

DEPT. OF DEFENCE
DISCIPLINARY BOARD

ORDER SHEET

1. Original Application No.

2. Mise Petition No.

8/07 in O.A.76/05

3. Contempt Petition No.

4. Review Application No.

u. Gopal Ray
Union of India & Ors

Applicant(s) S.K. Sen

vs

Advocate for the Applicant(s) P.K. Roy, S.K. Chakrabarty

Mrs. A. Chakrabarty, M. M. Datta

Mr. M. U. Ahmed,

Advocate for the Respondent(s) Add. C. O. S. C.

Notes of the Registry

Date

Order of the Tribunal

This Contempt petition has been filed by the counsel for the petitioner for willful and deliberate violation of the direction given by this Tribunal on 22.9.2006 for reinstatement of the petitioner, in O.A.76/05

Final before
the Hon'ble Court for
further order.

15.5.07. This Contempt Petition has been filed for non compliance of the order of this Tribunal in O.A.No.76 of 2005 dated 22.09.2006 wherein this Court has directed the respondents as follows:-

"We set aside the impugned order dated 31.03.2004 of penalty of compulsory retirement from service passed by the Disciplinary Authority as well as the order of the Appellate Authority dated 02.08.2005 (sic 08.02.2005) and remit back the matter to the competent authority for imposing the said punishment and his reinstatement in service with notional benefits within a period of three months from the date of receipt of this order."

Contd/-

Q.D.
for Second Paper

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15.5.07.

I have heard Mr. P. K. Roy, learned counsel for the applicant and Mr. M.U.Ahmed learned Addl.C.G.S.C. for the Respondents.

Counsel for the applicant has submitted that the respondents have filed the Writ Petition in W.P.C No.384 of '07 before the Gauhati High Court. The High Court did not grant any order of stay. The applicant has approached the respondent No.2 personally and he has also filed an application on 02.03.2007 requesting the respondent to allow him to join in his duties in terms of the order passed by the Tribunal. The counsel

15.5.07

also stated that the respondents was aggrieved by a part of the judgment and order dated 22.09.2006 by which this Hon'ble Tribunal has directed the respondents to grant no pay during the absented period while imposing the punishment of lowering increments, accordingly, the applicant filed a Writ Petition in W.P.C No.529 of 2007, on which the respondents have already appeared. The learned counsel for the respondents also submitted that he would like to take instructions. Let

contd/-

15.5.07

it be done. Post the matter on
15.6.07.

Copy of the petition be
furnished to the counsel for the
respondents.

Vice-Chairman

lm

17/5/07

~~the counsel for the Respondents for compliance
of the order of this Tribunal. It is made clear
that the Contempt Proceeding would be initiated
against the respondents. Post the matter on~~

Vice-Chairman

15.6.07 This Contempt Petition has been filed by
the counsel for the petitioner for non
compliance of the judgment and order dated
22.9.2006 in O.A.No.76 of 05. When the
matter came up for hearing the learned
counsel for the respondents has submitted
that they have filed affidavit stating that the
matter is pending before Hon'ble High Court in
W.P.C No.529 of 2007. The counsel for the
applicant has produced an order of Hon'ble
High Court in WPC No.384/07 in M.C.no.1485

Contd/-

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6 1/2
C.P. 8/07

15.6.07.

of 2007 which has been rejected of by the Hon'ble Gauhati High Court with the following observations :

"Alongwith the 2nd Respondent some more officers of the same department were also charge sheeted in connection with the said transaction. They were also found guilty. However, the orders, who are occupying higher posts, were awarded a lesser punishment whereas, in case of the present respondent, punishment of dismissal was awarded. No explanation available on record as to whether the higher officers got a lesser punishment.

In the circumstances, prima facie, we are of the opinion that the findings recorded by the Tribunal that the order passed by the department shocks the judicial conscience of the Court may not require any interference."

22-6-07
An affidavit submitted by the Respondent No. 2 page No. 1 to 6 (copy not served. Ans.)

I have heard Mr. A.K.Roy, learned counsel for the applicant and Mr. M.U.Ahmed learned Addl.C.G.S.C. for the Respondents. When the matter came up for hearing the learned counsel for the respondents has submitted that since the matter is pending before the Hon'ble Gauhati High Court and the matter is not finally disposed of. The Contempt Proceeding not to be proceeded. However, legal position is that the mere fact is that the matter is taken up earlier before the Hon'ble High Court, contempt cannot be stopped.

Therefore, one-month time is granted to for the Respondents for compliance of the order of this Tribunal. If not this Court will be forced to Proceedings with the Contempt. Post the matter on 20.7.07.

Vice-Chairman

Affidavit filed by Im

R.No—2.

22-7-07.

20.7.2007

When this C.P. came up for consideration today, learned counsel for the Petitioner Mr.P.K.Roy submitted that orders of this Tribunal has been complied with. Mr.M.U.Ahmed, learned Addl. C.G.S.C. also endorsed the submission of Petitioner's Counsel.

Recording the above submission I am of the view that this C.P. does not stand in its legs. Therefore, the C.P. is closed as complied with.

25/7/07
ADD. C.G.S.C


Vice-Chairman

/bb/

24.7.07
Copy of the order
has been sent to
the office for issuing
the same on the application
by post.


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| प्राप्ति के लिए दिन की तारीख (Date of application for the copy.) | स्टॉप और फॉलो-सी अवधिक संलग्न सुनिश्चित करने की तिथि तारीख (Date fixed for ascertaining the requisite number of stamps and folios.) | विदेश स्टॉप और फॉलो-सी देने की तारीख (Delivery of the requisite stamps and folios.) | प्राप्ति, जबकि देने के लिए देने की तारीख (Date on which the copy is to be delivered.) | प्राप्ति को अप्पेलेंट को देने की तारीख (Date of making over the copy to the applicant.) |
| 12/6/07 | 12/6/07 | 12/6/07 | 12/6/07 | 13/6/07 |

IN THE GAUHATI HIGH COURT
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

*Misc Case
in W.P(C) No. 384/07*

No. 1485 of 2007

The Director, Survey of India

Appellant
Petitioner

Versus

Sri Subrata Kumar Sen

Respondent
Opposite Party

Appellant
For _____
Petitioner

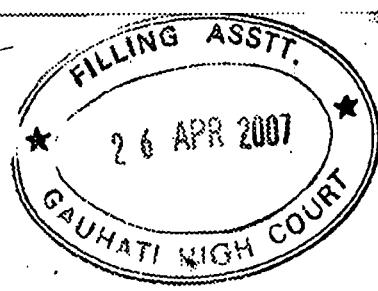
Mr. H. Rakman

Respondent
For _____
Opposite Party

Mr. P. K. Roy,

Mr. S. K. Chakrabarty.

| Noting by Officer or Advocate | Serial No. | Date | Office notes, reports orders or proceedings with signature |
|----------------------------------|---------------|------|---|
| 1 | 2 | 3 | 4 |
| <i>197</i> | | | |



IN THE MATTER OF :

writ Petition(Civil)No.384/07

The Director,

Survey of India,

...2

[Handwritten signature]

[Handwritten signature]

- 2 -

Assam & Nagaland, GDC,
Ganeshguri Chariali,
G.S.Road, Guwahati,
District - Kamrup, Assam.

... Petitioner

- Versus -

Sri Subrata Kumar Sen,
son of late S.K. Sen,
Lower Harisava, P.O. Shillong-04,
District - East Khasi Hills,
Meghalaya.

... Respondent

- A N D -

IN THE MATTER OF :

The Director,
Survey of India,
Assam & Nagaland, GDC,
Ganeshguri Chariali,
G.S.Road, Guwahati,
District-Kamrup, Assam.

... Applicant

- Versus -

Sri Subrata Kumar Sen,
son of late S.K. Sen,
Lower Harisava, P.O. Shillong-04,
District - East Khasi Hills,
Meghalaya.

... Respondent

... 3

| Noting by Officer or Advocate | Serial No. | Date | Office notes, reports, orders or proceeding with signature |
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MC No.1485/07
In WP(C) No.384/07
with WP(C) No.529/07

PRESENT
HON'BLE CHIEF JUSTICE MR. J.CHELAMESWAR
HON'BLE SMT JUSTICE A.HAZARIKA

11.06.2007

(Chelameswar,CJ)

This application is filed with the prayer as follows:

"It is, therefore, prayed that Your Lordships may be pleased to pass an interim order staying the operation of the impugned order dated 22.9.06 passed by the Central Administrative Tribunal, Guwahati in OA No.76/05 (Annexure-V to the writ petition) and/or pass any such further or other order/orders as Your Lordships may deem fit and proper."

Heard Mr. H Rahman, learned Assistant Solicitor General of India appearing for the petitioner and Mr. PK Roy, learned counsel for Respondent.

Along with the 2nd Respondent, some more officers of the same department were also chargesheeted in connection with the said transaction. They were also found guilty. However, the others, who

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| Noting by Officer or Advocate | Serial No. | Date | Office notes, reports, orders or proceedings with signature |
|-------------------------------|------------|------|---|
| 1 | 2 | 3 | 4 |

are occupying the higher posts, were awarded a lesser punishment whereas, in case of the present respondent, punishment of dismissal was awarded. No explanation available on record as to whether the higher officers got a lesser punishment.

In the circumstances, *prima facie*, we are of the opinion that the findings recorded by the Tribunal that the order passed by the department shocks the judicial conscience of the Court may not require any interference.

The application is rejected.

Sol- A Hazarika
Judge

P. No- 76968
Date 12-6-07.

Sol- J. Chakraborty
Chief Justice

| | |
|----------------------------------|---------|
| CERTIFIED TO BE TRUE COPY | |
| Kening Ram Deka | |
| Date | 13/6/07 |
| Superintendent (Copying Section) | |
| Gauhati High Court | |
| Authorised U/S 76, Act L. 1871 | |

13/6/07

14 MAY 2007

In the Central Administration Tribunal, Guwahati Bench,
Guwahati.

Contempt Petition Civil No. 8 of 2007

In the matter of

An application under Rule 5 of the Contempt of Court (CAT) Rules 1992 for willful and deliberate violation of the direction given by this Hon'ble Tribunal on 22.09.2006 for reinstatement of the petitioner, in O.A. no.76 of 2005, amounting to Civil Contempt within the meaning of Section 2(b) of the contempt of Court Act 1971.

-AND-

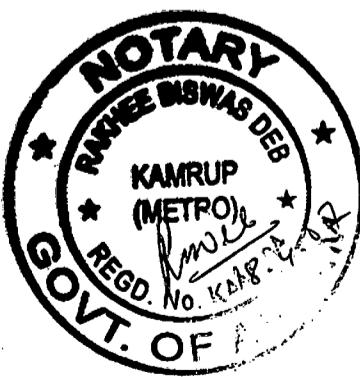
In the matter of

Shri Subrata Kumar Sen.
S/o late Sudhangshu Kr. Sen.
Surveyor (Under compulsory retirement) Survey of India
Resident of Harisava Para,
P.O. Shillong-4 Dist. East
Khasi Hills, Meghalaya.

.....Petitioner.

Vs.

1. Shri M. Gopal Rao.
Surveyor General of India
Hathibarkala ; Dehradun
2. Shri R.N. Nahak
Director, Survey of India
Meghalaya & Arunachal Pradesh



GDC, Malki,
Shillong - 1

.....**Respondents/Contemnors**

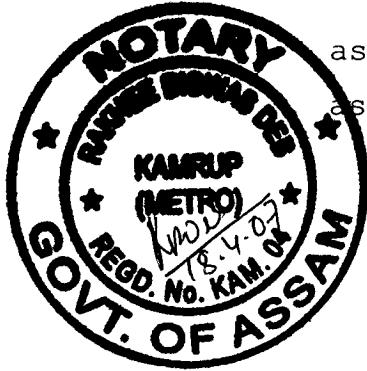
The humble petition of the petitioner above named.

MOST RESPECTFULLY SHEWETH :

1) That the petitioner, being aggrieved by an order dated 31.03.2004 passes by his disciplinary authority as well as the subsequent order dated 08.02.2005 passed by his appellant authority by which he was compulsorily retired from service quite, illegally on the basis of some perverse finding in the enquiry report conducted by the inquiry officer in a most defective departmental enquiry drawn against him, approached this Hon'ble Tribunal by filing an Original application in O.A. No.76 of 2005. This Hon'ble Tribunal however by the judgment and order dated 22.09.2006 was pleased to allow the said original application partly, by setting aside both the impugned orders by giving some directions for reinstatement with lesser punishment in the following manner.

