

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

1. ORIGINAL APPLICATION No : -----/2009

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

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

4. Contempt Petition No : 26/2010/2009 in O.A. No. 240/2007

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

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

Applicant (S) : Sri Himanshu Paul

Respondent (S) : Sri Monoyit Kumar

Advocate for the
(Applicant (S)) : M/s. N. Das, Mr. B. Deb

Advocate for the
(Respondent (S)) : Cise

Notes of the Registry	DATE	ORDER OF THE TRIBUNAL
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This CP is filed by
by Mr. B. Deb, Advocate,
on behalf of the applicant,
praying for issue Lm
Notice to the contemners
for their disobedience
and deliberate
non-compliance of
the order dated
20-2-2009.

27.7.2010 List the matter on 5th August 2010 before
Division Bench.

(Madan Kumar Chaturvedi)
Member (A)

Willful ~~negligence~~ of direction
contained vide order dated 20.02.2009 in
O.A. 240/2007 is alleged in present CP.

We have heard Mr. B. Deb, learned
counsel for the applicant. Vide said order,
directions were issued to respondents to
reconsider the matter in order to provide
employment on compassionate ground.

Laid before the
Hon'ble Court for
favour of order.

AKM
23-7-2010

Section Officer (S)

23-7-2010.

On examination of records, we notice
that in purported compliance thereof,
respondents passed order dated 27.07.2009.

Contd...

C.P.26/2010 (O.A.240/2007)

Contd.
05.08.2010

Received Order copy
dtd 5.8.10. for Mr. N. Das
S.n.CasC. Mukta
9.8.10

placed on record as Annexure-6, whereby by passing detail and analytical order, respondents have rejected applicant's representation dated 19.03.2009 by assigning many reasons.

In our considered opinion, there is no breach less than willful disobedience. Therefore, CP is dismissed.

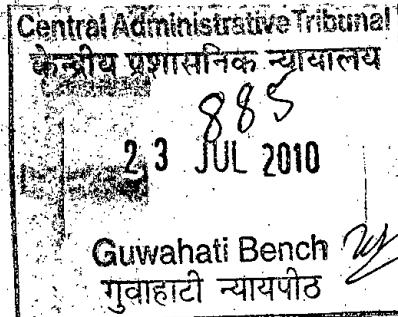
 (Madan Kumar Chaturvedi) Member (A)

 (Mukesh Kumar Gupta) Member (J)

Received copy order dt. 5.8.10
Kajal Das
applicant
9/8/10
/bb/

10-
Copy enclosed
over to Mr. M. Das
for C.P. S.e order
dated 5.8.2010 encd.
applicant also
on 9.8.2010

Received copy
Order dt. 5.8.10 on
behalf of M. Kumar
CPMC, GJM
9/8/10



Filed by the
Petitioner through
Bipradip Deb
23/7/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

(An application Under Section 17 of the Central administrative Tribunal Act,1985)

Contempt Petition No. 26 of 2010.

in

Original Application No.240 of 2007.

Shri Himanshu Paul

Petitioner

-Versus-

Union of India and others

Respondents.

IN THE MATTER OF :-

An application under section 17 of the Administrative Tribunals Act, 1985, read with Article 215 of the Constitution of India.

AND

IN THE MATTER OF :-

Order dated 20.2.2009 passed by this Hon'ble Tribunal in Original Application No.240 of 2007 directing the respondent authorities to provide employment to the applicant in the department within 120 days.

AND -----

AND

23 JUL 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE MATTER OF :-

Representation dated 19.3.2009 submitted by the petitioner along with the certified copy of the aforesaid order dated 20.2.2009 passed by this Hon'ble Tribunal in Original Application No.240 of 2007 before the respondent praying, interalia, for his appointment in the department.

AND

IN THE MATTER OF :-

Order dated 27th July, 2009, passed by the Chief Post Master General, Assam Circle, Guwahati, deliberately and intentionally declined to comply with the aforesaid order dated 20.2.2009 passed by this Hon'ble Tribunal in Original Application No.240 of 2007 and, thereby, deliberately and intentionally put an obstruction in the justice delivery system and had also lowered the dignity and majesty of this Hon'ble Tribunal by dismissing and rejecting the order dated 20.2.2009 passed by this Hon'ble Tribunal directing the respondent authorities to provide appointment within 120 days from the date of receipt of the order.

AND -----

AND

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 JUL 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE MATTER OF :-

Willful disobedience and non-compliance of the aforesaid order dated 19.11.2009 passed by this Hon'ble Tribunal in Original Application No.240 of 2007 for consideration of the case of the petitioner for his appointment in the department.

AND

IN THE MATTER OF :-

Shri Himanshu Paul,

Son of late Phani Bhushan Paul (Ex-Group 'D' employee),

Vill.- Karatigram, P.O.-Rongpur, P.S.-Silchar,

District Cachar, Assam.

Pin- 788009.

-----Petitioner

-Versus-

Shri Monojit Kumar,

The Chief Post Master General,

Meghdoot, Assam Circle, Guwahati-1.

-----Respondent/Contemnor

The humble petition of the petitioner, above named,

MOST RESPECTFULLY -----

23 JUL 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

MOST RESPECTFULLY SHEWETH :-

1. That this application is filed by the petitioner against the willful disobedience and non-compliance of the order dated 20.2.2009 passed by this Hon'ble Tribunal in Original Application No.240 of 2007 directing the respondent authorities to consider the matter in accordance with the directions of this Hon'ble Tribunal and accordingly to provide employment to the petitioner on compassionate ground in the department within 120 days of the aforesaid order dated 20.2.2009 passed by this Hon'ble Tribunal.
2. That the petitioner was appointed to the post of the Postman on compassionate ground vide order dated 4.11.1997 passed by the Assistant Chief Postmaster General (Staff), Assam Circle, Guwahati, based on his selection in the meeting of the Selection Committee held on 23.9.97 for appointment to the said post.

A copy of the aforesaid order dated 4.11.1997 is annexed hereto as Annexure-1 of this petition.

3. That the service of the petitioner to the post of Postman in the G.C. College, Sub-Post Office, Silchar, thereafter, was arbitrary terminated vide order dated 26.7.1999 passed by the Assistant Superintendent of Post Offices, North Sub-Division, Silchar.

A copy of the aforesaid order dated 26.7.1999 is annexed hereto as Annexure-2 of this petition.

4. That the -----

:-5:-

4. That the petitioner thereafter was temporary engaged in the vacant post of the Postman under the Sub-Postmaster, Haflong, as per letter dated 7.1.2000 issued by the Senior Superintendent of Post Offices, Cachar division, Silchar.

A copy of the aforesaid letter dated 7.1.2000 is annexed hereto as Annexure-3 of this petition.

5. That the service of the petitioner as the Postman under the Sub-Postmaster, Haflong, thereafter, was arbitrary terminated as per letter dated 9.7.2002 issued by the Sub-Divisional Inspector of Post Offices, Haflong.

A copy of the aforesaid letter dated 9.7.2002 is annexed hereto as Annexure-4 of this petition.

6. That the petitioner along with others accordingly under the aforesaid circumstances filed an Original Application No.213 of 2002 and Original Application No.261 of 2002 before this Tribunal praying inter-alia for directions to the authorities to provide for appointment of the petitioner on compassionate ground. The aforesaid Original Application No.213 of 2002 and Original Application No.261 of 2002 were dismissed by this Hon'ble Tribunal on the ground of non-availability of vacancies. The petitioner thereafter filed a writ petition being registered as W.P.(C) No.8141 of 2002 before the Hon'ble Gauhati High Court, Guwahati, wherein materials were produced to show that a large number of

— vacancies for

23 JUL 2010

---6---

Guwahati Bench
गुवाहाटी न्यायपीठ

vacancies for the appointment of the petitioner on compassionate ground in the department.

The Hon'ble Gauhati High Court, Guwahati, accordingly directed the respondents to consider the prayer of the petitioner for providing employment on compassionate ground.

The respondents on consideration of the matter turn down the prayer of the petitioner on the ground of non-availability of 5% quota of vacancies for compassionate appointment.

7. That the petitioner under the aforesaid circumstances filed the Original Application No.240 of 2007 before this Hon'ble Tribunal against the rejection of the prayer of the petitioner for compassionate appointment allegedly due to non-availability of 5% quota of vacancies for compassionate appointments.

8. That this Hon'ble Tribunal, thereafter, on hearing the parties vide order dated 20.2.2009 passed in the aforesaid Original Application No.240 of 2007 came to a finding that 5% quota of vacancies for appointment on compassionate grounds was introduced for the first time vide Office Memorandum dated 9.10.1998. The petitioner on the other hand was appointed on compassionate ground vide order 4.11.2007 (Annexure-1), that is, prior to the aforesaid Office Memorandum dated 9.10.1998 issued by the authorities concerned introducing 5% quota of vacancies for appointment on compassionate ground. There was accordingly no such quota for recruitment on compassionate ground when the petitioner was appointed on compassionate ground vide order dated 4.11.1997 (Annexure-1) passed by the authorities concerned. It was further held that the Office Memorandum dated 9.10.1998 is an executive instruction and therefore it was prospective in character without any retrospective effect and therefore the non-availability of 5% quota of vacancies for appointment cannot be shown as the reason to deny the compassionate

----- appointment to

-:7:-

23 JUL 2010

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

appointment to the petitioner particularly when such vacancies are much prior to the aforesaid Office Memorandum dated 9.10.1998 issued by the authorities concerned and accordingly this Hon'ble Tribunal after having arrived at the aforesaid finding vide order dated 20.2.2009 passed in Original Application No.240 of 2007 was pleased to direct the respondents to re-consider the matter in order to provide an employment on compassionate ground to the petitioner. It was further held that a fresh representation dated 3.12.2008 of the petitioner may not be taken into consideration by the respondents and it should be remembered by the respondents that the petitioner was unjustly deprived of employment on compassionate ground which led to miscarriage of justice and accordingly directed the respondents to complete the entire exercise within 120 days from the date of receipt of the aforesaid order dated 20.2.2009 passed by this Hon'ble Tribunal.

A copy of the aforesaid order dated 20.2.2009 is annexed hereto as Annexure-5 of this petition.

9. That the petitioner thereafter submitted a representation dated 19.3.2009 along with the certified copy of the aforesaid order dated 20.2.2009 (Annexure-5) passed by this Hon'ble Tribunal in Original Application No.240 of 2007 before the respondents praying inter-alia for appointment of the petitioner to the post of the Postman in the department in compliance to the aforesaid order dated 20.2.2009.

10. That the respondent/contemnor on receipt of the aforesaid representation dated 19.3.2009 along with the certified copy of the order dated 20.2.2009 (Annexure-5) passed by this Hon'ble Tribunal most illegally set in giving judgment vide his

— vide his order

23 JUL 2010

4:8:-

Guwahati Bench

गुवाहाटी न्यायपीठ

order No.VIG/5/XXI/2007 dated 27.7.2009 over the order dated 20.2.2009 (Annexure-5)

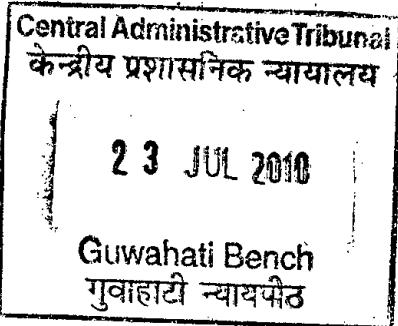
passed by this Hon'ble Tribunal in Original Application No.240 of 2007 and accordingly declined to comply with the aforesaid order dated 20.2.2009 (Annexure-5) passed by this Hon'ble Tribunal deliberately and intentionally again holding that the petitioner cannot be appointed on compassionate ground due to non-availability of 5% quota of vacancies for appointment of the petitioner on compassionate ground and thereby deliberately and intentionally put an obstruction in the justice delivery system and that has also lowered the dignity and majesty of this Hon'ble Tribunal.

A copy of the aforesaid order dated 27.7.2009 is annexed hereto as Annexure-6 of this petition.

11. That the petitioner states that the respondent/contemnor has no regard for the aforesaid order dated 20.2.2009 (Annexure-5) passed by this Hon'ble Tribunal and in order to restore the confidence of the litigant public in the justice delivery system and under the facts and circumstances of the case in the interest of justice.

Under the circumstances stated above it is most humbly prayed that your Lordships may be pleased to admit this petition, issue notice upon the respondent/ contemnor and on hearing the parties be pleased to punish the respondent/ contemnor for their disobedience and deliberate non-compliance of the order dated 20.2.2009 (Annexure-5) passed by this Hon'ble Tribunal in Original Application No.240 of 2007, and/or, pass such further and other order(s) as your Lordships may deem fit and proper under the facts and circumstances of the case in the interest of justice.

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



DRAFT CHARGE

Laid before the Hon'ble Central Administrative Tribunal, Guwahati Bench, for initiation of Contempt proceedings against the contemnor for willful disobedience and deliberate non-compliance of the order dated 20th February, 2009, passed in Original Application No.240 of 2007 passed by this Hon'ble Central Administrative Tribunal.

EDWARD CHANDLER

entertainment industry in Hong Kong, and started his
own publishing company to publish his own books. During this
period, he also wrote and directed several short films and
television series, including "The Legend of the Golden
Sword" and "The Legend of the Golden Phoenix".
In 2002, he founded "The Legend of the Golden Phoenix" company
to produce and distribute his own books and films. The company
has since produced several books and films, including "The Legend
of the Golden Phoenix" and "The Legend of the Golden Phoenix".

Chandler's books and films have been well received by the
public and have won several awards.

23 JUL 2010

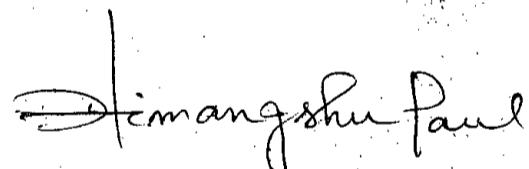
Guwahati Bench
गुवाहाटी न्यायपीठ

AFFIDAVIT

I, Shri Himanshu Paul, son of late Phani Bhushan Paul, resident of vill.- Karatigram, P.O.- Rongpur, P.S.- Silchar, Cachar district, Assam, aged about 31 years do hereby solemnly affirm and say as follows:-

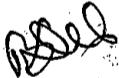
1. That I am the petitioner in the above case and as such I am acquainted with the facts and circumstances of the case.
2. That the contents of this affidavit and the statements made in paragraphs 1,2,3,4,5,6,7 and 8 of the above petition are true to my knowledge and the rests are my prayers and submissions before this Hon'ble Tribunal which I also believe to be true and no materials has been concealed thereon.

And I sign this affidavit this the 20th day of July, 2010 in Guwahati.



DEONENT.

Identified by:-



Advocate.

Solemnly affirmed and sworn in before me by the deponent, who is identified by Shri Bipradeep Deb, Advocate, on this the 20th day of July, 2010 in Guwahati.

23 JUL 1997

Guwahati Bench
গুৱাহাটী বায়োঞ্চ

DEPARTMENT OF POST
OFFICE OF THE CHIEF POST MASTER GENERAL ASSAM CIRCLE
GUWAHATI - 1

No. Staff/16-Misc/97

Dated at Guwahati the 4/11/97

To

Sri Himangshu Paul
S/O Late P.B. Paul
Ex.Gr.D, P & T Disp. Silchar

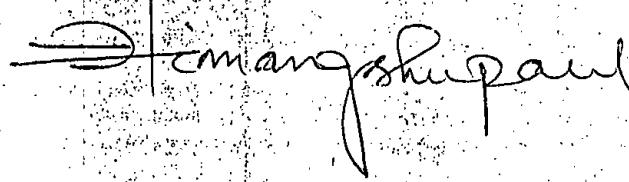
Subject :- Appointment under relaxation of normal
recruitment rules.

You have been approved for appointment under relaxation of normal
Recruitment rules in the cadre of Postman /MG. by the Circle Selection
Committee held on 23.9.97.

(I.C.SARMA)

APMG (STAFF)

O/O CPMG: GUWAHATI



9/03/10
Medical Officer
C.B.N. P.H.C.
Silchar, Cachar (Assam)

Certified to be
true COPY



23 JUL 2010 Annexure 2

Page - 19

Gauhati Bench গুৱাহাটী বৰ্ষাৰ্থ

DEPARTMENT OF POSTS: INDIA

DE OF THE ASSTT SUPDT OF POST OFFICES: SILCHAR NORTH SUB DIVN. SILCHAR-783011

0 NO. B2 HK. Roy

33-112-614442 26-07-99

Examination of the following testing orders are issued
for the purpose of the SEP/SC memo No. A.8/2019

Sri Krishnadas Ray, Ex-mp's D' Karimanguda has
all approved. Consideration of his appointment in Peshawar, S. C. &
and he left on the 2nd of November 1946 w/ his
as Inspector Gen. College & Vice Rte's Krishnadas Ray
terminated.

2. Sri Ramendra Deo, EDM, Financially
an approved candidate for appointment to Tatyagan Sahay
in place of us Postmen. Ramgopal Singh Co. Vice Sri Lalit Ram
Bihari transferred.

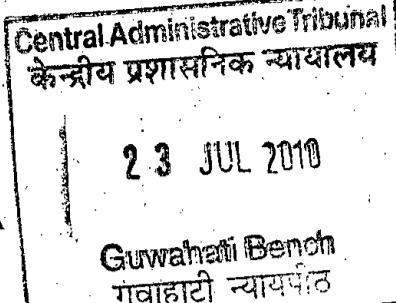
22. 2. HALDAR
d.w.t. Srinivasan
Nestle's Plaza
Kalyanpur

Coiffure

1. The SPM, Postmaster, Silvassa.
2. The SPM, D. C. College, So.
3. The SPM, