Pradip Sarma
8. Sri Paneswar Boro
9. Sri Nagendra Boro
10. Sri Anil Kalita
11. Sri Bhogi Ram Basumatary

All are ex-casual workers under Alipurduar
Division, N.F.Railway.

..... Applicants in O.A. No.336/2004.

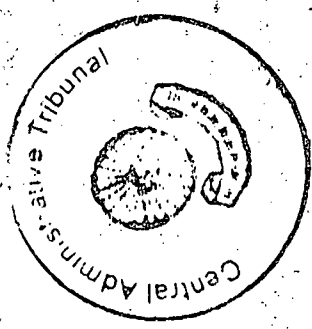
1. Shri Suren Ramchiary
2. Sri Ratan Boro
3. Sri Mizing Brahma
4. Sri Rajit Brahma
5. Sri Jaidev Swargiary
6. Sri Naren Ch. Basumatary
7. Sri Raj Kumar Mandal
8. Sri Biren Baishya
9. Sri Angat Das
10. Sri Radhe Shyam Mandal
11. Sri Monilal Nurzary
12. Sri Swargo Boro
13. Sri Ramesh Ch. Boro
14. Sri Biren Baishya

Attested
Advocate

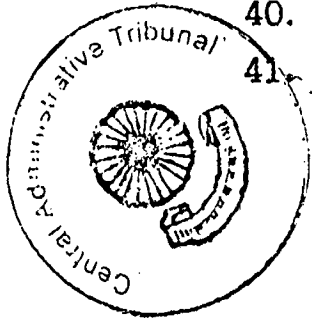
15. Sri Jogendra Pasi
 16. Sri Ramjit Das
 17. Sri Naren Ch. Boro
- All ex-casual labourers in the Alipurduar
Division, N.F.Railway.

..... Applicants in O.A. No.337/2004.

1. Sri Dhaneswar Rahang
2. Sri Lohit Ch. Boro
3. Sri Rati Kanta Boro
4. Sri Monorangen Dwaimary
5. Sri Manteswar Boro
6. Sri Joy Ram Boro
7. Sri Haricharan Basumatary
8. Sri Durga Ram Daimary
9. Sri Sanjit Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro
12. Sri Upen Narzary
13. Sri Tarun Ch. Boro
14. Sri Ramesh Ch. Ramchairy
15. Sri Monoranjana Deori
16. Sri Ram Nath Pathak
17. Sri Gopal Basumatary
18. Sri Malin Kr. Das
19. Sri Ranjit Swargiary
20. Sri Ratna Kanta Boro
21. Sri Nirmal Kr. Brahma
22. Sri Monoj Das
23. Sri Mrinal Das
24. Sri Sanjay Kr. Narzary
25. Sri Pankaj Baruah
26. Sri Ajit Kr. Sarania
27. Sri Sunil Ch. Boro
28. Sri Bipin Ch. Boro
29. Sri Népolin Lahary
30. Sri Rajen Lahary



32. Sri Suren Daimary
33. Sri Raju Bora
34. Sri Pradip Das
35. Sri Robin Dwaimary
36. Sri Pradip Boro
37. Sri Chandan Dev Nath
38. Sri Kamaleswar Boro
39. Sri Phukan Boro
40. Sri Krishna Ram Boro
41. Sri Ratneswar Boro



All ex-casual labourers in the Alipurduar Division, (BB/CON), N.F.Railway.

.....Applicants in O.A. No.338/2004.

By Advocate Ms. U. Das.

- Versus -

1. The Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-11.
2. The General Manager (Construction)
N.F.Railway, Maligaon
Guwahati-11.
3. The Divisional Railway Manager (P)
Alipurduar Division, N.F.Railway
Alipurduar.

..... Respondents in all the three O.A.s.

By Dr. M. C. Sharma, counsel for the Railways.

.....

26 - 9 - 4
ORDER (ORAL)

SIVARAJAN, I.(V.C.) :

Excepting the fact that the applicants in these three O.As are different all of them claim the benefits of a scheme introduced by the Railways for grant of temporary status and subsequent absorption in Group 'D' posts. All these applicants had earlier approached the Tribunal by filing O.A. Nos.259, 44 and 43 of 2002 respectively. This Tribunal disposed of the said O.As vide orders dated 25.8.2003, 1.5.2003 and 1.5.2003 respectively (Annexure-5 in O.A.336/2004, Annexure-10 in O.A.337/2004 and Annexure-5 in O.A.338/2004) and the applicants were directed to file fresh representations setting out their respective claims. Accordingly, the applicants filed representations before the concerned respondents. The said representations were disposed of vide substantially identical orders with slight changes dated 18.3.2004 (Annexures 7, 12 and 7 respectively). The claim made by the applicants was rejected. The order passed in few such representations reads as under:

" In reference to your above mentioned application the relevant records regarding your claim of being ex-casual labour have been got verified and it is found that the genuineness of your casual labour card is not established.

Hence, your claim for re-engagement in Railway service is rejected without any further correspondence."

The applicants challenged the said orders in these three O.As.

