

FORM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. _____
 2. Misc Petition No. _____
 3. Contempt Petition No. 26 of 2004 in O.A. 17/04
 4. Review Application No. _____

Applicant(S) Shri Kh. Jibon Singh

Respondant(S) U. O. I Gony

Advocate for the Applicant(S) M. Gunedhor Singh
N. Thaisa Singh
S. K. Sanyal

Advocate for the Respondat(S) Case. G. Bawanya, Sr. Case

Notes of the Registry	Date	Order of the Tribunal
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This Contempt petition has been filed by the Counsel for the petitioner w/s 11 & 12 Contempt of Court with Rule 7 (1) of CAE Rule 1992 for initiating Contempt proceedings against for their willful and deliberately non-compliance of this Hon'ble Tribunal order dated 1.6.2005 passed in O.A. 17/04.

Kindly refer the Hon'ble Court for further orders.

[Signature]
Section Officer

21.9.2006 Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.

This Contempt Petition has been filed for non-compliance of the order of the Tribunal dated 1.6.2005 passed in O.A. 17/2004 wherein this Tribunal had specifically directed the respondents as under:-

"The enquiry proceedings will have to be completed thereafter within a period of three months from the date of service of the memo of charges and the statement of imputation receipt of the order. Learned counsel for the applicant Ms. B. Devi, submits that the applicant will participate in the enquiry without fail. This is recorded. If the applicant absents himself on the date of enquiry to be fixed by the Enquiry Officer without sufficient cause, certainly the respondents are free to proceed with the matter. The question of re-instatement of the applicant as a result of this only will be considered by the appointing/Disciplinary authority independently."

contd.

Contd
21.9.2006

The applicant thereafter taken the matter before the Hon'ble Gauhati High Court in W.P.(C) No.866 of 2005 wherein the High Court had observed and directed as follows:-

" We have heard the learned counsel for the parties and also perused the materials available on records including the affidavit-in-opposition. In the affidavit-in-opposition, no justification whatsoever has been shown by the Department as to why the petitioner has not been re-instated in spite of his termination order having been set aside by the Tribunal vide judgment and order passed in O.A. No.17 of 2004 dated 1.6.2005. The re-instatement of an employee is a natural consequence of setting aside an illegal order of termination, more particularly, when further inquiry has been directed without re-instating the petitioner, the relationship between the master and the servant might not be there and legal fiction in that event would arise.

In view of the above discussion, we accordingly, allow this petition directing the respondent authorities to re-instate the petitioner in his original post within a period of 30 days and deal with him in accordance with law."

Mr.N.T.Singh, learned counsel for the applicant submits that now the grievance of the applicant is that though he was re-instated in service as per the direction, the enquiry proceedings which was directed to be completed within three months by this Tribunal is not completed as yet despite his request. Hence this contempt petition is moved.

Considering all the aspects I direct the Registry to issue contempt notice to 3rd contemner/respondent in this C.P. to show cause as to why contempt proceeding under Contempt of

Contd ...

Contd
21.9.2006

Courts Act shall not be initiated against him on the basis of the statements made in this C.P. supported by other documents and the submissions made by the counsel for the applicant.

Post on 07.11.2006. The personal appearances of the alleged contemnors are dispensed with for the time being.


Vice-Chairman

bb

~~xxxxxx~~

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

7.11.06.


Counsel for the alleged contemnors has submitted that substantial compliance has already been done. The applicant has already been reinstated. Post ~~the~~ Post the matter on 7.12.06.


Vice-Chairman

lm

07.12.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice - Chairman.

Learned Counsel for the Respondents ~~wanted~~ is not present and sought further time to file reply statement. Post on 13.12.2006.


Vice-Chairman

Counsel for the respondents wanted further one week time to file reply statement. Post the matter on 20.12.06.


Vice-Chairman

As per order dated 21/9/06 notice with order sent to D/Section for issuing to resp. no-3 by regd. A/D post. D/No- 1019
Cons 6/11/06 Dt= 10/11/06.

① Service report awaited.

ms
6.11.06.

Notice duly served on R-3.

Cons 15/11/06.

Notice duly served on R.No- 3.

ms
6.11.06.

No reply/statement has been filed. /mb/ 13.12.06.

ms
12.12.06.

No reply statement has been filed. lm

ms
19.12.06.

20.12.06

Counsel for the applicant submitted that he has received a copy of the reply affidavit and he would like to file reply affidavit.

Post on 24.1.07 for order.

Vice-Chairman

pg

22.12.06

Affidavit on behalf of Respondent Respondent No. 3.

24.01.07

Mr. G. Baishya, Sr. C.G.S.C. has submitted that the applicant has already been re-instated in service. Counsel for the applicant prays for further two weeks time to get instructions as to whether High Court's order complied with or not.

Post the matter on 13.2.07.

Vice-Chairman

Affidavit filed by R.No-3, others respondents from awaited.

23.1.07

13.2.07

When the matter came up for hearing the learned counsel for the applicant has submitted that the relief has been granted to the applicant and also reinstated the applicant. Therefore he does not want to press the contempt petition. Accordingly, C.P. is dismissed as not pressed. However, if the applicant is still aggrieved, liberty is given to the applicant to file fresh application in appropriate forum. *with original side*

Vice-Chairman

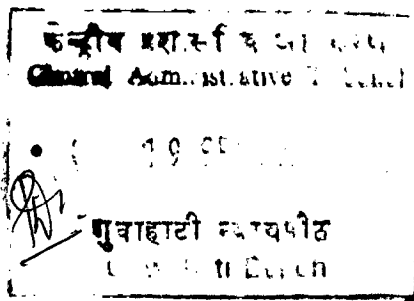
Affidavit filed on behalf of R.No-3, others respondents from awaited.