" We set aside the impugned order dated 31.03.2004 of penalty of compulsory retirement from service passed by the Disciplinary Authority as well as the order of the Appellate authority dated 02.08.2005 (sic 08.02.2005) and remit back the matter to the competent authority for imposing the said punishment and his reinstatement in service with notional benefits within a period of there months from the dated of receipt of this order.

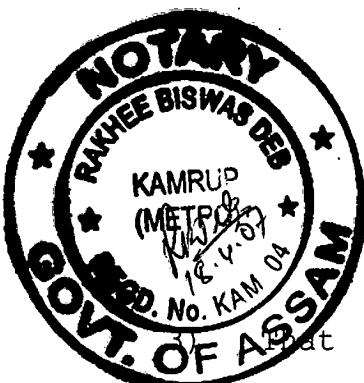
The original Application is partly allowed as above. In the circumstances there is no order as to costs".



A copy of the judgment and order dated 22.09.2006 passed in O.A. No.76 of 2006

is annexed as Annexure 'A' to this petition.

2) That the petitioner states that on receipt of the certified copy of the said judgment and order dated 22.09.2006, the petitioner sent a copy of the same vide his letter dated 04.10.2006 to the Respondent No.2 for his reinstatement with all the relief, which, was duly acknowledged by the respondent No.2 on 04.10.2006 itself.



Copy of the said letter dated 04.10.2006 is annexed as Annexure 'B' to this petition.

That the petitioner states that the respondent No.2 i.e his disciplinary authority, without complying with the order dated 22.09.2006 passed by the Hon'ble Tribunal, simply sent the same to the respondent No.1 in the Survey of India Head Quarter at Dehradun. But the respondent No.1 despite clearly understanding the illegality committed by the respondent No.2 in passing the impugned order of punishment, which resulted in the direction by this Hon'ble tribunal for the petitioners reinstatement in service, filed a writ petition in W.P. (C) No.384 of 2007 in the Hon'ble Gauhati High Court praying for setting aside the judgment and order passed by this Hon'ble Tribunal with a further prayer for stay of operation of the said judgment and order. The Hon'ble High Court however, though passed an order/or issue of notice on the petitioner, did not pass any order for stay of the said judgment and order dated 22.09.2006 passed by this Hon'ble tribunal.

4) That the petitioner states that having come to know that the respondent have filed the writ petition before the Hon'ble Gauhati High Court and the Hon'ble High Court did not grant any order of stay, he approached the respondent No.2 personally and also filed an application on 02.03.2007 requesting him to allow him to join in his duties in terms of the order passed by this Hon'ble tribunal since no stay was granted against the same by the Hon'ble High Court and

the time frame given by this Hon'ble Tribunal also, in the mean time, was over. By the said letter dated 02.03.2007, the petitioner also submitted his joining report in anticipation of the formal order to be passed in this regard. But the said respondent knowing fully well that no stay was granted by the Hon'ble High Court, just ignored the direction given by this Hon'ble tribunal for passing the order of reinstatement within three months and in fact the petitioner, despite submission of joining report by him, is not allowed to work by passing any formal order. The petitioner personally approached the respondent No.2 at the time of submission of his letter dated 02.03.2007, but the respondent No.2 clearly stated that whether the Hon'ble High Court passes any order of stay or not, the respondent would not comply with the direction given by the Hon'ble Tribunal. The said respondent No.2 also indicated that he also received similar views of the respondent No.1 in the matter as well, and the petitioner would not be reinstated in service.



A copy of the letter dated 02.03.2007 written by the petitioner is annexed as Annexure 'C' to this petition.

5) That the petitioner states that he was also aggrieved by a part of the judgment and order dated 22.09.2006 by which this Hon'ble tribunal has directed the respondents to grant no pay during the absented period while imposing the punishment of lowering increments, and accordingly filed a writ petition in W.P. (C) No.529 of 2007, on which the respondents have already appeared. He was however satisfied with the order of reinstatement passed by this Hon'ble Tribunal and as such left that part of the direction, without any challenge in the said writ petition.

6) That the petitioner states that despite there being no order of stay granted by the Hon'ble High Court in the writ petition filed by the respondents, the said respondents are willfully and deliberately violating and disobeying the

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order passed by this Hon'ble tribunal for reinstatement of the petitioner. Even the Hon'ble High Court during the admission hearing in the writ petition filed by the respondents verbally, in explicit terms indicated and made the respondents understand that since the Hon'ble High court did not grant any order of stay of the order passed by the Hon'ble Tribunal, the respondents may comply with the direction given by this Hon'ble Tribunal and reinstate the petitioner. But the respondents has been showing scant regard to the direction of this Hon'ble tribunal and passed no order of petitioners reinstatement even today.

7) That the petitioner states that the above acts of the respondents clearly amounts to civil contempt within the meaning of Section 2(b) of the contempt of courts Act 1971 and as such liable for punishment under the provision of contempt of court (CAT) Rules 1992. None of the respondents has even slightest regard to the dignity and authority of this Hon'ble Tribunal. They have deliberately and willfully disobeyed the direction given by this Hon'ble Tribunal for the reinstatement of the petitioner. It is therefore a fit case where this Hon'ble tribunal may be pleased to initiate contempt proceeding against the respondents under Section 12 of the contempt of courts Act read with the provision of the contempt of court (CAT) Rules 1992 and after hearing, punish them for the willful and deliberate violation of the said direction given by this Hon'ble Tribunal as stated above.

8) That the petitioner states that he has not previously made any petition on the aforesaid facts.

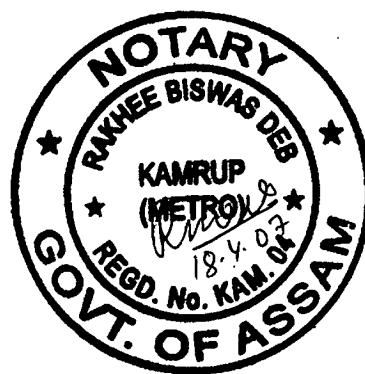
9) That the petitioner is made bonafide and for the ends of justice.



In the premises aforesaid it is humbly prayed that the Hon'ble Tribunal may be pleased to admit this petition, issue notice on the respondents, initiate

contempt proceeding against the respondents and after hearing punish the respondents under the provisions of the contempt of courts (CAT) Rules 1992 and be pleased to pass such other or further order/orders as to the Hon'ble Tribunal may deem fit and proper.