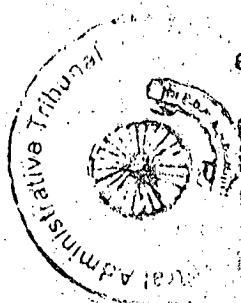
2. The respondents have filed separate written statements in all the three cases. Excepting some difference in factual situation, the contentions are similar.

[Signature]

3. We have heard Ms. U. Das, learned counsel for the applicants and Dr. M. C. Sharma, learned Railway counsel for the respondents. Ms. U. Das has submitted that all the applicants were in fact engaged as casual labourers before 1981 and that there is clear evidence with the respondents in regard to the said engagement. She also contends that the Railway authorities have issued identity cards which would also reveal that the applicants were ex-casual labourers of the Railways. Counsel submits that the applicants fulfill all the conditions stipulated in the scheme for assignment of temporary status and for their subsequent absorption in Group 'D' posts. Counsel also points out that the respondents in their written statements have admitted the engagement of eight casual labourers and so far as the applicant no.1 in O.A.336/2004 the earlier order passed by this Tribunal in O.A. No.259/2002, para 3 there of clearly indicates that he was also an ex-casual labourer employee. She also relies on the communication dated 16.3.2004 issued by the Deputy Chief Engineer (Con), N.F.Railway, Jogighopa to the General Manager/Con, N.F.Railway, Maligaon (Annexures-11 in O.A. Nos. 336/2004, 338/2004 and Annexure-15 in O.A.No.337/2004) which clearly states that many of the applicants' claim are found in order. Counsel, in short, submits that all the applicants are entitled to be absorbed in Group 'D' post under the Railways.

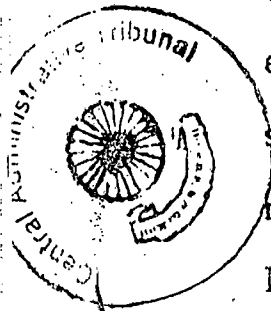
4. Dr. M. C. Sharma, Railway counsel has relied on various averments made in the written statement and submits that the applicants had never attempted to establish their claim for availing the benefits under the scheme in the 80's and if the applicants, as a matter of fact, had any genuine claim, they should have approached the Railway authorities then and there. Counsel submits that so far as

the claim of the applicants is concerned, it is more than twenty five years gone and that if at all there is any valid claim it is lost by limitation. Dr. Sharma also points out that the respondents cannot be expected to keep all the records relating to the engagement of casual labourers made in the 80's even today. Counsel points out that the various documents relating to the engagement of the applicants are at present not traceable. Dr. Sharma also points out that so far as the casual labour live register is concerned, the original is not traceable and trust cannot be made on the xerox copies of those documents without being verified with the original. He further submits that the identity cards which were produced by the applicants were got verified and it is found that the signature of the issuing authority available in the identity cards do not match with the admitted signatures of the officers who are stated to have issued the same. He also submits that at that relevant time those officers were not employed in the division in which the applicants were alleged to have been engaged. He further submits that in the absence of any authenticated material produced by the applicants to substantiate their claim for absorption respondents cannot be directed to absorb them in the Railways. Dr. Sharma also points out that large scale manipulations were being made from certain corners in the matter of absorption of casual labourers under the scheme. He, in support, has referred to and relied on the decision of the Calcutta Bench of Central Administrative Tribunal in O.A. No. 915 of 1998. Counsel accordingly submits that the applicants' claim for benefits of the scheme cannot be sustained.



5. As already noted, the applicants had earlier approached this Tribunal by filing O.A. No. 259, 44 and 43 of 2002 and this

Tribunal had disposed of the said applications by directing the applicants to make representations before the Railways. We find that the Tribunal had specifically considered the contention of the respondents that the claim of the applicants is highly belated. The Tribunal observed that when similarly situated persons have earlier approached the Tribunal and obtained reliefs and were absorbed the applicants cannot be denied the benefits, if they are really entitled to, on the ground of delay. It was further observed that when similar nature of orders were passed it was equally incumbent on the part of the respondents to issue notices to all the like persons so that they could also approach the authority for appropriate reliefs. The Tribunal, however, observed that ends of justice will be met if a direction is issued on the applicants also to submit their representations giving details of their services and narrating all the facts within a specified time and if such representations are filed within the time, respondents shall examine the same as expeditiously as possible and take appropriate decisions thereon within the specified time. The applicants pursuant to these directions made representations. One such representation is Annexure-6 in O.A. No.336/2004. We are sorry to note that the respondents had dealt with the matter in a very casual manner by passing the impugned orders all dated 18.3.2004. The orders only say that the genuineness of the casual labour cards is not established. It is not clear as to whether the applicants were afforded an opportunity by the Railways for establishing the genuineness of the casual labour cards. There is no averment in the written statement in this respect. Further, there is no case for the Railways that they have ascertained the genuineness of the casual labour cards from the officers who are stated to have



[Handwritten signature]

30 - 13 -

issued the cards. From the written statement and from the submission of Dr. Sharma it is clear that the names of the persons who have issued the casual labour cards were very much known to the Railways. Why in such a situation, no such step was taken to verify the genuineness of the casual labour cards with those officers is anybody's guess. We do not want to further comment on the conduct of the Railways. Dr. Sharma has placed before us the identity cards, the records of the officers who had issued the identity cards and also the records containing the xerox copies of the casual labour live register. We have perused the said records. We do not want to say anything with regard to the identity cards i.e. as to whether they are genuine and were issued during the relevant period and why the Railways did not make any effort to ascertain its genuineness through the officers who are stated to have issued those cards. For our purpose, the extract of the xerox copies of Casual Labour live register is sufficient.

