

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

ORDERSHEET

1. Original Application No: _____ /2009

2. Misc Petition No _____

3. Contempt Petition No _____ 3/2009 in OA No 220/2007

4. Review Application No _____

Applicant(s) Sri Binod Bezbarrah

Respondent(s) Sri Madhav Lal & SPS

Advocate for the Applicant(s): Mr. B. Chakraborty,
Mr. S. Chakraborty &
Mr. L. Gogoi

Advocate for the Respondent(s): _____

Notes of the Registry	Date	Order of the Tribunal
<p>This Application has been filed by the Applicant as an application under Section 17 of the Administrative Tribunal Act, 1985 read with Contempt of Court Act, 1972 for non Compliance of the order dated 28.4.2008 passed by this Hon'ble Tribunal in OA No. 220/2007.</p> <p>Laid before the Hon'ble Court for favour of order.</p> <p><i>Naresh</i> 29.5.09 Deputy Registrar 29.5.2009</p>	02.06.2009	<p>1. Respondents of O.A.220/2007, were asked (by order dated 23.04.2008 of this Tribunal) to provide a temporary engagement to the Applicant until he is given a regular employment on compassionate ground. The reasons and the background (leading to such direction dated 23.04.2008) were well discussed in the said order dated 23.04.2008 of this Tribunal.</p> <p>2. Despite the above said direction, the Respondents have refused to grant temporary engagement to the Applicant by their order dated 29.05.2008 passed by the Deputy Director (Administration) of the Office of the Development Commissioner (Micro, Small and Medium Enterprises) in the Ministry of Micro, Small and Medium Enterprises of Government of India.</p>
		<p>4</p> <p>Contd... ↗</p>

Contd.
02.06.2009

11.6.09

Notices are ~~sent~~
to the DfCs for issue
notices to the Respondents.
vide No 3025 dated
10.6.09.

11.6.09
TIB/6/09

① Service report.
awarded.

29.7.09

/bb/

No W/S filed

27.8.09

27.8.09
Respondents No:
1, 2 & 3 filed
Affidavit in reply
with Rakalatram
through Mr. M.U. Ahmad
Adv. CGSC. with
order seeking to
leave to the Advocate
for the Applicant.

27.8.09

30.07.2009 None appears for the Applicant. On
the prayer of Mr G. Baishya, learned Sr. Standing Counsel for
Govt. of India in course of the day, call this matter on 28.08.2009.

(M.K. Chaturvedi)
Member (A)

nkm

(M.R. Mohanty)
Vice-Chairman

28.8.09

28.08.2009 Prayer for an employment on compassionate ground (as a measure of rehabilitation to the distressed family of a Govt. servant died prematurely) could not be materialized for want of 5% of DR vacancies in Respondent Organization.

In the above said premises, the Applicant (son of the deceased Group D Staff of Respondents Organization) approached this Tribunal with O.A.No.220/2007; which was disposed of on 23.04.2008. This Tribunal took the following views; while disposing of the case/O.A.No.220/2007 on 23.04.2008:-

"M.C. Bezbaruah, while serving under the Respondents Organization as a Peon, died prematurely on 02.08.2005 leaving behind the widow, two unmarried /unemployed daughters and two unemployed sons. *** *** *** It is the positive case of the Respondents that, 50% of direct recruitment vacancies in Group C & D posts (having been set apart for compassionate appointment not being available, no employment could be provided to the Applicant.*** *** Respondents have also fairly disclosed that two posts of LDC, two posts of helper, two posts of Peon, one post of Farash and one post of Skilled Worker Grade II are lying vacant in different DIs of the Respondents Organization at Guwahati, Silchar, Tura and Tezpur since 2006-07. *** ***

*** There is no dispute that deceased Government servant has left behind a heavy family with two unmarried/unemployed daughters and two unemployed sons and the widow. It has not been disputed by the Respondents that the Applicants are in distress with a paltry sum of Rs.3,000/- as Family Pension; which is a very small amount for a family of five

Contd/-

28.08.2009

persons.*** *** *** Only problem before the Respondents is that there is no clear vacancy to be filled up on compassionate ground.*** ***

*** A family of a deceased Peon with 2 grown up un-married daughters needs immediate help for sustenance. On the other hand, although satisfied, the Respondents Organization is not in a position to provide an employment to one of the members of the family, although vacancies are there, because of the 5% clause stated above.***

*** The family needs immediate assistance; at least for a minimum dignified living till the marriage of the 2 daughters of the family.*** *** temporary engagement to one of the male members of the family (as against existing vacancies) can solve the problem for now. ***

*** *** Since some vacancies are there in Group C and D posts at the disposal of the Respondents, they should consider to provide a purely temporary engagement to the present Applicant as against any of the vacant Group C and/or Group D posts (as the Applicant is a Matriculate) in order to mitigate immediate penury condition of the family."

2. The Respondents Organization, it is seen, again turned-down the case of the Applicant; on the ground that "as the Government has banned ad-hoc appointment, the temporary engagement is not covered under Rules and, accordingly, the same can not be given to him" In the rejection order dated 29.05.2008, the Respondents have not disclosed as to under which Rules, the ban has been imposed. Despite attempts of the Applicant to know the Rules under which ban was imposed (for

contd/-

contd/-

28.08.2009

adhoc/temporary engagement) no helping hand was extended to him. That itself shows the un-kindness of the Respondents.

3. While filing the reply to this Contempt Petition, the Respondents also chosen not to disclose about the Rules referred to in their order dated 29.05.2008. However, they have placed an record a copy of Office Memo No. 28036/1/2001-Estt (D) Dated 23.07.2001 of Department of Personnel & Training of Govt. of India; which goes to show that in appropriate and deserving cases, with approval of DOPT, such ad-hoc appointments can be given.

4. There are no material available on record to show that any attempt was made by the Respondents Organization to obtain permission of DOPT (by placing the fact that in order to cover a very deserving case, they intend) to fill-up certain vacancies purely an temporary basis, by a distress member of the family of a prematurely deceased Govt. servant. Where there is a will there is a way.

5. Mr. M. U. Ahmed, learned Addl. Standing Counsel for Govt. of India, intends to take instructions on the point as to whether DOPT has been moved to give clearance in the matter or not.

6. DOPT not being a party before us, we direct the Respondents to explore the possibility of providing temporary engagement to the Applicant (While awaiting 05% of direct vacancy) as against the existing vacant post (in order to save the family of

Contd/-

C.P. 3 of 2009 O.A.220 of 20.

Contd/-

28.08.2009

prematurely deceased Govt. Servant) by way of obtaining clearance from DoPT. We are sure the Department of Personnel & Training (DOPT) of Govt. of India shall not hesitate to permit the engagement of the Applicant, as a special case, for the reason of facts & circumstances involved in it.

7. While asking the Respondents (and DOPT) to act promptly; we adjourn this matter (Contempt Petition) to 12.10.2009.

8. Send copies of this order to the Applicant and the Respondents.

9. Free copies of this order be also sent to DOPT and also to the Advocates appearing for the parties.

copies of order dt. 28/8/09 send to D/Sec. for issuing to applicant and the respondents by post.

Free Copies of this order also issuing to DoPT and Adv. for both the parties.

Lm.


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Cr. D/No - 1233-1239
7/9/09. D/No 11-9-09

12.10.2009

On the request of learned counsel for the Applicant, call this matter on 10.11.2009.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/lm/

10.11.2009

Learned proxy counsel seeks some time as Mr.M.U.Ahmed, learned Addl. C.G.S.C. for Respondents is unwell and is not present today.

List on 17.11.2009.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/bb/

17.11.2009 Respondents, in pursuance of order dated 28.08.2009 whereby they were required explore possibility of providing temporary engagement to Applicant in certain manner, have filed an affidavit. Learned counsel for Applicant seeks some time to study/argue the matter.

20.11.09
Common Addl.
Affidavit filed by
the Respondents in
the Court on 17.11.09
through Mr. M.U.
Ahmed Addl. C.G.S.C.
with 'under take up'
to serve a copy to
the A.D.R. for the
Applicant.

10/11/09

List on 23.11.2009.


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

/bb/

10.12.09
Addl. Affidavit
filed by the
Respondents through
Mr. M.U. Ahmed,
Addl. C.G.S.C.
10/11/09

23.11.2009 Mr. M.U. Ahmed, learned Addl. C.G.S.C. seeks some time to place on record (i) the details of the vacancies which came into existence after passing of the judgment dated 23.04.2008 in O.A.220/2007; (ii) break up of the vacancies filled from various methods like direct recruitment, compassionate appointment and other methods under Recruitment Rules; and (iii) details of vacancies which arose after Applicant had filed an application seeking for compassionate appointment. This shall be ~~done~~ filed by appropriate means by the Respondents within a period of two weeks.

List on 10.12.2009.


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

/bb/

10.12.09 It is stated that the affidavit in compliance of direction dated 23.11.09 is being filed today.

List on 16.12.09.


(Mukesh Kr. Gupta)
Member (J)

C.P. No. 3-2009 (in O.A. 220/07)

16.12.2009

Shri S. Chakraborty states that Shri B. Chakraborty, learned counsel appearing for applicant is unwell and therefore prays for time.

Affidavit in compliance of direction dated 23.11.2009 has been filed on 10.12.2009.

List on 07.01.2010.

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

/PB/

7.1.2010 Heard both sides. Reserved for orders.

7.1.2010 Heard both sides. Reserved for orders.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

7.1.2010

Heard both sides. Reserved for orders.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

13.01.2010

Judgment pronounced.

In terms of the order recorded separately C.P. is dismissed.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gup
Member (J)

20-1-2010

Final order dated 13/1/2010
Prepared and Sent to the D/Selldon
for Issuing the all the Refdls by
Post. vide No - 204 to 206

dated

20.1.2010 /pg/

51

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Contempt Petition No. 3 of 2009
In O.A. 220/2007.

DATE OF DECISION : THIS, THE 13th DAY OF JANUARY, 2010

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR. MADAN KUMAR CHATURVEDI, MEMBER (A)**

Sri Binod Bezbarua,
So of Late Madhab Chandra Bezbarua,
Village Gamarimuri,
P.O. Kaithalkuchi, Dist. Nalbari
Assam.Applicant

By Advocate Shri B.Chakraborty.

• Versus –

1. Shri Madhav Lal,
Development Comissioner,
Ministry of Micro, Small & Medium Enterprises,
Nirman Bhawan, 7th Floor,
Maulana Azad Road,
New Delhi-11.
2. Sri A.Kumar,
Deputy Director (Administration)
O/o the Development Commissioner (MSME)
Ministry of Micro, Small & Medium Enterprises,
Nirman Bhawan, 7th Floor,
Maulana Azad Road, ↘
New Delhi-11.
3. Sri N.N. Debnath,
Director, Small Industries Service Institute,
(Now Development Institute)
Bamunimaidam, Guwahati-21.
Dist. Kamrup, Assam.

.....Respondents/Alleged Contemners.

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

ORDERMR M.K.CHATURVEDI, MEMBER(A)

Violation of order dated 23.4.2008 of this Tribunal (rendered in O.A.No.220/2007) is the subject matter of allegation in the Contempt Petition.

2. In the aforesaid order Tribunal rendered the following directions :

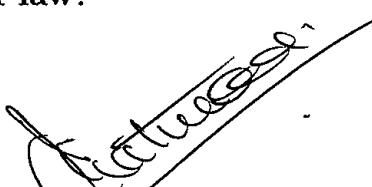
"Since some vacancies are there in Group C and D posts at the disposal of the respondents, they should consider to provide a purely temporary engagement to the present applicant as against any of the vacant Group C and/or Group D posts (as the applicant is a Matriculate) in order to mitigate immediate penury condition of the family; and such arrangement can be allowed till respondent organisation finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the applicant."

3. Adverting to the history of the case we find that Shri Madhab Chandra Bezbaruah, while serving as Peon in MSME DI, Guwahati died on 2.8.2005. The widow of the deceased made a representation to the Director, for the employment of her son on compassionate ground. The representation was considered in the office of the Development Commissioner (MSME) but it was not found feasible to grant compassionate appointment to the petitioner as no vacancy in Group C or D post could be found under the 5% quota for compassionate appointment. Again a representation was made on 7.3.2006. This was considered but appointment could not be given due to the same reason. Being aggrieved by the said order applicant approached before this Tribunal. The O.A was disposed of vide order



dated 23.4.2006 observing that respondents should consider to provide a purely temporary engagement to the applicant against any of vacant Group 'C' or 'D' post and such appointment can be allowed till respondents finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the applicant. The respondents in conformity with the direction of the Tribunal again considered the case of the applicant. But due to ban on ad hoc appointment, purely temporary arrangement as suggested in the order of the Tribunal could not be given to the applicant. We find from records that the order of the Tribunal was complied with within the limits of law. No mandate was issued for providing temporary appointment. The respondents were directed only to consider to provide purely a temporary engagement as against the vacant Group 'C' or 'D' post. The office of the Development Commissioner (MSME) duly complied with the order of the Tribunal and re-considered the possibility for providing temporary engagement to the applicant, but due to ban put on ad hoc appointment, suggested arrangement could not be made.

4. In view of the above we hold that no contempt has been committed by the respondents. Thus C.P. is dismissed. Notices are discharged. It is needless to mention that in any case, applicant is still aggrieved, by the said order, he is at liberty to take appropriate steps as per law.


 (MADAN KUMAR CHATURVEDI)
 ADMINISTRATIVE MEMBER


 (MUKESH KUMAR GUPTA)
 JUDICIAL MEMBER

27 MAY 2008
27/5/08

গুৱাহাটী চায়াবৰ্ষা
Guwahati Chayabari

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

C.P CASE NO 3 /2009

In O.A No. 220/2007

Sri Binod Bezbarua,

.....Petitioner

-Versus-

Sri Madhav Lal & Others

Respondents.

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Filed by

Santosh Chakraborty

Advocate



Sri Binod Bezbarua

27 MAY 2009

गुवाहाटी आदायपीठ
Guwahati Bench

Filed by
S. K. Choudhury
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

C.P CASE NO 3 /2009

In O.A No. 220/2007

Sri Binod Bezbarua, son of
Late Madhab Chandra Bezbarua,
Village Gamarimuri, P.O
kaithalkuchi, District Nalbari,
Assam.

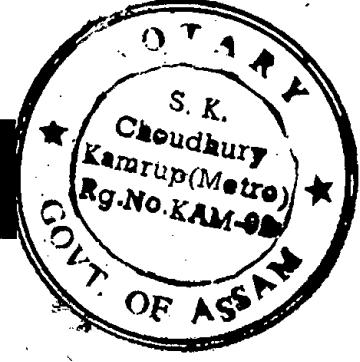
.....Applicant

-Versus-

1. Union of India represented
by its Secretary to the
Ministry of Small Scale
Industries, Nirman Bhawan, New
Delhi.

2. Director,
Small Industries Service
Institute, Bamunimaidam,
Guwahati-21, District :Kamrup,
Assam.

3. Deputy Director, (Administratio
n) Small Industries Service
Institute, Bamunimaidam,
Guwahati-21, District Kamrup,
Assam.



Sri Binod Bezbarua

27 MAY 2009

गुवाहाटी न्यायालय
Guwahati Bench

4. Development Commissioner,
Small Scale Industries, Nirman
Bhawan, New Delhi

5. Section Officer
(Administration), Small
Industries, Nirman Bhawan, New
Delhi

..... Respondents

And

In the matter of :

(An Application under Section
17 of The Administrative
Tribunal Act, 1985 read with
Contempt Of Court Act, 1971)

And

In the matter of :

Non compliance of the order
dated 23.4.2008 passed by this
Hon'ble Tribunal in O.A No.
220/2007.

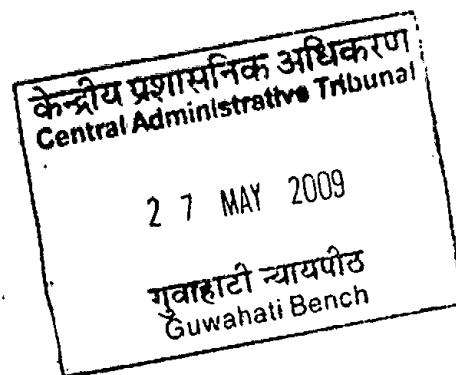
And

In the matter of :

Sri Binod Bezbaruah, son of
Late Madhab Chandra Bezbaruah,
Village Gamarimuri, P.O
kaithalkuchi, District Nalbari,
Assam.



Sri Binod Bezbaruah



..... Petitioner

-Versus-

1. Sri Madhav Lal, Development Commissioner, Ministry of Micro, Small and Medium Enterprises, Nirman Bhawan, 7th floor, Maulana Azad Road, New Delhi-11.
2. Sri A. Kumar, Deputy Director, (Administration), ~~of Dev. Commr.~~ (MSME) Ministry of Micro, Small and Medium Enterprises, Nirman Bhawan, 7th floor, Maulana Azad Road, New Delhi-11
3. Sri N.N. Debnath, Director, Small Industries Service Institute, (Now Development Institute) Bamunimaidam, Guwahati-21, District : Kamrup, Assam.

..... Respondents

The petitioner above named

Most respectfully begs to state

1. That the petitioner states that his father Late Madhab Chandra Bezbarua was serving as a regular peon in the Office of the Director, Small Industries Service Institute, Bamunimaidam, Guwahati, and while in service he died in harness on 2.8.2005.