And the petitioner as in duty bound shall ever pray.



✓

A F F I D A V I T

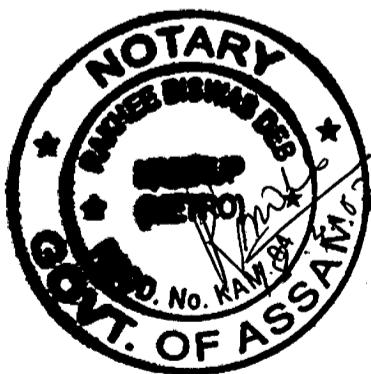
I, Shri Subrata Kumar Sen, S/o Late S.K. Sen, aged about years, Surveyor (Under compulsory retirement) Survey of India, resident of Hari Sabha Para, P.O. Shillong-04, District-East Khasi Hills, Meghalaya do hereby solemnly affirm and state as follows:

- 1) That I am the petitioner in the instant writ petition and as such I am conversant with the facts and circumstances of the case.
- 2) That the statements made in paragraph *1& 8* are true to my knowledge and those made in paragraph *are true to my information derived from records and rest are my humble submissions before this Hon'ble Court.*

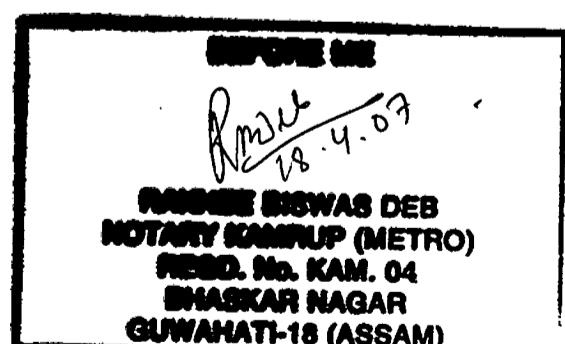
And I sign this affidavit on this *18* day of *April* 2007 at Guwahati.

Prasanta K. Ray
Advocate
Identified by *18.4.2007*

Subrata K. Sen.
DEPONENT



Magistrate/Notary



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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 76 of 2005.

Date of Order: This, the 22nd day of September 2006.

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Shri Subrata Kumar Sen

Surveyor

(Under compulsory retirement)

Son of Late S.K. Sen

Erstwhile No.80(P) Party (NEC)

(Now Assam & Nagaland GDC

(Shillong Wind), Lower Marisava

P.O.: Shillong - 793 004

District East Khasi Hills

Meghalaya.

..... Applicant.

By : Advocates S/Shri P. K. Roy, S. K. Chakraborty,
Mrs. A. Chakraborty.

• Versus -

Union of India

Represented by the Secretary to the

Govt. of India, Ministry of Science
and Technology
New Delhi.

3. The Surveyor General of India
Hathibarkala, Dehradun.

4. The Director
Survey of India
Meghalaya & Arunachal Pradesh
GDC, Malki, Shillong-01.

5. The Director
Survey of India
Assam & Nagaland, GDC
Ganeshguri, Guwahati.

..... Respondents.

By Mr. M. U. Ahmed, Addl. C.G.S.C.

..... L

Certified to be true. Copy
S. K. Chakraborty
for record
11/5/2007

10/9/

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O R D E R

SACHIDANANDAN, K.V., (V.C.):

While working as a Surveyor in the Erstwhile No.80 (P) Party (NEC) now A & N GDC (Shillong Wing), Shillong, a memorandum dated 13.7.2001 was issued against the applicant whereby the Director, NEC, proposed to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation of misconduct on 3 charges and also directed him to submit his written statement of defence within ten days from the date of receipt of the said memorandum. On receipt of said memorandum, the applicant, vide application dated 17.7.2001 prayed for supply of all the relevant documents on basis of which the alleged charges were leveled in order to file his written statement of defence. But the Disciplinary Authority, vide order dated 26.7.2001, refused to furnish the documents. Hence, without perusing the documents applicant filed his written statement of defence denying the charges leveled against him. The department also simultaneously proposed to initiate departmental proceedings against R.K.Meena, Superintending Surveyor, O/C, No.83 Party, U.N.Mishra, Superintending Surveyor, O/C, No.12 Drawing Office and 8 verifiers in respect of the same incident out of which charges against the applicant is drawn. In the written statement of defence he stated that he carried out the orders of the superiors for engaging 4 extra porters and



If any financial irregularities had occurred for such extra engagement, the same cannot be attributed to the applicant. The departmental enquiry was initiated against the applicant and he was made a departmental witness against the verifiers in the said enquiry, but the applicants' applications for dispensing with his deposition, in the said inquiries on the ground of prejudice was not entertained. Out of 7 listed witnesses, 5 witnesses made their depositions, the others did not turn up. Written brief was submitted and according to the applicant there is no evidence to link the applicant into the alleged misconduct, and therefore, it is a case of NO EVIDENCE. The Enquiry Officer, having found that nothing could be proved in the enquiry, went back to the written statement of the applicant and by accepting the plea of the Presenting Officer mechanically gave a finding that he could not produce any evidence for 'use of pressure' and 'coercion' against him. Consequently, the Disciplinary Authority, on the basis of finding of the Enquiry Officer, imposed the punishment of compulsory retirement from service w.e.f. 31.3.2004. The applicant, did not plead himself guilty for all the charges framed against him. All the other delinquent employees against whom disciplinary proceedings were drawn on similar nature of allegations and enquired into by the same Enquiry Officers, were exonerated and the applicant alone was treated in a most discriminatory manner. Applicant's ACP was also not

12/11/05

considered which was long due to him. The applicant by representation dated 15.3.2004 (Annexure-Q) pointed out to the authority that during the pendency of the departmental proceedings many of his juniors were promoted without considering his case illegally. The applicant filed an appeal before the Appellate Authority under Rule 23 of the CCS (CCA) Rules, 1965 before the Surveyor General of India on 19.4.2004. Since the appeal was not disposed of, he approached this Tribunal by way of O.A. No.260 of 2004 and this Tribunal vide order dated 10.11.2004 directed the Appellate Authority to dispose of the said appeal with a specified time frame. Pursuant to the aforesaid direction, the Appellate Authority vide order dated 2.5.2005 taking into consideration some irrelevant materials leaving aside the relevant materials, without appreciating the real grievances of the applicant confirmed the penalty of compulsory retirement passed by the Disciplinary Authority, applicant claimed. Being aggrieved by the said action of the respondents, the applicant has filed this O.A. seeking the following reliefs:-

- i) Set-aside the order dated 31.3.2004 passed by the Director, Survey of India, Meghalaya & Arunachal Pradesh GDC, Malki, Shillong-01 (Annexure-O).
- ii) Set-aside the order dated 8.2.2005 passed by the Surveyor General of India (Annexure-T).
- iii) Direct the respondents particularly the Respondent No.3 to reinstate the applicant in his own post of Surveyor

and grant him all consequential benefit including promotional benefit which was due to him."