6. Now, on the question whether the xerox copies of the Casual Labour live register can be relied, respondents have taken a stand in the written statements that unless the details contained in the xerox copies are verified with the original it cannot be relied. The respondents at the same time do not have the original of the Casual Labour live register. How it is missing is neither clear nor stated. Now, coming to the xerox copies of the Casual Labour live register, on perusal of the records, we find the reason for taking such photocopies in a communication dated 5.1.1989 issued by the Executive Engineer/BG/CON, N.F.Railway, Bongaigaon to the Deputy Chief Engineer/CON, N.F.Railway, Jogighopa. It is stated therein that 463 surplus ex-casual labours had to be re-encoded and therefore after

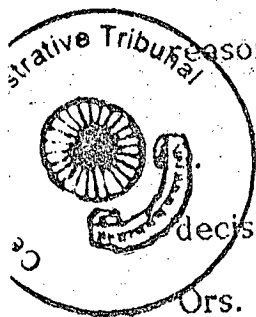
holding discussions with the relevant organization the letter is sent along with xerox copies of the "Casual Labour Live Register" for suitable and necessary action by the Deputy Chief Engineer. Xerox copies of the said document are available in the records maintained by the Railways. From the above it can be assumed safely that the xerox copies represent the original and it is maintained in the regular course of business of the Railways. It is surprising, when the xerox copies of the casual labour live register along with the letter dated 5.1.1989 is in the records maintained by the Railways, how they could say in the written statement "For obvious reasons, these records could not be relied upon as authentic due to the fact that such materials are capable of being manipulated due to the high stakes involved." On this aspect also, we do not want to make further observation which may eventually damage the reputation of the persons who made such bald statements.

Now, coming to the matter on merits the respondents are in possession of records (xerox copies of the live register) containing the details of the applicants. Of course some of the applicants do not find a place in the said records also. In respect of applicant no.1 in O.A.336/2004 the earlier written statements filed by the Railways in O.A.259/2002 and referred to in Annexure-5 judgment in O.A.336/2004 the following observations occurs:-

"In the written statement the respondents however admitted that one ex casual labour namely, Sri Habul son of Ruplal was screened thereby indicating that the applicant was screened but he could not be absorbed for want of vacancy within the panel period."

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8. As already noted, the only reason for rejecting the claim of the applicants is that the casual labour identity cards produced by the applicants the genuineness of which is doubtful. In the circumstances, as already discussed, the respondents are directed to consider the case of the applicants ignoring the identity cards and based on their own records namely, the xerox copies of the casual labour live register, the documents with reference to which the earlier written statements were filed and extracted hereinabove and to take a decision in the case of the applicants in all the three cases afresh within a period of four months from the date of receipt of this order. For the said purpose, the impugned orders all dated 18.3.2004 (Annexures-7 in O.A. Nos.336/2004 and 338/2004 and Annexure-11 in O.A. No.337/2004) are quashed. The concerned respondent will pass reasoned orders on merits as directed hereinabove.



Before parting with, we would also like to refer to the decision of the Hon'ble Supreme Court in Ratan Chandra Samanta & Ors. vs. Union of India & Ors., 1994 SCC (L&S) 182 relied on by Dr. M. C. Sharma. The said decision was rendered in Writ Petition (Civil) filed under Article 32 of the Constitution of India. In that case the applicants who were ex-casual labours in South Eastern Railways alleged to have been appointed between 1964-69 and retrenched between 1975-78 had approached the Supreme Court for a direction to the opposite parties to include their names in the live casual labourer register after due screening and to give them re-employment according to their seniority. Supreme Court rejected the said Writ Petition stating that no factual basis or any material whatsoever prima facie to establish their claim was made out in the Writ Petition. The contention that the petitioners therein will produce all the documents

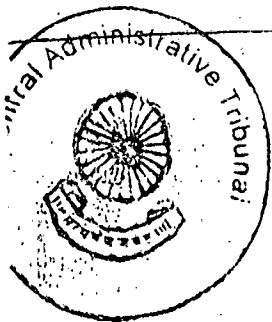
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before the authorities, in the above circumstances, was repelled. The said decision is not applicable in the instant case for the reason that there are necessary averments in the representation filed by the applicants and necessary materials are also available in the records maintained by the Railways.

The O.A.s are allowed as above. In the circumstances, there will be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



TRUE COPY
प्रतिलिपि

11/8/05
अनुमान अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी-5
GUWAHATI-5.

Attested
by
Advocate