12.2.07

13/2/07

Copy of the order has been sent to the office for issue of the rule to the applicant as well as to the Sr. CGSC, C.A.T.

lm



Filed by Mr. Petitioner
through N. Thouda Singh
Advocate
14-09-06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

C.P. No. 26/06

Contempt Petition (Civil) No. 2006

In the matter of:

A contempt petition under Section 11 and 12 of the Contempt of Courts Act, 1971 read with Rule 7(1) of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992 for initiating contempt of court proceeding against the below named respondent for their willful and deliberate disobedience/non-compliance of this Hon'ble Tribunal's order dated 1-6-2005 passed in Original Application No. 17 of 2004 and punish the contemnors/respondents accordingly.

AND

In the matter of:

Sh. Kh. Jibon Singh

Son of Lt. Kh. Achou Singh

Village Irengbam, P.O. Nambol

District Bishnupur, Manipur State.

... Petitioner

Kh. Jibon Singh

- Versus -

1. Smt. Jyotshna Diesh, Secretary (Post) to the Government of India, Director General of Posts, Dak Bhawan, New Delhi - 110001
2. Shri S.K. Das, the then Chief Post Master General, N.E. Circle, Shillong - 793001.
3. ~~Smt. P. Gopinath, Chief Post Master General, N.E. Circle, Shillong - 789001~~
4. Shri Lalhuma, Post Master General, N.E. Circle, Shillong - 789001
5. Shri Abhinav Salia, Director, Postal Service (HQ), N.E. Circle, Shillong - 789001, (Then Director in-charge, Postal Service, Manipur upto 25-06-2006)
6. ~~Shri Ajesh Dubey, Director, Postal Services, Manipur, Imphal 795001~~

NE Circle

... Contemners/Respondents

The humble application of the above named petitioner.

Kh. Tibon Singh

Facts of the case:

1. That the instant contempt petition has been filed by the petitioner for initiating contempt of Court proceeding against the contemnors/respondents for their willful and deliberate disobedience/non-compliance of this Hon'ble Tribunal's order dated 1-6-2005 passed in Original Application No. 17 of 2004.
2. That, the petitioner had filed the original application being Original Application No. 17 of 2004 before this Hon'ble Tribunal assailing the impugned order dated 11-4-2002 issued by the Director of Postal Services, Manipur under memo No. B-2/Kh. Jibon Singh whereby the petitioner was condemned by imposing the highest penalty of removal from service and this Hon'ble Tribunal after hearing the parties, vide order dated 1-6-2005 was pleased to set aside the said impugned order.
3. That this Hon'ble Tribunal vide order dated 1-6-2005 passed in Original Application No 17 of 2004 specifically directed the respondent authority that "... The applicant (the petitioner in this instant petition) must be furnished with the memorandum of charges and the statement of imputation within one month. The enquiry proceedings will have to be completed thereafter within a period of three months from the date of service of memo of charges and the statement of imputation receipt (sic) of the order". This Hon'ble Tribunal further observed that ".... The question of re-instatement of the applicant (the petitioner in this instant petition) as a result of this only will be considered by the appointing/Disciplinary authority independently"

Kh. Jibon Singh

A copy of the order dated 1-6-2005 passed by this Hon'ble Tribunal in Original Application No. 17 of 2005 is annexed hereto and marked as Annexure-A.

4. That being partially aggrieved by the said order dated 1-6-2005 passed by this Hon'ble Tribunal in Original Application No 17 of 2005 for refusing to direct the respondent authority to re-instate the petitioner/applicant in service even after setting aside the impugned order of removal from service, the latter preferred a writ proceeding before the Hon'ble Gauhati High Court at Imphal Bench vide W.P.(C) No. 866 of 2005. The Hon'ble Gauhati High Court after hearing the parties while upholding this Hon'ble Tribunal's order dated 1-6-2005 passed in Original Application No.17 of 2005 setting aside impugned order of termination from service of the petitioner further held as unjustified for not directing to re-instate the petitioner in inspite his termination order having been set aside by this Hon'ble Tribunal, and, hence, directed the respondent authorities to re-instate the applicant/petitioner in service vide order dated 10-11-2005 on the ground that "... The re-instatement of an employee is a natural consequence of setting aside an illegal order of termination, more particularly, when further inquiry has been directed without re-instating the petitioner (the petitioner of this instant petition) the relationship between the master and the servant might not be there and legal fiction in that event would arise" and in pursuant to the said order of the Hon'ble High

Mr. Jibon Singh

Court, the petitioner of this instant petition was re-instated in service

It is submitted here that in view of the said order dated 10-11-2005 passed by the Hon'ble at High Court, Imphal Bench in W.P.(C) No 866 of 2005 being confined to the question of re-instatement of the petitioner in service after the impugned order of termination being set aside and other aspects of the said order of this Hon'ble Tribunal having not challenged, the said order of this Hon'ble Tribunal dated 1-6-2005 passed in Original Application No 17 of 2005 holds force, save and except regarding question of re-instatement of the petitioner in service and therefore willful and deliberate violation/disobedience and/or non-compliance of the said order of this Hon'ble Tribunal render the respondents liable to be prosecuted for contempt of this Hon'ble Tribunal

A copy of the order-dated 10-11-2005 passed by the Hon'ble Gauhati High Court Imphal Bench in W.P.(C) No 866 of 2005 is annexed hereto and marked as Annexure-B.

5. That the petitioner states that in pursuant to the direction given by this Hon'ble Tribunal in its order dated 1-6-2005 in O.A. No.17 of 2005, the respondent authority were to complete the enquiry proceedings within three months from date of service of memo of charges. The respondent authority though proceeded with the said enquiry has not yet completed the same

Kh. Jibon Singh

in total violation of the direction given by this Hon'ble Tribunal in no uncertain terms.

6. That, the petitioner states that your petitioner had fully participated in the said enquiry proceedings and it is reliably learnt that no charges were proved against the petitioner. The authorities have completed the said proceeding and they have not yet disposed of the said enquiry even after three months as directed by this Hon'ble Tribunal has passed long back. The petitioner submits that the respondents are using the purported enquiry against the petitioner as pressure tactic to bully him down for extraneous consideration.

7. That, due to the said enquiry having not yet disposed of albeit proceedings been completed and consequently disobeying of the order of this Hon'ble Tribunal, the respondents have committed grave illegality needless to say mental anxiety and trauma to the petitioner apart from undermining the Hon'ble Tribunal in the eyes of general public.

8. That, your petitioner states that there is ostensibly no way that the respondents are willing to dispose of the purported enquiry in the immediate future, as extraneous consideration is apparent for such action on the part of the respondents and unless this Hon'ble Tribunal intervene by initiating contempt proceedings against the respondents, the petitioner shall continue to suffer irreparable loss and justice shall fail to prevail.

Kh. Tibon Singh

9. That, this petition has been filed within the stipulated time as prescribed under Contempt of Courts Act, 1971 read with the Central Administrative Tribunal (Contempt of Courts) Rules, 1992.

10. That, this petition has been bonafide and for interest of justice.

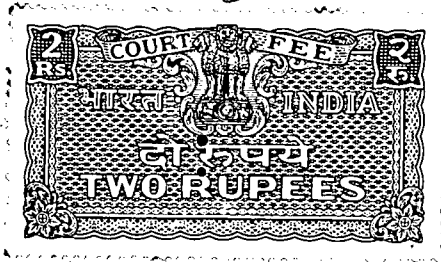
In the premises aforesaid, it is most humbly prayed that this Hon'ble Tribunal may admit this petition issue notice for initiating contempt proceedings against the respondents for willful disobedience of order dated 1-6-2005 passed by this Hon'ble Tribunal in Original Application No. 17 of 2005 and upon hearing the parties punish the respondents for contempt of court for reasons as aforesaid and/or pass any such order/orders as this Hon'ble Tribunal deem fit and proper.

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

M. Tibon Singh
Applicant.

DRAFT CHARGE

This Contempt Petition arises out of willful deliberate violation of Judgment and Order dated 01-06-2005 passed in O.A. No.17 of 2004 by. Smt. Jyotshna Diesh, Secretary (Post) to the Government of India, Director General of Posts, Dak Bhaban, New Delhi -110001, Shri S.K.Das, the then Chief Post Master General, N.E. Circle, Shillong, Smti. P.Gopinath, Chief Post Master General, N.E. Circle, Shillong, Shri Lalhulna, Post Master General, N.E. Circle, Shillong, Shri Abhinav Salia, Director Postal Service (HQ) N.E. Circle, Shillong (Then Director in-Charge, Postal Service, Manipur upto 25-06-06), Shri Ajesh Dubey, Director, Postal Service, Manipur, Imphal. The order passed by this Hon'ble Tribunal was duly communicated to them and received by them as well and deliberately and willfully has flouted the order. Hence may be punished under the Contempt of Court Act as well as under the provision of Article 215 of the Constitution of India.



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AFFIDAVIT

I, Kh Jibon Singh, aged 43 years, Son of Late Kh. Achou Sining of Irengbam Awang Mamang Keikai, P.O. & P.S- Nambol District, Bishnupur, Manipur, do hereby solemnly affirm and swear as follows:

(1) That, I am the petitioner in the contempt petition and as such, I am fully acquainted with the facts and circumstances of the case.

(2) That the statements made in this affidavit and those made in the paragraph Nos 1,2,5,6,8 and 9 of this petition are true to my knowledge and those made in paragraphs 3 and 4 are matter of records are true to my information as derived therefrom which I believe to be true and rest are my humble submission before this Hon'ble Court.

And I sign this affidavit on this the 15th day of September 2006 at Guwahati

Identified by

N. Thoida Singh
Advocate.

Kh. Jibon Singh
DEPONENT

VERIFICATION

Verified today at Imphal this th day of August, 2006
that the contents of the above application from para 1 to are all
true and correct to the best of my knowledge and belief and the
submissions on legal points are based on the legal advice
rendered to me by my counsel which I verily believe to be true
an correct.

Kh. Subow Singh
APPLICANT

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 17 of 2004.

Date of Order: This, the 1st Day of June, 2005.

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

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

Sh. Kh. Jibon Singh,
S/o Lt. Kh. Achou Singh
Vill: Irengbom, P.O. Nambol
Dist: Bishnupur, Manipur.

..... Applicant.

By Advocate S/Shri S.Sarma, U.K.Nair & B.Devi.

- Versus -

1. The Union of India
Represented by Secretary
to the Government of India
Ministry of Communication
Dak Bhawan
New Delhi - 1.

2. The Post Master General
North-Eastern Circle
Shillong - 793 001
Meghalaya.

3. The Director
Postal Services
Manipur, Imphal - 795 001.

... Respondents.

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

ORDER (ORAL)SIVARAJAN, J.(V.C.):

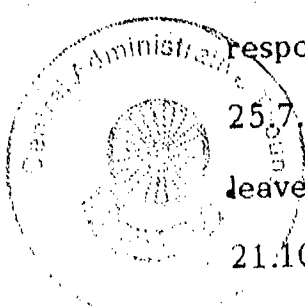
The applicant was originally appointed as Postal Assistant under the respondents on 30.9.1984. He was later on promoted to the post of Sub-Divisional Inspector w.e.f. 21.7.1998. He also worked as LG PA at imphal H.O. While working as such the applicant was on leave from July, 2001. He continued on leave upto October, 2001. While so

Corrected to be
True copy

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respondents initiated disciplinary action against the applicant on 6.8.2001. The Enquiry Officer and Presenting Officer were appointed. The notice regarding the enquiry was issued to the delinquent official. However, it could not be served on the delinquent either for the reason that he did not accept it or for the reason that his house was closed. The enquiry was concluded ex-parte and the Disciplinary Authority has passed the impugned order dated 11.4.2002 (Annexure-1) imposing the penalty of removal from service. Alleging gross procedural irregularities the applicant filed appeal (Annexure-2) before the second respondent. The same happened to be dismissed by order dated 3.2.2003 (Annexure-3). The applicant challenges the said two orders in this Original Application.

2. We have heard Ms. B. Devi, learned counsel for the applicant and also Mr. A. K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. As already stated the applicant was on leave w.e.f. 25.7.2001 till 20.11.2001. It is the case of the respondents that the leave for the period from 21.9.2001 to 20.10.2001 and from 21.10.2001 to 20.11.2001 was not granted since the applicant did not produce medical certificate. The respondents had attempted to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965 by sending registered notice to the applicant in the address furnished by the applicant. It is stated in the written statement that one of the notices sent by registered post was returned with the endorsement "refused". Another notice sent was returned with the remark "door closed". It is admitted fact that the applicant made a request dated 29.11.2001 to which date the enquiry was posted to defer the enquiry till he returns from leave. No orders have been passed on the said request. The Enquiry Officer proceeded with the enquiry and



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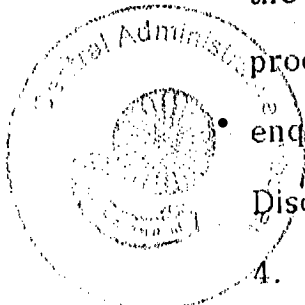
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Disciplinary Authority on the basis of the enquiry report had passed the impugned order dated 11.4.2002. In the written statement filed by the respondents it is stated that the request for deferment of the proceedings was not granted for the reason that the respondents have not sanctioned the leave applied for by the applicants.

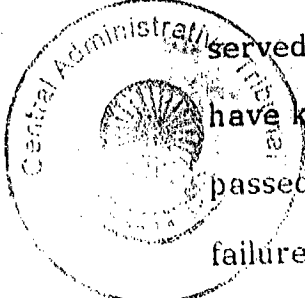
3. Thus it is clear that the enquiry and the impugned orders happened to be passed ex-parte and without hearing the applicant. Though the applicant had narrated the procedural irregularities in the disciplinary proceedings in the appeal memorandum all those were rejected by the Appellate Authority stating that the applicant was very much aware of the enquiry proceedings and that he had willfully refrained from participating in the enquiry proceedings. The Appellate Authority had clearly noted in the appellate order that "it is also a fact that the appellant had sent through a messenger, a request to the Inquiry Officer for postponement of the oral inquiry till his return from leave." The Appellate Authority has relied on this to state that the charged officials had been aware of the Rule 14 enquiry proceedings but had chosen not to appear personally in the oral enquiry. The Appellate Authority had endorsed the views of the Disciplinary Authority and rejected the appeal.

4. On a consideration of the facts and circumstances of the case we are of the view that an opportunity has to be given to the applicant to defend his case in the disciplinary enquiry. It is true that the respondents sought to comply with the procedural provisions contained in Rule 14 of the Rules by sending registered notices and by hand delivery. Though notices were not received by the applicant, coming to know of the enquiry proceedings commenced during the period of leave, he had sent his brother to watch the proceedings and



gpr

It is on getting information regarding the next posting date, i.e. 29.11.2001 since he was on leave he sent a request dated 29.11.2001 to the Enquiry Officer through his brother seeking for deferring the departmental proceedings till he resumes duty after leave. If, as a matter of fact, the Enquiry Officer was not inclined to grant the request, he should have set out the reasons for rejecting the request by passing an order and should have communicated to the applicant through his brother who was before the Enquiry Officer. This could have been done by the Enquiry Officer since this request was brought by the brother of the applicant on the date fixed for enquiry. If an order was passed rejecting the request, the same could have been served on the brother of the applicant so that the applicant would have known about the rejection. In this case no such orders have been passed on the said request. This, according to us, has resulted in failure of justice. Though the action of the applicant in not participating in the enquiry even after coming to know about the pending proceedings against him cannot be fully justified, the action of the respondents in not considering the request for deferment of the proceeding and in proceeding with the enquiry also cannot be justified. Taking into account the fact that the applicant had been condemned unheard as stated above, we are of the view that an opportunity must be afforded to the applicant before imposing any penalty for the alleged misconduct. We make it clear that this indulgence of us may not be understood as justifying the conduct of the applicant. For the limited purpose we set aside the impugned orders dated 11.4.2002 (Annexure-1) and 3.2.2003 (Annexure-3) and direct the third respondent to conduct a fresh enquiry against the applicant as contemplated under the Rules. The applicant must be



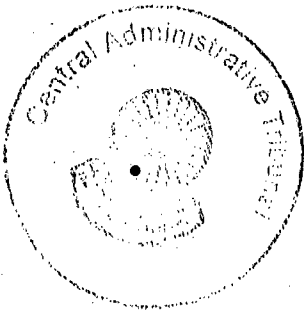
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furnished with the memorandum of charges and the statement of imputation within one month. [The enquiry proceedings will have to be completed thereafter within a period of three months from the date of service of the memo of charges and the statement of imputation receipt of the order. Learned counsel for the applicant Ms. B. Devi submits that the applicant will participate in the enquiry without fail. This is recorded. If the applicant absents himself on the date of enquiry to be fixed by the Enquiry Officer without sufficient cause, certainly the respondents are free to proceed with the matter. The question of re-instatement of the applicant as a result of this only will be considered by the appointing/Disciplinary authority independently.]

The Original Application is disposed of as above.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



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SECRETARY

76.05
7/6/05

Date of application for the copy.	তারিখ Date fixed for notifying the requisite number of stamps and fees.	Date of delivery of the requisite stamps and fees.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
24 NOV 2005	25 NOV 2005	2 NOV 2005	2 NOV 2005	25 NOV 2005

ANNEXURE - B

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

IMPHAL BENCH

WRIT PETITION (C) NO. 866 OF 2005

Shri Kh. Jibon Singh, aged about 42 years old, S/O Late Kh. Achou Singh of Irengbam Awang Mamang Leikai, P.O. & P.S. Nambol District, Bishnupur, Manipur State.

... Petitioner

-Versus-

1. The Union of India represented by Secretary to the Government of India, Ministry of Communication, Dak Bhawan, New Delhi-1.
2. The Post Master General, North-Eastern Circle, Shillong-793001, Meghalaya.
3. The Director Postal Service, Manipur State.

... Respondents.

B E F O R E

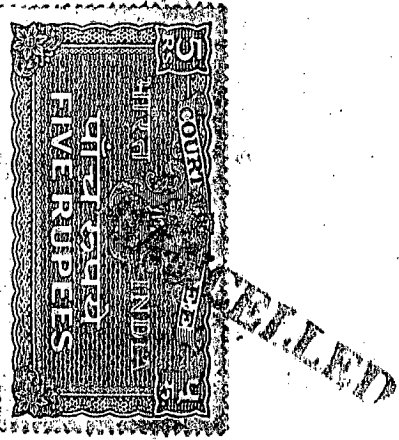
THE HON'BLE MR. JUSTICE H.N. SARMA
THE HON'BLE MR. JUSTICE A.B.PAL

For the Petitioner :: Mr. H.A.Paonam, Id. Advocate.

For the Respondents :: Mr.N.Ibotombi, Id. CGSC.

Date of order :: 10-11-2005.

Contd... P.2/-



Assistant Registrar-1
Gauhati High Court
Imphal Bench (Manipur)

Certified to be
true copy
✓

25/11/05

O R D E R

Heard Mr. Paonam, learned counsel for the petitioner and Mr. N. Ibotombim, learned CGSC for the respondents.

The short question that arises for decision in this writ petition is whether the CAT was justified in not re-instating the petitioner after setting aside the order of termination which was found to be illegal, improper and violative of the principles of natural justice. The further question that arises for consideration is that whether the respondent authorities are authorized by law to continue the proceedings without first re-instating the petitioner.

We have heard the learned counsel for the parties and also perused the materials available on records including the affidavit in opposition. In the affidavit in opposition, no justification whatsoever has been shown by the Department as to why the petitioner has not been re-instated in spite of his termination order having been set aside by the Tribunal vide judgment and order passed in OA No.17 of 2004 dated 1.6.2005. The re-instatment of an employee is a natural consequence of setting aside an illegal order of termination, more particularly, when further inquiry has been directed without re-instating the petitioner, the relationship between the master and the servant might not be there and legal fiction in that event would arise.

In view of the above discussion, we accordingly, allow this petition directing the respondent authorities to re-instate the petitioner in his original post within a period of 30 days and deal with him in accordance with law.

Sd/- A. B. PAL,
Judge

Sd/- H. N. SARMA,
Judge

Signature of copyist:

M. Priya Kumar Singh 25/11/05
(M. PRIYA KUMAR SINGH)

Read by : *[Signature]*
25/11/05

Compared by : *P. Barua*
25/11/05



CERTIFIED TO BE A TRUE COPY
[Signature]
25/11/05
Assistant Registrar
Gauhati High Court, Disputes Bench
Authorised under Section-76, Act.
of 1872

[Signature]
25/11/05

Central Administrative Tribunal
গুৱাহাটী ন্যায়পীঠ
Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

22

Filed by
The respondents
through Grant for the
20.12.06 ST/MS

Contempt Petition (Civil) No. 26 of 2006

O.A. No. 17 of 2004

K.J. Singh

.....Petitioner.

-VS-

Union of India & Others

.....Respondents.

AFFIDAVIT ON BEHALF OF REpondENTS NO.3 TO THE CONTEMPT
PETITION (CIVIL) NO. 26 OF 2006 IN O.A.NO. 17 OF 2004.

I, Smt. Padmini Gopinath w/o
of Mr. P. K. Gopinath aged about 57 years
resident of Oakland, Shillong P.O. Shillong within
the district of E. Khasi Hills do hereby solemnly affirm
and state as follows.

1. That I am the authorised officer in the instant
affidavit and I am well acquainted with facts and cir-
cumstances of the case.

2. That with regards to the paragraph 1 of the con-
tempt petition the respondent begs to state that the
order of the Hon'ble CAT, Guwahati dated 01.6.2005, in
O.A. No.17 of 2005 is already implemented and there is
no contempt at all, as detailed hereunder. The implemen-
tation of the order was delayed for sometimes as the
petitioner filed Writ Petition in the Hon'ble High

Contd....p/

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Court, Imphal Bench, vide WP(C) No. 866 of 2005, against the impugned order of the Hon'ble CAT, Guwahati and thus the matter was remaining sub-judicial while the WP was pending in the Hon'ble High Court.

3. That with regard to the statements made in the paragraph no.2 of the contempt petition. The Respondent begs to state that, the order of the then Director Postal Services, Manipur, vide Memo. No. B-2/Kh. Jibon Singh, dated 11.4.2002, whereby the petitioner was awarded the penalty of removal from service, is already cancelled in compliance to the order of the Hon'ble CAT, Guwahati dated 01.6.05 in O.A. No. 177 of 2005 and the petitioner is reinstated in service on 14.11.2005.

4. That with regard to the statement made in the paragraph 3 of the contempt petition the respondent begs to state that, the order of the Hon'ble CAT, Guwahati, dated 01.6.2005, was received by the respondent authority on 21.6.2005 and in compliance with the order of the Hon'ble CAT, the Disciplinary Authority issued fresh Charge-sheet against the applicant vide his Memo dated 21.7.2005 i.e. within one month of receipt of the order. But Sri Kh Jibon Singh, the petitioner, filed WP(C) No. 866 of 2005 before the Hon'ble High Court, Imphal Bench, against the order of the Hon'ble CAT, Guwahati. Since the matter was again sub-judice in the Hon'ble High Court, the ongoing inquiry into the De-novo disciplinary proceeding initiated on 21.07.2005 was kept in abeyance for the time being. Thus the inquiry-proceeding was delayed due to pendency of the Writ Petition in the Hon'ble High Court.

5. That with regards to the statement made in the

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paragraph 4 of the contempt petition the respondent begs to state that, immediately after final disposal of the Writ Petition by the Hon'ble High Court, Imphal Bench, on 10.11.2005 and on receipt of a copy of the order, the petitioner was reinstated in service on 14.11.2005 and the inquiry was restored & continued till completion of it. As such there was no disobedience or non-compliance of the order of the Hon'ble CAT, Guwahati, on the part of the respondent authorities.

6. That with regards to the statement made in the paragraph 5 of the contempt petition the respondent begs to state that, the inquiry was completed on 03.03.2006 and the Inquiry Officer submitted his report on 18.3.2006. The fact of completion of the inquiry was communicated to the petitioner also. As such, the averment of the petitioner that 'the respondent authority though proceeding with the said inquiry has not yet completed the same, is completely false, misleading and the same has been started by the petitioner without any iota of truth.

7. That with regards to the paragraph 6 of the contempt petition the respondent begs to state that those are false, untrue and concocted. The actual state of affairs is that the inquiry was completed and the fact that the Inquiry Officer held all the articles of charge 'disproved', was communicated to the petitioner by the respondent authority vide letter No. B-2/Kh. Jibon Singh(loose) dated 01.6.2006, under Rged, Post and receipt of the letter was acknowledged by the petitioner vide his letter dated 06.06.2006. Therefore, the averment of the petitioner, in this Para, that 'it is reliably learnt that no charges were proved' is nothing

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but an absolute falsehood submitted before the Hon'ble Tribunal as an attempt to have a favourable order.

A copy of the letter of the respondent authority dated ^{1.6.06 P} 06.06.2006 are enclosed as Annexure R-1 & R-2.

8. That with regards to the statement made in the paragraph 7 of the contempt petition the respondent begs to state that, the earlier order of 'Removal from service' is cancelled the petitioner is reinstated in service, the inquiry is initiated afresh & completed and the same is communicated to the petitioner also. As such, the statement of the petitioner, in these Paras, are not acceptable. There was not no laches on the part of the respondents in complying with the order of the Hon'ble Tribunal. The respondents have highest regard for the authority of law and majesty of the Hon'ble Tribunal and it is inconceivable on their part to show any willful disregard or disobedience to the order of the Hon'ble Tribunal.

9. That the respondent begs to submit that, in view of the above statement, it crystal that there is no negligence on the part of the respondent authorities in implementation of the order of the Hon'ble CAT and as such this misconceived contempt petition filed by misrepresentation & misstatement of facts being wholly devoid of any merit, is liable to be rejected with cost to the respondents.

10. That the respondent begs to submit that the respondents have in no way circumvented the orders of the

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Hon'ble Tribunal. The respondent were prevented to implement the said order as because the same was subjudiced before the Hon'ble High Court. Once the Hon'ble High Court disposed the matter immediately the respondent comply with the order. There is no wilful violation or disrespect on the part of the contemner against the order and direction of this Hon'ble Tribunal.

11. That the instant affidavit of the answering respondent contemner is made bonafide and in the interest of justice.

12. That in view of the above the Hon'ble Tribunal may dismiss the contempt petition against the commence by discharging the notice issued to the respondents.

I hereunto set my hand to this affidavit on this the 28th day of November, 2006'

Identified by me
Geantam Buihly
Advocate

DEPONENT

The deponent abovenamed
solemnly affirm before me
who is identified
by *Geantam Buihly*.....Ad-
vocate on this the 28th
day of November, 2006'.

पी. गोपिनाथ
P. Gopinath
मुख्य पोस्टमास्टर जनरल
Chief Postmaster General
उत्तर पूर्व परिमंडल
N. E. Circle
शिलांग / Shillong.

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Anney m - K-1
DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL
N.E. CIRCLE: SHILLONG

No. B-2/Kh. Jibon Singh (loose)

Date: 1.6.06

To

Recd.

Shri Kh. Jibon Singh,
Postal Assistant,
Nambol, Manipur.

Subject: Departmental Inquiry under Rule-14 of CCS (CCA) Rules, 1965 against
Shri Kh. Jibon Singh, PA, Nambol.

1. A copy of the Inquiry Report submitted by the Inquiry Officer appointed for the captioned case is sent herewith. The undersigned disagrees with the findings of the Inquiry Officer on the articles of charges and records the points of disagreement as below:
2. You are hereby asked to submit representation, if you so wish against the findings of the I.O., and the points of disagreement within 10 (ten) days of receipt of this communication failing which the case will be decided ex-parte.

Points of disagreement

Article-I The Inquiry Officer while disproving the charges under this article maintains that the prosecution could not establish the fact that the A. Rolls No.185, 198 and 282 (Exhibit S-6, S-7 and S-8) were sent to Ukhrul SO through Imphal HO SO Slip No.83 dated 26-2-99 (Exhibit C-1), that the report of the SPM Ukhrul SO dated 27-2-2001 (Exhibit S-1) regarding alleged taking away of the said A. Rolls by the charged official has no value to establish the charge in absence of corroborative evidence and that the written statement dated 13-7-2001 Shri Th. Bhubol Singh (Exhibit S-5) can not stand to prove the charge against the charged official for the fact that the said written statement were dictated to the said witness (SW-1).

*a. Bhubol Singh
S. K. G. S. C.*

The I.O., has failed to appreciate the facts and circumstantial evidences produced and adduced in the inquiry. The report of the SPM Ukhrol SO (Exhibit S-1) can not be discarded for the single reason that the same was not corroborated by evidence of the incumbent SPM. The report is a piece of material evidence and has cognizant value to infer and establish the fact that the charged official indeed took away the A. Rolls (Exhibit S-6, S-7 and S-8) from Ukhrol SO on 9-3-99. The fact that the written statement dated 13-7-2001 (Exhibit S-5) was dictated to the witness (SW-1) does not dilute the material facts of the case. The witness while depositing before the Inquiry held on 1-2-2006 categorically and clearly owned the entire contents of the said written statement. This aspect has been ignored by the I.O., inferring too much technicality in the inquiry which is not warranted in Departmental proceeding.

Article-II The Inquiry Officer has disproved the charged under this article stating the grounds that the Ex-EDMC of Huining EDBO was actually entitled to an amount of Rs.6948/- as arrear TRCA for the period from 1/96 to 4/98 against the amount of Rs.7000/- actually paid to him vide A. Roll No.185 (Exhibit S-6) and there were excess payment of Rs.52/- only which may have cropped in due to arrear in rounding-off in fraction amount. Hence it can not be proved that the arrear TRCA was paid to the said GDS MC for the period from 1/96 to 12/98 in the knowledge and witness the charged official as alleged in the article of charge.

The I.O., while putting forth the aforesaid grounds relied upon a calculation of the arrear TRCA which he himself has done. The calculation so made out is not supported by any authentication through official having qualification in Accounts. Hence this prosecution of the I.O., on his own violation can not be taken as the actual position and fact. Moreover the I.O., did not consider the fact that the arrear TRCA paid by A. Roll No.125 (Exhibit S-6) was for the period from 1/96 to 12/98 and this could not be refuted by the charged official or disproved by any evidence in the inquiry.

Article-III The I.O., while disproving the charges under this article has put forth that none of the ED Agents connected with payment in respect of A. Roll No.180, 198 and

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282 (Exhibits S-6, S-7 and S-8) was included as witness to establish the charge non receipt of payment by the actual payees, that no report/complaint was submitted/produced from any of the ED Agents to prove that they did not sign the A. Rolls and that no expert opinion of handwriting was obtained.

The I.O., has failed to render realistic appreciation of the facts and documentary evidences adduced in the inquiry. Examination of the signature of ED Agents on the A. Rolls (Exhibit S-4 series (i) to (x)) which are the A. Rolls for the months from 1/98 to 7/98 in respect of the ED Agents of Pushing, Huining and Msokat EDBOs and comparison with that of the A. Roll 185, 198 and 282 (Exhibit S-6, S-7 and S-8) clearly speaks of wide variation and distinction in the signature on the two sets of documents establishing that the signature on A. Roll No.185, 198 and 282 does not matched with that of A. Rolls produced on Exhibits S-4 series (i) to (x) thereby proving that some persons other than the actual payees signed the A. Rolls exhibited as S-6, S-7 and S-8 that too on identification of the charged official exposing dubious intention on his part. Any lay-man will be able to point out the non matching of the signatures on those two sets of documents and opinion of handwriting expert in this is redundant.

Article-IV The I.O., while disproving the charges under this article ^a put forth that the written statement of Shri Th. Bhubol Singh, the then Assistant Treasurer (Cash) Imphal HO recorded on 13-7-2001 (Exhibit S-5) was dictated one and not supported by any other independent witness and that the Postmaster Imphal HO or his report if any to prove the charges was produced in the inquiry.


As already discussed against the Article-I above, the witness (SW-1) while deposing in the inquiry held on 1-2-2006 clearly owned the entire contents of his written statement dated 13-7-2001 (S-5) thereby establishing the charges. In the given circumstances of the case corroborating the statement by any other independent witness at the time of recording the same was not warranted. This aspect in no way dilutes the facts and other circumstantial evidences if the case against the charged official. As regards, producing the Postmaster, Imphal HO or bringing in a report from him in the

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matter in the inquiry, such questions are hypothetical and immaterial to the inquiry in the given facts and evidences. Further, the I.O., has ignored to appreciate the facts lies behind the CAT case OA No.355/2000 filed by the official of the above named BOs regarding non-receipt of payment of the arrear TRCA of the period mentioned in the charges. This aspect was inferred and argued by the prosecution side. Neither the charged official nor the I.O., could refute this point.

3. In view of the facts and circumstances of the case as well as the evidences discussed above, the undersigned disagrees with the findings of the Inquiry Officer on the charges under all articles (I to IV) set out in Memo No. B-2.Kh. Jibon singh dated 21-7-05 to the extant points as recorded above.

Encls. as above


(Dr. ABHINAV WALIA)
Director of Postal Services (HQ)
O/o the Chief PMG, N.E. Circle,
Shillong - 793 001.

To :

The Director Postal Services,
Manipur, Imphal - 795 001.

Imphal,
06th June 2006.

Kind Attn: Dr (Shri) Abhinav Walia, Director Postal Services(HQ), O/o the Chief Post Master General, N.E-Circle, Shillong - 793 001 who is looking after the charge of Director Postal Services, Manipur.

Sub: - Departmental Inquiry under Rule-14 of CCS(CCA)Rules 1965 against Shri Kh. Jibon Singh, Postal Assistant, Nambol S.O.

Ref: - DPS(HQ), N.E-Circle letter No.B-2/Kh. Jibon Singh (Loose) dated 01.06.06.