2. The respondents have filed a detailed reply statement, submitting therein that the applicant gave instruction to 8 verifiers of his camp to show 8 porters in the Master Roll against the authorized strength of 4 porters, thus by adding names of 4 fictitious porters caused financial irregularities in the same camp. Moreover, the applicant also gave an offer of Rs.1500/- to each verifier for adding the names of 4 extra fictitious porters. Besides, the applicant, while was engaged in fieldwork, misappropriated government money by raising inflated amount towards repair of vehicle. Hence, a disciplinary case under Rule 14 of CCS (CCA) Rules, 1965 was initiated against him, chargesheet was served on him in reply although he denied the charges leveled against him, he admitted his involvement in the case on the pretext that he was obeying the verbal orders of his superior officers. Enquiry was conducted, and out of three articles of charges, one was proved and on conclusion of the enquiry, penalty of compulsory retirement was imposed upon the applicant on 31.3.2004. Appeal was disposed of with due application of mind and the Appellate Authority did not find any justified reason to interfere with the decision of the Disciplinary Authority. The Enquiry Authority found the applicant guilty. The Disciplinary

Authority never refused to furnish the relevant documents to the applicant, rather he was conveyed that he would get full opportunity to inspect the listed documents during the course of enquiry. The applicant has attempted to nullify the admissions and disclosures made by him in the written statement of defence on the pretext of denial of documents for inspection, as narrations made in written defence had substantiated the charge. Non-availability of documents had no distant connection with the disclosures made in the written statement of defence, which are two separate issues. His request for dispensing with his deposition in the enquiry on the ground of prejudice was decided by the Enquiry Officer who hold the absolute discretion under Rule 22 (ii) & (iii) of CCS (CCA) Rules, 1965 to which no appeal lies. The charges against the applicant were proved by the statements given by the witnesses in the preliminary inquiry as well as the statement of defence dated 3.8.2001 submitted by him. The statements given by the witnesses in the preliminary enquiry were part of the memorandum issued to the applicant and his written statement of defence was also a part of the records of the disciplinary proceedings in which he admitted his offence very tactfully. Later on, the applicant disowned his statement in the regular enquiry on the plea that he had submitted his statement under pressure or without perusing the relevant documents. The verifiers were exonerated since the charges leveled

15-145
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against them were not proved. Applicant's case cannot be equated with that of the verifiers since both the allegations and set of evidences were different. The penalty of compulsory retirement was imposed on the applicant, after considering the gravity of offence committed by him, which was also upheld by the Appellate Authority, and therefore, it cannot be termed as disproportionate. Rather lenient view was taken since the applicant could have been dismissed from service. Therefore, the O.A. does not stand on its legs and liable to be dismissed, claimed the respondents.

3. The applicant have filed a rejoinder reiterating the contentions made in the O.A. and further contended therein that to punish an employee based on any admission, if any, should be clear and unambiguous admission of charges and not "lead to admission of charges" as alleged. He further denied of making any admission. The statements which were made in the disciplinary proceedings against the verifiers, were found to be justified and relevant and the verifiers were exonerated from the charges framed against them, whereas the same statements made by the same verifiers in all the disciplinary proceedings including their own, were allegedly found to be hostile in applicant's case, which is discriminatory. The O.C., the Camp Officer of the 29 Party and the 8 verifiers were also involved in the same financial irregularities and

16 - 15 - 2

according to the Enquiry Officer, the said verifiers, O.C. and the Camp Officer including the applicant have joined hands together not to give evidence against each other and were tightlipped during deposition, but on the question of inflicting of punishment the authority singled out the applicant imposing the extreme and harsh punishment of compulsory retirement exonerating all the verifiers.

We have heard Mr. P.K. Roy, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl.C.G.S.C. for the respondents. Both the counsels have taken us to the various pleadings, materials and evidence placed on record. Mr. Roy argued that there are 29 persons and 8 verifiers along with the applicant allegedly involved in the financial irregularities, wherein the applicant was alone singled out for imposing a grave punishment of compulsory retirement from service, which is per se discriminatory and against Articles 14 and 16 of the Constitution of India. The applicant never made a categorical admission of guilt, which has been interpreted to be an admission by the Enquiry Officer. The Addl.C.G.S.C., on the other hand, persuasively argued that it was after a full-fledged enquiry, granting reasonable opportunities to the applicant, complying with due procedure the applicant was found guilty of charge and the Disciplinary Authority as well as the Appellate Authority with due application of mind imposed the punishment of

17 - 16 - 20

compulsory retirement from service upon him. The charges against the other delinquent employees were different and sets of evidences were also different, and therefore, it cannot be said to be discriminatory.

5. We have given due consideration to the pleadings, arguments and materials advanced by the counsel for the parties. For better elicitation, the articles of charges framed against the applicant is reproduced herein below:-

ARTICLE I

That the said S.K.Sen, Surveyor while posted in No.29 Party NEC) during the field season 1996-97 was assigned field duty in Arunachal Pradesh. He was appointed as Assistant Camp Officer in Camp No.1 to assist Shri U.N.Mishra, the then Deputy Commanding Surveyor and the Camp Officer of the said Camp.

Shri S.K.Sen while performing the duties of Assistant Camp Officer in the said camp gave instructions to 8 verifiers of his camp to show 8 porters on their muster rolls against the authorized strength of 4 porters, by adding names of 4 fictitious porters which caused financial irregularities in the said camp..

Thus by his above act the said Shri S.K.Sen, Surveyor exhibited conduct unbecoming of a Govt. servant, thereby violated Rule 3(1)(i) & (iii) of CCS of (Conduct) Rules, 1964.

