

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : ----- / 2009 3/12/09

2. Transfer Application No : ----- /2009 in O.A. No. -----

3. Misc. Petition No : ----- /2009 in O.A. No. -----

4. Contempt Petition No : 11 /2009 in O.A. No. 284/06, 25/08, 26/08, 44/08, 45/08

5. Review Application No : ----- /2009 in O.A. No. -----

6. Execution Petition No : ----- /2009 in O.A. No. -----

Applicant (S) : Sri MaDhuryya Kumar Gogoi

Respondent (S) : Sri P. J. Thomas Mops.

Advocate for the : Mr. K.N. Choudhury, Sp. Advocate
(Applicant (S)) Mr. B. Choudhury or Mr. M. Mahanta

Advocate for the : -----
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<u>3/12/09</u> <u>This Contempt Petition has been filed by the Applicant with a prayer for issue show cause notice to the respondents/ Contamners and take appropriate action for wilful and intentional violation of the Common order dated 27.3.09 passed by this Hon'ble Tribunal in OA Nos 284/06, 25/08, 26/08, 44/08 and 45/08.</u> <u>Laid before the Hon'ble Court for favor of orders.</u>	08.12.2009	Since it is a fresh C.P it should be placed before Division Bench. List on 16.12.2009.  (Mukesh Kr. Gupta) Member (J)
	16.12.2009	None for the applicant despite second call. In the first call the matter was passed over on the request of proxy counsel. In the circumstances list on 8.1.2010.  (Madan Kr. Chaturvedi) Member (A)
	/pg/	 (Mukesh Kr. Gupta) Member (J)

~~Section Officer (T)~~
3/12/09

- 2 -

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M.P. 11/2009 in O.A. 248 of 2009

8.1.2010 List the matter on 1.2.2010 along with
O.A.No.248 of 2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

C.P.11 of 09 in O.A.284 of 06&25,26,44,45 of 2008

8.1.2010 It is alleged that direction issued vide order dated 27.3.2009 in O.A. Nos. 284 of 2006, 25/2008, 26/2008, 44/ 2008 and 45/2008 have been violated willfully and intentionally. No action have been taken by the Respondents as per direction issued by this Tribunal. An averment made to this effect is ~~made~~ in para 7 of the Contempt Petition.

Prima facie contempt case has been made out.

Issue notice to respondent No.2 & 3 for time being.

Returnable by 8.2.2010.

Personal appearance is dispensed with for the time being.

No M.P. has been filed in present O.A. , as reflected in this case and accordingly M.P need not be shown in the cause list on the next date of hearing.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

1. Notice issued.
2. No Service report.
3. no reply filed:
27/1/10

8.02.2010 Mrs.M.Das, learned Sr.C.G.S.C. entering appearance on behalf of Respondents states that a writ petition has been preferred after issuance of notice in the present contempt proceeding, which is listed today before the Hon'ble High Court.

In the circumstances, adjourned to

18.02.2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

8.2.2010
Contempt No. 263
filed Affidavit, copy
served
18/2/2010 Abidavite filed.
P.M. 22/2/2011 /bb/

18.02.2010 It has been stated by learned counsel for Respondents that Writ Petition No. 915 of 2010 has been preferred against the order dated 27th March 2009 against which the present C.P. is filed. It is admitted by Mrs. M. Das, learned Sr. Standing counsel for the Respondents that the said Writ Petition has been filed only after the notices were issued in the present C.P. It was further stated that vide order dated 08th February 2010, notices have been issued in the said Writ petition and the matter has been listed for hearing in 1st week of March, 2010 itself. Therefore, it is prayed that there is no justification to pass any order in present C.P. Without making any observations on the merits of the C.P., we would like to await the decision of the said Writ Petition particularly, when it has been urged that stay has been refused in the said writ petition by Hon'ble Gauhati High Court.

List the matter on 26th March 2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

lm/

26.03.2010 Mr. S.N. Tamuly, learned counsel for Respondents appeared and states that written statement has already been filed on 25th March 2010. Learned counsel for Applicant seeks four weeks time to file rejoinder.

Rejoinder
26/03/10

List on 27th April 2010.

(Madan Kr. Chaturvedi)
Member (A)

/pb/

C.P. No.11 of 2009

Bench of Mr. Justice Arun Kumar on 26.03.2020 (JUD) Being Division Bench matter list on 09th

April 2010.

AKH. 28/12/1967 10:00 AM 1001 1001

(Madan Kr. Chaturvedi)
'Member (A)

Programs will be written and tested

Mr.K.N.Choudhury, learned Sr. Advocate appeared for applicant and Mrs.M.Das, learned Sr.C.G.S.C. appeared for contemner Nos. 2 & 3.

Present Contempt Petition had been preferred alleging willful disobedience of the direction contained vide common order dated 27.03.2009 in O.A. 284/2006 and analogous proceedings.

The basic direction issued to the respondents had been to consider applicant's promotion afresh and take appropriate decision. Thereafter aforesaid judgment had been taken in appeal by filing W.P.(C) No.915/2010 before the Hon'ble Gauhati High Court. Though notices were issued in said proceedings on 08.02.2010, but stay was refused. Affidavits were filed by Sri V.K.Shukla, Member (Services) in the Office of Chairman of Telecom Commission as well as Sri Vipan Kumar, Sr. Deputy Director General (Vigilance), Deptt. of Telecom on 18.02.2010 and 08.02.2010 respectively contesting the contempt petition.

Mr.K.N.Chaudhury, learned Sr.
Advocate appearing for applicant points out
that on 12.03.2010 Presidential order has
been issued whereby vide para 4 the
competent authority after obtaining legal

Contd'

C.P.11-09+

09.04.2010

Mr.K.N.Choudhury, learned Sr.

Advocate appeared for applicant and
Mrs.M.Das, learned Sr.C.G.S.C. appeared for
contemner Nos. 2 & 3.

Present Contempt Petition had been
preferred alleging willful disobedience of the
direction contained vide common order
dated 27.03.2009 in O.A. 284/2006 and
analogous proceedings.

The basic direction issued to the
respondents had been to consider the
matter afresh and take appropriate decision.
Thereafter aforesaid judgment had been
taken in appeal by filing W.P.(C) No.915/2010
before the Hon'ble Gauhati High Court.
Though notices were issued in said
proceedings on 08.02.2010, but stay was
refused. Affidavits were filed by Sri V.K.Shukla,
Member (Services) in the Office of Chairman
of Telecom Commission as well as Sri Vipan
Kumar, Sr. Deputy Director General
(Vigilance), Deptt. of Telecom on 18.02.2010
and 08.02.2010 respectively contesting
present contempt petition.

Mr.K.N.Choudhury, learned Sr.
Advocate appearing for applicant points out
that on 12.03.2010 Presidential order has
been issued whereby vide para 4 the
competent authority after obtaining legal
advice, has decided to implement said
judgment and direction subject to outcome
of the writ petition pending, as noticed
hereinabove. In such circumstances, it was
Confd...

Contd.
09.04.2010

canvassed that though competent authority has taken a decision to implement the direction contained vide order dated 27.03.2009, but same has not yet been given effect to without any justification.

On examination of the matter and with reference to stand taken by both sides vis-à-vis latest development in the shape of order dated 12.03.2010, we have no doubt that though competent authority has decided to implement the judgment and direction of this Tribunal, but someone is sitting over the matter and not implementing the same which is not expected in society governed by the rule of law. We do not approve such practice.

In the circumstances, C.P. is closed, notices are discharged, expecting the competent authority to take final decision implementing the directions of this Tribunal within a period of four weeks from the date of receipt of this order.

 (Madan Kumar Chaturvedi)  (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

No. 25-52/2006-Vig.II
Government of India
Ministry of Communications & IT
Department of Telecom

400 31
Room No. 915
Sanchar Bhawan
20, Ashoka Road
New Delhi-110117

Dated the 12 March, 2010

O R D E R

Disciplinary cases were initiated under Rule 14 of the CCS (CCA) Rules, 1965 against Shri M.K. Gogoi, DGM, Assam Telecom Circle for the irregularities in the appointment of casual labourers as Temporary Status Mazdoors (TSMs) in various sub-divisions of Assam Telecom Circle. All the cases have been decided and penalties have been imposed on Shri Gogoi vide orders No. 8/15/2001-Vig.II dated 2.5.2006, No. 8/180/2000-Vig.II dated 2.5.2006, No. 8/165/2001-Vig.II dated 20.6.2007, No. 8/167/2001-Vig.II dated 30.5.2007, No. 8/181/2000-Vig.II dated 30.5.2007 and No. 8/186/2001-Vig.II dated 30.5.2007.

2. Aggrieved by the aforesaid orders, Shri Gogoi approached the CAT, Guwahati Bench and filed OA Nos. 119/04, 284/06, 25/08, 26/08, 44/08 & 45/08. The CAT has clubbed all the OAs and has passed a single order dated 27.3.2009 quashing all the penalty orders. The CAT has allowed the OAs on the following grounds :-

- i) Shri A.K. Sarkar who was a Member of the Committee to select the Temporary Status Mazdoors (TSM) was exonerated and let off by the disciplinary authority.
- ii) No action has been taken against the 221 persons who were irregularly appointed as TSM and they continued to be with the respondents.
- iii) The applicant has been picked up singularly and the respondents have adopted pick and choose policy which is violative of Articles 14 & 16 of the Constitution of India and not sustainable in the eyes of law.
- iv) Action against the applicant is not justified and smack of partiality and vendetta.

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3. In consultation with the Legal Advisor, DOT, it was decided to file an appeal in the Guwahati High Court against the judgement of CAT, Guwahati Bench dated 27.3.2009. Accordingly, writ petition No. 915/2010 has been filed in the Guwahati High Court against the aforesaid order of CAT. Along with the writ petition, a miscellaneous application No. 333/2010 was also filed in the High Court of Guwahati praying for stay on the operation of CAT order dated 27.3.2009. Hon'ble Guwahati High Court have admitted the writ petition of the Department but have not allowed stay on the operation of the CAT order, vide their order dated 9.2.2010.

4. The competent authority considered the records of the case, the deliberations of the Hon'ble Tribunal, made in their order dated 27.3.2009, the ground on which the Hon'ble Tribunal quashed the impugned penalty order, the advice of Legal Advisor, etc. and came to a conclusion that the order of the Hon'ble CAT dated 27.3.2009 in the said OAs be implemented subject to the outcome of the writ petition pending in the Guwahati High Court and the consequential appeal/review/SLP, etc., if any, arising out of the Writ Petition. The competent authority, i.e. the President has ordered that the penalties imposed on Shri M.K. Gogoi vide orders No. 8/15/2001-Vig.II dated 2.5.2006, No. 8/180/2000-Vig.II dated 2.5.2006, No. 8/165/2001-Vig.II dated 20.6.2007, No. 8/167/2001-Vig.II dated 30.5.2007, No. 8/181/2000-Vig.II dated 30.5.2007 and No. 8/186/2001-Vig.II dated 30.5.2007, be withdrawn immediately subject to the outcome of the writ petition pending in the Guwahati High Court and the consequential appeal/review/SLP, etc., if any.

5. The President has further ordered that the benefit of Pay and allowances, promotion, etc. accruing to Shri M.K. Gogoi, DGM by virtue of withdrawal of the penalties shall be allowed now which would be subject to the outcome of the writ petition and the consequential appeal/review/SLP etc., if any.

6. The receipt of this order shall be acknowledged by Shri M.K. Gogoi.

By order and in the name of the President.


(A.K. Patro)

Under Secretary to the Govt. of India

Shri M.K. Gogoi
Dy. General Manager
Assam Telecom Circle.

(Through the CGM Telecom, Assam Telecom Circle, Guwahati)

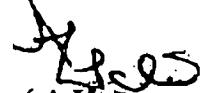
Contd....3

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Copy to :-

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1. The CGM Telecom, Assam Telecom Circle, Guwahati. The enclosed copy of the Order may please be delivered to Shri M.K. Gogoi, and his dated acknowledgement obtained and forwarded to this office for record.
2. CS to Advisor (HRD), Department of Telecom, Sanchar Bhawan, New Delhi-110001. The order may be placed in the CR dossier of the officer.
3. Deputy Director General (Estt.), Department of Telecom, Sanchar Bhawan, New Delhi-110117.
4. STG-III Section, Department of Telecom, Sanchar Bhawan, New Delhi-110117.
5. CCA, Assam Telecom Circle, Guwahati.
6. GM (Personnel), BSNL, Corporate Office, New Delhi.
7. File No. 8/15/2001-Vig.II, No. 8/180/2000-Vig.II, No. 8/165/2001-Vig.II, No. 8/167/2001-Vig.II, No. 8/181/2000-Vig.II and No. 8/186/2001-Vig.II.
8. Order Bundle.
9. Office Copy.