Sri Benod Bezbarua

27 MAY 2009

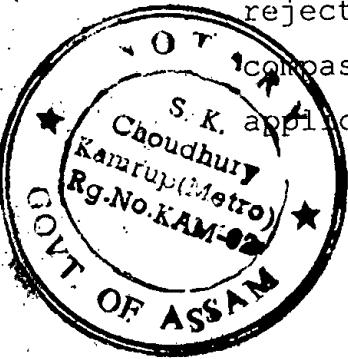
गुवाहाटी न्यायपीठ
Guwahati Bench

2. That the father of the petitioner was the sole bread earner of the large family and after his death the family was facing penury and destitute having no sustainable source of income except the nominal family pension.

3. That since the father of the petitioner died in harness, the petitioner, in view of the Government policy for giving compassionate appointment, made an application before the Director, Small Industries Service Institute, Guwahati, on 7.9.2005 praying for an appointment on compassionate ground. The petitioner did not receive any formal communication in response to his application dated 7.9.2005. However, on enquiry made by the petitioner, a Photostat copy of letter dated 7.12.2005 was handed over to the petitioner, wherein it was stated that the 5% quota for compassionate appointment as per the instructions of the DOPT OM NO-14012/6/94 dated 9.10.1998, had already been utilized in Small Industries Service Institute, Guwahati and as such the prayer of the petitioner could not be accepted.

4. That thereafter, the petitioner made another prayer before the Development Commissioner on 7.2.2006 for appointment on compassionate ground. In the said application it was also stated that the petitioner is willing to accept posting anywhere in the country. The application of the petitioner dated 7.3.2006 was also rejected by the authorities on 20.3.2006 on the same aforesaid ground.

5. That aggrieved by the action of the authority, in rejecting the claim of the petitioner for appointment on compassionate ground, the petitioner filed an application before this Hon'ble Tribunal under Section



Sri Bimal Beglani

27 MAY 2009

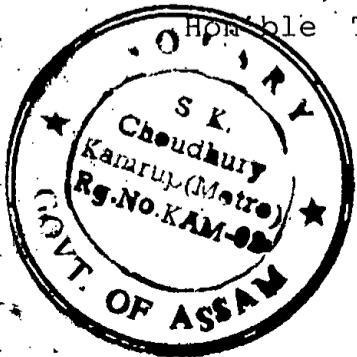
गुवाहाटी न्यायपोठ
Guwahati Bench

19 of the Administrative Tribunal act, 1985, vide O.A. No. 220/2007, alleging, inter-alia, that the authority acted illegally and arbitrarily in rejecting his claim for compassionate appointment in as much as, there had been a number Grade C and Grade D post lying vacant against the 5% quota for compassionate appointment. The respondent submitted there written statement in the case in which it was reflected that some Grade C and Grade D post are lying vacant under the Director, Small Industries service Institute, Guwahati. However, the respondent took the stand that as there was no vacancy under the 5% quota of compassionate appointment and therefore, the petitioner's case could not be considered for appointment.

6. That this Hon'ble Tribunal finally heard and disposed of the matter by judgment and order dated 23.4.2008 holding that the large family of the petitioner needed immediate help for sustenance for a minimum dignified living. The application filed by the petitioner was disposed of by this Hon'ble Tribunal giving a direction to the authorities to consider the case of the petitioner for a temporary engagement against the vacant Grade C or Grade D post in order to mitigate immediate penurious condition of the family till the organization found a suitable vacancy for regular appointment of the petitioner.

A copy of the judgment and order dated 23.4.2008 passed in O.A. No. 220/2007 is annexed herewith and marked as Annexure-I.

7. That the petitioner furnished a certified copy of the judgment and order dated 23.4.2008 passed by this Hon'ble Tribunal with a forwarding letter before the



Sidhu Beinod Bebarwa

27 MAY 2009

गुवाहाटी न्यायालय
Guwahati Bench

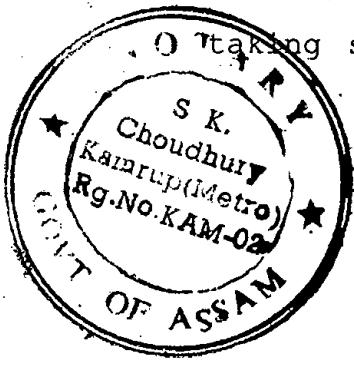
Respondent no. 2 on 9.5.2008 which was duly received by the office on 9.5.2008.

A copy of the letter dated 9.5.2008 is annexed herewith and marked as Annexure-II.

8. That the petitioner on 13.6.2008 received an order No. C-18014/3/2007-A(NG) dated 29.5.2008 issued by the Deputy Director, (ADMN) Micro ,Small and Medium Enterprises (MSME), wherein it has been stated that the case of the petitioner had been re-considered in the light of the observation made by this Hon'ble Tribunal directing to give temporary engagement to the petitioner but in view of the fact that there had been a ban imposed by the Government of India on ad-hoc appointments and also in view of the fact that temporary engagement of the petitioner was not covered under the Rules same couldn't be given to him.

A copy of the order dated 29.5.2008 passed by the Deputy Director MSME is annexed herewith and marked as Annexure-III.

9. That the petitioner states that on the face of it the order dated 29.5.2008 was not a compliance order of the direction passed by this Hon'ble Tribunal on 23.4.2008. The Hon'ble Tribunal issued a specific direction to give temporary engagement to the petitioner till a regular appointment was made on compassionate ground on availability of vacancy and the direction was issued in view of penurious condition of the family . Even assuming that there was some impediment in giving temporary engagement to the petitioner, it was incumbent upon the respondent to intimate the same to this Hon'ble Tribunal for such necessary modification instead of taking such a contrary stand, and that not having been



Sri Bimod Bezbarua

27 MAY 2009

গুৱাহাটী ন্যায়পাঠ
Guwahati Bench

done, the action of the respondent was contemptuous on the face of the order dated 29.5.2008.

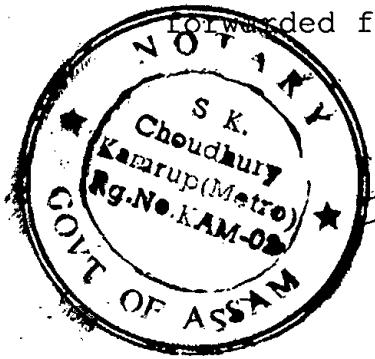
10. That however, since in the order dated 29.5.08 some ban imposed by the Government of India was reflected, instead of filing the instant contempt petition immediately, the petitioner made an application under the Right to Information Act, 2005 on 14.8.2008 before the Public Information Officer, Small Industries Service Institute, Bamunimaidam, Guwahati, asking for necessary information as regards imposition of ban on ad-hoc appointments etc. and along with the application the petitioner also enclosed a Indian Postal order of Rs. 10/- as per requirement of the Right to Information Act.

A copy of the said application dated 14.8.2008 is annexed herewith and marked as Annexure-IV.

11. That thereafter on 24.11.2008 the petitioner received a communication No. 2/6/05-EA-P-II/4483 dated 23.10.2008 issued by the Central public Information Officer to the Development Commissioner, Ministry of Micro, Small and Medium Enterprises, to provide the information sought for by the petitioner.

A copy of the letter dated 23.10.2008 is annexed herewith and marked as Annexure-V.

12. That thereafter the petitioner on 21.11.2008 received a communication no. 2/6/05-EA-P-II/4996 dated 17.11.2008 issued by the Central public Information officer, to the Director, East Division, DOPT, North Block, New Delhi, whereby the application of the petitioner under the Right to information Act was forwarded for necessary action.



Sri Binod Bezbarua.

27 MAY 2009

गुवाहाटी आयोग
Guwahati Bench

A copy of the letter dated 17.11.2008 is annexed herewith and marked as Annexure-VI.

13. That the petitioner on 21.11.2008 received a letter dated 17.11.2008 from the Central Public Information Officer, wherein it was stated that the application of the petitioner was transferred to the Director, East Division, DOPT, North Block, New Delhi, and thus the case of the petitioner got transferred to the said department.

A copy of the letter dated 17.11.2008 issued to the petitioner is annexed herewith and marked as Annexure-VII.

14. That the petitioner states that till date he has not been furnished with the information sought for by him under the Right to Information act. The petitioner states that the information he sought for was the foundation for rejecting his engagement, which he was entitled as per clear direction of this Hon'ble Tribunal order dated 23.4.2008.

15. That the petitioner states that the action of the Respondent No.1, Respondent No.2 and Respondent No.3 in not complying with the direction issued by this Hon'ble Tribunal, amounts to disobeying the Hon'ble Tribunal's Order in a deliberate manner and therefore the respondents have committed contempt of the Hon'ble Tribunal and they are liable to be punished under provision of the Contempt of Court Act, 1971. The petitioner states that Respondent No.1 is one who passed the contemptuous order dated 29.5.08 and the same has been communicated by the Respondent No. 2 and the Respondent No.3 was the authority to carry out and comply the order of the Tribunal dated 23.4.08 passed in



Sri Benod Bezbarua

27 MAY 2009

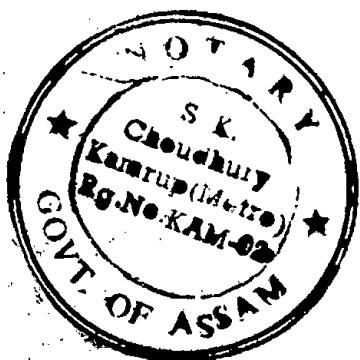
गुवाहाटी न्यायसीठ
Guwahati Bench

O.A.No. 220/07 and therefore they have been arrayed as Respondents in the case.

16. That the petitioner states that the authorities refused to comply with the direction of Hon'ble Tribunal stating that there had been a ban imposed by the Government of India on Ad hoc appointment and stating that giving Ad hoc appointment is not contemplated under the Rules. The petitioner states that so far the ban is concerned, the authorities are not able to furnish any information to the petitioner in response to his application as well as his Appeal dated 20.1.2009 under the Right to Information Act, 2005. So far the second reason forwarded by the authorities the petitioner states that the direction was given by this Hon'ble Tribunal after due consideration of the immediate need for sustenance for the family of the petitioner. The action of the respondents in confronting the direction issued by the Hon'ble Tribunal is contemptuous in nature and the Respondent No.1 and Respondent No.2 are liable to be prosecuted and punished under the provision of Contempt of Court Act, 1971.

17. That the petitioner states that the action of the authorities in issuing the order dated 29.5.08 so as to nullify the direction given by the Tribunal is contemptuous and therefore the Respondent No.1, respondent no. 2 and Respondent No.3 are liable to be prosecuted and punished under the provision of Contempt of Court Act, 1971.

18. That the petition is made bonafide and in the interest of justice.



It is, therefore, prayed that the Hon'ble Tribunal may be pleased to issue a notice

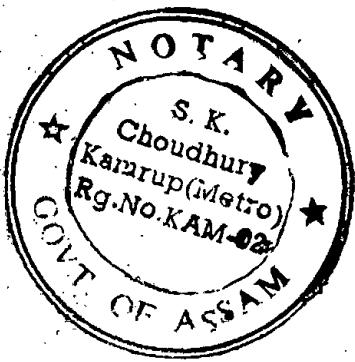
Sri Binod Bezboruah.

27 MAY 2009

गुवाहाटी न्यायालय
Guwahati Bench

to the respondents to show cause as to why a contempt proceeding shall not be initiated against the respondents for their willful disobedience of the order of this Tribunal dated 23.4.2008(Annexure - I) passed by this Hon'ble Tribunal in O.A No. 220/2007 and after hearing the causes shown , be pleased to draw a contempt proceeding against the respondents for imposition of appropriate punishment as provided under the provision of Section 17 of the Administrative Tribunal Act, 1985 read with Contempt of Court Act, 1971 and /or pass such further order /orders as your lordships may deem fit and proper .

And for this act of Kindness, the petitioner, as is duty bound, shall ever pray.



Sri Beinod Bezbarua.

27 MAY 2009

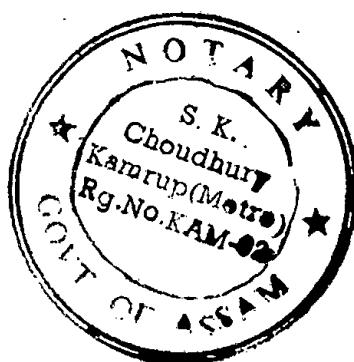
गुवाहाटी न्यायपीठ
Guwahati Bench

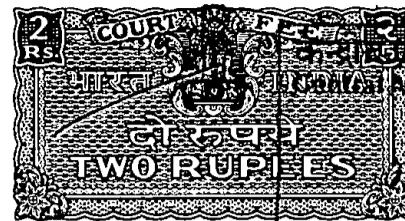
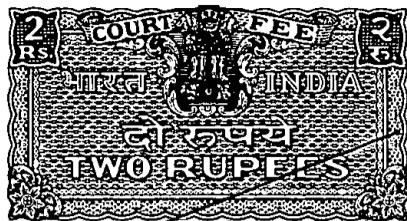
VERIFICATION

I, Sri Binod Bezbaruah, son of Late Madhab Chandra Bezbaruah, Village Gamarimuri, P.O kaithalkuchi, District Nalbari, Assam, aged about years, unemployed, do, hereby verify that the statement made in this verification and in paragraph 1 no. to are true to my knowledge; those made in paragraphs no is my respectful submission before this Hon'ble Court.

And I sign this verification on this 27th day of May, 2009 at Guwahati.

Sri Binod Bezbaruah.





शासनिक अधिकरण
National Administrative Tribunal

7 MAY 2009

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Guwahati Bench

45
27/05/09.

AFFIDAVIT

I, Sri Binod Bezbarua, son of Late Madhab Chandra Bezbarua, Village Gamarimuri, P.O kaithalkuchi, District Nalbari, Assam, aged about years, unemployed, do, hereby solemnly affirm and state as follows:-

- That I am the petitioner in the accompanying petition and as such I am fully acquainted with the facts and circumstances of the case.
- That the statements made in this affidavit and in paragraph no. 1 to 15 are true to my knowledge; those made in paragraphs no 16 to 18 is my respectful submission before this Hon'ble Court.

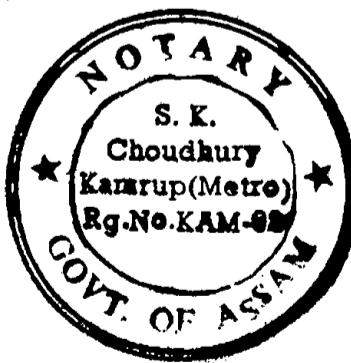
And I sign this affidavit on this 27th day of May, 2009 at Guwahati.

Identified by

Subhen Bezbarua
Advocates' Clerk

27.5.09

Sri Binod Bezbarua.
DEPARTMENT



SOLEMNLY AFFIRMED AND DECLARED
BEFORE ME
ON IDENTIFICATION OF ADVOCATE
DATER

Sanjeeb Kumar Choudhury
NOTARY
KAMRUP (Metro) GUWAHATI

27/05/09

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

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गुवाहाटी न्यायपीठ
Guwahati Bench

Draft Charges

The respondents named herein above have committed contempt under the provisions of Section 17 of The Administrative Tribunal Act, 1985 read with Contempt Of Court Act, 1971) by willfully disobeying the order dated 23.4.2008 passed by this Tribunal passed in O.A No. 220/2007.

Sri Benod Bezbarua.

ANNEXURE

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 220 of 2007

This the 23rd Day of April, 2008

HON'BLE MR. MANORNAJAN MOHANTY, VICE-CHAIRMAN

Sri Binod Bezbarua
S/O Late Madhab Chandra Bezbarua
Village-Gamari Muri
Post Office-Kaithalkuchi
District-Nalbari, Assam

Applicant

By Advocate Mr. B. Chakraborty, Mr. S. Chakraborty,
Mr. T.R. Sarma

-Versus-

1. Union of India to be represented by its Secretary to the Ministry of Small Scale Industries, Nirman Bhawan, New Delhi.
2. The Director
Small Industries Service Institute
Bamunimaidam, Guwahati-21
3. The Deputy Director (Administration)
Small Industries Service Institute
Bamunimaidam, Guwahati-21
4. Development Commissioner,
Small Scale Industries,
Nirman Bhawan, New Delhi
5. Section Officer (Administration)
Small Scale Industries
Nirman Bhawan, New Delhi.

Respondents.

Mr. G. Baishya, Sr. C.G.S.C.

ORDER (ORAL)
23.04.2008

M.R. MOHANTY, V.C.:

One Shri M.C. Bezbarua, while serving under the Respondents Organization as a Peon, died prematurely on 02.08.2005 leaving behind the widow, two unmarried/ unemployed daughters and two unemployed sons. Prayer of the distress family, to get an employment

Central Admin. Tribunal
Guwahati

14/4/08
915/0

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Advocate

Sri Binod Bezbarua

on compassionate ground, to one of the members of the family, having been turned down by the Respondent Organization, they have filed the present Original Application filed under Section 19 of the Administrative Tribunal Act, 1985.