ARTICLE II

That the said Shri S.K.Sen, Surveyor while performing the duties of Assistant Camp Officer in the Camp No.1 of No.29 Party (NEC) during field season 1996-97 gave an offer of financial gain of Rs.1500/- to all



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8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls.

Thus by his above act, the said Shri S.K.Sen, Surveyor exhibited conduct unbecoming of a Govt. servant, thereby violated Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE III

The said Shri S.K.Sen, Surveyor who was appointed Assistant Camp Officer in the field Camp of No.29 Party (NEC) during the field season 1996-97, while engaged in fieldwork had misappropriated Govt. money amounting to Rs.30/- (Rupees thirty only) by raising inflated amount towards repair of vehicle."

After enquiry, out of the three articles of charges, Articles II and, III were not proved. What is left out is

Article-I of charge regarding instructing 8 verifiers to show 8 porters in their muster rolls against authorized strength of 4 porters, by adding 4 fictitious porters resulting in financial irregularities thereby the applicant failed to maintain absolute integrity acting in manner unbecoming of the Government servant in violation of Rule 3 (i) & (iii) of CCS (Conduct) Rules, 1964.

6. In a celebrated decision reported in (1994) 6 SCC 651 in the case of Tata Cellular vs. Union of India the Hon'ble Supreme Court has stated that in judicial review Court/Tribunals are not sitting as Appellate Authority, what is to be looked into is not the decision, but the decision making process to be correct or not. On perusal of the records, materials available on record, we

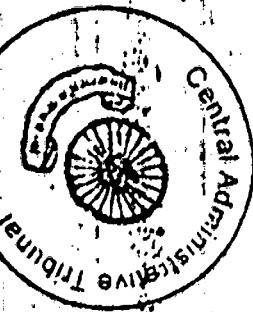
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find that reasonable opportunity was given to the applicant, in defending his case and also natural justice had been complied with. Applicant's allegation that he was not given reasonable opportunity vide Annexure-B was also appropriately replied by the respondents vide Annexure-C. The case of the respondents is that in furtherance of the allegation, received by the respondents, they have conducted preliminary enquiry in which the applicant has made a tacit admission that he was involved in the incident. For this purpose, the relevant paragraphs of the written statement of defence filed by the applicant at Annexure-D is abstracted herein below:-

".....Therefore my duties as Assistant Camp Officer was restricted to assist the Deputy Superintending Surveyor and the Camp Officer only, and by all means and implications I was to carry out their order and not to act independently without their directions, and accordingly in the instant case I actually carried out the order of my superiors, whatever they time to time instructed me to do.

Under circumstances, in my functioning as an Assistant Camp Officer, I had no option but to do and carry out their orders, in order to avoid insubordination and unnecessary complication.

..... Obviously my involvement into the matter may apparently sound as of a accomplice, since there was no written order of my superior in this regard, but in reality I supported them under complaining circumstances in order to reach to the root of conspiracy and accordingly I carried out their order without objection. However when I refused to take any financial benefit from them, they considered my presence in the camp unsafe and untimely I was directed to



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return to the Party Head Quarter and that too, prior to completion of my filed completion formalities."

By this statement the applicant has taken shelter under the plea that the alleged mischief/overtact was done by him to carry out the orders of his superiors whenever they from time to time instructed since he cannot act independently without their directions. He further stated therein that he had no option but to carry out his superior's orders in order to avoid unnecessary complications. He also stated that his involvement in the matter was that of an accomplice, since there was no written order of his superior in this regard. This document was sent by the applicant to the Director, Survey of India, N.E. Circle Office. It is also borne out that this document was mentioned and given to the applicant along with the article of charges well before the enquiry. His contention that such a document cannot be made use of in a regular enquiry proceeding is of no consequence. When a copy of such document is supplied which is relevant and pertinent, it is for the defence to put such document to test by cross-examining or by controverting the same by evidence otherwise it will be presumed that such document is taken for granted. Though rule of evidence is not strictly applicable in an enquiry proceedings, it is common sense that any document furnished to a delinquent employee will be made use of against him in the regular

enquiry whether it is preliminary report or statement given earlier.

Though the applicant tried to take us to the various evidences produced by the defence witnesses and tried to convince us that their evidences are false, we are not inclined to look into those evidences since we are not sitting as Appellate Authority. The veracity of the proceedings narrows down to the aspect whether the statement made by the applicant in admitting his involvement in the alleged offence can be relied on in the absence of proper explanation. It is not the benefit of doubt but preponderance applies in a disciplinary enquiry. The applicant had already admitted his involvement in the alleged offence, now, he cannot retrieve from his original position and also cannot take the plea of other delinquents also should have been given the similar treatment. The charges against the verifiers and other delinquent employees are different to that of the applicant. To show the bonafides of the Enquiry Officer, the Enquiry Officer found that two charges were not proved against the applicant but only one charge was proved. Therefore, one cannot say that the enquiry proceedings is vitiated or hit by malafide or irregularities.

8. Mr. P.K. Roy, counsel for the applicant has relied various decisions including the decision reported in (2002) 7 SCC 142 in the case of Sher Bahadur vs. Union of

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India & Others and argued that in enquiry proceedings requisite evidence must link the charged officer with the alleged misconduct, otherwise it will be a case of no evidence in law. On perusal of the facts of the cited case we find that this decision is not squarely applicable in the present case since there are ample evidences to link the applicant with the alleged misconduct. The Addl. C.G.S.C., on the other hand, has relied on a decision reported, in (2004) 8 SCC 218 in the case of Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal and contended that reinstatement cannot be taken into consideration by the Court unless and until the finding as to misconduct is not set aside. Reliance is also placed by Addl.C.G.S.C. to a decision reported in (2002) 3 SCC 641 in the case of State of U.P. and Others vs. Vijay Kumar Jain. We are in respectful agreement with above decisions, but the facts of those referred cases are different to this present case. The Sohan Lal's case (supra) is for reinstatement and the later one discussed about F.R. 56(c) and 56(j). These are all different concepts not applicable in this case. Counsel for the applicant also drawn our attention to a decision reported in 2003 (8) SCC 9 in the case of Dev Singh vs. Punjab Tourism Development Corporation Ltd. and Another and argued that if penalty of dismissal 'shocks' judicial conscience Court can mould the relief by awarding lesser

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unishment. It is, profitable to quote the following observations made by the Apex Court in the said case:-

"In such a situation to award the extreme punishment of dismissal according to the learned counsel would not only amount to a disproportionate punishment but also should disturb the conscience of this Court. The learned counsel in support of his argument, that it is open to the superior court to interfere with the quantum of punishment in a given set of facts, has relied upon the judgments of this Court in the case of 'Bhagat Ram v. State of H.P.', 'Ranjit Thakur v. Union of India' and 'U.P. SRTC v. Mahesh Kumar Mishra'.

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above-quoted judgments of this Court, if the punishment imposed by the Disciplinary Authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

9. Considering the entire aspects and fact that even assuming allegation of misconduct is true fact, the conspiracy theory of involvement of other delinquent employees cannot be ruled out and exoneration of such employees on the ground of no evidence appears to be not justified and the tacit admission of the employee in the



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Written statement in the preliminary enquiry and its consequential evidence alone cannot be a reason for awarding major punishment of compulsory retirement from service. But, considering the involvement of the applicant admitted by him and from such record since he cannot be equated with other delinquent employees, we are of the view that a lesser punishment of lowering three increments with no pay during the absented period but regularizing the said period nationally by adjusting with available leave, if any, for pensionary benefits will be sufficient in this case. For that purpose, we set aside the impugned order dated 31.3.2004 of penalty of compulsory retirement from service passed by the Disciplinary Authority as well as the order of the Appellate Authority dated 2.8.2005 and remit back the matter to the competent authority for setting aside the said punishment and his reinstatement in service with notional benefits within a period of three months from the date of receipt of this order.

The "Original Application is partly allowed as above. In the circumstances there is no order as to costs.

S. K. CHAKRABORTY
S/SECRETARY (A)

Date of Application : 25.9.06

Date on which copy is ready : 25.9.06

Date on which copy is delivered : 25.9.06

Certified to be true copy

25.9.06

Section Officer (A)
S. A. T. Court Room Bench
Guwahati

BB

ANNEXURE B
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To,

The Director
Survey of India
Meghalaya & Arunachal Pradesh, GDC
Malki, Shillong - 1,

OA No. 76 of 2005

S.K. Sen Applicant
-VS-

Union of India & Ors. Respondents

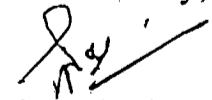
Sir,

I have to honour to forward herewith the certified copy of the judgment & order dated 22 / 09 / 06, passed in the above noted case by the Hon'ble Central Administrative Tribunal Guwahati.

The grievances made by me may kindly be redressed.

Date : 27/9/06

Yours faithfully,


(S.K. Sen)

Ex. Surveyor

Lowar Harisava

P.O. - Shillong - 4.

~~Certified to be true copy~~
S.K. Chakrabarty
Advocate
11/5/07

Received on
11/10/06
04/10/06

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ANNEXURE C

To,

The Director
Survey of India
Meghalaya & Arunachal Pradesh
GDC, Malki,
Shillong - 793001.

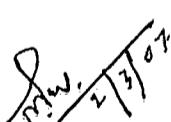
Sub:- Prayer for allowing me to join my duties in terms of the order dated 22.09.2006 passed by Hon'ble Central Administrative Tribunal in OA No. 76 of 2005.

Sir,

I have the honour to request you to kindly allow me to join in duties in terms of the direction given by the Hon'ble Central Administrative Tribunal Guwahati vide order dated 22.09.2006, in OA No. 76 of 2005. though the Department has taken the Judgment dated 22.09.2006, in the Hon'ble Guahau High Court by filling a writ petition, the Hon'ble High Court did not pass any order of stay of the said Judgment and order and consequently I should be allowed to join in my duties, in terms of the order passed by the Tribunal as aforesaid. The time-frame given by Hon'ble Tribunal for passing the order of my reinstatement is already over.

Anticipating your formal order in this regard, I hereby submit my joining report today.

Yours faithfully,


(Subrata Kumar Sen)

2nd March, 2007

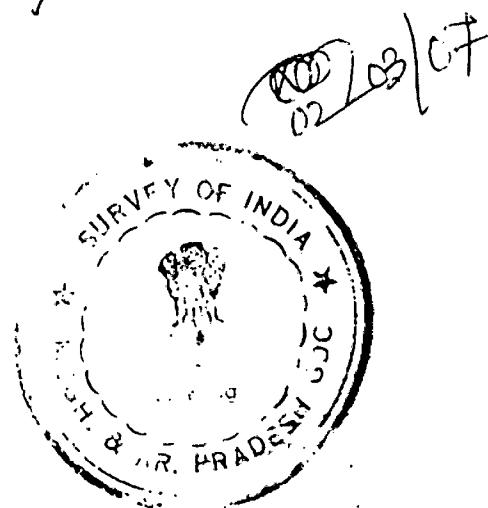
Surveyor, Erstwhile No. 80 (P) Party (NEC)
Resident of Lower Harisabha
P.O. Shillong - 4
District - East Khasi Hills,
Meghalaya.

certified to be true copy
S.K. Chakraborty
11/5/07

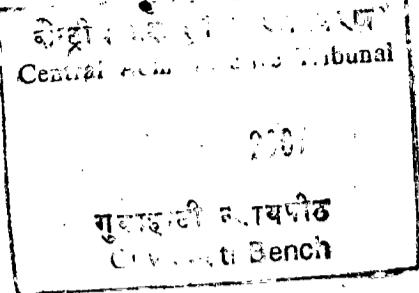
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Recd. one envelope from
Sri S. K. See containing
application dated 22
2nd March '07



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



Contempt Petition No.8/2007
In O.A.No.76/05

IN THE MATTER OF

Sri S.K.Sen

.....Petitioner

- Versus -

Sri R.N. Nahak,
Director, Survey of India,
Meghalaya, Arunachal Pradesh

.....Alleged Contemner/
Respondent No.2

IN THE MATTER OF

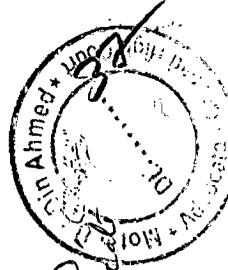
An affidavit for and on behalf of the
Respondent No.2.