(A.K. Patro)

Under Secretary to the Govt. of India

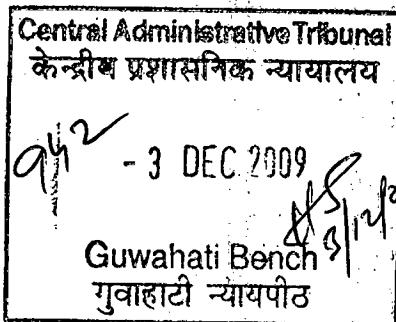
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH :: GUWAHATI

CONTEMPT PETITION NO. 11 /2009.

Sri Madhuryya Kumar Gogoi

..... Petitioner.



- Versus -

Sri P.J.Thomas and others.

..... Contemners/ Respondents

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FILED BY

Bikram Choudhury
27.11.09

ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI

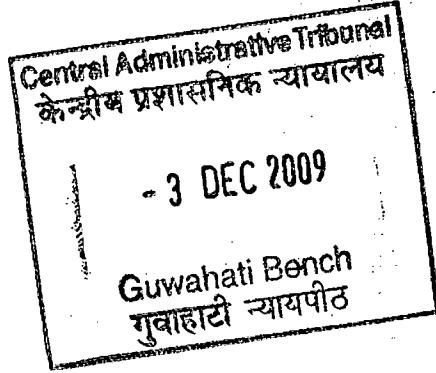
CONTEMPT PETITION NO. 11/2009

IN O.A. NOS NO 284/06, 25/08, 26/08, 44/08 AND 45/08.

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Madhuryya Kumar Gogoi
Filed by the petitioner through
Bikram Choudhury, Advocate
27.11.09.

IN THE MATTER OF:

An application under section 17 of the Administrative Tribunals Act, 1985, praying for punishment of the contemners/respondents for non compliance /violation of the common order dt: 27.3.09 passed in O.A. NOS 284/06, 25/08, 26/08, 44/08 and 45/08.



-AND-

IN THE MATTER OF:

Intentional and willful disobedience of the common order dated 27.3.09 passed by this Hon'ble Tribunal in O.A. NOS 284/06, 25/08, 26/08, 44/08 and 45/08.

-AND-

IN THE MATTER OF:

Sri Madhuryya Kumar Gogoi,
S/O Late Debeswar Gogoi,
Presently serving as Deputy General
Manager (Planning), Office of the General
Manager, Assam Telecom Circle, BSNL,
Panbazar, Guwahati-1.

.....Petitioner.

Wof

-VS-

1. Sri P.J. Thomas

Secretary to the Government of India-cum-Chairman of Telecom Commission, Ministry of Communications and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20-Ashoka Road, New Delhi.

2. Sri V.K. Shukla

Member (Service)

Office of the Chairman of Telecom Commission, Ministry of Communications and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20-Ashoka Road, New Delhi.

3. Sri Vipin Kumar

Senior Deputy Director General (Vigilance), Department of Telecom, West Block - II, Wing - 2 Ground Floor, R.K. Puram, New Delhi - 66.

.....Contemnners/Respondents.

The humble petitioner above-named

MOST RESPECTFULLY BEGS TO STATE:

1. That the petitioner is presently serving the Bharat Sanchar Nigam Limited as Deputy General Manager (Planning), Office of the General Manager, Assam Telecom Circle, BSNL, Panbazar, Guwahati on deputation. The petitioner states that he is not an officer absorbed in BSNL, but a Group -A officer of the Government of India under Telecommunication Department.

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Guwahati Bench

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2. That on coming out successful in competitive examination the petitioner joined the Department of Telecommunication as Assistant Divisional Engineer (Group-A) by order dt: 22.9.89. Thereafter he was promoted to the post of Telecom District Engineer (Senior Time Scale) in the year 1992.

3. That while working as TDE, Tezpur the petitioner issued provisional order dt: 27.5.96 conferring temporary status to 221 casual mazdoors on the basis of the recommendation given by a duly constituted Selection Committee, wherein the petitioner was not a member of the Committee. Subsequently the provisional order dt: 27.5.96 was cancelled by the petitioner vide order dt: 20.10.97, as directed by the higher authorities. However, the then TDM by order dt: 19.11.97 revoked the order dt: 20.10.97. Against this backdrop the authorities initiated 6 (six) disciplinary proceedings against the petitioner for issuing order dt: 27.5.96 by alleging identical charges and allegations in each of the proceedings. The petitioner participated in each of the proceeding. On completion of the first two proceedings the disciplinary authority imposed upon the petitioner in each of the proceedings the penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs. 14,300-400-18300 for a period of 2 years. While the first two proceedings were in progress the petitioner received the third and the 3 remaining charge memorandums wherein the charges were also identical as given in the first two proceedings. In these proceedings, the inquiry officer held the charge as not proved, but the disciplinary authority disagreed with the findings of the inquiry officer and held the charge as proved. Being aggrieved, the petitioner filed O.A.284/2006 before this Hon'ble Tribunal challenging the action of the authorities to initiate 6 (six) disciplinary proceedings against him for the same cause of action and also the two penalty orders relating to the first two proceedings. During the pendency of the above original application the petitioner received the penalty orders in respect of the remaining four proceedings. In each of the proceedings the applicant has been imposed the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs 14,300-400-18,300/ for a period of 2 years, with further direction that the petitioner will not earn increments of pay during the period of reduction and on expiry of such

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- 3 DEC 2009

Guwahati Bench

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period, the reduction will have the effect of postponing his future increment of pay. The petitioner then filed O.A. no 25/08, O.A.26/08, O.A. 44/08 and O.A. 45/08 challenging the action of the authorities to initiate 6 (six) disciplinary proceedings for the same cause of action, each of the charge memorandum and the subsequent penalty order imposed in each of the proceedings.

- That on 27.3.09, this Hon'ble Tribunal after hearing all parties and on perusal of the records quashed and set aside the impugned action of the authorities/respondents /contemners on the ground that the act of picking the petitioner singularly and failure to take action against others who are also equally responsible for grant of temporary status is violative of Article 14 and 16 of the Constitution of India and thus not sustainable in law.

Copy of the order dt: 27.3.09 is annexed herewith and marked as Annexure-I.

- That thereafter the petitioner on receiving a copy of the Hon'ble Tribunal's orders dt: 27.3.09, he submitted a representation alongwith the order before the contemner/respondent no 2 directly for putting his case before the contemner/respondent no 1 and also through proper channel on 30.3.09, with prayer for regularization in Junior Administrative Grade, restoration of his salary and all other consequential benefits, pursuant to the order of this Hon'ble Tribunal. The application was duly forwarded by the office of Chief General Manager, BSNL, Assam Telecom Circle, to the Director (HRD), BSNL, New Delhi vide letter no STES-3/19/89 dt: 16.4.09 for necessary action.

On 23.4.09, the office of the Director (HRD), BSNL, New Delhi vide letter no 314-33/2008-Pers.I dt: 23.4.09 forwarded the letter dt: 16.4.09 and the representation dt: 30.3.09 submitted by the petitioner to the Director (Staff), Department of Telecommunication, New Delhi for taking further necessary action from their end.

The petitioner states that the although the contemner/respondent no 2 was not a party in the original application, all along he was informed for due implementation and

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- 3 DEC 2009

Guwahati Bench
गुवाहाटी न्यायालय

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further he is the authority who works under the contemner no 1 /respondent no 1 and deals with cases that of the petitioner and it is through him that the contemner/respondent no 1 process the relevant cases and obtains necessary views/opinions from other authorities, before giving his final decision. The Director (Staff) and the contemner /respondent no 2 works under the contemner/respondent no 2 and contributes in the dealing of the relevant cases by the contemner/respondent no 1

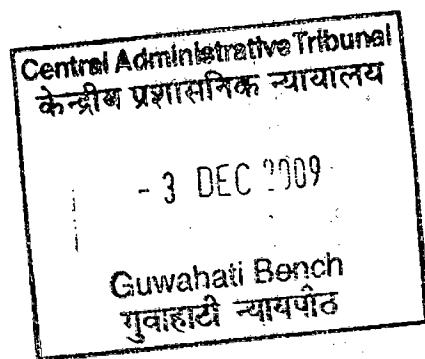
Copies of the representation dt: 30.3.09, letter dt: 16.4.09 and letter dt: 23.4.09 are annexed herewith and marked as Annexure-II, III and IV respectively.

6. That in the meanwhile on 16.4.09, the petitioner submitted another representation before the Chief General Manager, BSNL, Assam Telecom Circle for re-fixation of his pay pursuant to the order dt: 30.3.09 of this Hon'ble Tribunal. But till date there has been no response from the authorities.

Copy of the representation dt: 16.4.09 is annexed herewith and marked as Annexure-V.

7. That, thereafter the petitioner contacted/visited the office of the contemners/ respondents several times i.e. on 22.4.09, 21.6.09, 15.7.09 and also on 15.10.09, when he had to go to New Delhi for official works, with regard to the implementation of the order dt: 27.3.09 of this Hon'ble Tribunal and every time the petitioner was verbally assured that it is under process and necessary orders will be issued at the earliest. In this connection the petitioner submitted reminder letters dt: 21.6.09 and 19.8.09 before the Member (Service), Department of Telecommunication for implementation of the direction of the Hon'ble Tribunal, but till date there has been no response from any end and as a result the petitioner has been denied of his due pay, promotion to Senior Administrative Grade and other consequential benefits. The petitioner further states that he is still receiving the pay of Rs 14,300/- that was fixed after imposition of first penalty on 1.6.06 (at present after implementation of recommendation of Pay Commission the petitioner is receiving Rs 15,100/- since 1.8.08, which is the equivalent scale to Rs 14,300/-).

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Copy of the reminder letter dt: 19.8.09 and the office pass dt: 15.10.09 showing his visit to the office of contemners office is annexed herewith and marked as Annexure-VI and VII respectively.

8. That the petitioner begs to state and submit from the facts narrated above it will be apparent that the contemners/respondents has deliberately and intentionally disobeyed and violated the directions of this Hon'ble Tribunal given in order dt: 27.3.09 (Annexure-I).
9. That the petitioner submits that the contemners/respondents knowingly, willfully and intentionally flouted, disobeyed and shown disregard to the aforesaid order and have not yet complied with the direction given by this Hon'ble Tribunal. The aforesaid action on the part of the contemners/respondents is contemptuous in the interest of law, justice and equity and there can be no reasonable explanation for such act of contempt on the face of the record.
10. That the petitioner states that the contemners are liable to be prosecuted and punished under the contempt of courts proceeding.
11. That this application is filed bonafide and for the ends of justice.

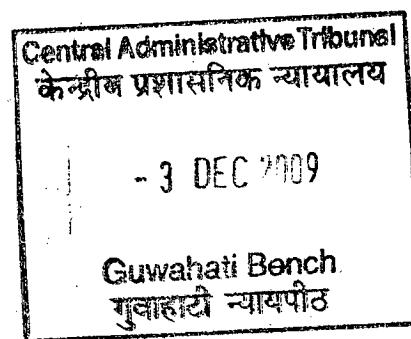
It is, therefore, prayed that Your Lordships would be pleased to consider what is stated above, issue show cause notice to the respondents/contemners and take appropriate action for willful and intentional violation of the common order dt: 27.3.09 passed by this Hon'ble Tribunal in O.A. Nos 284/06, 25/08, 26/08, 44/08 and 45/08 and after hearing the causes shown, if any be pleased to draw a contempt proceeding against the contemners/respondents for imposition of appropriate punishment under the Contempt of Courts Act 1971 and/or pass such

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order/orders as Your Lordships may
deem fit and proper.

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



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- 3 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठAFFIDAVIT

I, I, SRI MADHURYA KUMAR GOGOI, son of Late Debeswar Gogoi, resident of 2 C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati -20, in the district of Kamrup Assam, presently serving as Deputy General Manager (Planning), Office of the General Manager, Assam Telecom Circle, B.S.N.L., Panbazar, Guwahati - 781001 in the district of Kamrup, do hereby solemnly affirm and state as follows :-

1. That I the petitioner of the accompanying contempt petition and I am fully conversant with the facts and circumstances of the case.
2. That, the statements made in this affidavit and in paragraphs Nos. 1, 2, 5, 6, 7(P), 8, 9, 10 and 11 of the petition are true to the best of my knowledge; those made in paragraphs Nos. 3, 4 and 7(P) being matters of record, are true to my information derived therefrom which I believe to be true and the rest are humble submissions before this Hon'ble Court.

And I sign this affidavit on this 27th day of November, 2009 at Guwahati.

Identified by

Bikram Choudhury

Advocate's

Madhurya Kumar Gogoi

DE PONENT

Solemnly affirmed and declared before me by the deponent who is identified by Sri *Bikram Choudhury* on this 27th day of November 2009 at Guwahati.

Abhijit Rayamajhi
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 3 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

DRAFT CHARGE

Whereas the contemnors namely 1. Sri P.J. Thomas, Secretary to the Government of India-cum-Chairman of Telecom Commission, Ministry of Communications and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20-Ashoka Road, New Delhi, 2. Sri V.K. Shukla, Member(Service), Office of the Chairman of Telecom Commission, Ministry of Communications and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20-Ashoka Road, New Delhi, 3. Sri Vipin Kumar, Senior Deputy Director General (Vigilance), Department of Telecom, West Block-II, Wing-2 Ground Floor, R.K.Puram, New Delhi-66, are liable for contempt of courts proceeding for their willful and deliberate violation of the common judgment and order dated 27.03.2009 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati in Original Application Nos. 284/06, 25/08, 26/08, 44/08 and 45/08.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 284/06, M.P.130/05 (in O.A. 119/04), O.A.
25/08, 26/08, 44/08 & 45/08.

Date of Order : This the 27th day of March, 2009.

THE HON'BLE MR A. K. GAUR, JUDICIAL MEMBER

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

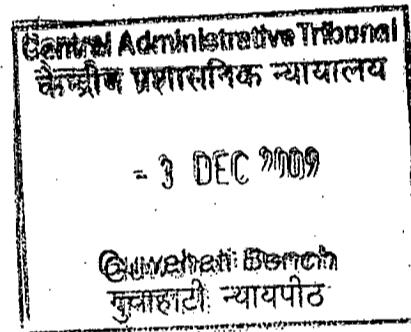
Shri Madhurya Kumar Gogoi
S/o late Debeswar Gogoi
Presently working Deputy General Manager
(Planning and Administration)
Office of the General Manager,
Kamrup Telecom District B.S.N.L,
Panbazar, Guwahati-781001.

.....Applicant in all
the above cases

By Advocate Mr K.N.Choudhury, B. Choudhury

-Versus-

1. Union of India,
represented by the Secretary to the
Government of India cum Chairman of
Telecom Commission, Ministry of
Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.



2. Senior Deputy Director General (Vigilance)
Department of Telecom, West Block-II,
Wing-2, Ground Floor,
R.K.Puram, New Delhi-66.

.....Respondents in all
the above cases

By Mr G.Baishya, Sr.C.G.S.C. & Miss D. Kar

ORDER

KHUSHIRAM (MEMBER-A)

All these 5 Original Applications have been filed by Sri
M.K.Gogoi, former Telecom District Manager (TDM) Tezpur and
presently Deputy General Manager, Guwahati for issuing 6 charge
sheets to him by the department for granting temporary status

2

Attested by
Choudhury
Adv.

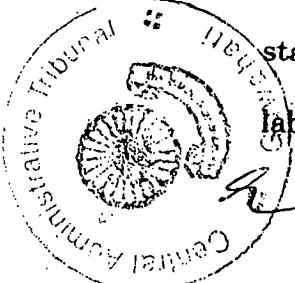
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench
गুৱাহাটী ন্যায়পৌঁঁ
3 DEC 2009

provisionally to 221 casual labourers in Tezpur and thus he failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

The details of each case is shown as under :

Charge Sheet No.	Case No.	No. of labourers Granted TSM	Divn/Sub-Dvn	Date of penalty Order
I,	O.A.284/06	34	North Lakhimpur SDEP Tezpur	23.05.06
II		22	Dhemaji	19.05.06
III	O.A.25/08	22	Udalguri	30.05.07
IV	O.A.26/08	21	SDOT Tezpur	30.05.07
V	O.A.44/08	15	SDE (Comp) Tezpur	30.05.07
VI	O.A.45/08	7		20.06.07

In compliance with the DOT circular dated 17.12.1993 for grant of temporary status to the Mazdoors working in the department continuously from 31.3.1985 to 22.6.1988. Copy of which was circulated vide circular dated 28.1.94, the applicant granted temporary status on the recommendation of a Committee consisting of 4 officers from different circles of the department including Accounts Officer, who was custodian of the payment vouchers. The Committee verified the names of eligible casual Mazdoors forwarded by the SDOs. The applicant on recommendation of the Committee conferred temporary status provisionally on 221 casual labourers vide order dated 27.10.1996. The Chief General Manager, Assam Circle, Guwahati directed to cancel provisional order conferring TSM to casual labourers and ordered to start the process for further scrutiny a-fresh to identify the casual labourers entitled for temporary status within a period of one month.

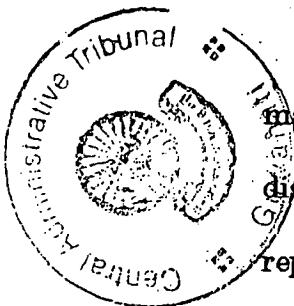


Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench
गুৱাহাটী ন্যায়পুর

- 3 DEC 2009

This order dated 20.10.97 (Annexure-IV) of withdrawal of TSM was subsequently revoked by TDM after one month vide order dated 19.11.97 (Annexure-V) under pressure of the Union. However, the applicant was charge sheeted under Rule 14 of CCS(CCA) Rules 1965 alleging that he, in collusion with the members of the Selection Committee, regularized casual labourers of North Lakhimpur. Thereafter, the applicant received other 5 memorandam one after another on the same allegations/charges in respect of different sub divisions. The enquiry officer held the charge against the applicant as not proved but the disciplinary authority disagreeing with the Inquiry Officer held the charges as proved. After accepting the advice of the UPSC Disciplinary Authority imposed the penalty of reduction of pay to a lower stage by 3 stages in the time scale of pay of Rs. 14300-400-18300/- for a period of 2 years in two cases respectively. The applicant challenged the above action of the respondents by filing O.A284/06. During pendency of the O.A. As the applicant received four penalty orders alongwith UPSC advice in respect of the four remaining proceedings which is apparently the basis of impugned action. On completion of all the proceedings and imposition of penalty the applicant filed O.A.25/08, 26/08, 44/08 and 45/08 challenging each of the four penalty orders and the four proceedings. The applicant has challenged the action of the respondents on the following grounds :

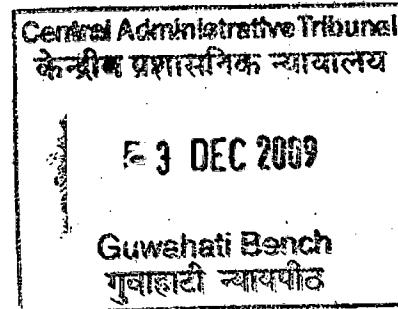
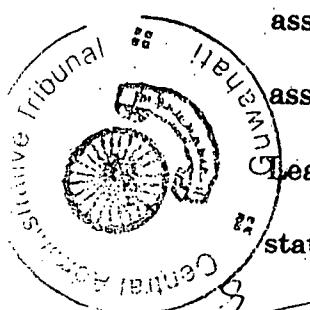
The disciplinary authority is not legally justified in issuing as many as 6 (six) charge sheet for the same cause of action. The disciplinary authority acted irrationally and arbitrarily. Secondly, report of the CBI which is apparently the basis of impugned action has



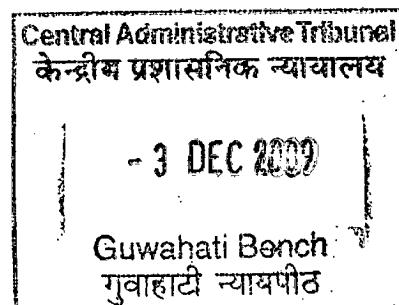
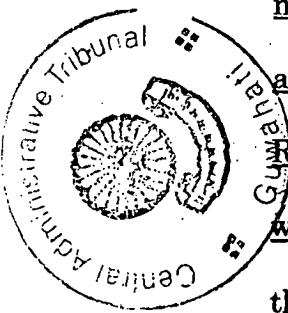
not been furnished to the applicant violating the principle of natural justice. Thirdly, 3 different Enquiry Officer came to different findings on the same cause of action is in itself a good enough reason for interfering with the inquiries in question to prevent miscarriage of justice. In not initiating any proceeding against Sri B.K.Goswami, the then TDM Tezpur who vide order dated 19.11.97 revoked the cancellation order dated 20.10.97 issued by the applicant smacks of discrimination and colourable exercise of power by the disciplinary authority.

2. The respondents have filed written statement stating that the officer committed the irregularities. The charge sheets were issued to the officer after due consultation with the CVC and after following the prescribed procedure. Hence it is not correct that these charge sheets were identical. The Hon'ble Tribunal in earlier proceedings have rightly upheld the separate charge sheets since the disciplinary proceeding are statutory in nature, the prescribed procedure has to be followed and no step can be avoided. There was adequate evidence on record to hold the charges as fully proved. The disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the penalty. Hence the O.A filed by the applicant deserves to be dismissed.

3. We have heard Mr K.N.Choudhury, learned Sr. counsel assisted by Mr B.Choudhury and Mr G.Baishya, learned Sr.C.G.S.C assisted by Miss D. Kar and perused the materials placed on record. Learned counsel for the applicant argued that conferment of temporary status in compliance of the policy of the Government was carried out by



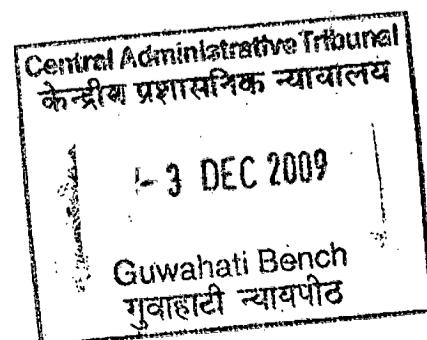
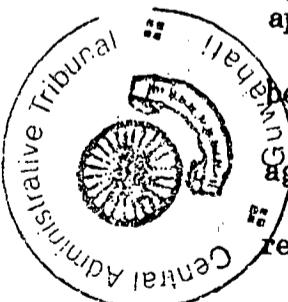
the applicant on the recommendation of the Committee consisting of 4 officers and the provisional conferment of temporary status was within the declared policy of the Government. The action of the applicant conferring temporary status to 221 Mazdoors under TDM Tezpur was ordered to be cancelled by the then Chief General Manager, Assam Telecom Circle, Guwahati in compliance of that order, the applicant withdrew the conferment of temporary status vide order dated 20.10.1997 and the said order of the applicant was again cancelled by the TDM Tezpur vide order dated 19.11.1997. Unless the TDM Tezpur who cancelled the withdrawal of TSM order of applicant and other officers who recommended conferment of temporary status on 221 casual labourers are proceeded against, the applicant cannot be singled out for panel action by the respondents. He has cited the decision reported in (1983) 4 SCC 225, Sengara Singh & Ors. Vs. State of Punjab and others, wherein it was held that arbitrary picking and choosing for reinstatement after mass dismissal violative of Article 14 – Mass dismissal of police personnel for misconduct of participation in unlawful agitation – But majority of them except the petitioners, reinstated and criminal prosecution against them withdrawn on the basis of recommendations of a committee comprising senior officers – Criteria for depriving the petitioners of the largesse of reinstatement not disclosed or unconvincing – Held dismissal of petitioners arbitrary and discriminatory. He also cited (2007) 7 SCC 206, Bongaigaon Refinery & Petrochemicals Ltd. and others vs. Girish Chandra Sarma, wherein it was held that well established proposition of law reiterated that courts cannot sit as appellate authority over the domestic enquiry.



However, the findings of the domestic enquiry in this case found unsustainable inasmuch as one person alone made scapegoat for collective decisions in which others also collectively participated.
Division Bench of High Court rightly set aside the penalty.

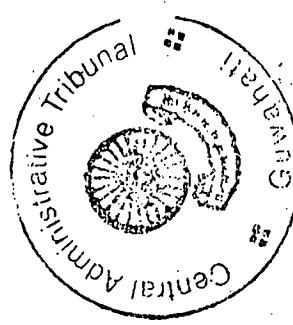
Mr G.Baishya, learned Sr.Standing counsel assisted by Miss D.Kar appearing for the respondents contended and vehemently defended the action of the respondents and tried to justify the action against the applicant.

4. After having gone through the arguments made by the learned counsel of the parties and perusal of the records, we feel that admittedly applicant had granted temporary status to 221 casual labourers on the recommendation of a Committee consisting with 4 other officers who have not been proceeded against by the respondents and one Shri A.K.Sarkar who was also a member of the said committee was exonerated and let off by the disciplinary authority. The action of the applicant withdrawing the grant of TSM vide order dated 20.10.1997 was further cancelled by the TDM Tezpur vide order dated 19.11.1997 and as a result the temporary status granted by the applicant continued to be enjoyed by 221 persons and respondents have not cared even to scrutinize their records to see whether action of the applicant was justified or not. Resultantly the 221 persons continued to be with the respondents without any action having been initiated against them, nor the TDM Tezpur has been asked to explain his action revoking the order of the applicant dated 20.10.1997 by which he had cancelled the temporary status granted provisionally to the 221 casual labourers. In this background it is apparent that respondents have not



been fair as far as they have acted by picking the applicant singularly. Failing to take action against others who are also equally responsible, if not more, for grant of temporary status to 221 persons; the respondents have adopted "pick and choose" policy which is violative of Article 14 & 16 of the Constitution and thus not sustainable in the eye of law. The citations submitted by the learned counsel for the applicant also strengthens the case of the applicant. In the above ~~conspicuous~~ facts and circumstances of the matter, action against the applicant is not justified and smack of partiality and vedentta and cannot be sustainable in the eye of law and accordingly the same is quashed and set aside. The respondents however, are at liberty to consider the matter a fresh and take appropriate action against all those who are responsible for the conferment of temporary status on 221 persons.

With the above order and observation all the O.As are disposed of. There will be no order as to costs.

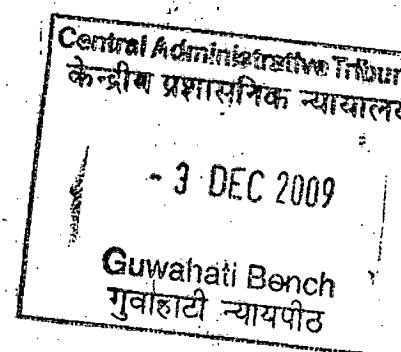


Date of Application : 15.6.09
 Date on which copy is ready : 17.6.09
 Date on which copy is delivered : 17.6.09
 Certified to be true copy

Section Officer (Judl)
 C. A. T. Guwahati Bench

Guwahati-5.

17/6/09



Dated at Guwahati, the 30th March, 2009

To

The Member (Services),
Govt. of India,
Department of Telecommunications,
Sanchar Bhawan,
20 Ashoka Road,
NEW DELHI – 110001.

(Through CGMT, Assam Circle, Guwahati)

Sub: -Request to hold early DPC in the Grade of JAG & SAG

Sir,

With due respect and humble submission I beg to state that I am 1986 batch of ITS Officer joined the Department in September 1989 and subsequently I have been promoted to the post of JAG (Adhoc) vide DOT order No. 314-1/98-STG.III dated 05-02-1998.

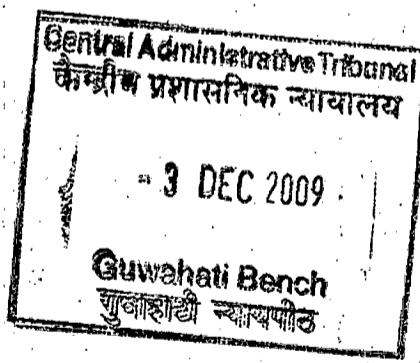
In the meantime the Department has issued charge sheets (six numbers) against me in 2001/2003. After the completion of the departmental proceedings I have been awarded six penalties for one cause of action. However, aggrieved by the penalty orders I filed application before the Hon'ble Central Administrative Tribunal Guwahati. The court after going in details quashed all the penalty orders vide its judgment dated 27/03/2009 (a copy enclosed).

In the circumstances I most fervently request your benign authority to consider my case in view of the Hon'ble CAT Guwahati order and issue necessary order to regularise me in JAG Grade and promote me to SAG cadre for which act of your kindness I shall remain ever grateful to you.

Thanking you,

Yours sincerely,

Encl: As above.



Chief General Manager Telecom
BSNL, Assam Telecom Circle
Panbazar, Guwahati - 781001

M.K.Gogoij
(M.K.Gogoij)
Dy. General Manager (Plg),
O/o Chief General Manager,
Assam Telecom Circle,
Panbazar, Guwahati-781001.

Attested by:
Choudhury XDW

✓ *✓21*
Bharat Sanchar Nigam Limited
(A Government of India Enterprises)
Office of the Chief General Manager, BSNL
Assam Telecom Circle: New Administrative Building
Panbazar Guwahati -781001.

No. STES- 3/19/89

To

Dated at Guwahati the 16/04/2009

The Director (HRD)
Bharat Sanchar Nigam Limited
Corporate Office
Bharat Sanchar Bhawan, (Opposite Hotel Janpath)
Janpath Road
New Delhi-110 001.

(Through proper Channel)

Sub:- Promotion to SAG of ITS Group 'A' - case of Shri M.K. Gogoi (Staff no. 9657), DGM(Plg), Circle Office, Guwahati of Assam Circle of 1986 batch to the cadre of SAG of ITS Group 'A'.

Kindly find enclosed herewith a representation dated 30-03-2009 received from Sri M.K. Gogoi (Staff no. 9657) DGM(Plg) of Assam Circle for his promotion to the grade of SAG of ITS Group 'A' for favour of your disposal please. The case is recommended by the CGMT, BSNL, Assam Circle.

Enclosed :- As above

bl *16/4/09*
(S.C. Ojha)
General Manager(Admn&OP)

Attested by
Abhijit Bhattacharya
Adm & OP

BHARAT SANCHAR NIGAM LIMITED

CORPORATE OFFICE
(PERSONNEL - I SECTION)

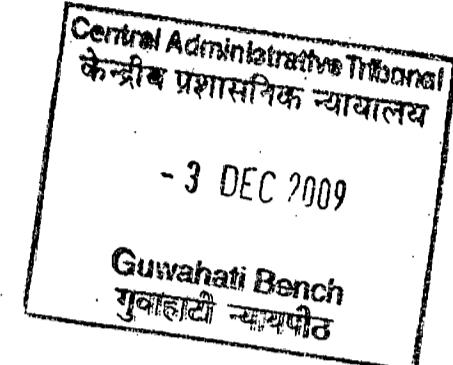
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1

No. 314-33/2008-Pers.I

Dated: 23rd April, 2009

To

The Director (Staff)
Department of Telecommunications
Sanchar Bhawan
New Delhi.



Subject:-Promotion to SAG of ITS Group 'A' - case of Shri M.K. Gogoi,
Staff No. 9657, DGM, Assam Telecom Circle.

The undersigned is directed to forward herewith a letter No. STES-3/19/89 dated 16.04.2009 along with a representation dated 30.03.2009 of Shri M.K. Gogoi, Staff No. 9657, DGM, Assam Telecom Circle received from the office of CGM, Assam Telecom Circle on the subject mentioned above for taking further necessary action at your end.

Enc. as above (in original).

(R.K. Verma) 23/4/09
Assistant General Manager (Pers.I)

Cop. for information to:-

The CGM, Assam Telecom Circle, BSNL, Guwahati w.r.t. his office letter No. STES-3/19/89 dated 16.04.2009.

✓
GM/H
30/4

Attested by:
Choudhury
XDW

Choudhury

Dated at Guwahati, the 16th April, 2009

To

The Chief General Manager,
Bharat Sanchar Nigam Limited,
Assam Telecom Circle,
Panbazar,
Guwahati - 781001.

(Through proper channel)

Sub: - Request for re-fixation of pay

Sir,

With due respect and humble submission I beg to state that I am 1986 batch ITS Officer joined the department in October, 1989 and subsequently have been promoted in the post of JAG vide DOT Order No. 314-1/96-STG.III dated 5/2/1998.

In the meantime, the department has initiated departmental proceedings based on false charges. After completion of the departmental proceedings I have been wrongly implicated and awarded with six penalty for only one cause of action and this office has implemented all the above penalty orders since June 2006. However, aggrieved by the penalty orders I filed an application before the Hon'ble Central Administrative Tribunal, Guwahati. The Court after going in details quashed all the penalty orders vide its judgment dated 27/3/2009 (copy enclosed).

Under the circumstances, I most fervently request your benign authority to consider my case in view of the Hon'ble Central Administrative Tribunal, Guwahati order and issue necessary order to refund the amount deducted towards penalties and restore my increments which was wrongly deducted from my salary, for which act of kindness I shall remain ever grateful to you.

Thanking you,

Encl: as above

Yours sincerely,

M.K. GOGOI

(M.K. GOGOI)
Dy. General Manager (Plg),
O/o Chief General Manager,
BSNL, Assam Telecom Circle,
Guwahati - 781001.
Staff No. 9657.

Attested by
Chowdhury
Adv.

Dated at Guwahati, the 19th August, 2009

To

The Member (Services),
Govt. of India,
Dept. of Telecommunications,
Sanchar Bhawan,
20 Ashoka Road,
NEW DELHI - 110001.

Sub:- Request to hold early DPC.

Sir,

Please refer to my earlier letter dated 30th March, 2009 and 21st June 2009 in the regard above. With due respect and humble submission I beg to state that I am 1986 batch ITS Officer and posted promoted to the post of JAG (Adhoc) vide DOT order No. 314-1/98-STG.III dated 05/02/1998.

During 2001 to 2003 the Department issued 6 Nos. of charge sheets for one cause of action and imposed 6 major penalties in spite of not proof report from the IOs. However, aggrieved by the penalty orders I filed application before the Hon'ble CAT, Guwahati. The Hon'ble CAT Guwahati has set aside and squashed all the penalty orders vide its order dated 27/03/2009 (A copy enclosed).

In view of the above, I request your benign authority to consider my case in view of Hon'ble CAT Guwahati order and issue necessary order to regularize me in JAG and promote me in SAG cadre for which act of your kindness I shall remain ever grateful to you.

Thanking you,

Encl : as above.

Yours sincerely,

M.K. Gogoi
(M.K. Gogoi)

Dy. General Manager (Plg)
O/o The CGM Telecom.,
Assam Telecom Circle,
Panbazar, Guwahati - 781001.
Staff No. 9657.

*Witnessed by
B. Sonal Chetry
XW*



मुलाकाती का पास नं./VISITOR'S PASS No. * 647594

भारत सरकार/Government of India

गृह मंत्रालय/Ministry of Home Affairs

(जिस अधिकारी से मुलाकात की गई हो, वह यह पास स्वागत अधिकारी को लौटा दें)
(The Officer visited should return the pass to the Reception Officer)

तारीख Date	15 OCT 2009	
मुलाकाती का नाम Visitor's Name	M C Gogoi	
उस अधिकारी का नाम व पदनाम जिससे मुलाकात की जानी है	Rajendra P. Reception	
Name & Designation of Officer to be visited	Signature	
प्रयोजन Purpose	सरकारी Official	निजी Private

समय :

TIME:

जिस अधिकारी से मुलाकात की गई हो, उसके हस्ताक्षर

Signature
(Officer visited)

राजेन्द्र प्रसाद/Rajendra P. Reception
Signature
राजेन्द्र प्रसाद (Reception Officer)

M.G.I.P.F—790M/o HA/2008—10.11.2008—10,00,000 Forms

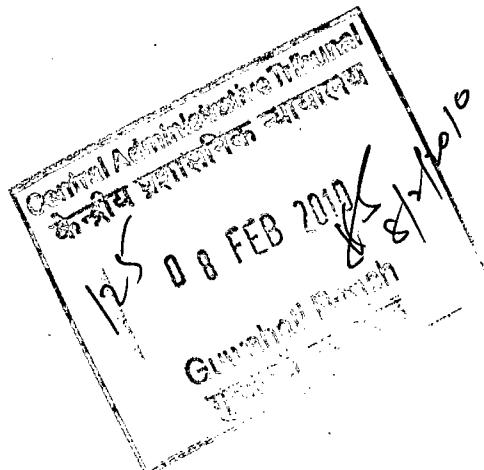
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 3 DEC

Guwahati Bench
गुवाहाटी न्यायपीठ

Attested by
Bhandary
Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



File No.:

The Contemnor no. 2
Through Mr. P. K. Ranjan,
Advocate 8/1/2010

IN THE MATTER OF:

C.P. No. 11/09

In O.A. Nos. 284/06, 25/08, 26/08,
44/08 and 45/08

-AND -

IN THE MATTER OF:

Sri M.K. Gogoi,

S/o Late Debeswar Gogoi,

Presently Serving as Deputy General Manager
(Planning), Office of the General Manager, Assam
Telecom Circle, BSNL, Panbazar, Guwahati-1

...Petitioner

-Vs-

1. Sri P.J. Thomas,

Secretary to the Government of India-cum-
Chairman of Telecom Commission, Ministry of
Communications and Information Technology,
Department of Telecommunications, Sanchar
Bhawan, 20 Ashoka Road, New Delhi

2. Sri V.K. Shukla,

Member (Service)

Office of the Chairman of Telecom Commission,
Ministry of Communication and Information
Technology, Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road, New Delhi

3. Sri Vipan Kumar

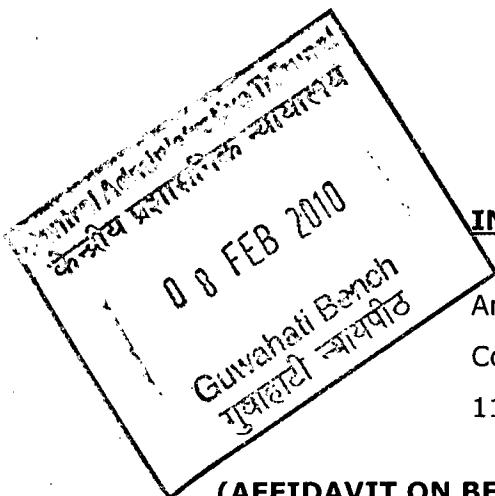
Senior Deputy Director General (Vigilance),
Department of Telecom, Sanchar Bhawan, 20
Ashoka Road, New Delhi - 110 001

... Alleged Contemnors/ Respondents

-AND-

Dm

*Received
Ch 8/2/10*



IN THE MATTER OF:

An Affidavit on behalf of the alleged Contemnor/Respondent No. 2 to the C.P. No. 11/09

(AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 2)

Dm I, Sri V.K. Shukla, S/o Late Shri Purneshwar Shukla aged about 60 years ~~presently working~~ ^{has worked (Since retired)} as the Member (Service), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi do hereby solemnly affirm and state as follows :-

1. That I am the Member (Service), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi. In the above contempt petition, I have been impleaded as Party Respondent /Contemnor No.2. The said contempt petition was moved in this Hon'ble Tribunal, *inter alia*, praying for issuing show cause notice to the respondent contemnors and taking appropriate action for willful and intentional violation of the common order dated 27.03.09 passed by this Hon'ble Tribunal in O.A. Nos. 284/06, 25/08, 26/08, 44/08 and 45/08.
2. That the humble deponent begs to state that this Hon'ble Tribunal vide order dated 08.01.10 was pleased to issue notice to respondent Nos. 2 and 3 for time being by making returnable by 08.02.10. The copy of the notice was served upon the humble deponent. I have gone through the copy of the contempt petition and have under stood the contents thereof.
3. That I do not admit any of the statements save and except which are specifically admitted hereinafter and the same are deemed as denied.
4. That with regard to the statements made in paragraphs 1 and 2 of the contempt petition, the humble deponent begs to offer no comment. However he does not admit any statement contrary to record.
5. That with regard to the statements made in paragraph 3 of the contempt petition, the humble deponent begs to state that the petitioner while working as Telecom District Engineer, Tezpur (hereinafter referred as 'TDE, Tezpur', in short) during the period of 1996 appointed 221 casual labourers as Temporary Status Mazdoors (hereinafter referred as 'TSM' in short) from different sub-divisions under Tezpur Telecom District. It is stated

Dm

that under the Tezpur Telecom District there are all total 11 sub-divisions. The above appointments were made on the basis of a Selection Committee consisting of four members from different field of the departments such as Accounts, Human Resource Development, Engineering and Field Units. The petitioner himself was the Chairman of the aforesaid selection Committee constituted by him. The members of the Committee (including the Chairman) were as follows:

- 1) Sri M.K. Gogoi, TDE, Tezpur (as he then was),
- 2) Sri A.K. Sarkar, SDE, Tezpur (as he then was),
- 3) Sri U. Swargiary, Accounts Officer, Tezpur (as he then was),
- 4) Sri D. Payeng, SDE(P), Tezpur (as he then was).

It is further stated that the above process of regularization/appointment of 221 nos. of casual labourers as TSM was carried out in terms of Circular no. 269/4/93-STN issued by the Department of Telecommunications, New Delhi. But while carrying out the aforesaid regularization/appointment, the petitioner violated the provisions of the above circular. As there were some irregularities in the selection process the matter was enquired by the Central Bureau of Investigation (hereinafter referred as 'CBI' in short). During the aforesaid enquiry it was found that there were gross irregularities in the selection process. It was found that the petitioner i.e. the Chairman of the Selection Committee and other members recommended and regularized 221 casual labourers without verifying the genuineness of recommendations of different SDOs and SDEs and Experience Certificates issued by the JTOs/Lineman etc. It is stated that the aforesaid persons were not eligible for regularizations as they had not completed the requisite tenure as casual labourers as per the above circular and submitted forged experience certificates.

Thereafter, the departmental proceedings were initiated against all the members of the Selection Committee including the present petitioner after obtaining first stage advice of Central Vigilance Commission (hereinafter referred as 'CVC') vide memo no. 8-181/2001-Vig.II dated 11.09.03. Charge-sheet was issued against the respondent under the provisions of Rule 14 of the CCS (CCA) Rules, 1965.

It is stated that the statutory enquiry as per rules were instituted against the petitioner. The Inquiry Officer gave his findings on allegations after taking into account the evidence on record. The Disciplinary Authority disagreed with the findings of the Inquiry Officer. The Disciplinary Authority has been vested with the powers, under the statutory Rules to disagree with the findings of the Inquiry Officer if he finds that the evidence available on record has not been taken into cognizance by the Inquiry Officer. The action of the Disciplinary Authority to disagree with the findings of the Inquiry Officer is as per Rules based on records adduced during the inquiry. The UPSC, an independent body under the Constitution, have tendered their

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advice after a thorough examination of all the records. The service particulars and the C.R. dossiers were also furnished to the UPSC alongwith the case records which were perused by UPSC before tendering their advice. The competent authority examined all the records and the advice tendered by UPSC and decided to accept the advice after due consideration and proper application of mind. Orders were passed accordingly. Thereafter each case was decided on its merits keeping in view the facts and the nature of irregularities. If any officer is found to have committed serious irregularities while discharging his official duties, he has to face the penal consequences of his acts of omission and commission. The rules and procedures with regard to the disciplinary proceedings were strictly followed in the case of the respondent. The Disciplinary Authority considered the records of the case, submissions of the delinquent officer, advice of the CVC and UPSC and took a conscious decision to impose the impugned penalties. It is also mentioned that advice of CVC and UPSC are only guiding facts for the Disciplinary Authority which has to apply its mind and arrive at its own conclusion regarding the quantum of penalty on the delinquent official. There has been neither any violation of the principles of natural justice nor the provisions of the statutory rules.

6. That with regard to the statements made in paragraph 4 of the contempt petition, the humble deponent begs to state that vide order dated 27.03.09 this Hon'ble Tribunal after hearing all the parties was pleased to set aside and quash the impugned action taken by the department authority. Further ordered that the respondents were however at liberty to consider the matter afresh and take appropriate action, if they so desire against all those who are responsible for the conferment of temporary status on 221 person. With the above observation, the hon'ble Tribunal was pleased to dispose of all the aforesaid Original Applications.

7. That with regard to the statements made in paragraphs 5 to 7 of the contempt petition, the humble deponent begs state that immediately after receiving the order dated 27.03.09 passed by this Hon'ble Tribunal, the respondent authority immediately took up the matter and placed the matter before the Legal Adviser, Department of Telecommunications for his views. The Legal Adviser of the Department has advised to obtain the views of the Department of Personnel and Training. In view of this, it was proposed to refer the case to the Department of Personnel and Training. Thereafter the Department of Personnel and Training intimated the Department of Telecommunication that in view of the facts it was felt that it is a fit case for filing an appeal before the appropriate higher forum as opined by Legal Adviser, Department of Telecommunication. Accordingly, it was decided by the Department on 05.10.09 to go ahead for filing an appeal in the High Court

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and it was proposed to ask the Assistant Solicitor General of India, Gauhati High court to go for filing the case. The said proposal was placed before the Legal Adviser, Department of Telecommunication for his concurrence before the government counsel was advised accordingly.

Further it is stated that as per the decision of the Department as in view of the Department of Personnel and Training and Department of Telecommunication and with due consultation of the Legal Adviser, Ministry of Law, the Assistant Solicitor General of India was requested vide letter dated 27.10.09 for preparation of the draft writ petition against the judgement and order dated 27.03.09 passed by the Hon'ble Tribunal in the above O.A.s for filing the same before the Hon'ble High Court. The said letter was received on the same very day by the then Assistant Solicitor General of India.

There was also a change of Assistant Solicitor General of India and the Department again approached before the present Assistant Solicitor General of India for filing the writ petition and accordingly a writ petition against the judgment and order dated 27.03.09 passed by the Hon'ble Tribunal has been filed before the Hon'ble Gauhati High Court alongwith the application for stay of the operation of order dated 27.03.09 passed by the Hon'ble Tribunal.

8. That the humble deponent denies the correctness of the statements made in paragraphs 8 and 9 of the contempt petition. It is stated that the order dated 27.03.09 passed by this Hon'ble Tribunal was in fact received by the office in the later part of May, 2009. The respondents initiated action immediately on receipt of the said order. Since inter-ministerial consultation was required to be done, some time was taken for completing the same. After analyzing the order in detail the competent authority has decided to file the appeal in the Hon'ble High Court against the aforesaid order of the Hon'ble Tribunal. Accordingly, a writ petition has been filed alongwith the application for stay on the operation of the Hon'ble Tribunal's order dated 27.03.09 in the Gauhati High Court. The said writ petitions are registered as W.P.(C) nos. 915/10, 916/10, 917/10, 918/10 & 919/10 which are pending before the Hon'ble High Court.

9. That the humble deponent begs to state that there is no lapse or negligence on the part of the respondent authorities to comply with the Hon'ble Tribunal's order.

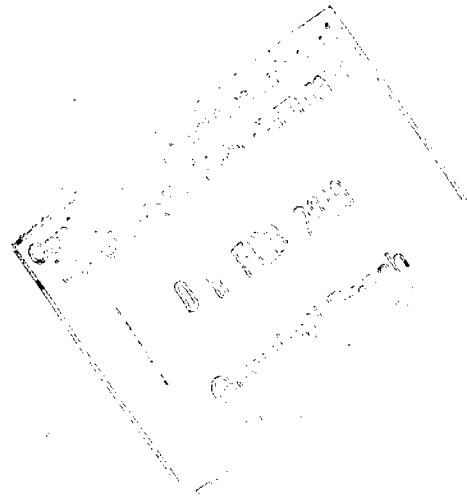
10. That the humble deponent begs to submit that the respondent department always respects the orders of the Hon'ble Courts/Tribunals. In fact there is no violation at all on the part of the respondent authority. With due regard, the respondent authority immediately took up the matter for compliance. However the department authority with due consultation with the other organizations, decided to file the writ petition before the Hon'ble High Court for which there was some delay for filing the case before the High Court

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which was not intentional or willful negligence but for the unavoidable circumstances.

11. That the humble deponent respectfully begs to pray that in view of the above facts and circumstances, this contempt petition may be closed.

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AFFIDAVIT

I, Sri V.K. Shukla, S/o Late Shri Purneshwar Shukla aged about 60 years presently working as the Member (Service), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi do hereby solemnly affirm and state as follows:

1. That I have been impleaded as the alleged contemnor no. 2 in the instant case and fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 4, 9 and 10.....are true to my knowledge and those made in paragraphs 1, 2 and 5 to 8..... being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 8th day of February, 2010 at Guwahati.

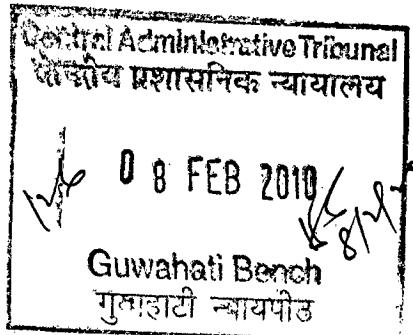
Identified by:-

Monalisa Deka
Advocate.