Respected Sir,

The letter under above reference has since been delivered to the undersigned at 11:30 Hours by Shri. Biren Rajbangshi, Asstt Supdt of Post Offices (HQ), O/o the Director Postal Services, Manipur, Imphal, at the office of the Director Postal Services, Imphal; and soon after opening the letter in the presence of Shri. Biren Rajbangshi, Asstt Supdt of Post Offices (HQ), Imphal, it is seen that the copy of the 'Inquiry Officer's Report' has not been received there-with, although it has been mentioned in Para-1 of the said letter that a copy of the Inquiry report submitted by the Inquiry Officer was sent therewith. Thus, it is very clear that a 'dilatatory tactics' has been employed to harass the undersigned for the reasons best known to the disciplinary authority.

2. As per the available information, the Inquiry Officer's Report was submitted in the month of March-2006; and in accordance with the standing instructions, a copy of the Inquiry Officer's Report along-with the tentative reasons of disagreement by the disciplinary authority, if any, should be served upon the Charged Official within a period of 30-days. But, in this instant case, 2(Two) months time has been taken by the disciplinary authority to tell that he disagrees with the Inquiry Officer's Report; but the disciplinary authority has intentionally failed to forward a copy of Inquiry Officer's Report along-with the his notice containing tentative reasons for his disagreement. Thus, the delay in serving the Inquiry Officer's Report is intentional, with a view to harass the humble subordinate (Charged Official).

3. In the points of disagreement given in the letter under above reference it is noticed that:-

(i) It has been stated by the disciplinary authority, in respect of Article-I, that the **corroboration of Exhibit No.S-1 by the SPM, Ukhrul S.O concerned is not necessary; and the report which was recorded behind the back of the charged official may be admitted as valuable evidence to prove the charges.** This type of observation, obviously shows nothing but the biased mind of the disciplinary authority;

(ii) Similarly, as regards Article-II, the analysis of the I.O as regards the correctness of the amount payable to the GDSMC, Huining BO has been criticized by the disciplinary authority on the ground that the calculation is not authenticated by any qualified Accountant. While stating the above, the disciplinary authority has intentionally blacked out the fact that Shri. L. Tiken

*attached
sub source*

*DPS
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Singh, SDIPOs, Ukhrul who was the Inquiry Officer in the case was a qualified Accountant and the officer was working as Accountant, Imphal HPO before being promoted to the cadre of Inspector of Post Offices. Thus, the decision to disagree with the findings of the I.O, by the disciplinary authority is not based on any fact or material, but on his pre-determined mind and biased attitude, which is clearly proved by the fact that the 'Inquiry Officer's Report' has not been served along-with his letter dated 01.06.2006.

- (iii) As regards Article-III, the disciplinary authority has contended that the Exhibits 'S-4 series from Ex-S(i) to Ex-S(x)' proves that the signatures of the ED-Agents in the Arrear payment A.Rolls does not tally with the signatures available in the S-4 series A.Rolls. But, the Disciplinary authority has not explained anything towards non-tallying of signatures available within the 'Exhibit S-4 series A.Rolls.' Many signatures of the ED-Agents available on the 'Exhibit S-4 series A.Rolls themselves are not tallying each other. Therefore, the disciplinary authority has just attempted to fulfill his hidden motive and biased attitude to panelize the Charged Official (the undersigned), by issuing the letter dated 01.06.2006 containing his disagreement with I.O-Report, without serving a copy of the I.O's Report along-with the letter.
- (iv) As regards Article-IV, the disciplinary authority has contended that the written statement of Shri. Th. Bhubol Singh [Exhibit No.S-5] need not been proved by any other independent, corroborative evidence. Shri. Th. Bhubol Singh, the then Asstt Treasurer (cash) who was examined in the Departmental Proceedings as S.W-1 has himself stated in the Departmental Inquiry that his stated dated 13.07.2001 was dictated one. The disciplinary authority has not justified as to how he relies on a statement which is said to be a dictated one by the deponent of the statement himself; and also, the disciplinary authority has not explained as to why the written statement of Shri. Th. Bhubon Singh, the then Asstt Treasurer (Cash) was recorded 27(Twenty Seven) months after the alleged wrong payment etc. Thus, the disciplinary authority has already made up his mind to penalize the undersigned for no fault; and the disciplinary authority is employing a well-planned dilatory tactics to harass the undersigned by delaying the finalization of the disciplinary case, which was intentionally initiated against the undersigned without any basis. This biasness and dilatory tactics of the disciplinary authority are provable in the court of law by the fact that the disciplinary authority has intimated his disagreement with the I.O's Report on the Charged Official, without serving a copy of the Inquiry Officer's Report.

4. On the basis of above facts, the undersigned has already decided to initiate appropriate legal proceedings against the disciplinary proceedings. Justice cannot be expected from the biased and pre-decided mind. The undersigned cannot give any effective defence than the above in the absence of a copy of Inquiry Officer's Report.

5. Hence, it is intimated that appropriate legal proceedings are being initiated in the appropriate legal forum for the intentional omissions and commissions by the disciplinary authority.

Yours truly,


(Kh. Jibon Singh)
Postal Assistant,
Nambol S.O.

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Copy to:

1. The Director General (Posts), Dak Bhawan, New Delhi - 110 001 for information.
2. The Chief Post Master General, N.E-Circle, Shillong - 793 001 for information.
- ✓ 3. The Post Master General, N.E-Circle, Shillong - 793 001 for information.
4. The Deputy Supdt of Post Offices, O/o the Director Postal Services, Manipur, Imphal for information.
5. The Asstt Supdt of Post Offices (HQ), O/o the Director Postal Services, Manipur, Imphal for information.

Jibon
6/6/06
(Kh. Jibon Singh)
Postal Assistant,
Nambol S.O.