2. By filing a written reply, the Respondents have disclosed that the family of the deceased 'Peon' are getting Family Pension of Rs.3,075/- per month and got lump sum amount of Rs. 2,37,586/- from DCRG; Rs.5000/- from Group Insurance; Rs.9,829/- from G.P.F and Rs. 1,198/- from leave encashment of deceased Government servant. It is the positive case of the Respondents that, 5% of direct recruitment vacancies in Group C & D posts (having been set apart for compassionate appointment) not being available, no employment could be provided to the Applicant (son of the deceased Government servant) and, as such, he has not been able to get an employment on compassionate ground. Respondents have also submitted that whatever posts were available, under the compassionate appointment quota, have already been granted to deserving cases between the year of 1973 to 2001 and that seven persons have already been appointed under compassionate employment quota and that three persons (including the Applicant) are still in waiting list as on date and that they have not been able to get employment on compassionate ground. Respondents have also fairly disclosed that two posts of LDC, two posts of Helper, two posts of Peon, one post of Farash and one post of Skilled Worker Grade II are lying vacant in different DIs. of the Respondents' Organization at Guwahati, Silchar, Tura and Tezpur since 2006-07.

2. Despite opportunity, the Applicant has not filed any rejoinder.

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Sri Bonod Bez Larma.

Heard Mr.S.Chakraborty, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr.Standing Counsel appearing for the Respondents department/Organization and perused the materials placed on record.

4. There is no dispute that deceased Government servant has left behind a heavy family with two unmarried/ unemployed daughters and two unemployed sons and the widow. It has not been disputed by the Respondents that the Applicants are in distress with a paltry sum of Rs.3000/- as Family Pension; which is a very small amount for a family of five persons. Only problem before the Respondents is that there are no clear vacancy to be filled up on compassionate ground.

5. A family of a deceased Peon, with 2 grown up un-married daughters, needs immediate help for sustenance. On the other hand, although satisfied, the Respondent Organisation is not in a position to provide an employment to one of the members of the family, although vacancies are there, because of the 5% clause stated above. The family needs immediate assistance; at least for a minimum dignified living till the marriage of the 2 daughters of the family. In absence of any prohibition to give temporary engagement, one of the male members of the family (as against existing vacancies) can solve the problem for now.

6. Since some vacancies are there in Group C and D posts at the disposal of the Respondents, they should consider to provide a purely temporary engagement to the present Applicant as against any of the vacant Group C and/or Group D posts (as the Applicant is a Matriculate) in order to mitigate immediate penury condition of the family; and such arrangement can be allowed till Respondent

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

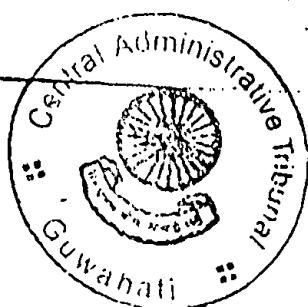
27 MAY 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sri Bimal Basumatary.

Organization finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the Applicant.

7. With this above observations, this O.A. stands disposed of.



Sd/-
Manoranjan Mohanty
Vice-Chairman

TRUE COPY

प्रतिलिपि

अनुसन्धान अधिकारी
Section Officer (Judi)
Central Administrative Tribunal
गुवाहाटी न्यायपाल
Guwahati Bench
गुवाहाटी/Guwahati-S

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sri Binod Bora

18
ANNEXURE - II

To

The Director,
Small Industries Service Institute,
Bamunimaidam, Guwahati-21.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Date- 09.05.2008

Sub:- Appointment on Compassionate Ground.

Ref:- Judgment and Order dated 23.04.2008, passed by the Central Administrative Tribunal, Guwahati Bench in Original Appeal No.220/07.

Sir,

I respectfully state that my father Sri Madhab Chandra Bezbaruah was serving as a peon in the office and he died on 2/8/05 in harness. My father was the only bread earner of the family and on his death the family fell in penury and destitution.

I made an application before you praying for appointment on Compassionate Ground under the 'Prevailing Scheme' of the government. Which was not rejected for lack of vacancy. I then filed the application under reference before the Central Administrative Tribunal, Guwahati Bench. The Hon'ble Tribunal by Order dated 23.4.08 allowed and disposed of the application with the direction to the authorities to consider to provide me temporary engagement against vacant "Group-C" or "Group-D" post till the authorities find a suitable vacancy to provide regular appointment to me.

I therefore pray before you kindly accommodate me providing appointment as ordered by the Hon'ble Tribunal, so that I can support my family in a decent living.

Yours faithfully

Sri Binod Bezbaruah

(Sri Binod Bezbaruah)
S/o- Late Madhab Bezbaruah
Vill-Gamarimuri
P.O.-Kaithkuchi
Dist.-Nalbari, Assam

Enclosed Copy:

A copy of Judgment and order dated 23.4.08 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 220/07.

Certified to be True Copy


Advocate

Sri Binod Bezbaruah.

(11) 23062311, FAX: 23022220, 23022221, 23022202 FAX: + (91-31) 23062315, 23061726, 23061068, e-Mail: demanchq@msme.ole.in

No. C-18014/1/007-A(NG)

Dated: (29.5.2008)

ORDER

The Hon'ble CAT Guwahati Bench, while disposing of O.A. No. 220/2007 filed by Shri Binod C. Bezbaruah, S/o late Madhab Chandra Bezbaruah, ex- Peon, MSME-DI, Guwahati, vide its order dated 23.4.2008, has observed that the respondents should consider to provide a purely temporary engagement to the present applicant as against any of the vacant Group 'C' and/or Group 'D' posts and such arrangement can be allowed till respondent organization finds out a suitable/ appropriate vacancy to provide regular compassionate appointment to the applicant.

2. Shri Madhab Chander Bezbaruah while working as Peon in MSME-DI, Guwahati died on 2.8.2005. The widow of the deceased Government servant, namely, Smt. Kanchan Bezbaruah made a representation dated 18.8.2005 to the Director, MSME-DI, Guwahati for employment to her son Shri Binod C. Bezbaruah on compassionate grounds. The representation was considered but it was not found feasible to grant compassionate appointment to the applicant as no vacancy in Group 'C' or 'D' post could be found under the 5% quota for compassionate appointment. Smt. Bezbaruah again made another representation dated 7.3.2006 for compassionate appointment to the applicant. This was also considered and rejected on the same grounds as no vacancy could be located within the 5% quota at that point of time.

3. Aggrieved by the above, Shri Binod C. Bezbaruah filed an O.A. 220/2007 in CAT Guwahati bench praying for a direction from the Tribunal to the respondents to consider the applicant for a compassionate appointment in the Group 'C' & Group 'D' post. The O.A. has been disposed of by the Tribunal vide Order dated 23.4.2008 with the observations mentioned in para 1.

4. In the light of the above observation, the matter regarding temporary engagement of the applicant has been reconsidered. As the Government has banned ad-hoc appointments, the temporary engagement of Shri Binod C. Bezbaruah is not covered under Rules and accordingly the same cannot be given to him.

 S.V.N. Pillai
 (S.V.N. Pillai)
 Deputy Director(Admin)

✓ Shri Binod Bezbaruah,
 S/o Late Madhab Chandra Bezbaruah,
 Village-Gammarimuri, Post Office- Kaithalkuchi,
 Dist- Et- Nalbari, Assam.

Copy to : MSME-DI, Guwahati w.r.t his letter No. C.14014(25)/2007/949 dt. 21.5.08.

The Public Information Officer,
Small Industries Service Institute,
Bamunimaidam, Guwahati-21.

Dated: 14.8.2008

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायसभा
Guwahati Bench

Sub: An application under section 6 of the Right to Information
Act, 2005.

Sir,

I would like to state that I preferred an Original application before the Hon'ble Central Administrative Tribunal, at Guwahati, for my appointment on compassionate ground as my father, Late Madhab Ch. Bezbarua, who was working in Small Industries Service Institute, Bamunimaidam, Guwahati-21, as an Grade IV employee died in harness on 28.8.2005, and the said application has been numbered as O.A No. 220/2007.

That The Hon'ble Central Administrative Tribunal, by order dated 23.4.2008 was pleased to disposed of my application with an observation that the authority should consider to provide me a purely temporary engagement against any vacant Group-C or Group-D post and such arrangement can be allowed till the authority finds out a suitable vacancy to provide me a regular appointment.

That accordingly I applied before the authority along with a copy of the order dated 23.4.2008. The Deputy Director, Administration, of Small Industries Service Institute, Bamunimaidam, Guwahati-21 by order dated 29.5.2008, has shown to have considered my case and as the Government has banned ad-hoc appointments, my temporary engagement is not covered under Rules, as such, no temporary engagement was given to me.

Now, therefore, I have preferred this instant application under the Right to Information Act, 2005 for providing me with the following information:

- i. Circular(s) / Notification(s) issued by the Government banning Ad-hoc appointments.
- ii. Rule(s) framed by the Government banning ad-hoc/ temporary appointments and,
- iii. All such other information in respect of ad-hoc/ temporary appointments.

Certified to be True Copy


Advocate

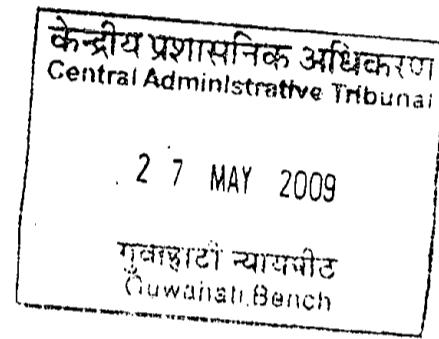
Sri Bimal Bezbarua.

I, therefore, request you to kindly provide me the aforementioned information so that I can seek appropriate remedy. The fees of Rs. 10 (ten) as required under the Right to Information act, 2005 is also paid herewith yide Indian Postal order.

Yours faithfully,

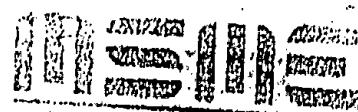
Sri Binod Bezbarua.

Sri Binod Bezbarua, son of Late Madhab
Ch. Bezbarua, Village- Gamarimuri, P.O
Kaithakuchi, District:- Nalbari, Assam.



Sri Binod Bezbarua.

Annexure-(III)



MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISE,
MICRO, SMALL AND MEDIUM ENTERPRISE DEVELOPMENT INSTITUTE
BAMUNIMAADAM: GUWAHATI-781021

A S S A M

No. M/005/FA-P-II / 4483

DL.23.10.08

The Development Commissioner,
(MSME),
Narinen Bhawan, 7th Floor,
New Delhi-108

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

27 MAY 2009

Kind Attn:- Shri S.V.N. Pillai, Dy Director (Admin),
Sub:- Application under Right to Information Act-2005.

Sir,

Shri Binod Bezbarua son of Late Madhab Chandra Bezbarua, Vill:- Gamarihuri, P.O.
Kaithalkuchi, Dist :- Nalbari, Assam has asked the following information under RTI Act 2005.

1. Circular(s) /Notification(s) issued by the Government banning Ad-hoc appointments.
2. Rule(s) framed by the Government banning ad-hoc/temporary appointments and.
3. All such other information in respect of ad-hoc/temporary appointments.

You are requested kindly to provide the above mentioned informations to us for onward transmission of the same to the person concerned.

Yours faithfully,

(A.K.Karma)
Dy. Director (Met)/C.C.O.
For Director

✓ Copy to:- Shri Binod Bezbarua, S/O Late Madhab Chandra Bezbarua, Vill:- Gamarihuri,
P.O. Kaithalkuchi, Dist :- Nalbari, Assam for information.

For Director

(A.K.Karma)
Dy. Director (Met)/C.C.O.
For Director

passed by the C.C.O.
Guwahati Bench in Original Application no.
220/07.

Sri Binod Bezbarua.

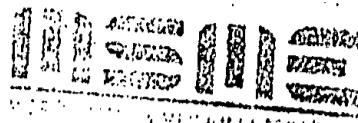
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A.K.Karma

Guwahati Bench
Guwahati, Assam
www.msmeb.gov.in

Guwahati Bench
Guwahati, Assam

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Annexure-(IV)

MINISTRY OF PAICKO, SMALL AND MEDIUM ENTERPRISES
MICRO, SMALL AND MEDIUM ENTERPRISE DEVELOPMENT INSTITUT
BAMUNIMADAM: GUWAHATI-781021
S. S. A. M

No.2/3/05/MSD/II/4096

Dated: 11th November, 2009

To
The
Minister
(Min. of Civilian)
DOPT, North Block
New Delhi

Subject: Information under RTI Act-2005

Dir.

Enclosed please find herewith an application seeking information under RTI Act-2005 received from Sri Binod Bezbarua, S/o of Late Chandra Bezbarua, will necessary action at your end.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायालय
Guwahati Bench

Yours faithfully,

(A.K. Karma)
Deputy Director(Met)/CPIO
For Director

Guwahati

(A.K. Karma)
Deputy Director(Met)/CPIO
For Director

PASSED BY THE C...

Guwahati Bench in Original Application no.
220/07.

Sri Binod Bezbarua.

Certified to be True Copy

Advocate

ANNEXURE

Regd. Post

21/11/08

Cham. in bind
E-mail: dedi-guwarhati@densmsme.gov.in
http://www.msmedi-guwarhati.gov.in

Phone: 0361-2550031, 2550032
Fax: 0361-2550053

Annexure-(V)

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES
M. O. MICRO, SMALL AND MEDIUM ENTERPRISE DEVELOPMENT INSTITUTE
BAMUNIMADAM: GUWAHATI-781021

A S S A M

No. 2/6/05-EA-P-II / 11002

Dated: 11th November, 2008

To
Shri Birend Bezbarua,
S/o Late Madhab Chandra Bezbarua,
Vill- Gumarimuri,
P.O- Kathalkuchi
Dist-Neibari(Assam)

Subject: Application under Right to Information Act-2005.

Sir,

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

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Guwahati Bench

With reference to your letter No. nil dated 24.9.08 on the subject cited above, your case was referred to our HQ vide letter No.2/6/05-EA-P-II/1482-83 dated 23-10-08 under intimation to you. The reply from HQ is also received vide letter No. A-60015/1/2007-A(NC) dated 29.10.08 which says that as per Section 8(3)(i) of RTI Act-2005, the case may please transferred to Director(Estt.Division), DOPT, North Block, New Delhi. Accordingly your case is being transferred to the above mentioned department.

Yours faithfully,

(A.K.Karma)
Deputy Director(Met)/CPIO
For Director.

passed by the
Guwahati Bench in Original Application No.
220/07.

Sri Birend Bezbarua.

Certified to be True Copy


Advocate

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No-3/2009
(Arising out of OA No.-220/2007)

Sri Binod Bezbarua

Petitioner

-VS-

1. Sri Madhav Lal
2. Sri A. Kumar
3. Sri N. N. Debnath

Respondent/ Alleged Contemnor

IN THE MATTER OF

An affidavit for and on behalf of the Respondent No 1

I, Madhav Lal, Additional Secretary and Development Commissioner (MSME), Ministry of Micro, Small and Medium Enterprises, Nirman Bhavan, 7th Floor, Maulana Azad Road, New Delhi-110108, do hereby

Solemnly affirm and state as follows:

1. That I am the Respondent No. 1 (one) in the instant Contempt Petition.
2. That I am holding the post of Additional Secretary & Development Commissioner (MSME) since 5th November 2008. I first came to know about this case after the filing of contempt petition by the petitioner alleging that the order passed by the Office of Development Commissioner (MSME) on 29th May 2008 is in contempt of the order of the Hon'ble Tribunal dated 23rd April 2008.
3. That I have gone through the aforesaid Contempt Petition filed by the Petitioner and have acquainted myself with the facts and circumstances of the case based on records.
4. At the outset I submit that I have the highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any order passed by the Hon'ble Tribunal.
5. That there is no any willful or deliberate and reckless disobedience of the order dated 23-04-2008 in O.A. No-220/07 pronounced by this Tribunal by the Respondent, and hence there is no question of showing any Contempt to the orders of this Tribunal.

*I undertake to serve
copy of affidavit as
and when the counsel
for the Petitioner
will be available*
24/8/11

Contd....2/-

Motin U-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Secy. & Dev. Commr. (MSME)
Government of India
Ministry of Micro, Small And Medium Enterp.

6. Brief history of the case

Shri Madhab Chandra Bezbaruah, while working as Peon in MSME-DI, Guwahati died on 02.08.2005. The widow of the deceased Government servant namely, Smt. Kanchan Bezbaruah, made a representation dated 18.08.2005 to the Director, MSME-DI, Guwahati for employment to her son, Shri Binod Bezbaruah, then aged about 25 years, on compassionate grounds. The representation was considered in the Office of the Development Commissioner (MSME) but it was not found feasible to grant compassionate appointment to the petitioner as no vacancy in Group 'C' or 'D' post could be found under the 5% quota for compassionate appointment as stipulated in the Scheme for Compassionate Appointment. Smt. Bezbaruah again made another representation dated 07.03.2006 for compassionate appointment to the Development Commissioner (MSME). This was also considered but could not be agreed to due to the same reason. Aggrieved by the above, Shri Binod Bezbaruah filed an O.A. No. 220/2007 to CAT, Guwahati Bench praying for a direction from the Tribunal to the respondents to consider the applicant for a compassionate appointment in any Group 'C' or 'D' post. The O.A was disposed of vide Order dated 23.04.2008 observing that respondents should consider to provide a purely temporary engagement to the applicant against any of vacant Group 'C' or 'D' post and such appointment can be allowed till respondent organization finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the applicant. In pursuance of the order of the Hon'ble Tribunal dated 23rd April 2008, the matter was considered in the Office of the Development Commissioner (MSME) but, on consideration, it was found that in view of the ban on ad-hoc appointments by the Government of India vide Deptt. of Personnel & Training O.M.No.28036/1/2001-Estt.(1) dated 23.07.2001, the petitioner could not be temporarily engaged. Accordingly, a self-speaking order was passed on 29th May 2008, which was conveyed to the petitioner.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

27 AUG 2009

Guwahati Bench
गुवाहाटी न्यायालय

The petitioner has alleged that the decision of the Office of the Development Commissioner (MSME) dated 29th May 2008 was in contempt of the orders of the Hon'ble Tribunal dated 23rd April 2008 and has sought to hold the answering respondent and other respondents in the petition responsible for the same. It is humbly submitted that the answering respondents was not even holding office of the Development

Commissioner when the order dated 29th May 2008 was passed and hence there is no question of arraigning him as a contemnor in the case. It is also submitted that the Office of the Development Commissioner (MSME) did consider the possibility of providing temporary engagement to the petitioner as directed by the Hon'ble Tribunal but after consideration it was unable to offer temporary engagement to the petitioner in view of the ban on ad-hoc appointments by the Government of India. In view of the circumstances, the other answering respondents of the Office of the Development Commissioner (MSME) also, by going along with the rules, policies and guidelines of the Government, did not commit any contempt of the Hon'ble Tribunal as they duly considered the matter in terms of the direction of the Hon'ble Tribunal.

That the above history may be treated as the integral part of this Reply/Affidavit.



MADHAV LAL
Addl. Secy. & Dev. Commr. (MSME)
Government of India
Ministry of Micro, Small And Medium Enterprises

7. That with regard to the Para 1 to 8 of the contempt petition, the answering Respondents do not admit anything which is beyond the records.
8. That with regard to the statement made in para 9 of the Contempt petition, the Respondent submits that the Hon'ble Tribunal while disposing off O.A. No.220/2007 had observed that respondents in the O.A. should consider to provide a purely temporary engagement to the applicant against any of the vacant Group 'C' and/or Group 'D' post. It is submitted that Tribunal did not give a definitive direction to the respondents in the O.A to provide temporary engagement to the petitioner, as sought to be made out by the petitioner, but had directed the respondents to consider providing temporary engagement. Such consideration was accorded and it was not found possible to offer even temporary engagement in view of the ban on ad-hoc appointments in the Government of India, as referred supra. As the matter was duly considered in the light of the policy and direction of the Government of India, the order of the Office of the Development Commissioner (MSME) could not be said to be in contempt of the Tribunal's direction and suffers from no illegality or infirmity.
9. That with regard to the statements made in Para 10 to 14, it is submitted that the same relate to certain steps the petitioner states he took to secure the documents relating to the Government of India's

instructions concerning the ban on ad-hoc appointments under the Right to Information Act with the relevant authorities under the said Act. As the same do not bear direct relevance to the question of the alleged contempt of the Hon'ble Tribunal's direction, it is not possible for the answering respondents to comment thereon for want of his personal knowledge and that gained from the records relating to the question of compassionate appointment.

10. That with regard to Para 15 to 17, the answering respondents in the contempt petition have not disobeyed the Hon'ble Tribunal's order. Furthermore, the Hon'ble Tribunal's orders were complied with by the Office of the Development Commissioner (MSME) since due consideration was accorded to providing temporary engagement to the petitioner but the temporary engagement could not be granted in view of the ban on ad-hoc appointments in the Government of India as

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

27 AUG 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

explained above. The relevant documents concerning the Government's policy and directions relating to banning ad-hoc appointments, as embodied in the DOPT's O.M.No.28036/1/2001-Estt.(1) dated 28.07.2001, is placed at Annexure-R-I.

In view of the facts and submissions made hereinabove, it is more respectfully prayed that the contempt petition be dismissed and the replying respondents be discharged from the notice under reply to meet the ends of justice.

- AND -

For this act of kindness the Respondent

shall ever pray.

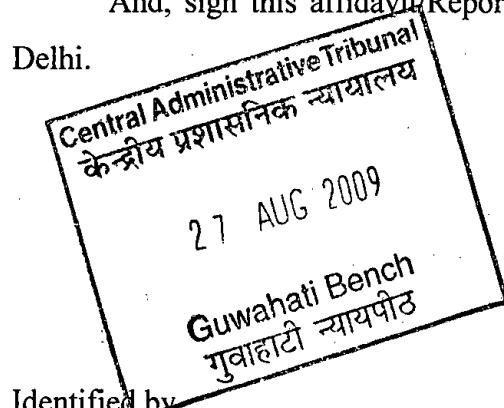
AFFIDAVIT

I, Madhav Lal, Additional Secretary & Development Commissioner (MSME), Ministry of Micro, Small and Medium Enterprises, Nirman Bhavan, 7th Floor, Maulana Azad Road, New Delhi-110108, aged 54 years, do hereby solemnly affirm and state as follows:-

That I am the Respondent No. 1 (one) in the above case and I am fully acquainted with the facts and circumstances of the case and nothing has been suppressed or concealed in this reply.

That the statements made in Para 1 to 10 of the affidavit are true to my knowledge, belief and information based on the records.

And, sign this affidavit/Report on this 22nd day of July, 2009 at New Delhi.



Identified by

R. L. Hindu

Signature
MADHAV LAL
 Addl. Secy. & Dev. Commr. (MSME)
 Government of India
 Ministry of Micro, Small And Medium Enterprises
 Office of The DC (MSME), New Delhi Deponent

Solemnly affirm & declare before
 me by the deponent who is
 Identified by... *R. L. Hindu*.
 Advocate at.... on 25/7
 this... day of July, 2009 at... *6 A.M.*

(ADVOCATE)

Deputy Secretary under the Central Staffing Scheme, will continue to be regulated by special instructions contained in O.M. No. 31/16/82-EO (MM), dated 28-8-1983.

6. *Review of ad hoc appointments/promotions.*— All *ad hoc* appointments including *ad hoc* promotions shall be reviewed on the basis of the above guidelines. In exceptional circumstances, wherever such appointments are required to be continued beyond the present term, the decision thereon may be taken by the authority prescribed in Para. (4) (v). However, it may be noted that the continuance of such *ad hoc* appointments, including *ad hoc* promotions, will be subject to the overall restrictions of one year from the date of issue of these instructions.

All Ministries/Departments are requested to take action in accordance with the above-mentioned instructions in respect of both Secretariat as well as non-Secretariat offices under them.

[G.I., Dept. of Per. & Trg., O.M. No. 28036/8/87-Estt. (D), dated the 30th March, 1988.]

(2) *No Ad hoc appointment by Direct Recruitment.*— The undersigned is directed to say that as per the Department of Personnel and Administrative Reforms O.M. No. 22011/3/75-Estt. (D), dated 29-10-1975 and the Department of Personnel and Training O.M. No. 28036/8/87-Estt. (D), dated 30-3-1988 (*Order (1) above*), persons appointed on *ad hoc* basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption), as the case may be, at the earliest opportunity. These instructions also provide that whenever an appointment is made on *ad hoc* basis, the fact that the appointment is *ad hoc* and that such an appointment will not bestow on the person a claim for regular appointment should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on *ad hoc* basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

2. Instances have, however, come to the notice that despite the clear provisions, as mentioned above, persons appointed on *ad hoc* basis, when replaced, approach the courts of law for regularizing their appointment and in many cases, directions are given for regularizing the period of *ad hoc* appointment with consequential benefits like seniority, etc.

3. In this regard, it is stated that issue of regularization of *ad hoc* employees has been considered in several judgments of the Hon'ble Supreme Court. In the case of *R.N. Nanjundappa v. T. Thimmaiah and others* (AIR 1972 SC 1767), the Supreme Court observed that regularization is not itself a mode of recruitment and any act in the exercise of executive power of the Government cannot override rules framed under Article 309 of the Constitution. In the case of *State of Orissa v. Sukanti Mahapatra* (AIR 1993 SC 1650), the Supreme Court has observed that assuming that their having served for long years is a valid reason for regularization, that without anything more, will not meet the requirement of the action being in public interest and what has been

done under the impugned orders is to regularize the illegal entry into service as if the Rules were not in existence. In another case of *K.C. Joshi v. Union of India* (AIR 1991 SC 284), the Supreme Court observed that the *ad hoc* appointees cannot be put on a higher pedestal over the candidates who stood the test of merit and became successful in a competitive recruitment and secured ranking according to the merit in the approved list of candidates. In the case of *State of Haryana and others v. Piar Singh and others* (1992 SC 2130), the Supreme Court observed that direction to regularize *ad hoc* appointments, work-charged employees would only result in encouraging of unhealthy practice of back-door entry — what cannot be done directly cannot be allowed to be done in such indirect manner. In the case of *Dr. M.A. Haque v. Union of India* (1993 2 SCC 213), the Supreme Court held that the Recruitment Rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commission are permitted, it will open a back-door for illegal recruitment without limit. In the case of *Dr. Arundhati A Pargaon-kar and another v. State of Maharashtra* (AIR 1995 SC 962), the Apex Court has held that a continuous service by itself do not give rise to the claim of regularization.

4. Therefore, as already stated in DoP & T's O.M.s referred to above, an *ad hoc* appointee has to be replaced by a regularly selected candidate as per provisions of the Recruitment Rules and in accordance with the prescribed procedure at the earliest possible and in no case such an officer should be regularized. In the cases, where a judicial order is received for regularization of an *ad hoc* employee, steps may be taken to contest the same in the light of the specific conditions on which the offer of appointment on *ad hoc* basis was made, the policy of the Government in this regard and the various judicial pronouncements of the Apex Court. If in a particular case, the concerned Ministry/Department desires to consider acceptance of the judicial order, the matter should be invariably referred to the Department of Legal Affairs and the Department of Personnel and Training as per this Department's O.M. No. 28027/9/99-Estt. (A), dated 1-5-2000 (*not printed*) which says that whenever there is a court order against the Government of India, pertaining to service matters, no such order shall be implemented by the concerned Ministry/Department without first referring the matter to the Department of Legal Affairs and to the Department of Personnel and Training for advice.

5. It has all along been emphasized in the existing instructions that *ad hoc* appointments should be made only in rare cases and in real exigency of work, where the post cannot be kept vacant until regular candidate become available. It has been emphasized, in particular, that *ad hoc* appointment by direct recruitment from the open market should be resorted to only as a last resort. This is because, once a person is appointed from outside the Government on *ad hoc* basis, such arrangement is generally continued for long periods, either because a regularly selected candidate is not available or some other vacancy in the grade/cadre become available against which he is adjusted. Consequently, when efforts are made to replace such an officer,

he/she invariably approaches a court of law for regularization of their appointment. Apart from the fact that regularization of appointment in such cases is not in public interest as they have not come through proper selection procedure and on merit, regularization also creates problems in the matters of seniority, promotion, pension, etc. However, notwithstanding these instructions, *ad hoc* appointments by direct recruitment from open market are being made as a matter of routine. In fact, on many occasions, such appointments are being made only to avoid the post getting abolished in terms of the relevant instructions of the Ministry of Finance, providing for automatic abolition of posts if they remain vacant for more than one year. Of late, instances of *ad hoc* appointments from open market have substantially increased resulting in more and more court cases being filed for regularization of service of such *ad hoc* appointees.

✓ 6. In view of the aforesaid undesirable trend, the matter has been reviewed and it has been decided that hereafter no appointment shall be made on *ad hoc* basis by direct recruitment from open market. Where the vacant post cannot be kept vacant for functional considerations, efforts may be made to entrust the additional charge of the post to a serving officer under provisions of FR 49, failing which only appointment by *ad hoc* promotion/*ad hoc* deputation may be considered. If in an exceptional case (e.g., in the case of an operational organization), it is inescapable to resort to *ad hoc* appointment by direct recruitment, prior concurrence of the Department of Personnel and Training (Establishment 'D' Section) may be obtained by giving full and complete justification for the same.

7. Continuation of an *ad hoc* appointment beyond one year will, as per the existing instructions, continue to require the prior approval of Department of Personnel and Training as before.

8. This order takes effect from the date of its issue.

9. All Ministries/Departments are requested to bring these instructions to the notice of all concerned for guidance and compliance.

[G.I., Dept. of Per. & Trg., O.M. No. 28036/1/2001-Estt. (D), dated the 23rd July, 2001.]

(3) **Action to fill up posts to be taken well before vacancies occur.**— Prime Minister has noticed that in a number of cases, appointments are made *ad hoc* either because Recruitment Rules have not been finalized or there has been delay in the filling up of the posts in a regular manner. Prime Minister has, therefore, desired that Ministries/Departments should take action to fill up the posts in good time before vacancies actually occur in order to avoid *ad hoc* appointments. In case where there is unjustifiable delay, responsibility for the delay should be assigned and those responsible should be suitably dealt with.

[G.I., D.P. & A.R., O.M. No. 28036/2/77-Estt. (D), dated the 7th October, 1977.]

(4) **Procedure to be followed when disciplinary proceeding is initiated against a Government servant officiating in a higher post on**

ad hoc basis.— The question whether a Government servant appointed to a higher post on *ad hoc* basis should be allowed to continue in the *ad hoc* appointment when a disciplinary proceeding is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases—

- (i) Where an appointment has been made purely on *ad hoc* basis against a short-term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.
- (ii) Where the appointment was required to be made on *ad hoc* basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceedings is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

[G.I., D.P.T., O.M. No. 11012/9/86-Estt. (A), dated the 24th December, 1986.]

(5) **Special instructions in respect of *ad hoc* promotions of officers whose cases are kept in sealed covers.**— See Chapter on Promotion.

(6) **Instructions on reporting *ad hoc* appointments to the Union Public Service Commission.**— 1. There is no provision for approval by UPSC for any appointment initially made without consulting them. The objective behind reporting of *ad hoc* appointments to UPSC under Regulation 4 is not to secure their concurrence to continuance of *ad hoc* appointment beyond one year but to enable the Commission to discharge their constitutional responsibility to bring to the notice of the Parliament, through their Annual Report, the cases in which the Government have not followed the constitutional provision of making regular appointment through UPSC.

2. In cases in which Recruitment Rules already exist, after a temporary or officiating appointment has been made under the provisions of Regulation 4, the appointing authority must forward to the Commission within a period of six months of such appointment, a requisition for recruitment to the post or for regular promotion thereto or take such other action as may be required under the Recruitment Rules (including the convening of their own DPC in cases in which the Commission are not to be associated). In cases in which Recruitment Rules do not exist, the appointing authority should finalize the

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No-3/2009
(Arising out of OA No.-220/2007)

Sri Binod Bezbarua

Petitioner
-VS-

1. Sri Madhav Lal
2. Sri A. Kumar
3. Sri N. N. Debnath

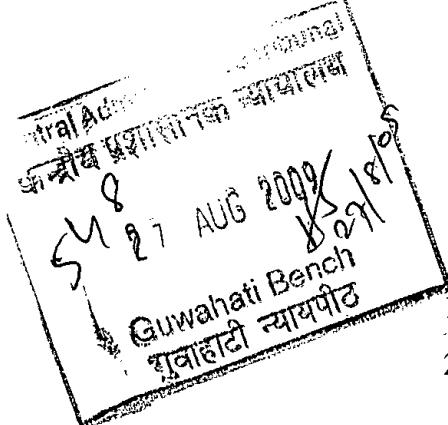
Respondent/ Alleged Contemnor

IN THE MATTER OF

An affidavit for and on behalf of the Respondent No 2

I, A. Kumar, Deputy Director (Admn), O/o the Additional Secretary and Development Commissioner (MSME), Ministry of Micro, Small and Medium Enterprises, Nirman Bhavan, 7th Floor, Maulana Azad Road, New Delhi-110108, do hereby

Solemnly affirm and state as follows:



1. That I am the Respondent No. 2 (two) in the instant Contempt Petition.
2. That I have gone through the aforesaid Contempt Petition filed by the Petitioner and have acquainted myself with the facts and circumstances of the case based on records.
3. At the outset I submit that I have the highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any order passed by the Hon'ble Tribunal.
4. That there is no any willful or deliberate and reckless disobedience of the order dated 23-04-2008 in O.A. No-220/07 pronounced by this Tribunal by the Respondent, and hence there is no question of showing any Contempt to the orders of this Tribunal.

Contd...2/-

अनिल कुमार / ANIL KUMAR
उपलिदेशक (प्रभाग) / Dy. Director (Admn)
निर्मान भवन सरकारी / Govt. of India
सरकार, नियुक्त पर्यायम् उपर्युक्त उपर्युक्त
Ministry of Micro, Small & Medium Enterprises
विभाग (रोड नं. २५ पर्यायम्) का कार्यालय
Office of the Dev. Commr. (MSME)
नियुक्त पर्यायम् उपर्युक्त उपर्युक्त
नियुक्त पर्यायम् उपर्युक्त उपर्युक्त

Motin Uddin Ahmed
M.A. B. Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

5. Brief history of the case

Shri Madhab Chandra Bezbaruah, while working as Peon in MSME-DI, Guwahati died on 02.08.2005. The widow of the deceased Government servant namely, Smt. Kanchan Bezbaruah, made representation dated 18.08.2005 to the Director, MSME-DI, Guwahati for employment to her son, Shri Binod Bezbarua, then aged about 25 years, on compassionate grounds. The representation was considered in the Office of the Development Commissioner (MSME) but it was not found feasible to grant compassionate appointment to the petitioner as no vacancy in Group 'C' or 'D' post could be found under the 5% quota for compassionate appointment as stipulated in the Scheme for Compassionate Appointment. Smt. Bezbaruah again made another representation dated 07.03.2006 for compassionate appointment to the Development Commissioner (MSME). This was also considered but could not be agreed to due to the same reason. Aggrieved by the above, Shri Binod Bezbaruah filed an O.A. No. 220/2007 to CAT, Guwahati Bench praying for a direction from the Tribunal to the respondents to consider the applicant for a compassionate appointment in any Group 'C' or 'D' post. The O.A was disposed of vide Order dated 23.04.2008 observing that respondents should consider to provide a purely temporary engagement to the applicant against any of vacant Group 'C' or 'D' post and such appointment can be allowed till respondent organization finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the applicant. In pursuance of the order of the Hon'ble Tribunal dated 23rd April 2008, the matter was considered in the Office of the Development Commissioner (MSME) but, on consideration, it was found that in view of the ban on ad-hoc appointments by the Government of India vide Deptt. of Personnel & Training O.M.No.28036/1/2001-Estt.(1) dated 23.07.2001, the petitioner could not be temporarily engaged. Accordingly, a self-speaking order was passed on 29th May 2008, which was conveyed to the petitioner.

The petitioner has alleged that the decision of the Office of the Development Commissioner (MSME) dated 29th May 2008 was in contempt of the orders of the Hon'ble Tribunal dated 23rd April 2008 and has sought to hold the answering respondent and other respondents in the petition responsible for the same. It is also submitted that the

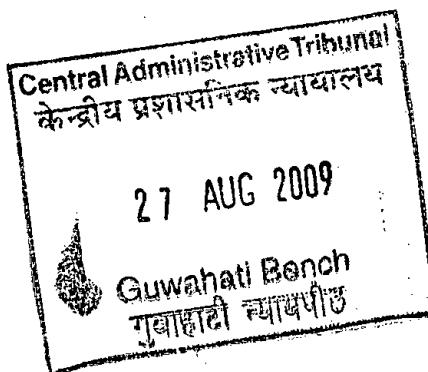
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ANIL KUMAR
अनिल कुमार (संग्रहीत)
ADY. Director (Admin.)
मंत्री, राज्य प्रबन्ध विभाग, सरकारी
मिनिस्ट्री ऑफ मिलीक, स्माल & मीडियम एंटरप्राइज
रिकोर्ड्स (प्रो नो एवं नो रेकर्ड) का कार्यालय
Office of the Dev. Commr. (MSME)
नई दिल्ली-१०८/ नई दिल्ली-१०८

Office of the Development Commissioner (MSME) did consider possibility of providing temporary engagement to the petitioner directed by the Hon'ble Tribunal but after consideration it was unable to offer temporary engagement to the petitioner in view of the ban on ad-hoc appointments by the Government of India. In view of the circumstances, the other answering respondents of the Office of the Development Commissioner (MSME) did not commit any contempt of the Hon'ble Tribunal as they duly considered the matter in terms of the direction of the Hon'ble Tribunal.

That the above history may be treated as the integral part of this Reply/Affidavit.

6. That with regard to the Para 1 to 8 of the contempt petition, the answering Respondents do not admit anything which is beyond the records.
7. That with regard to the statement made in para 9 of the Contempt petition, the Respondent submits that the Hon'ble Tribunal while disposing off O.A. No.220/2007 had observed that respondents in the O.A. should consider to provide a purely temporary engagement to the applicant against any of the vacant Group 'C' and/or Group 'D' post. It is submitted that Tribunal did not give a definitive direction to the respondents in the O.A to provide temporary engagement to the petitioner, as sought to be made out by the petitioner, but had directed the respondents to consider providing temporary engagement. Such consideration was accorded and it was not found possible to offer even temporary engagement in view of the ban on ad-hoc appointments in the Government of India, as referred¹ supra. As the matter was duly considered in the light of the policy and direction of the Government of India, the order of the Office of the Development Commissioner (MSME) could not be said to be in contempt of the Tribunal's direction and suffers from no illegality or infirmity.
8. That with regard to the statements made in Para 10 to 14, it is submitted that the same relate to certain steps the petitioner states he took to secure the documents relating to the Government of India's



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ANIL KUMAR
Chandigarh
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instructions concerning the ban on ad-hoc appointments under the Right to Information Act with the relevant authorities under the Act. As the same do not bear direct relevance to the question of alleged contempt of the Hon'ble Tribunal's direction, it is not possible for the answering respondents to comment thereon for want of his personal knowledge and that gained from the records relating to the question of compassionate appointment.

9. That with regard to Para 15 to 17, the answering respondents in the contempt petition have not disobeyed the Hon'ble Tribunal's order. Furthermore, the Hon'ble Tribunal's orders were complied with by the Office of the Development Commissioner (MSME) since due consideration was accorded to providing temporary engagement to the petitioner but the temporary engagement could not be granted in view of the ban on ad-hoc appointments in the Government of India as explained above. The relevant documents concerning the Government's policy and directions relating to banning ad-hoc appointments, as embodied in the DOPT's O.M.No.28036/1/2001-Estt.(1) dated 23.07.2001, is placed at Annexure-R-I.

In view of the facts and submissions made hereinabove, it is more respectfully prayed that the contempt petition be dismissed and the replying respondents be discharged from the notice under reply to meet the ends of justice.

- AND -

For this act of kindness the Respondent

shall ever pray.

AFFIDAVIT

(30)

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I, A. Kumar, Deputy Director (Administration), O/o the Additional Secretary & Development Commissioner (MSME), Ministry of Micro, Small and Medium Enterprises, Nirman Bhavan, 7th Floor, Maulana Azad Road, Delhi-110108, aged 59 years, do hereby solemnly affirm and state as follows:-

That I am the Respondent No. 2 (two) in the above case and I am fully acquainted with the facts and circumstances of the case and nothing has been suppressed or concealed in this reply.

That the statements made in Para 1 to10 of the affidavit are true to my knowledge, belief and information based on the records.

And, sign this affidavit/Report on this 22nd day of July, 2009 at New Delhi.  

Identified by

(ADVOCATE)

Guwahati Bench
Guwahati न्यायपीठ

Enthumur 21/7/01

Deponent

प्रतिक्रिया कर्त्ता / MR. ANIL KUMAR
 उपनिदिशक (प्रशासा) / Dy. Director (Admn.)
 मानव संसाधन विभाग, सरकारी विभाग
 संस्था, लघु एवं मध्यम उद्योग प्रशासन
 Ministry of Micro, Small & Medium Enterprises
 मिनिस्ट्री ऑफ माइक्रो, सीएसएम एंटरप्रायज़ (एमएसई) का कार्यालय
 Office of the Dev. Commr., (MSME)
 नई दिल्ली-108, New Delhi-108
 Identified by... *Enthumur*

Advocate at... C.R.on 23/7/2002
this... day of July, 2009 at... C.R.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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Contempt Petition No-3/2009
(Arising out of OA No.-220/2007)

Sri Binod Bezbarah

Petitioner

-VS-

1. Sri Madhav Lal
2. Sri A. Kumar
3. Sri N. N. Debnath

Respondent/ Alleged Contemnor

IN THE MATTER OF

An affidavit for and on behalf of the Respondent No 3

I, N. N. Debnath, Director, Micro, Small & Medium Enterprises Development Institute, Ministry of Micro, Small and Medium Enterprises, 111 & 112 B.T. Road, Kolkata-700 108, do hereby

Solemnly affirm and state as follows:

1. That I am the Respondent No. 3 (three) in the instant Contempt Petition.
2. That I have gone through the aforesaid Contempt Petition filed by the Petitioner and have acquainted myself with the facts and circumstances of the case based on records.
3. At the outset I submit that I have the highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any order passed by the Hon'ble Tribunal.
4. That there is no any willful or deliberate and reckless disobedience of the order dated 23-04-2008 in O.A. No-220/07 pronounced by this Tribunal by the Respondent, and hence there is no question of showing any Contempt to the orders of this Tribunal.

Contd....2/-

Nitwananda Debnath
एन. एन. देबनाथ / N. N. Debnath
एस. एस. एस. एस. / MSME Dev Institute
नियमित / Director
गोवर्नर / GOVT OF INDIA
शोलकाता / KOLKATA

Motin Jid-Din Ahmed
M. A., B. Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

5. Brief history of the case

Shri Madhab Chandra Bezbaruah, while working as Peon in MSME-DI, Guwahati died on 02.08.2005. The widow of the deceased Government servant, namely, Smt. Kanchan Bezbaruah, made a representation dated 18.08.2005 to the Director, MSME-DI, Guwahati for employment to her son, Shri Binod Bezbaruah, then aged about 25 years, on compassionate grounds. The representation was considered in the Office of the Development Commissioner (MSME) but it was not found feasible to grant compassionate appointment to the petitioner as no vacancy in Group 'C' or 'D' post could be found under the 5% quota for compassionate appointment as stipulated in the Scheme for Compassionate Appointment. Smt. Bezbaruah again made another representation dated 07.03.2006 for compassionate appointment to the Development Commissioner (MSME). This was also considered but could not be agreed to due to the same reason. Aggrieved by the above, Shri Binod Bezbaruah filed an O.A. No. 220/2007 to CAT, Guwahati Bench praying for a direction from the Tribunal to the respondents to consider the applicant for a compassionate appointment in any Group 'C' or 'D' post. The O.A. was

disposed of vide Order dated 23.04.2008 observing that respondents should consider to provide a purely temporary engagement to the applicant against any of vacant Group 'C' or 'D' post and such appointment can be allowed till

27 AUG 2009 respondent organization finds out a suitable/appropriate vacancy to provide regular compassionate appointment to the applicant. In pursuance of the order of the Hon'ble Tribunal dated 23rd April 2008, the matter was considered in the

Office of the Development Commissioner (MSME) but, on consideration, it was found that in view of the ban on ad-hoc appointments by the Government of India vide Deptt. of Personnel & Training O.M.No.28036/1/2001-Estt.(1) dated 23.07.2001, the petitioner could not be temporarily engaged. Accordingly, a self-speaking order was passed on 29th May 2008, which was conveyed to the petitioner.

The petitioner has alleged that the decision of the Office of the Development Commissioner (MSME) dated 29th May 2008 was in contempt of the orders of the Hon'ble Tribunal dated 23rd April 2008 and has sought to hold the answering respondent and other respondents in the petition responsible for the same. It is also submitted that the

Binod Bezbaruah / N. N. Debnath
एस एस बिनोद बेजबुराह / एन. एन. देबनाथ
निदेशक / Director
माननीय सचिव / GOVT. OF INDIA
कार्यालय / KOLKATA

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Office of the Development Commissioner (MSME) did consider the possibility of providing temporary engagement to the petitioner as directed by the Hon'ble Tribunal but after consideration it was unable to offer temporary engagement to the petitioner in view of the ban on ad-hoc appointments by the Government of India. In view of the circumstances, the other answering respondents of the Office of the Development Commissioner (MSME) did not commit any contempt of the Hon'ble Tribunal as they duly considered the matter in terms of the direction of the Hon'ble Tribunal.

That the above history may be treated as the integral part of this
Reply/Affidavit.

6. That with regard to the Para 1 to 8 of the contempt petition, the answering Respondents do not admit anything which is beyond the records.
7. That with regard to the statement made in para 9 of the Contempt petition, the Respondent submits that the Hon'ble Tribunal while disposing off O.A. No.220/2007 had observed that respondents in the O.A. should consider to provide a purely temporary engagement to the applicant against any of the vacant Group 'C' and/or Group 'D' post. It is submitted that Tribunal did not give a definitive direction to the respondents in the O.A to provide temporary engagement to the petitioner, as sought to be made out by the petitioner, but had directed the respondents to consider providing temporary engagement. Such consideration was accorded and it was not found possible to offer even temporary engagement in view of the ban on ad-hoc appointments in the Government of India, as referred supra. As the matter was duly considered in the light of the policy and direction of the Government of India, the order of the Office of the Development Commissioner (MSME) could not be said to be in contempt of the Tribunal's direction and suffers from no illegality or infirmity.
8. That with regard to the statements made in Para 10 to 14, it is submitted that the same relate to certain steps the petitioner states he took to secure the documents relating to the Government of India's

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय

Contd...4/-

27 AUG 2009

Guwahati Bench গুৱাহাটী ন্যায়পীঠ

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instructions concerning the ban on ad-hoc appointments under the Right to Information Act with the relevant authorities under the said Act. As the same do not bear direct relevance to the question of the alleged contempt of the Hon'ble Tribunal's direction, it is not possible for the answering respondents to comment thereon for want of his personal knowledge and that gained from the records relating to the question of compassionate appointment.

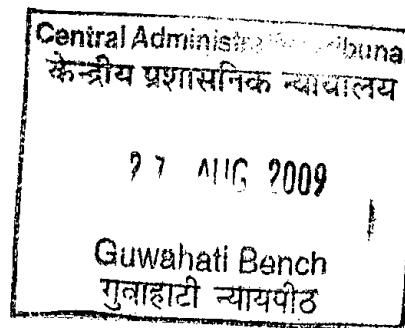
9. That with regard to Para 15 to 17, the answering respondents in the contempt petition have not disobeyed the Hon'ble Tribunal's order. Furthermore, the Hon'ble Tribunal's orders were complied with by the Office of the Development Commissioner (MSME) since due consideration was accorded to providing temporary engagement to the petitioner but the temporary engagement could not be granted in view of the ban on ad-hoc appointments in the Government of India as explained above. The relevant documents concerning the Government's policy and directions relating to banning ad-hoc appointments, as embodied in the DOPT's O.M.No.28036/1/2001-Estt.(1) dated 23.07.2001, is placed at Annexure-R-I.

In view of the facts and submissions made hereinabove, it is more respectfully prayed that the contempt petition be dismissed and the replying respondents be discharged from the notice under reply to meet the ends of justice.

- AND -

For this act of kindness the Respondent

shall ever pray.



Nirananda Debnath
एन. एन. देबनाथ / N. N. Debnath
एन. एन. देबनाथ / N. N. Debnath
निदेशक / Director
मार्ग: राजपथ / GOVT OF INDIA
कोलकाता / KOLKATA

एन. एन. देबनाथ / N. N. Debnath
एन. एन. देबनाथ / N. N. Debnath
निदेशक / Director
मार्ग: राजपथ / GOVT OF INDIA
कोलकाता / KOLKATA

(41)

AFFIDAVIT

I, N. N. Debnath, Director, Micro, Small & Medium Enterprises Development Institute, Ministry of Micro, Small and Medium Enterprises, 111 & 112 B.T. Road, Kolkata-700 108, aged 54 years, do hereby solemnly affirm and state as follows:-

That I am the Respondent No. 3 (three) in the above case and I am fully acquainted with the facts and circumstances of the case and nothing has been suppressed or concealed in this reply.

That the statements made in Para 1 to 10 of the affidavit are true to my knowledge, belief and information based on the records.

And, sign this affidavit/Report on this 23rd day of July, 2009 at Kolkata.

Nityamanda Debnath

एन. एन. Debnath / N. N. Debnath
एम. एस. एम. एस. / MSME-Dev Institute

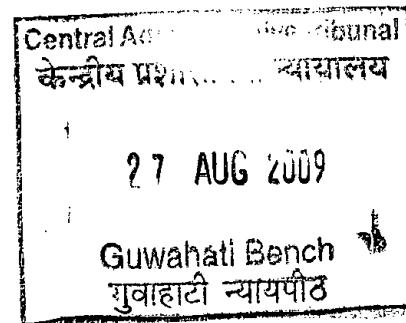
Solemnly affirm & declare before
मीटिंग डिपोनेंट / Director
मारत सरकार / GOVT OF INDIA
me by the deponent खोलकाला / KOLKATA

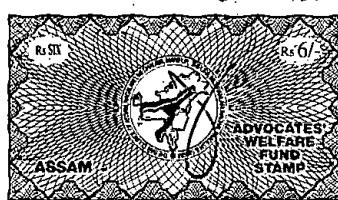
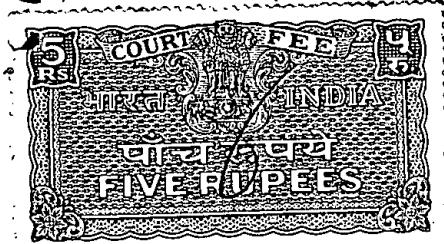
Identified by *R. L. Chakraborty*

Advocate at *...A.L.* on *23/7/09*

this... day of July, 2009 at...

(ADVOCATE)





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWATHI

98

VAKALATNAMA FOR THE

Contempt Petition No. 3/2009 in O.A.No. 220/2007

Shri Binod Bezbarua

Petitioner

Shri Madhav Lal & Others

Respondents

Know all men by these presents that by this Vakalatnama

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Versus

27 AUG 2009
Guwahati Bench

I, Madhav Lal, Additional Secretary & Development Commissioner (MSME) do hereby appoint the advocate noted below in the margin as my lawful Advocate in the above mentioned case for appearing, conducting and arguing the same for depositing or withdrawing any money in connection therewith for putting in paper, petition etc. on my behalf for filling or taking any document, or withdrawing suit or appeal with permission to institute fresh suit and for doing all act that be necessary to be done by my said Advocate after accepting this Vakalatnama shall be considered as my true and lawful act.

Shri Motin Ud-Din Ahmed, Advocate,
Addl. Central Govt. Standing Counsel,
Guwahati.