(V.K. SHUKLA)
DEPONENT

Solemnly affirmed and declare
by the deponent who is identified by Ms. M. Deka
(Advocate)
08/02/10.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF:

C.P. No. 11/09

In O.A. Nos. 284/06, 25/08, 26/08,
44/08 and 45/08

-AND-

IN THE MATTER OF:

Sri M.K. Gogoi,

S/o Late Debeswar Gogoi,

Presently Serving as Deputy General Manager
(Planning), Office of the General Manager, Assam
Telecom Circle, BSNL, Panbazar, Guwahati-1

filed by :
The Contemnor no. 6
through Ms. P.K. General, 433
Advocate

...Petitioner

-Vs-

1. Sri P.J. Thomas,
Secretary to the Government of India-cum-
Chairman of Telecom Commission, Ministry of
Communications and Information Technology,
Department of Telecommunications, Sanchar
Bhawan, 20 Ashoka Road, New Delhi

2. Sri V.K. Shukla,
Member (Service)
Office of the Chairman of Telecom Commission,
Ministry of Communication and Information
Technology, Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road, New Delhi

3. Sri Vipan Kumar
Senior Deputy Director General (Vigilance),
Department of Telecom, Sanchar Bhawan, 20
Ashoka Road, New Delhi - 110 001

... Alleged Contemnors/ Respondents

-AND-

विपन कुमार
VIPAN KUMAR
वरिष्ठ उप नियन्त्रक (विगि.)
Senior Deputy Director General (Vig.)
ट्रॉलोनर विभाग, भारत सरकार
Dept. of Telecom, Govt. of India
भारत सरकार

8/2/2010

IN THE MATTER OF:

An Affidavit on behalf of the alleged Contemnor/Respondent No. 3 to the C.P. No.

11/09

08 FEB 2010
Guwahati Bench
গুৱাহাটী ন্যায়পৌর

(AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 3)

I, Sri Vipan Kumar, S/o Shri Gobind Ram aged about 57 years presently working as the Senior Deputy Director General (Vigilance), Department of Telecom, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001 do hereby solemnly affirm and state as follows :-

1. That I am the Senior Deputy Director General (Vigilance), Department of Telecom, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001. In the above contempt petition, I have been impleaded as Party Respondent/Contemnor No.3. The said contempt petition was moved in this Hon'ble Tribunal, *inter alia*, praying for issuing show cause notice to the respondent contemnors and taking appropriate action for willful and intentional violation of the common order dated 27.03.09 passed by this Hon'ble Tribunal in O.A. Nos. 284/06, 25/08, 26/08, 44/08 and 45/08.
2. That the humble deponent begs to state that this Hon'ble Tribunal vide order dated 08.01.10 was pleased to issue notice to respondent Nos. 2 and 3 for time being by making returnable by 08.02.10. The copy of the notice was served upon the humble deponent. I have gone through the copy of the contempt petition and have under stood the contents thereof.
3. That I do not admit any of the statements save and except which are specifically admitted hereinafter and the same are deemed as denied.
4. That with regard to the statements made in paragraphs 1 and 2 of the contempt petition, the humble deponent begs to offer no comment. However he does not admit any statement contrary to record.
5. That with regard to the statements made in paragraph 3 of the contempt petition, the humble deponent begs to state that the petitioner while working as Telecom District Engineer, Tezpur (hereinafter referred as 'TDE, Tezpur', in short) during the period of 1996 appointed 221 casual labourers as Temporary Status Mazdoors (hereinafter referred as 'TSM' in short) from different sub-divisions under Tezpur Telecom District. It is stated that under the Tezpur Telecom District there are all total 11 sub - divisions.

(Signature)

VIPAN KUMAR
Senior Deputy Director General (MIS)
Department of Telecom, Ministry of Communications
Dated: 08/02/2010

The above appointments were made on the basis of a Selection Committee consisting of four members from different field of the departments such as Accounts, Human Resource Development, Engineering and Field Units. The petitioner himself was the Chairman of the aforesaid selection Committee constituted by him. The members of the Committee (including the Chairman) were as follows:

- 1) Sri M.K. Gogoi, TDE, Tezpur (as he then was),
- 2) Sri A.K. Sarkar, SDE, Tezpur (as he then was),
- 3) Sri U. Swargiary, Accounts Officer, Tezpur (as he then was),
- 4) Sri D. Payeng, SDE(P), Tezpur (as he then was).

It is further stated that the above process of regularization/appointment of 221 nos. of casual labourers as TSM was carried out in terms of Circular no. 269/4/93-STN issued by the Department of Telecommunications, New Delhi. But while carrying out the aforesaid regularization/appointment, the petitioner violated the provisions of the above circular. As there were some irregularities in the selection process the matter was enquired by the Central Bureau of Investigation (hereinafter referred as 'CBI' in short). During the aforesaid enquiry it was found that there were gross irregularities in the selection process. It was found that the petitioner i.e. the Chairman of the Selection Committee and other members recommended and regularized 221 casual labourers without verifying the genuineness of recommendations of different SDOs and SDEs and Experience Certificates issued by the JTOs/Lineman etc. It is stated that the aforesaid persons were not eligible for regularizations as they had not completed the requisite tenure as casual labourers as per the above circular and submitted forged experience certificates.

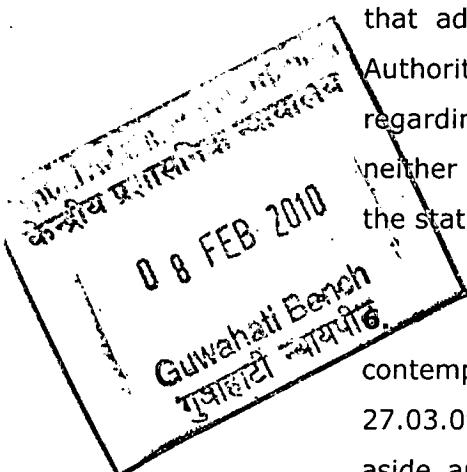
Thereafter, the departmental proceedings were initiated against all the members of the Selection Committee including the present petitioner after obtaining first stage advice of Central Vigilance Commission (hereinafter referred as 'CVC') vide memo no. 8-181/2001-Vig.II dated 11.09.03. Charge-sheet was issued against the respondent under the provisions of Rule 14 of the CCS (CCA) Rules, 1965.

It is stated that the statutory enquiry as per rules were instituted against the petitioner. The Inquiry Officer gave his findings on allegations after taking into account the evidence on record. The Disciplinary Authority disagreed with the findings of the Inquiry Officer. The Disciplinary Authority has been vested with the powers, under the statutory Rules to disagree with the findings of the Inquiry Officer if he finds that the evidence available on record has not been taken into cognizance by the Inquiry Officer. The action of the Disciplinary Authority to disagree with the findings of the Inquiry Officer is as per Rules based on records adduced during the inquiry. The UPSC, an independent body under the Constitution, have tendered their advice after a thorough examination of all the records. The service particulars

Dipan

VIPAN KUMAR
Chairman (Vigilance)
Secretary Director General (M&P)
Ministry of Civil Service & Training
Govt. of India
Dated

and the C.R. dossiers were also furnished to the UPSC alongwith the case records which were perused by UPSC before tendering their advice. The competent authority examined all the records and the advice tendered by UPSC and decided to accept the advice after due consideration and proper application of mind. Orders were passed accordingly. Thereafter, each case was decided on its merits keeping in view the facts and the nature of irregularities. If any officer is found to have committed serious irregularities while discharging his official duties, he has to face the penal consequences of his acts of omission and commission. The rules and procedures with regard to the disciplinary proceedings were strictly followed in the case of the respondent. The Disciplinary Authority considered the records of the case, submissions of the delinquent officer, advice of the CVC and UPSC and took a conscious decision to impose the impugned penalties. It is also mentioned that advice of CVC and UPSC are only guiding facts for the Disciplinary Authority which has to apply its mind and arrive at its own conclusion regarding the quantum of penalty on the delinquent official. There has been neither any violation of the principles of natural justice nor the provisions of the statutory rules.



That with regard to the statements made in paragraph 4 of the contempt petition, the humble deponent begs to state that vide order dated 27.03.09 this Hon'ble Tribunal after hearing all the parties was pleased to set aside and quash the impugned action taken by the department authority. Further ordered that the respondents were however at liberty to consider the matter afresh and take appropriate action, if they so desire against all those who are responsible for the conferment of temporary status on 221 person. With the above observation, the hon'ble Tribunal was pleased to dispose of all the aforesaid Original Applications.

7. That with regard to the statements made in paragraphs 5 to 7 of the contempt petition, the humble deponent begs state that immediately after receiving the order dated 27.03.09 passed by this Hon'ble Tribunal, the respondent authority immediately took up the matter and placed the matter before the Legal Adviser, Department of Telecommunications for his views. The Legal Adviser of the Department has advised to obtain the views of the Department of Personnel and Training. In view of this, it was proposed to refer the case to the Department of Personnel and Training. Thereafter the Department of Personnel and Training intimated the Department of Telecommunication that in view of the facts it was felt that it is a fit case for filing an appeal before the appropriate higher forum as opined by Legal Adviser, Department of Telecommunication. Accordingly it was decided by the Department on 05.10.09 to go ahead for filing an appeal in the High Court and it was proposed to ask the Assistant Solicitor General of India, Gauhati

(Signature)

विपन कुमार
VIPAN KUMAR
संविधान न्यायालय (गুৱাহাটী)
Senior Deputy Director General (M/s.)
সুবিধান ন্যায়ালয়, মহোন স্ট্রিট
Dept. of Telecomm, Govt. of India
৭৫ ফুলেন্ড রোড, ঢাক্কা

High court to go for filing the case. The said proposal was placed before the Legal Adviser, Department of Telecommunication for his concurrence before the government counsel was advised accordingly.

Further it is stated that as per the decision of the Department as in view of the Department of Personnel and Training and Department of Telecommunication and with due consultation of the Legal Adviser, Ministry of Law, the Assistant Solicitor General of India was requested vide letter dated 27.10.09 for preparation of the draft writ petition against the judgement and order dated 27.03.09 passed by the Hon'ble Tribunal in the above O.A.s for filing the same before the Hon'ble High Court. The said letter was received on the same very day by the then Assistant Solicitor General of India.

There was also a change of Assistant Solicitor General of India and the Department again approached before the present Assistant Solicitor General of India for filing the writ petition and accordingly a writ petition against the judgment and order dated 27.03.09 passed by the Hon'ble Tribunal has been filed before the Hon'ble Gauhati High Court alongwith the application for stay of the operation of order dated 27.03.09 passed by the Hon'ble Tribunal.

8. That the humble deponent denies the correctness of the statements made in paragraphs 8 and 9 of the contempt petition. It is stated that the order dated 27.03.09 passed by this Hon'ble Tribunal was in fact received by the office in the later part of May, 2009. The respondents initiated action immediately on receipt of the said order. Since inter-ministerial consultation was required to be done, some time was taken for completing the same. After analyzing the order in detail the competent authority has decided to file the appeal in the Hon'ble High Court against the aforesaid order of the Hon'ble Tribunal. Accordingly, : writ petitions has been filed alongwith the application for stay on the operation of the Hon'ble Tribunal's order dated 27.03.09 in the Gauhati High Court. The said writ petitions are registered as WP(C) nos. 915/10, 916/10, 917/10, 918/10, 919/10 which are pending before the Hon'ble High Court.

9. That the humble deponent begs to state that there is no lapse or negligence on the part of the respondent authorities to comply with the Hon'ble Tribunal's order.

10. That the humble deponent begs to submit that the respondent department always respects the orders of the Hon'ble Courts/Tribunals. In fact there is no violation at all on the part of the respondent authority. With due regard, the respondent authority immediately took up the matter for compliance. However the department authority with due consultation with the other organizations, decided to file the writ petition before the Hon'ble High Court for which there was some delay for filing the case before the High Court

(Signature)

VIPAN KUMAR
Senior Deputy Director General (Legal)
Department of Telecommunication
Ministry of Communications, Govt. of India
MS 162 400001

which was not intentional or willful negligence but for the unavoidable circumstances.

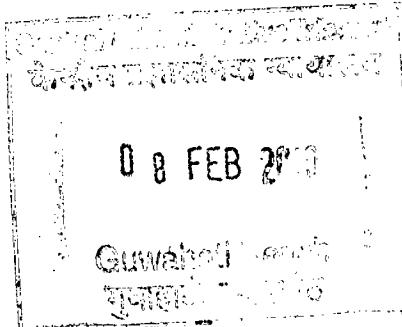
11. That the humble deponent respectfully begs to pray that in view of the above facts and circumstances, this contempt petition may be closed.