I, Sri R.N.Nahak, Director, Survey of India, Meghalaya &
Arunachal Pradesh do hereby solemnly affirm and state as follows :-

1. That I am the Respondent No.2 in the instant Contempt Petition and have gone through the aforesaid Contempt Petition filed by the petitioner and have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.
2. At the outset I submit that I have the Highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any Order passed by the Hon'ble Tribunal. However, I tender unqualified and unconditional apology for any delay or lapse in the compliance of the Order dated 22.9.05 in O.A.76/05 pronounced by this Tribunal.

Ramnath Nahak

filed by the Respondent
Hassan Ahmed * 15/6/07
Advocate
15/6/07



3. That there is no any willful or deliberate and reckless disobedience of the aforesaid order by the Respondents. The Respondents has highest regards for this Hon'ble Tribunal and hence there is no question of showing any contempt to the orders of this Tribunal.

It is pertinent to mention here that on being aggrieved by the order dated 29.9.06, passed in O.A. 76/05, the Respondents preferred to exercise the right of appeal, which is substantive vested valuable right and creature of the statute. The respondents preferred the appeal within time prescribed for filing and accordingly it was admitted by the Hon'ble Court and as such it is a continuation of the O.A. 76/05. Therefore, the above statutory right cannot be curtailed by the petitioner by way of filing the instant Contempt Petition. Since the Hon'ble Courts are also zealous in guarding the aforesaid statutory right.

Furthermore, the aforesaid order has been challenged by the applicant vide W.P.(C) NO.529/07 before the Hon'ble High Court. It is settled law that an order/judgment may be legal or illegal, but for all times and purpose and it can not be said that an order is legal for some time or purpose and illegal for other time or purpose. The judgment has to be read/treat understood as a whole and one cannot adopt pick & choose method and as such the petitioner is not allowed to file this instant petition and simultaneously challenging the part of the order before Hon'ble High Court.

4. That with regard to the statement made in para 1 of the contempt petition, the answering respondents beg to submit that those are being particulars of the judgment dated 22.9.06 passed by the Hon'ble CAT in O.A. No.76/05 except that the applicant was compulsorily retired from Govt. service basing on the findings of a

Re: mnrth Nohak

regular inquiry conducted as per relevant rules and also the inquiry proceedings was not vitiated or hit by mala fide or irregularities. Therefore, statement made by the applicant is misleading to the Hon'ble Tribunal and liable to be rejected.

5. That with regard to the statement made in para 2, 5 and 8 of the contempt petition, the answering respondents offer no comments, which are based on records.

6. That with regard to the statement made in para 3 of the contempt petition, the answering respondents beg to submit that the application dated 27.9.06 submitted by the applicant received on 4.10.06 was forwarded to the Respondent No.1 since Respondent No.2 could not comply with the judgment order of Hon'ble CAT passed in OA No.76/05 without approval of respondent No.1 who being the appellate authority neither found reason to interfere with the decision of the Disciplinary Authority in imposing "Compulsory Retirement" to the applicant nor found any irregularity committed by him. More over the Misc.Petition in WP(C) No. 384/2007 filed by the department in the Hon'ble Guwahati High Court praying stay of operation of the judgment dated 22.9.06 in O.A. No.76/05 of Hon'ble CAT is yet to be heard. Hence it can not be stated that Hon'ble High Court has not granted stay. Therefore, non compliance of Hon'ble Tribunals order till date is not intentional but compulsion under circumstances and the statement made herein by the applicant is without any merit.

7. That with regard to the statement made in para 4 of the contempt petition, the answering respondents beg to submit that the submission made by the applicant is totally false and misleading to the Hon'ble Tribunal since on 02.03.07 Shri R.N. Nahak, Director, Meghalaya & Arunachal Pradesh GDC and Respondent No.2 was out of

Ramnath Nahak

station availing leave and rejoined duties only on 12.3.07, hence question of meeting him on 02.03.07 personally by the applicant and discussing regarding his re-instatement does not arise. At that time Shri U.N.Mishra, S.S was on current duty charge of Director, M&AP GDC and the applicant had not meet him also. Therefore, the false statement against Respondent No.2 is liable to be rejected.

8. That with regard to the statement made in para 6 of the contempt petition, the answering respondents beg to submit that since the Misc.Petition filed by the department in the Hon'ble High Court , where in prayer has been made for stay of operation of the aforesaid judgment of Hon'ble CAT which is yet to be heard, it is not correct to state that Hon'ble High court has not granted stay. Further, verbal discussion made during the hearing to admit the W.P. filed by the department in Hon'ble Guwahati High Court does not mean that Hon'ble Court has instructed to re-instate the applicant in service. Therefore, statement made by the applicant is devoid of any merit.

9. That with regard to the statement made in para 7 of the contempt petition, the answering respondents beg to submit that it is once again reiterated that there is neither slightest dis-regard to the dignity of the Hon'ble Tribunal nor any deliberate or willful disobedience on the part of the respondents by not implementing the direction of the aforesaid judgment, but due to compulsive circumstances of the case it can not be done.

10. That with regard to the statement made in para 9 of the contempt petition, the answering respondents beg to submit that as the statements made by the applicant are mostly misleading and false, prayer made by him is devoid of merit hence not tenable.

Remnath Nahak

11. That it is stated that Respondent No.2 has the highest respect for the orders of Hon'ble Central Administrative Tribunal, Guwahati Bench. The respondent therefore prays that in the circumstances of the case mentioned above, the Hon'ble Central Administrative Tribunal, Guwahati Bench may be pleased to exempt the respondent from the contempt proceedings and drop the same for interest of justice and equity. Since the purpose and object of the CRS/premature retirement of any employee is to weed out the inefficient, the corrupt, the dishonest or the dead wood from the Govt. service only

Remnath Nahar

AFFIDAVIT

I, Sri R.N. Nahak, Director, Survey of India, Meghalaya & Agunachal Pradesh, son of Late Kuber Nahak aged about 54 years do hereby solemnly affirm and state as follows.

That I am the Respondent No.2 in the above case and I am fully acquainted with the facts and circumstances of the case.

That, the statements made in para 1 to 11 of the affidavit are true to my knowledge, belief and information based on the record and nothing has been suppressed thereof.

And I sign this affidavit/report on this 7th day of June, 2007 at Gauhati.

Identified by



ADVOCATE



Deponent
Ramnath Nahak

Solemnly affirm and declare before me by the deponent who is identified by M. H. Ahmed Advocate at Gauhati on this 15th day of June 2007 at Gauhati.