To the above effect I execute this Vakalatnama

Dated 20th July, 2009

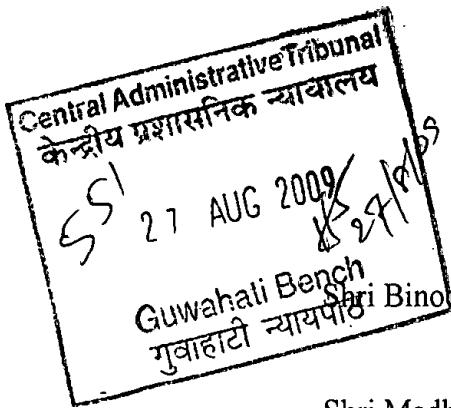

(MADHAV LAL)

Additional Secretary & Development Commissioner
(Micro Small and Medium Enterprises)

MADHAV LAL
Addl. Secy. & Dev. Commr. (MSME)
Government of India
Ministry of Micro, Small And Medium Enterprises
Office of The DC (MSME), New Delhi

Accepted
28/7/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI



VAKALATNAMA FOR THE

Contempt Petition No. 3/2009 in OA No. 220/2007

Shri Madhav Lal & Others

Petitioner

Versus

Respondents

Know all men by these presents that by his Vakalatnama

I, Anil Kumar, Deputy Director (Admn), Office of the Development Commissioner (MSME) do hereby appointment the advocate noted below in the margin as my lawful advocate in the above mentioned case for appearing, conducting and arguing the same for depositing or withdrawing any money in connection therewith for putting in paper, petition etc. on my behalf for filling or taking any document, or withdrawing suit or appeal with permission to institute fresh suit and for doing all act that be necessary to be done by my said advocate after accepting this Vakalatnama shall be considered as my true and lawful act.

Shri Motin Ud-Din Ahmed, Advocate,
Addl. Central Govt. Standing Counsel,
Guwahati.

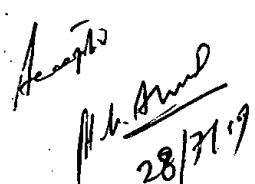
To the above effect I execute this Vakalatnama

Dated 22nd July, 2009



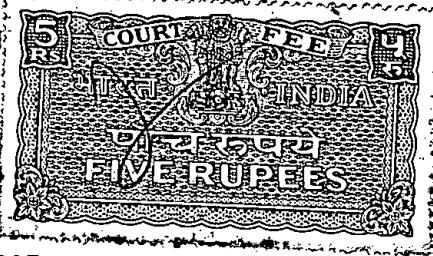
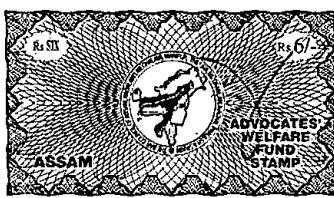

(Anil Kumar)
Deputy Director (Admn)
Office of the Development Commissioner
(Micro, Small and Medium Enterprises)

कर्मसुलत सभायी / ANIL KUMAR
उपनिदेशक (विभाग) / Dy. Director (Admn.)
परातं सर्वानन्द / Govt. of India
संस्कृत लघु विभाग / Ministry of Micro, Small & Medium Enterprises
विद्यार्थी (सू. ल० ८० रु. ५० रुपय) का कार्यालय
Office of the Dev. Commr. (MSME)
नई प्रिल्डी भवन / New Delhi-108


28/7/09

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**



**VAKALATNAMA FOR THE
Contempt Petition No 3/2009 in O.A. No. 220/2007**

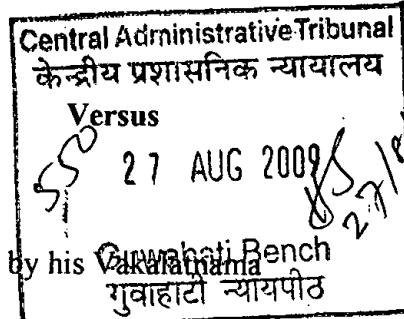
Shri Binod Bezbarua

Shri Madhav Lal & Others

Petitioner

Respondent

Know all men by these presents that by his *Vakalatnama*
गुवाहाटी न्यायपीठ



I, N.N. Debnath, Director, N. N. Debnath, Director, Micro, Small & Medium Enterprises Development Institute, Ministry of Micro, Small and Medium Enterprises, 111 & 112 B.T. Road, Kolkata-700 108 do hereby appoint the advocate noted below in the margin as my lawful Advocate in the above mentioned case for appearing, conducting and arguing the same for depositing or withdrawing any money in connection therewith for putting in paper, petition etc. on my behalf for filling or taking any document, or withdrawing suit or appeal with permission to institute fresh suit and for doing all act that be necessary to be my said Advocate after accepting this Vakalatnama shall be considered as my true and lawful act.

Shri Motin Ud-Din Ahmed, Advocate,
Addl. Central Govt. Standing Counsel,
Guwahati.

To the above effect I execute this Vakalatnama.

Dated 23rd July, 2009

Nityananda Debnath

(N.N. Debnath)
Director
MSME-Development Institute,
Kolkata

एन. एन. देबनाथ / N. N. Debnath
एम एस एम डी.डी.इ. / MSME-Dev. Institut
निर्देशक / Director
भारत सरकार / GOVT OF INDIA
कोलकाता / KOLKATA

*Accepted
28/7/09*

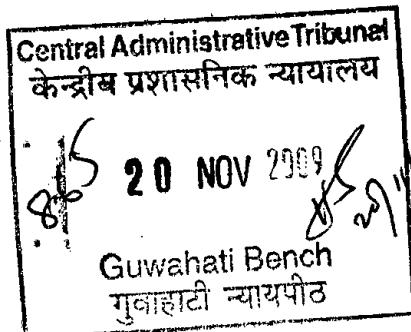
(U2)

File in Court on 18/11/09

Court Officer.

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Contempt Petition No. 3/2009
(Arising out of O.A. 220/2007)



Sri Binod Bezbarah

---- Petitioner

-VS-

1. Sri Madhav Lal
2. Sri A. Kumar
3. Sri N.N. Debnath

---- Respondent/Alleged
Contemnor

**Common Additional affidavit for and on behalf of all
the Respondents in the matter of implementation of
the Hon'ble Tribunal's interim order dated 28-8-
2009.**

I, N.N. Debnath, erstwhile Director, MSME-DI, Guwahati and presently posted as Director, MSME-DI, 111/112 B.T. Road, Kolkata-108, aged 54 years, do hereby solemnly affirm and state as follows.

1) At the outset I submit that the respondents have the highest regard for the Hon'ble Tribunal and there is no question of any wilful disobedience of any order passed by this Tribunal. Further, in order to show the hidden respect as well as interest of the respondents, I tender unconditional and unqualified apology for any lapse or delay in compliance of the Tribunal's order.

Contd.....2/-

I undertake to serve
the com or n petition
12/11/09

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2) That I am respondent No.3 in the instant Contempt Petition and am filing a Common Affidavit for and on behalf of all the Respondents.

3) That the Hon'ble Tribunal, vide its interim order dated 28-08-2009 in C.P.No. 3 of 2009 in O.A. No.220 of 2007, directed the respondents to explore the possibility of providing temporary engagement to the applicant by obtaining clearance from Department of Personnel & Training. Accordingly, the respondents sent a proposal seeking clearance from DOPT for giving temporary appointment to the applicant.

4) That DOPT has not cleared the proposal stating inter-alia that the appointment against compassionate ground is different from ad-hoc appointment as the same is against 5% quota in the DR vacancies on regular basis. There is, therefore, no concept of any compassionate appointment on ad-hoc basis. If it is resorted to, it would exceed the prescribed quota of that grade as ad-hoc appointment is always against an existing vacancy in a particular grade pending regular appointments when the post cannot be kept vacant under exceptional circumstances for the reasons mentioned in DOPT O.M. dated 30-3-1988. However, in the case of compassionate appointment, there is no urgency of filling up the post as the post is already filled. A copy of DOPT's communication received in this regard vide diary No. 79306/2009 dated 7.10.2009 is placed at Annexure R-I.

5) That the respondents submit that ad-hoc appointment by direct recruitment is banned.

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय

Contd.... 3/-

20 NOV 2009

Guwahati Bench গুৱাহাটী ন্যায়পীঠ

6) That the Respondents submit that only in the following cases in respect of an operational organization, ad-hoc appointment by direct recruitment can be resorted to with the prior concurrence of Department of Personnel & Training:-

- (a) Where there is an injunction by a Court/Tribunal directing that the posts may not be filled on a regular basis and the final judgment is not expected early and the post could not be allowed to remain unfilled.
- (b) Where direct recruitment quota has not been filled and the Recruitment Rules do not provide alternate method of recruitments, and the post cannot also be kept vacant; and
- (c) In short-term vacancies due to regular incumbents being on leave for 45 days or more, or on study leave, deputation, etc., for less than one year duration, and where the posts cannot be kept vacant.

A copy of DOPT O.M. No. 28036/8/87-Estt(D) dated 30-3-1988 regarding ad-hoc appointments is placed at Annexure R-II.

7) That the respondents' office is a promotional office engaged in the extension services for the development and growth of micro, small and medium enterprises and not an operational organization like Railways, Posts etc. Further, there is no concept of compassionate appointment on ad-hoc basis. Hence, the relaxation as envisaged in DOPT O.M. No. 28036/1/2001-Estt(D) dtd. 23.7.2001(Copy placed at Annexure R-III) is not applicable in the instant case.

In view of the facts and submission made hereinabove, it is more respectfully prayed that the contempt petition be dismissed and the replying respondents be discharged from the notice under reply to meet the ends of justice.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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Nitishananda Debnath
नितिशनन्दा देबनाथ / N. N. Debnath
एन. एन. देबनाथ / नितिशनन्दा देबनाथ
मिस्ट्रीज / Director
भारत सरकार / GOVT OF INDIA

AFFIDAVIT

I, N.N. Debnath, erstwhile Director, MSME-DI, Guwahati and presently posted as Director, MSME-DI, 111/112 B.T. Road, Kolkata-108, aged 54 years, do hereby solemnly affirm and state as follows:-

That I am the Respondent No.3(three) in the above case and am fully acquainted with the facts and circumstances of the case and nothing has been suppressed or concealed in this reply.

That the statements made in Para 1 to 7 of the affidavit are true to my knowledge, belief and information based on the records.

And, sign this affidavit/report on this on this 11th day of November, 2009 at Guwahati.

Nityananda Debnath
नित्यनन्द देबনाथ / N.N. Debnath
एम.एस.ए.डी.ई.टी.ए. / MSME-DI, गुवाहाटी
Deponent
भारत सरकार / GOVT. OF INDIA
कोलकाता / KOLKATA

Identified by

M

(Advocate)

Solemnly affirm & declare before

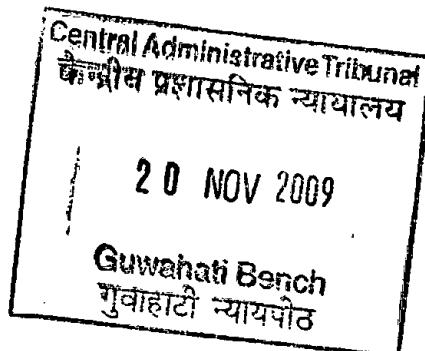
me by the deponent who is

Identified by *M. K. Ghosh*...

Advocate at *Lakshmi*, on

this 11th day of November,

2009 at. Guwahati.



Department of Personnel & Training
Establishment D Section

Reference preceding notes.

2. DOPPT OM 28036/1/2001- Estt.(D) dated 23.07.2001 is not applicable in the instant case as directed by Hon'ble Tribunal. The above OM speaks about restrictions on regularization of adhoc appointments because despite clear instructions issued by DoPT vide OM dated 30.03.1988 persons appointed on adhoc basis when replaced approach Courts of Law for regularization of the period of their adhoc appointments with consequential benefits like 'Seniority' etc and for eligibility for promotion to the next higher grade.

3. The appointment against compassionate ground is different from adhoc appointments as the same is against 5% quota in the DR vacancies on regular basis. There is, therefore, no concept of any compassionate appointment on adhoc basis. If it is resorted to, it would exceed the prescribed quota of that grade as adhoc appointment is always against a existing vacancy in a particular grade pending regular appointments when the post cannot be kept vacant under exceptional circumstances for the reasons mentioned in DoPTs OM dated 30.03.1988. However in the case of compassionate appointment there is no urgency of filling up the post as the post is already filled.

4. The Ministry of ~~Urban Development~~ ^{MSME}, may be advised to file a WP in the High Court against the judgment of the CAT, Guwahati Bench in consultation with DOLA.

(A.K. Srivastava)
(A.K. Srivastava)
Under Secretary
06.10.2009

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपाठ

Director(E-1).

The legal advice of the A.L.O. contained in para 4 of Pg. 131N also reiterates our view expressed in para 4 above that an appeal could be preferred by the Deptt. in Hon'ble High Court. For approval pl. *6910*

79306

220/US(D)/09
7/10/09

Attested
11/10/09

महायक निदेशक /Asstt. Director (DDO)
एम.एस.एम.डी. - वि.स. /MSME-D.I.
गुवाहाटी/Guwahati- 21

MSME (MSME)

Ap. No. 79306/2009 - Dated 7/10/09

JS (F)

Dir (E-F)

MSME
U.S(D)

AK
7/10

(W)

ANNEXURE - KII

Vol

CHAPTER 16 AD HOC APPOINTMENTS/PROMOTIONS

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

(i) **Revision of instructions on ad hoc appointments.**—1. It has been noted that appointments continue to be made on an *ad hoc* basis and proposals are being received for regularisation of these appointments on the grounds that the persons concerned have been working against these posts for a long time. This has led to instances where Courts and Tribunals have directed the Government to fix seniority after taking into consideration the period of service rendered on an *ad hoc* basis. This unintended benefit of *ad hoc* services has, therefore, been bestowed on a number of persons whose *ad hoc* promotions have been made on seniority-cum-fitness, even though the Recruitment Rules for the posts may have prescribed promotion by selection.

2. In view of the position explained above it has been decided that the Ministries/Departments may not make any appointment on an *ad hoc* basis including appointments by direct recruitment, promotion, transfer on deputation, etc. The procedure to be followed in circumstances when *ad hoc* appointments are presently frequently being resorted to, is explained below.

(ii) **Absence of Recruitment Rules.**—*Ad hoc* appointments are frequently resorted to on the grounds that Recruitment Rules for the post are in the process of being framed. In Department of Personnel and Administrative Reforms, O.M. No. 39021/5/83-Estt. (B), dated the 9th July, 1985, all Ministries/Departments have been advised that if there are over-riding compulsions for filling any Group 'A' or Group 'B' post in the absence of Recruitment Rules, then they may make a reference to the Union Public Service Commission (U.P.S.C.) for deciding the mode of recruitment to that post. Further action to fill the post may be taken according to the advice tendered by the U.P.S.C. All such appointments will be treated as regular appointments. In the case of Groups 'C' and 'D' posts which are outside the purview of U.P.S.C., powers to frame Recruitment Rules without consulting the Department of Personnel and Training have already been delegated to the Administrative Ministries *vide* this Department's O.M. No. CD-14017/10/85-Estt. (RR), dated the 21st March, 1985. Therefore, no appointment may be made to any post on an *ad hoc* basis on the ground that no Recruitment Rules exist for the same.

(iii) **Revision of Recruitment Rules.**—*Ad hoc* appointments are also frequently resorted to on the ground that proposals are under consideration to amend the existing Recruitment Rules. The legal position in this regard is that posts are to be filled as per eligibility conditions prescribed.

Attested

महाप्रक निदेशक /Asstt. Director (DDO)
एम.एस.एम.डी. - वि.स. /MSME.D.O.
गुवाहाटी/Guwahati- 21

AD HOC APPOINTMENTS/PROMOTIONS

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in the rules in force at the time of occurrence of the vacancies unless amended. Recruitment Rules are brought into force with retrospective effect. In fact, the practice has been to give effect to amendments in the Recruitment Rules only prospectively, except in rare cases. Hence, regular appointments/promotions may be made in all such cases in accordance with the Recruitment Rules in force at the time when the vacancy arises. No *ad hoc* appointments/promotions may be made on the grounds that the Recruitment Rules are being revised or amended.

(iii) *Revision of Seniority List.*—Another reason for making *ad hoc* arrangements and delaying regular promotions is that the seniority position of the officer holding the post in the feeder grade is disputed. In such cases regular D.P.C.s. may be held based on the existing seniority list. In case such disputes are pending before a Court/Tribunal, unless there is an injunction/stay order against making regular promotions, the appointing authority may convene the D.P.C. and make promotions on the basis of the existing seniority list. However, while issuing the orders in such cases it should be stipulated that these promotions are provisional and subject to the final decision of the Court/Tribunal. Subsequently, when the directions of the Court/Tribunal become available a revised D.P.C. may be held and the necessary adjustments made in the promotions of officers based upon the revised seniority list. In case any of the officers provisionally promoted do not figure in the list approved by the Review D.P.C., they may be reverted to the posts held by them earlier.

(iv) *Shortage in Direct Recruitment Quota.*—*Ad hoc* appointments are also made on the consideration that adequate number of qualified candidates are not available for filling the vacancies through the direct recruitment quota prescribed in the Recruitment Rules. In some cases, even though the required number of candidates are recommended by the Union Public Service Commission/Staff Selection Commission, some of them do not join or they join to resign thereafter.

According to the instructions contained in this Department's O.M. No. 24012/34/80-Estt. (B), dated the 20th February, 1981, while notifying vacancies to recruiting agencies especially the S.S.C., the appointing authority is expected to compute the total number of vacancies taking into consideration the likely vacancies during the period beginning from the date of announcement of the examination in question up to the date of announcement of the subsequent examination so that the total number of posts to be kept vacant may be very few.

In spite of this, if some vacancies still remain unfilled the following measures may be adopted:

- (a) Wherever feasible, the posts may be allowed to remain vacant until qualified candidates become available at the next examination.
- (b) Wherever the Recruitment Rules for the posts provide alternative methods of recruitment, i.e., not only by the direct

Attached

✓ 11/1/08

महायक निदेशक | Asstt. Director (DDU)
एम.एस.एम.ई. - फ.स. | MAME Date
मुख्यहास्ती | Guwahati-23

method but also by transfer on deputation, efforts may be made to fill those vacancies which cannot be held over (until candidates of next examination become available), by the alternative methods, i.e., by transfer on deputation, etc.

(c) However, in cases where direct recruitment is the only method provided in the Recruitment Rules, Ministries/Departments have been advised *vide* O.M. No. 14017/8/84-Estt. (RR), dated the 19th June, 1986, that the Rules may be amended to provide for transfer on deputation as an alternative method to fill short-term vacancies in the direct recruitment quota. In case the rules have not been amended the Ministries/Departments may take steps to do so immediately so that the shortage of qualified candidates against the D.R. quota, may be met by filling the vacancies through transfer on deputation for short periods.

(v) *Filling up of short-term vacancies.*—Whenever short-term vacancies are caused by the regular incumbents proceeding on leave for 45 days or more, study leave, deputation, etc., of less than one year duration, they may be filled by officers available on an approved panel. Such a panel may be maintained taking into account not only the actual but also the vacancies anticipated over a period of 12 months in accordance with the existing instructions/holding D.P.Cs. Wherever an officer is not available on an approved panel the post may be kept vacant, as far as possible.

3. *Cases where ad hoc appointments can be made.*—If the prescribed instructions and procedures are strictly adhered to, it may be seen that there will be very few cases where appointments need to be made on an *ad hoc* basis. Such circumstances may be—

(a) Where there is an injunction by a Court/Tribunal directing that the post may not be filled on a regular basis and if the final judgment of the Court/Tribunal is not expected early and the post also cannot be kept vacant.

(b) Where the D.R. quota has not been filled and the Recruitment Rules also do not provide for filling it up on transfer or deputation temporarily and the post cannot also be kept vacant.

(c) In short-term vacancies due to regular incumbents being on leave/deputation, etc., and where the posts cannot be filled as per para. (r) above and cannot also be kept vacant.

4. *Conditions for making ad hoc appointments.*—In such exceptional circumstances *ad hoc* appointments may be resorted to subject to the following conditions:—

(i) The total period for which the appointment/promotion may be made on an *ad hoc* basis, will be limited to one year only. The practice of giving a break periodically and appointin-

Attested
[Signature]

एम.एस.एम.इ.- असिट. डायरेक्टर (DDO)
एम.एस.एम.इ.- वि.सि./MSME-D.O.
गुवाहाटी/Guwahati-21

(50) 9

152 AD-HOC APPOINTMENTS/PROMOTIONS

the same person on *ad hoc* basis may not be permitted. In case there are compulsions for extending any *ad hoc* appointment/promotion beyond one year, the approval of the Department of Personnel and Training may be sought at least two months in advance before the expiry of the one year period. If the approval of the Department of Personnel and Training to the continuance of the *ad hoc* arrangements beyond one year is not received before the expiry of the one year period of the *ad hoc* appointment/promotion, shall automatically cease on the expiry of the one year term.

(ii) If the appointment proposed to be made on an *ad hoc* basis involves the approval of the Appointments Committee of the Cabinet, this may be obtained prior to the appointment/promotion being actually made.

(iii) Where *ad hoc* appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under:

- (a) *Ad hoc* promotions may be made only after proper screening by the appointing authority of the records of the officer.
- (b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for *ad hoc* appointments. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.
- (c) The claims of Scheduled Castes and Scheduled Tribes in *ad hoc* promotions shall be considered in accordance with the guidelines contained in the Department of Personnel and A.R., Office Memorandum No. 36011/14/83-Est. (S.C.T.), dated 30-4-1983 and 30-9-1983.

(iv) Where *ad hoc* appointment by direct recruitment (which as explained above should be very rare) is being done as a last resort, it should be ensured that the persons appointed are those nominated by the employment exchanges concerned and they also fulfil the stipulations as to the educational qualifications/experience and the upper age limit prescribed in the Recruitment Rules. Where the normal procedure for recruitment to a post is through the employment exchange only, there is no justification for resorting to *ad hoc* appointment.

(v) Where the appointing authority is not the Ministry, the Authority competent to approve *ad hoc* appointments may be decided by the Administrative Ministries themselves. The competent

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प्राधान्यक नियंत्रण विभाग
एम.एस.एम.सी. फायरिंग
गुवाहाटी, Guwahati-21

AD HOC: APPOINTMENTS/PROMOTIONS

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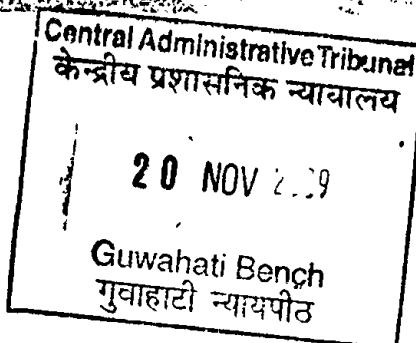
authority so authorised by the Ministry should be one level higher than the appointing authority prescribed for that post.

5. *Ad hoc promotions of officers whose cases are kept in sealed covers.*—*Ad hoc promotions with respect to officers whose cases are kept in a sealed cover in accordance with O.M. No. 22011/2/86-Estt. (A), dated 12-1-1988, will, however, continue to be governed by these special instructions (Order 5 below).* Similarly, *ad hoc promotions of officers belonging to the Central Secretariat Service (C.C.S.) to posts of Under Secretary/ Deputy Secretary under the Central Staffing Scheme, will continue to be regulated by special instructions contained in O.M. No. 31/16/82-EO (MM), dated 28-8-1983.*

6. *Review of ad hoc appointments/promotions.*—All *ad hoc* appointments including *ad hoc* promotions shall be reviewed on the basis of the above guidelines. In exceptional circumstances, wherever such appointments are required to be continued beyond the present term, the decision thereon may be taken by the authority prescribed in para. (4) (v). However, it may be noted that the continuance of such *ad hoc* appointments including *ad hoc* promotions will be subject to the over-all restrictions of one year from the date of issue of these instructions.

All Ministries/Departments are requested to take action in accordance with the abovementioned instructions in respect of both Secretariat as well as non-Secretariat offices under them.

(G.I., Dept. of Per. & Tr., O.M. No. 22011/2/87-Estt. (D), dated the 30th March, 1988.)



Attested
and
11/11/09

महायक निदेशक |Asstt. Director (DDO)
एम.एस.एम.ई. वि.स./M&ME-B.I.
गुवाहाटी/Guwahati- 21

No.28036/1/2001-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 NOV 2009

New Delhi-110 001
July 23, 2001

Guwahati Bench

गुवाहाटी न्यायपीठ Subject:- Restriction on regularization of
ad-hoc appointment - regarding.

OFFICE MEMORANDUM

The undersigned is directed to say that as per the Department of Personnel and Administrative Reforms O.M. No.22011/3/75-Estt(D) dated October 29, 1975 and the Department of Personnel and Training O.M.No.28036/8/87-Estt (D)-dated March 30, 1988, persons appointed on ad-hoc basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption), as the case may be, at the earliest opportunity. These instructions also provide that whenever an appointment is made on ad-hoc basis, the fact that the appointment is ad-hoc and that such an appointment will not bestow on the person a claim for regular appointment should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on ad-hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade

2. Instances have, however, come to the notice that despite the clear provisions, as mentioned above, persons appointed on ad-hoc basis, when replaced, approach the courts of law for regularizing their appointment and in many cases, directions are given for regularizing the period of ad-hoc appointment with consequential benefits like seniority etc.

3. In this regard, it is stated that issue of regularization of ad-hoc employees has been considered in several judgements of the Hon'ble Supreme Court. In the case of R.N. Nanjundappa Vs T. Thimmaiah & Ors (AIR 1972 SC 1767), the Supreme Court observed that regularization is not itself a mode of recruitment and any act in the exercise of executive power of the government can not override rules framed under Article 309 of the Constitution. In the case of State of Orissa Vs Sukanti Mahapatra (AIR 1993 SC 1650), the Supreme Court has observed that assuming that their having served for long years is a valid reason for regularization, that without any thing more, will not meet the requirement of the action being in public interest and what has been done under the impugned orders is to regularize the illegal entry into service as if the Rules were not in existence. In another case of K.C. Joshi Vs Union of India (AIR 1991 SC 284), the Supreme Court observed that the ad-hoc appointees can not be put on a higher pedestal over the candidates who stood the test of merit and became successful in a competitive recruitment and secured ranking according to the merit in

Authenticated

11/4/09

महायक निदेशक /Asstt. Director (DD)
एम.एस.एस.इ.- वि.सि./MSME-DL
गुवाहाटी/Guwahati-21
.....2/-

the approved list of candidates. In the case of State of Haryana and others Vs Piara Singh and others (1992 SC 2136), the Supreme Court observed that direction to regularize ad-hoc appointments, work charged employees would only result in encouraging of unhealthy practice of back door entry-what can not be done directly can not be allowed to be done in such indirect manner. In the case of Dr. M.A. Haque Vs Union of India (1993 2SCC 213), the Supreme Court held that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commission are permitted, it will open a back-door for illegal recruitment without limit. In the case of Dr Arundhati A Pargaonkar and another Vs State of Maharashtra (AIR 1995 SC 962), the Apex Court has held that a continuous service by itself do not give rise to the claim of regularization.

4. Therefore as already stated in DoP&T's O.M.s referred to above, an ad-hoc appointee has to be replaced by a regularly selected candidate as per provisions of the recruitment rules and in accordance with the prescribed procedure at the earliest possible and in no case such an officer should be regularized. In the cases, where a judicial order is received for regularization of an ad-hoc employee, steps may be taken to contest the same in the light of the specific conditions on which the offer of appointment on ad-hoc basis was made, the policy of the Government in this regard and the various judicial pronouncements of the apex court. If in a particular case, the concerned Ministry/Department desires to consider acceptance of the judicial order, the matter should be invariably referred to the Department of Legal Affairs and the Department of Personnel and Training as per this Department's O.M.No.28027/9/99-Estt(A) dated May 1, 2000, which says that whenever there is a court order against the Government of India, pertaining to service matters, no such order shall be implemented by the concerned Ministry/Department without first referring the matter to the Department of Legal Affairs and to the Department of Personnel and Training for advice.

5. It has all along been emphasized in the existing instructions that ad-hoc appointments should be made only in rare cases and in real exigency of work, where the post cannot be kept vacant until regular candidate becomes available. It has been emphasized, in particular, that ad-hoc appointment by direct recruitment from the open market should be resorted to only as a last resort. This is because, once a person is appointed from outside the Government on ad-hoc basis, such arrangement is generally continued for long periods, either because a regularly selected candidate is not available or some other vacancy in the grade/cadre becomes available against which he is adjusted. Consequently, when efforts are made to replace such an officer, he/she invariably approaches a court of law for regularization of their appointment. Apart from the fact that regularization of appointment in such cases is not in public interest as they have not come through proper selection procedure and on merit, regularization also creates problems in the matters of seniority, promotion, pension etc. However, notwithstanding these instructions, ad-hoc appointments by direct recruitment from open market are being made as a matter of routine. In fact, on many occasions, such appointments are being made only to avoid the post getting abolished in terms of the relevant instructions of the Ministry of Finance, providing for automatic abolition of posts if they remain vacant for more than one year. Of late, instances of ad-hoc appointments from open market have substantially increased resulting in more and more court cases being filed for regularization of service of such ad-hoc appointees.

Attested
Chandu
stt. Director (प्रबंधक)
वि.स.। MBBM-Bols
Date- 21

... 3/-

20 NOV 2009

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Guwahati Bench
गुवाहाटी न्यायघीठ

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6. In view of the aforesaid undesirable trend, the matter has been reviewed and it has been decided that hereafter no appointment shall be made on ad-hoc basis by direct recruitment from open market. Where the vacant post cannot be kept vacant for functional considerations, efforts may be made to entrust the additional charge of the post to a serving officer under provisions of FR-49, failing which only appointment by ad-hoc promotion/ad-hoc deputation may be considered. If in an exceptional case (e.g., in the case of an operational organization), it is inescapable to resort to ad-hoc appointment by direct recruitment, prior concurrence of the Department of Personnel and Training (Establishment 'D' Section) may be obtained by giving full and complete justification for the same.

7. Continuation of an ad-hoc appointment beyond one year will, as per the existing instructions, continue to require the prior approval of Department of Personnel and Training as before.

8. This order takes effect from the date of its issue.

9. All Ministries/Departments are requested to bring these instructions to all concerned for guidance and compliance.

(R.K. GOEL)

Deputy Secretary to the Government of India

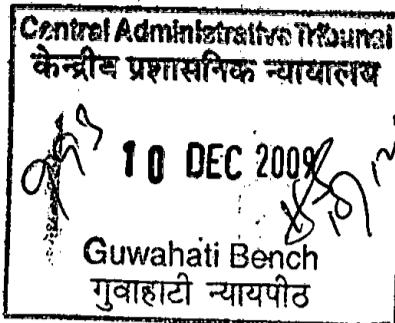
To

All Ministries/Departments of the Government of IndiaCopy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Rajya Sabha Secretariat, New Delhi.
4. The Lok Sabha Secretariat, New Delhi.
5. The Comptroller and Auditor General of India, New Delhi.
6. The Union Public Service Commission, New Delhi with reference to their letter No. 2/3/2001-S.H dated 2.2.2001.
7. The Staff Selection Commission, New Delhi.
8. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
9. All Officers and Sections in the Department of Personnel and Training.
10. Establishment (D) Section (200 copies).
11. Facilitation Center, DOPT (20 copies).
12. NIC, DoP&T for placing the order on the website of the DoP&T (persmin.nic.in).

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11/11/09
महायक निदेशक | Asstt. Director (DDO)
एम.एस.ई.- वि.सं. | MSME-D.I.
गुवाहाटी | Guwahati- 21

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**



Contempt Petition No. 3/2009
(Arising out of O.A. 220/2007)

Shri Binod Bezbaruah

-- Petitioner

- VS -

1. Shri Madhav Lal

2. Shri A. Kumar

3. Shri N.N. Debnath

-- Respondent/Alleged Contemnor

Common Additional affidavit for and on behalf of all the Respondents in the matter of implementation of the Hon'ble Tribunal's Interim order dated 23.11.2009.

I, Anil Kumar, Deputy Director (Administration), Office of the Development Commissioner (Micro, Small & Medium Enterprises), Ministry of Micro, Small & Medium Enterprises, Nirman Bhavan, New Delhi – 110 011, aged 59 years, do hereby solemnly affirm and state as follows.

अनिल कुमार / ANIL KUMAR
उच्चतम उत्पादन के साथ एक समीक्षण उत्पादक / Dy. Director (Admin.)
द्वारा नियंत्रित किया जाता है। एक समीक्षण उत्पादक

filed by

1) At the outset I submit that the respondents have the highest regard for the Hon'ble Tribunal and there is no question of any wilful disobedience of any order passed by this Tribunal. Further, in order to show the hidden respect as well as interest of the respondents, I tender unconditional and unqualified apology for any lapse or delay in compliance of the Tribunal's order.

2) That I am respondent No. 2 in the instant Contempt Petition and am filing a Common Affidavit for and on behalf of all the Respondents.

Copy Received by
Tribhuvan Library
(on behalf of
Mr. B. Chakraborty)
10/14/09

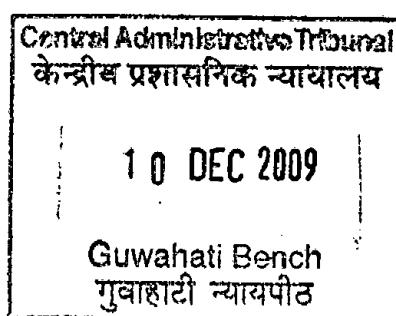
3) That the Hon'ble Tribunal vide its interim order dated 23.11.2009 in CP No.3 of 2009 in OA No. 220 of 2007, has directed the Respondents to submit (i) Details of the vacancies which came into existence after passing of the judgment dated 23.4.2008 in OA No. 220 of 2007; (ii) break up of the vacancies filled from various methods like direct recruitment, compassionate appointment and other Methods under recruitment rules; (iii) details of vacancies which arose after Applicant had filed an application seeking for compassionate appointment, within a period of two weeks.

4) That with regard to above direction of the Hon'ble Tribunal, the information as directed by the Hon'ble Tribunal is placed at Annexure-I, A-II and Annexure-III respectively. A statement showing list of persons appointed under compassionate quota and pending applications for compassionate appointment is placed at Annexure-IV.

5) That in view of the restrictions on direct recruitment, vide notification/ Govt. Order No.2/8/2001-PIC dated 16th May, 2001 which were in force until 31.3.2009 from May, 2001, only 1/3rd of the DR vacancies could be filled and the rest 2/3rd vacancies were to be abolished. The filling up of 1/3rd of the DR vacancies required the approval of Screening Committee headed by the Cabinet Secretary. The Respondents Annual Direct Recruitment Plan for the years 2006-07, 2007-08 and 2008-09 is still pending with the Department of Expenditure. Hence, none of the DR vacancies for the above years and shown in the Annexure could be filled in. (The memo. dt. 30/4/06, The Notice was dt. 16/5/01 & The Memo. 9/4/09 amend as annexure - V, VI & VII respectively.)

Further more, the Respondents have not made any appointment through DR or on compassionate grounds from the date Petitioner Shri Binod Bezbarua has applied for appointment on compassionate grounds e.i. 21.9.2005.

In view of the above details, it is more respectfully prayed that the Contempt Petition be dismissed and the replying Respondents be discharged from the notice under reply to meet the ends of justice.



.....3/-

10 DEC 2009

Guwahati Bench
গুৱাহাটী চায়পীঠ

AFFIDAVIT

I, Anil Kumar, Deputy Director (Administration), Office of the Development Commissioner (Micro, Small & Medium Enterprises), Ministry of Micro, Small & Medium Enterprises, Nirman Bhavan, New Delhi – 110 011, aged 59 years, do hereby solemnly affirm and state as follows.

That I am the Respondent No. 2 (two) in the above case and am fully acquainted with the facts and circumstances of the case and nothing has been suppressed or concealed in this reply.

That the statements made in Para 1 to 5 of the affidavit and the annexures thereto are true to my knowledge, belief and information based on the records.

And, sign this affidavit/report on this 61-day of December, 2009 at New Delhi.


अनिल कुमार / ANIL KUMAR
उपनिदेशक (प्रशासन) / Dy. Director (Admn.)
मानव संस्करण बोर्ड, Govt. of India
सूक्ष्म, लघु, एवं मध्यम उद्यम बन्द्रालय
Ministry of Micro, Small & Medium Enterprises
निपुण (संस्करण एवं शो उद्यम) का कार्यालय
नई दिल्ली-१०२, New Delhi-102

Identified by

me by the deponent who is


M. U. Ahmed

identified by M. U. Ahmed

(Advocate)

Advocate at 61 on this 61

day of December, 2009 at

10 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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- 4 -

Annexure A-I

Details of direct recruitment vacancies which came into existence after passing of the judgement dated 23.4.2008 in OA No. 220/2007.

S. No.	Name of Institute	Name of post	No. of DR vacancy	Date of vacancy	Filled by DR	Filled by compassionate appointment	Filled by other methods
1.	MSME-DI, Guwahati	Skilled Worker Gr.II	1	1.3.2009	0	0	0
2.	- do -	Helper	1	2.5.2009	0	0	0
3.	- do -	Peon	1	1.6.2008	0	0	0
4.	- do -	Watchman	1	1.7.2008	0	0	0

Note 1 : MSME-DI, Guwahati is the cadre controlling authority in respect of all Group C & D posts excepting for Investigator & Junior Hindi Translator in MSME-DI, Guwahati and its Branch Institutes at Silchar, Shillong, Itanagar, Tura, Tezpur and Diphu.

Note 2: The post of Skilled Worker Gr.II is filled 75% by direct recruitment and 25% by promotion.


अनिल कुमार / ANIL KUMAR
उपनिदेशक (प्रभाव) / Dy. Director (Admn.)
भारत सरकार / Govt. of India
सूक्ष्म, लघु एवं मध्यम उद्यम भवालय
Ministry of Micro, Small & Medium Enterprises
विभाग (सूक्ष्म लघु एवं मध्यम) का कार्यालय
Office of the Dev. Commr. (MSME)
नई दिल्ली-११००२६, New Delhi-110026

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Annexure A-II

Break-up of vacancies filled from various methods like direct recruitment, compassionate appointment and other methods under recruitment rules since 21.9.2005 i.e. the date of application for appointment on compassionate ground by the applicant.

Group/Post	Vacancy arisen after 21.9.2005.	Filled		
		Direct Recruitment	Compassionate appointment	By Promotion
Group C/LDC	2 (1 st post vacant since 11.7.06 2 nd post since 1.2.07)	0	0	0
Group C/ Skilled Worker Gr.II	2 (1 st post since 1.3.09 & 2 nd post since 2.6.09)	0	0	2
Group D/ Helper	2 (1 st post vacant since 2.12.07 2 nd post vacant 2.5.09)	0	0	0
Group D/Peon	3(1 st post vacant since 16.11.06, 2 nd post vacant since 1.9.07 & 3 rd post vacant since 1.6.08)	0	0	0
Group D/ Watchman	1 (post vacant since 1.7.08)	0	0	0
Group D/ Farash	1 (post vacant since 1.6.06)	0	0	0

Contd... 6/-

अन्तिम कामार / ANIL KUMAR
उपायिकर्ता (प्रशासन) / Dy. Director (Admn.)
मारत सरकार / Govt. of India
मुख्यमंत्री, लघु एवं मध्यम संघर्ष मंत्रालय
Ministry of Micro, Small & Medium Enterprise
विभाग (मुख्यमंत्री का कार्यालय)
Office of the Dev. Commr. (MSME)
नई दिल्ली-११००१८/ New Delhi-110018

10 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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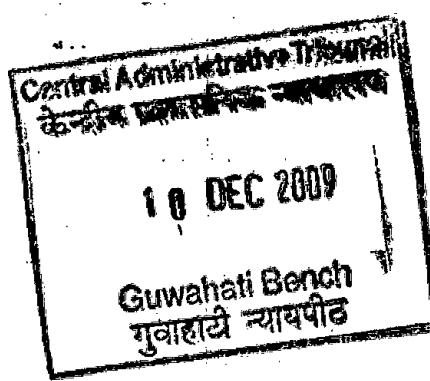
Annexure A-III

Details of vacancies which arose after applicant had filed an application for compassionate appointment.

Sl.No.	Name of the Institute	Name of the post	No. of vacancy	Date of vacancy
1.	MSME-DI, Guwahati	LDC	1	1.2.2007
2.	- do -	Skilled Worker Gr.II	1	1.3.2009
3.	- do -	Helper	1	2.5.2009
4.	- do -	Peon	2	1.9.2007 1.6.2008 1.7.2008
5.	- do -	Farash	1	1.6.2006
6.	Branch MSME-DI, Silchar	Skilled Worker Gr.II	1	2.6.2009
7.	- do -	Helper	1	20.12.2007
8.	Branch MSME-DI, Tura	Peon	1	16.11.2006
9.	Branch MSME-DI, Tezpur	LDC	1	11.7.2006

Anil Kumar
अनिल कुमार/ANIL KUMAR
उपनिदेशक (प्रशासा)/Dy. Director (Admn.)
भारत सरकार/Govt. of India
मूल्य, लघु एवं मध्यम उद्यम मंत्रालय
मिनिस्ट्री (सूख लग एवं मूल्यम) का कार्यालय
Office of the Dev. Commr. (MSME)
नई दिल्ली-११००१६/ New Delhi-110016

Contd...7/-



Annexure A-IV

Statement showing persons appointed under compassionate quota and the pending applications for appointment under compassionate quota

(A) Compassionate appointment

Sl. No.	Name of the compassionate appointee	Date of appointment	Remarks
1.	Smt. Neela Dutta, Peon, MSME-DI, Guwahati	1.2.1973	Retired on 31.5.2008
2.	Smt. Champawati Mahanta, LDC, Br. MSME-DI, Tezpur	2.7.1990	-
3.	Smt. Iswara Devi, Peon, MSME-DI, Guwahati	5.3.1993	-
4.	Shri Alok Sarkar, LDC, MSME-DI, Guwahati	30.6.1995	-
5.	Smt. Ira Das Singh, Sweeper, MSME-DI, Guwahati	9.2.2000	-
6.	Smt. Bimala Kalita, LDC, MSME-DI, Guwahati	16.2.2000	-
7.	Smt. B. Bhuyan, LDC, MSME-DI, Guwahati	9.2.2001	-

(B) Pending applications for compassionate appointment

Sl. No.	Name of applicant	Name & Designation of deceased employee	Date of application
1.	Ms. Feliarich I. Rynjah	Shri B. Lyndoh, UDC	26.5.2004
2.	Shri Binod Bezbaruah	Shri M.C. Bezbaruah, Peon	21.9.2005
3.	Shri Paban Boro	Shri Bishnu Ram Boro, Daftary	11.6.2008


 अनिल कुमार / ANIL KUMAR
 उपनिदेशक (प्रशासन) / Dy. Director (Admn.)
 सरकारी / Govt. of India
 सूचना, लघु एवं मध्यम उद्यम संग्रालय
 Ministry of Micro, Small & Medium Enterprise
 विभाग (सू. ल० एवं म० उद्यम) का। कार्यालय
 Office of the Govt. Commr. (MSME)
 नई दिल्ली-११००११ / New Delhi-110011

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AN EXTENSION OR DEF.

Annexu=V

- 2006

No.2/8/2001-PIC
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi - 110 001

Dated: August 30th, 2006

OFFICE MEMORANDUM

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

1.0 DEC 2009

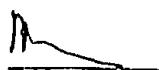
Guwahati Bench
गुवाहाटी न्यायपीठ

Subject: Optimisation of Direct Recruitment to Civilian Posts

Reference: DOP&T OM No.2/8/2001-PIC dated 16.5.2001

The undersigned is directed to refer to this Department OM of even number dated 16.5.2001 on the above-cited subject and to say that the Scheme of Optimisation of Direct Recruitment to Civilian Posts, which was current up to 31.3.2006, has been reviewed in consultation with the Ministry of Finance. It has now been decided to continue the Scheme for a further period of three years, i.e. from 01.04.2006 to 31.3.2009, subject to a review being undertaken after receipt of the Sixth Pay Commission Recommendations.

2. The existing instructions on the subject of Optimisation of Direct Recruitment and the convening of the Screening Committee meetings, issued by Department of Personnel and Training, from time to time, will continue to be in force till the validity of this Scheme.
3. All Secretaries of Administrative Ministries/Departments are, requested to circulate these orders to their attached and subordinate offices, autonomous bodies, etc. under their administrative control to ensure compliance of these instructions and for holding timely meetings of the Screening Committees.


(P.K. Mishra)

Joint Secretary to the Government of India

To:

1. All Ministries/Departments to the Government of India (as per standard distribution list)
2. Chairman, RRB, SSC, UPSC and C&AG.
3. All Financial Advisers (By name)

10 DEC 2009

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Annexure -

VI

Guwahati Bench
গুৱাহাটী ন্যায়ালয়

No.2/8/2001-PIC
Government of India

Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 16th May, 2001.

OFFICE MEMORANDUM

Subject: Optimisation of direct recruitment to civilian posts.

• The Finance Minister while presenting the Budget for 2001-2002 has stated that "all requirements of recruitment will be scrutinised to ensure that fresh recruitment is limited to 1 per cent of total civilian staff strength. As about 3 per cent of staff retire every year, this will reduce the manpower by 2 per cent per annum achieving a reduction of 10 per cent in five years as announced by the Prime Minister".

1.2 The Expenditure Reforms Commission had also considered the issue and had recommended that each Ministry/Department may formulate Annual Direct Recruitment Plans through the mechanism of Screening Committees .

2.1 All Ministries/Departments are accordingly requested to prepare Annual Direct Recruitment Plans covering the requirements of all cadres, whether managed by that Ministry/Department itself, or managed by the Department of Personnel & Training, etc. The task of preparing the Annual Recruitment Plan will be undertaken in each Ministry/Department by a Screening Committee headed by the Secretary of that Ministry/Department with the Financial Adviser as a Member and JS(Admn.) of the Department as Member Secretary. The Committee would also have one senior representative each of the Department of Personnel & Training and the Department of Expenditure. While the Annual Recruitment Plans for vacancies in Groups 'B', 'C' and 'D' could be cleared by this Committee itself, in the case of Group 'A' Services, the Annual Recruitment Plan would be cleared by a Committee headed by Cabinet Secretary with Secretary of the Department concerned, Secretary(DOPT) and Secretary(Expenditure) as Members.

2.2 While preparing the Annual Recruitment Plans, the concerned Screening Committees would ensure that direct recruitment does not in any case exceed 1% of the total sanctioned strength of the Department. Since about 3% of staff retire every year, this would translate into only 1/3rd of the direct recruitment vacancies occurring in each year being filled up. Accordingly, direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. While examining the vacancies to be filled up, the functional needs of the organisation would be critically examined so that there is flexibility in filling up vacancies in various cadres depending upon their relative functional need. To amplify, in case an organisation needs certain posts to be filled up for safety/security/operational considerations, a corresponding reduction in direct recruitment in other cadres of the organisation may be done with a view to restricting the overall direct recruitment to one-third of vacancies meant for direct recruitment subject to the condition that the total vacancies proposed for filling up should

Attested

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Skruthi

05/05/09
Director
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মাননীয় সচিব / M.S. / MSME - DI
মাননীয় সচিব / Guwahati-21

be within the 1% ceiling. The remaining vacancies meant for direct recruitment which are not cleared by the Screening Committees will not be filled up by promotion or otherwise and these posts will stand abolished.

2.3 While the Annual Recruitment Plan would have to be prepared immediately for vacancies anticipated in 2001-02, the issue of filling up of direct recruitment vacancies existing on the date of issue of these orders, which are less than one year old and for which recruitment action has not yet been finalised, may also be critically reviewed by Ministries/Departments and placed before the Screening Committees for action as at para 2.2 above.

2.4 The vacancies finally cleared by the Screening Committees will be filled up duly applying the rules for reservation, handicapped, compassionate quotas thereon. Further, administrative Ministries/Departments/Units would obtain beforehand a No Objection Certificate from the Surplus Cell of the Department of Personnel & Training/Director General, Employment and Training that suitable personnel are not available for appointment against the posts meant for direct recruitment and only thereafter place indents for Direct Recruitment. Recruiting agencies would also not accept any indents which are not accompanied by a certificate indicating that the same has been cleared by the concerned Screening Committee and that suitable personnel are not available with the Surplus Cell.

3. The other modes of recruitment (including that of 'promotion') prescribed in the Recruitment Rules/Service Rules would, however, continue to be adhered to as per the provisions of the notified Recruitment Rules/Service Rules.

4. The provisions of this Office Memorandum would be applicable to all Central Government Ministries/Departments/organisations including Ministry of Railways, Department of Posts, Department of Telecom, autonomous bodies – wholly or partly financed by the Government, statutory corporations/bodies, civilians in Defence and non-combatised posts in Para Military Forces.

5. All Ministries/Departments are requested to circulate the orders to their attached and subordinate offices, autonomous bodies, etc. under their administrative control. Secretaries of administrative Ministries/Departments may ensure that action based on their orders is taken immediately..

6. Hindi version will follow.

Sd/-
(Harinder Singh)
Joint Secretary to the Govt. of India

To

1. All Ministries/Departments to the Government of India
(as per standard distribution list)
2. Chairman, RRB, SSC, UPSC and C&AG.
3. All Financial Advisers (By name)

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

10 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

True copy attested
Guwahati 4/12/09

निदेशक / Director
भारत सरकार / Govt. of India
एम.एस.एस.इ. - वि.सं. / MSME - DI
गुवाहाटी - 21 / Guwahati - 21

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No.2/8/2001-PIC

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

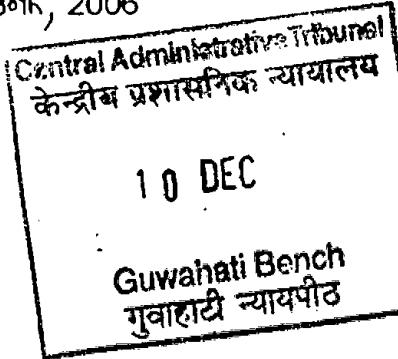
New Delhi - 110 001

Dated: August 30th, 2006

OFFICE MEMORANDUM

Subject: Optimisation of Direct Recruitment to Civilian Posts

Reference: DOP&T OM No.2/8/2001-PIC dated 16.5.2001



The undersigned is directed to refer to this Department OM of even number dated 16.5.2001 on the above-cited subject and to say that the Scheme of Optimisation of Direct Recruitment to Civilian Posts, which was current up to 31.3.2006, has been reviewed in consultation with the Ministry of Finance. It has now been decided to continue the Scheme for a further period of three years, i.e. from 01.04.2006 to 31.3.2009, subject to a review being undertaken after receipt of the Sixth Pay Commission Recommendations.

2. The existing instructions on the subject of Optimisation of Direct Recruitment and the convening of the Screening Committee meetings, issued by Department of Personnel and Training, from time to time, will continue to be in force till the validity of this Scheme.

3. All Secretaries of Administrative Ministries/Departments are, requested to circulate these orders to their attached and subordinate offices, autonomous bodies, etc. under their administrative control to ensure compliance of these instructions and for holding timely meetings of the Screening Committees.

(P.K.Mishra)

Joint Secretary to the Government of India

To:

1. All Ministries/Departments to the Government of India (as per standard distribution list)
2. Chairman, RRB, SSC, UPSC and C&AG.
3. All Financial Advisers (By name)

(12)

3. Keeping in view the above recommendation of the Sixth Central Pay Commission, the optimisation policy has again been reviewed in consultation with the Department of Expenditure, Ministry of Finance and it has been decided not to extend the validity of the Optimization Scheme beyond 31.3.2009.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

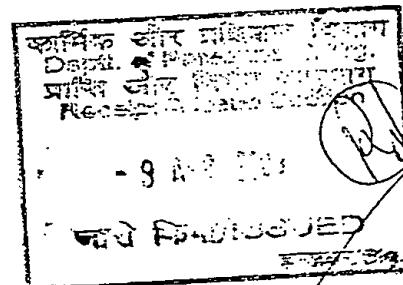
10 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

To

All Ministries/ Departments

Smita Kumar
(SMITA KUMAR)
DIRECTOR



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