Upar

विजय कुमार
VIJAY KUMAR
मिस्टर डी. बी. बोर्डर (मुख्य)
Deputy Director General (M)

सुरक्षा विभाग, अपर प्रबन्ध
कार्यालय, राज्य प्रशासन
कार्यालय, राज्य प्रशासन
कार्यालय, राज्य प्रशासन

08 FEB 2003



Guwahati
Assam
India

AFFIDAVIT

48 Feb 2010

I, Sri Vipan Kumar, S/o Shri Gobind Ram aged about 57 years, presently working as the Senior Deputy Director General (Vigilance), Department of Telecom, Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001 do hereby solemnly affirm and state as follows:

1. That I have been impleaded as the alleged contemnor no. 3 in the instant case and fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 4, 9 and 10 are true to my knowledge and those made in paragraphs 1, 2, 5 to 8 being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 8th day of February, 2010 at Guwahati.

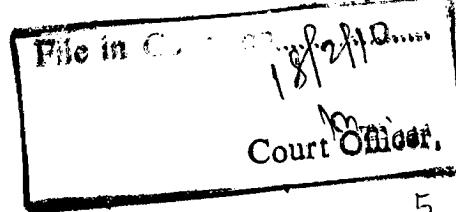
Identified by:-

Monalisa Deka
Advocate.

Vipan
DEPONENT
VIPAN KUMAR
विपन कुमार विलियम (संस्कृत)
Senior Deputy Director General (Vig.)
इन्डियन टेलिकॉम, भारत सरकार
Dept. of Telecom, Govt. of India
7th Feb 2010 v Deka

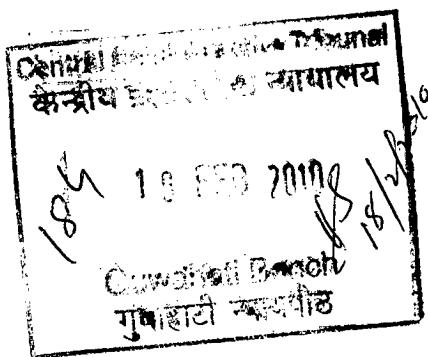
Solemnly affirmed and declare
by the deponent who is identified by

(Advocate)



NO
The Contemnor
Respondent No.
Through
Monalisa Deka (Advocate)
18/2/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF:

C.P. No. 11/09

In O.A. Nos. 284/06, 25/08, 26/08,
44/08 and 45/08

-AND -

IN THE MATTER OF:

Sri M.K. Gogoi,
S/o Late Debeswar Gogoi,
Presently Serving as Deputy General Manager
(Planning), Office of the General Manager, Assam
Telecom Circle, BSNL, Panbazar, Guwahati-1

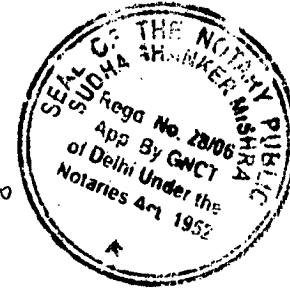
...Petitioner

-Vs-

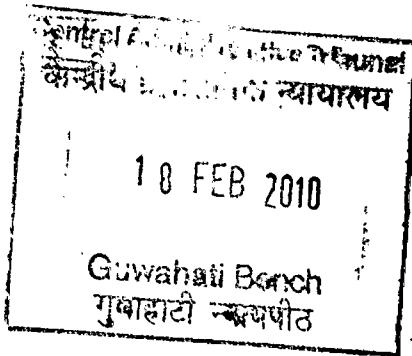
1. Sri P.J. Thomas,
Secretary to the Government of India-cum-
Chairman of Telecom Commission, Ministry of
Communications and Information Technology,
Department of Telecommunications, Sanchar
Bhawan, 20 Ashoka Road, New Delhi

2. Sri V.K. Shukla,
Member (Services) (since retired),
Office of the Chairman of Telecom Commission,
Ministry of Communication and Information
Technology, Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road, New Delhi

3. Sri Vipan Kumar
Senior Deputy Director General (Vigilance),
Department of Telecom, Sanchar Bhawan, 20
Ashoka Road, New Delhi - 110 001



... Alleged Contemnors/ Respondents



: 2 :

-AND-

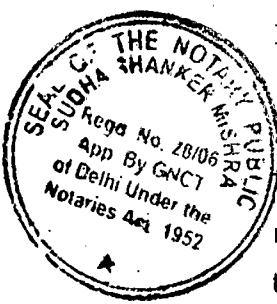
IN THE MATTER OF:

An Additional Affidavit on behalf of the alleged Contemnor/Respondent No. 2 to the C.P. No. 11/09

(ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 2)

I, Sri V.K. Shukla, S/o Late Shri Purneshwar Shukla aged about 60 years, having worked (since retired) as the Member (Services), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi do hereby solemnly affirm and state as follows :-

1. That I was the Member (Services), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001. In the above contempt petition, I have been impleaded as Party Respondent /Contemnor no.2. The said contempt petition was moved in this the Hon'ble Tribunal, *inter alia*, praying for issuing show cause notice to the respondent contemnors and taking appropriate action for willful and intentional violation of the common order dated 27.03.09 passed by this Hon'ble Tribunal in O.A. Nos. 284/06, 25/08, 26/08, 44/08 and 45/08. I have retired from service on 31.01.2010.

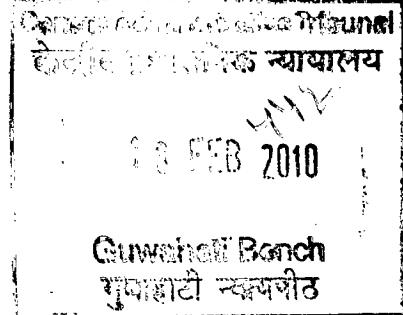


2. That the humble deponent begs to state that this Hon'ble Tribunal vide order dated 08.01.10 was pleased to issue notice to respondent nos. 2 and 3 for time being by making returnable by 08.02.10. The copy of the notice was served upon the humble deponent. I have gone through the copy of the contempt petition and have under stood the contents thereof.

3. That the humble deponent begs to state that I have filed my Vakalatnama and affidavit in the aforesaid Contempt petition on 08.02.2010.

4. That the humble deponent begs to state that in para 8 of the my affidavit it was stated that already five writ petitions were filed before the Division Bench of the Hon'ble Gauhati High Court against common judgement and order dated 27.03.09 passed in O.A. Nos. 284/06, 25/08, 26/08, 44/08

Dm



: 3 :

and 45/08 (Sri M. K. Gogoi -vs- Union of India & others). The aforesaid writ petitions were registered as WP(c) no. 915/10, 916/10, 917/10, 918/10 and 919/10.

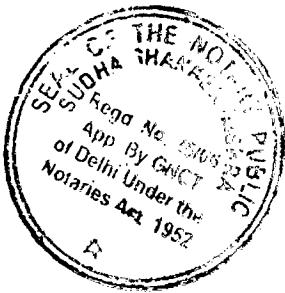
5. That the humble deponent begs to state that on 08.02.10 the aforesaid writ petitions came up for admission before the Hon'ble Division Bench of the Hon'ble Gauhati High Court on 08.02.10. The Hon'ble Division Bench of the Hon'ble Gauhati High Court vide order dated 08.02.10 was pleased to admit the aforesaid writ petitions and was pleased to issue notice to the respondent fixing the date of hearing in the 1st week of March, 2010. Further, alongwith the aforesaid writ petitions another Misc. case praying for stay of operation of the said common order dated 27.03.09 was also filed. The Hon'ble Gauhati High Court on the same day was pleased to pass an order rejecting the interim prayer directing the registry to list the case in the 1st week of March, 2010.

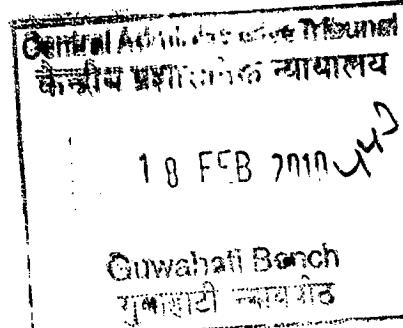
Copies of the orders dated 08.02.10 in the aforesaid writ petitions are annexed herewith as **Annexure 1** series.

6. That the humble deponent begs to state that alongwith the aforesaid writ petitions another misc case praying for stay of operation of the said common order dated 27.03.09 was also filed. The Hon'ble Gauhati High Court on the same day passed order directing the registry to list the case in the 1st week of March, 2010.

7. This additional affidavit has been filed bona fide and for the interest of justice.

Dm





AFFIDAVIT

I, Sri V.K. Shukla, S/o Late Shri Purneshwar Shukla aged about 60 years having worked (since retired) as the Member (Services), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001 do hereby solemnly affirm and state as follows :-

1. That I have been impleaded as the alleged contemnor no. 2 in the instant case and fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1 and 7.....are true to my knowledge and those made in paragraphs 2, 3, 4, 5 and 6..... being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 18th day of Feb , 2010 at
Guwahati.....

Identified by:-



X
DEPONENT

Advocate.

Solemnly affirmed and declare
by the deponent who is identified by



ATTESTED
S. MISHRA
NOTARY PUBL.

Old Court Compound
Parliament Street,
New Delhi-110001

15 FEB 2010

15 FEB 2010



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : WP(C) 915/2010

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority.)

1 UNION OF INDIA & ANR.
REP. BY THE SECY, TO THE GOVT. OF
INDIA-CUM-CHAIRMAN OF TELECOM COMMISSION,
MINISTRY OF COMMUNICATIONS AND INFORMATION
TECHNOLOGY, DEPARTMENT OF
TELECOMMUNICATIONS, SANCHAR BHAWAN,
20-ASHOKA ROAD, NEW DELHI.
2 SENIOR DEPUTY DIRECTOR GENERAL (VIGILANCE),
DEPARTMENT OF TELECOM, SANCHAR BHAWAN, 20,
ASHOKA ROAD, NEW DELHI-110001,

Central Adminstrative Tribunal
सेन्ट्रल अडिमिस्ट्रेटिव ट्रिब्यूनल
न्यायालय

18 FEB 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Petitioner/appellant/applicant

Versus

1 MADHURYA KUMAR GOGOI
S/O LT. DEBESWAR GOGORI
PRESENTLY SERVING AS DEPUTY GENERAL
MANAGER (PLANNING), OFFICE OF THE GENERAL
MANAGER, ASSAM TELECOM CIRCLE, BSNL,
PANBAZAR, GHY-1.

Respondent/Opp. Party

Advocates for Petitioner/appellant

1 M BHAGABATI
2 SC, C G S C
3 M DAS
4 P K ZANNAT
5 S N TAMULI
6 N VASHUM

Advocates for Respondents

1 K N CHOWDHURY
2 B CHOWDHURY
3 M MAHANTA
4 J PATOWARY
5 FOR CAVEATOR

Summary Of Case And Prayer In Brief

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DATE OF FILING APPLICATION	DATE WHEN COPY WAS READY	DATE OF DELIVERY
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BEFORE

HON'BLE THE CHIEF JUSTICE J.CHELAMESWAR
HON'BLE MR. JUSTICE BK SHARMA

DATE OF ORDER : 08/02/2010

Heard Mrs.R Bora, learned counsel for the petitioners.

Admit.

Notice.

Mr. KN Choudhury, learned senior counsel takes notice for and on behalf of the sole Respondent.

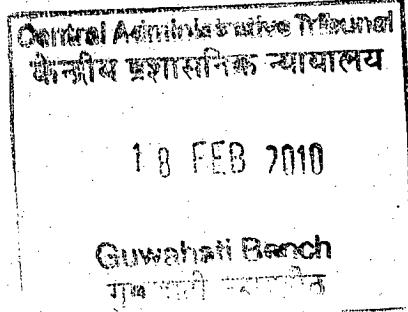
Sd/ B.K. Sharma (Judge) Gauhati High Court
(Judge) 9/2/10

CERTIFIED TO BE TRUE COPY

Mrs. Bora
Date: 9/2/10
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act 1, 1972

Received
9/2/10

Sl no. 133917
ad 9/2/10
B.





-7-

-92-

446

THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : MC 333/2010

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority.)

1 UNION OF INDIA & ANR.

Petitioner/appellant/applicant

Versus

1 MADHURYA KUMAR GOGOI

Respondent/Opp. Party

Advocates for Petitioner/appellant

1 M BHAGABATI

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Central Administrative Tribunal
केन्द्रीय द्रष्टव्यासनिक न्यायालय

18 FEB 2010

Guwahati Bench
গুৱাহাটী বৰ্ষাবৰ্তী

CASE NO : WP(C) 915/2010

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority.)

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REP. BY THE SECY. TO THE GOVT. OF
INDIA-CUM-CHAIRMAN OF TELECOM COMMISSION,
MINISTRY IF COMMUNICATIONS AND INFORMATION
TECHNOLOGY, DEPARTMENT OF
TELECOMMUNICATIONS, SANCHAR BHAWAN,
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2 SENIOR DEPUTY DIRECTOR GENERAL (VIGILANCE),
DEPARTMENT OF TELECOM, SANCHAR BHAWAN, 20,
ASHOKA ROAD, NEW DELHI-110001,

Petitioner/appellant/applicant

Versus

1 MADHURYA KUMAR GOGOI
S/O LT. DEBESWAR GOGOI
PRESENTLY SERVING AS DEPUTY GENERAL
MANAGER (PLANNING), OFFICE OF THE GENERAL
MANAGER, ASSAM TELECOM CIRCLE, BSNL,
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 3 M MAHANTA
 4 J PATOWARY
 5 FOR CAVEATOR

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

18 FEB 2010

Summary Of Case And Prayer In Brief

Guwahati Bench
 गुवाहाटी न्यायालय

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DATE OF FILING APPLICATION	DATE WHEN COPY WAS READY	DATE OF DELIVERY
09/02/2010	09/02/2010	09/02/2010

BEFORE

HON'BLE THE CHIEF JUSTICE J. CHETI AMESWAR
 HON'BLE MR. JUSTICE BK SHARMA

DATE OF ORDER : 08/02/2010

Application is filed with the prayer as follows:-

"In the aforesaid premises, it is prayed that Your Lordships may graciously be pleased to admit this petition and be pleased to stay the operation of the common order dated 27.03.09 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. nos.284/06,25/08,26/08,44/08 and 45/08. And/or any other order/orders as Your Lordships may deem fit and proper for ends of justice."

Heard Mrs.R Bora, learned counsel for the applicants and Mr.KN Choudhury, learned senior counsel for the sole Respondent.

Having regard to the facts and circumstances, we do not see any reason to grant interim order, as prayed for.

However, as agreed to by the learned counsels, appearing for the parties, we deem it appropriate to direct the Registry to list the main matter for hearing in the first week of March,2010.

Sd/ B.K. Sharma Sd/ J. Chetineswar
 Judge Chief Justice

CERTIFIED TO BE TRUE COPY

.....Niranjan.....

Date: 09/2/10

Superintendent (Copying Section)

Gauhati High Court

Authorised U/S 76, Art 1 1972

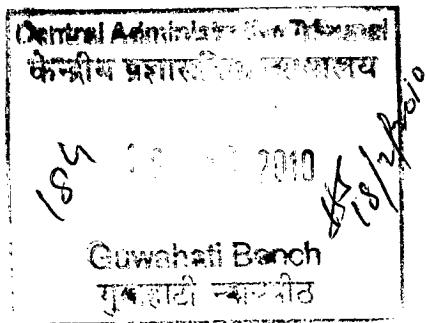
Sl no - 133918
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9/2/10
 18

File No. 187/10

Court Officer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



File No. 2
The Contemnor
Respondent No. 2
Through
Monalisa Deka (Advocate)
8.2.10

IN THE MATTER OF:

C.P. No. 11/09

In O.A. Nos. 284/06, 25/08, 26/08,
44/08 and 45/08

-AND -

IN THE MATTER OF:

Sri M.K. Gogoi,
S/o Late Debeswar Gogoi,
Presently Serving as Deputy General Manager
(Planning), Office of the General Manager, Assam
Telecom Circle, BSNL, Panbazar, Guwahati-1

...Petitioner

-Vs-

1. Sri P.J. Thomas,
Secretary to the Government of India-cum-
Chairman of Telecom Commission, Ministry of
Communications and Information Technology,
Department of Telecommunications, Sanchar
Bhawan, 20 Ashoka Road, New Delhi

2. Sri V.K. Shukla,
Member (Services) (since retired),
Office of the Chairman of Telecom Commission,
Ministry of Communication and Information
Technology, Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road, New Delhi

3. Sri Vipan Kumar
Senior Deputy Director General (Vigilance),
Department of Telecom, Sanchar Bhawan, 20
Ashoka Road, New Delhi – 110 001

... Alleged Contemnors/ Respondents

Received
M. Mukt.
P.M.
18/02/10

Dm

: 2 :

-AND-

IN THE MATTER OF:

18 FEB 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

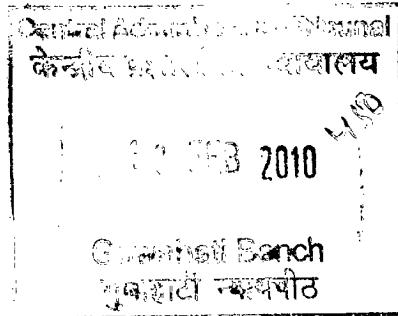
An Additional Affidavit on behalf of the alleged
Contemnor/Respondent No. 2 to the C.P. No.
11/09

(ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 2)

I, Sri V.K. Shukla, S/o Late Shri Purneshwar Shukla aged about 60 years, having worked (since retired) as the Member (Services), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi do hereby solemnly affirm and state as follows :-

1. That I was the Member (Services), Office of the Chairman of Telecom Commission, Ministry of Communication and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110 001. In the above contempt petition, I have been impleaded as Party Respondent /Contemnor no.2. The said contempt petition was moved in this the Hon'ble Tribunal, *inter alia*, praying for issuing show cause notice to the respondent contemnors and taking appropriate action for willful and intentional violation of the common order dated 27.03.09 passed by this Hon'ble Tribunal in O.A. Nos. 284/06, 25/08, 26/08, 44/08 and 45/08. I have retired from service on 31.01.2010.
2. That the humble deponent begs to state that this Hon'ble Tribunal vide order dated 08.01.10 was pleased to issue notice to respondent nos. 2 and 3 for time being by making returnable by 08.02.10. The copy of the notice was served upon the humble deponent. I have gone through the copy of the contempt petition and have under stood the contents thereof.
3. That the humble deponent begs to state that I have filed my Vakalatnama and affidavit in the aforesaid Contempt petition on 08.02.2010.
4. That the humble deponent begs to state that in para 8 of the my affidavit it was stated that already five writ petitions were filed before the Division Bench of the Hon'ble Gauhati High Court against common judgement and order dated 27.03.09 passed in O.A. Nos. 284/06, 25/08, 26/08, 44/08

Dm



: 3 :

and 45/08 (Sri M. K. Gogoi -vs- Union of India & others). The aforesaid writ petitions were registered as WP(c) no. 915/10, 916/10, 917/10, 918/10 and 919/10.

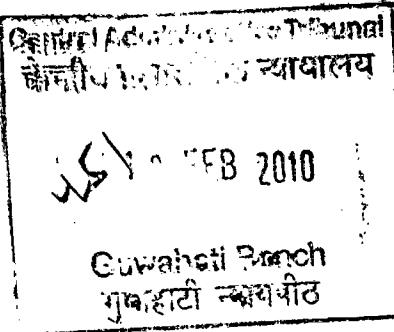
5. That the humble deponent begs to state that on 08.02.10 the aforesaid writ petitions came up for admission before the Hon'ble Division Bench of the Hon'ble Gauhati High Court on 08.02.10. The Hon'ble Division Bench of the Hon'ble Gauhati High Court vide order dated 08.02.10 was pleased to admit the aforesaid writ petitions and was pleased to issue notice to the respondent fixing the date of hearing in the 1st week of March, 2010. Further, alongwith the aforesaid writ petitions another Misc. case praying for stay of operation of the said common order dated 27.03.09 was also filed. The Hon'ble Gauhati High Court on the same day was pleased to pass an order rejecting the interim prayer directing the registry to list the case in the 1st week of March, 2010.

Copies of the orders dated 08.02.10 in the aforesaid writ petitions are annexed herewith as **Annexure 1** series.

6. That the humble deponent begs to state that alongwith the aforesaid writ petitions another misc case praying for stay of operation of the said common order dated 27.03.09 was also filed. The Hon'ble Gauhati High Court on the same day passed order directing the registry to list the case in the 1st week of March, 2010.

7. This additional affidavit has been filed bona fide and for the interest of justice.

Dm



AFFIDAVIT

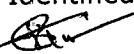
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1. That I have been impleaded as the alleged contemnor no. 2 in the instant case and fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1 and 7 are true to my knowledge and those made in paragraphs 2, 3, 4, 5 and 6 being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 18th day of Feb , 2010 at

Guwahati.

Identified by:-



MY

Advocate.



DEPONENT

Solemnly affirmed and declare
by the deponent who is identified by

- 5 -

- 48 -

THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : WP(C) 915/2010

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority.)

- 1 UNION OF INDIA & ANR.
REP. BY THE SECY, TO THE GOVT. OF
INDIA-CUM-CHAIRMAN OF TELECOM COMMISSION,
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TECHNOLOGY, DEPARTMENT OF
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- 2 SENIOR DEPUTY DIRECTOR GENERAL (VIGILANCE),
DEPARTMENT OF TELECOM, SANCHAR BHAWAN, 20,
ASHOKA ROAD, NEW DELHI-110001,

Petitioner/appellant/applicant

Central Administrative Tribunal
কেন্দ্ৰীয় প্ৰশাসনিক ন্যায়ালয়

18 FEB 2010

Guwahati Bench
গুৱাহাটী বৰ্গায়িত

Versus

- 1 MADHURYA KUMAR GOGOI
S/O LT. DEBESWAR GOGOI
PRESENTLY SERVING AS DEPUTY GENERAL
MANAGER (PLANNING), OFFICE OF THE GENERAL
MANAGER, ASSAM TELECOM CIRCLE, BSNL,
PANBAZAR, GHY-1.

Respondent/Opp. Party

Advocates for Petitioner/appellant

- 1 M BHAGABATI
- 2 SC, C G S C
- 3 M DAS
- 4 P K ZANNAT
- 5 S N TAMULI
- 6 N VASHUM

Advocates for Respondents

- 1 K N CHOWDHURY
- 2 B CHOWDHURY
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- 5 FOR CAVEATOR

Summary Of Case And Prayer In Brief

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BEFORE
HON'BLE THE CHIEF JUSTICE J.CHELAMESWAR
HON'BLE MR. JUSTICE BK SHARMA

DATE OF ORDER : 08/02/2010

Heard Mrs. R Bora, learned counsel for the petitioners.

Admit.

Notice.

Mr. KN Choudhury, learned senior counsel takes notice for and on behalf of the sole Respondent.

Sd/- B. K. Sharma
Judge

Sd/- J. Choudhury
Chief Justice

CERTIFIED TO BE TRUE COPY
Niru Das
Date: 9/2/10
Superintendent (Copying Section)
Guwahati High Court
Authorised U/S 76, Act 1, 1872

Central Administration Tribunal
संघीय द्रष्टासनिक न्यायालय

18 FEB 2010

Guwahati Bench
गुवाहाटी न्यायालय

Amul
9/2/10

Sl no - 133917
Ad 9/2/10
Rs.

THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

MS

CASE NO : MC 333/2010

District : Kamrup

Category : 10057 (Order of the Appellate or Revisional authority.)

1 UNION OF INDIA & ANR.

Petitioner/appellant/applicant

Versus

1 MADHURYA KUMAR GOGOI

Respondent/Opp. Party

Advocates for Petitioner/appellant

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- 3 M DAS
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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

10 FEB 2010

Guwahati Bench
गुवाहाटी न्यायपाल

Advocates for Respondents

- 1 K N CHOWDHURY
- 2 B CHOWDHURY
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- 5 FOR CAVEATOR

CASE NO : WP(C) 915/2010

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Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

3 FEB 2010

Summary Of Case And Prayer In Brief

Guwahati Bench
 गुवाहाटी न्यायालय

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Heard Mrs.R Bora, learned counsel for the applicants and Mr.KN Choudhury, learned senior counsel for the sole Respondent.

Having regard to the facts and circumstances, we do not see any reason to grant interim order, as prayed for.

However, as agreed to by the learned counsels, appearing for the parties, we deem it appropriate to direct the Registry to list the main matter for hearing in the first week of March,2010.

Sd/ B.K. Sharma Sd/ J. Chelameswar
 Judge Clerk of the Court

CERTIFIED TO BENCH COPY
 Date: 09/02/10
 Superintendent (Copying Section)
 Gauhati High Court
 Application No. 376, 2010

SL No. - 133918
 dd 9/2/10
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9/2/10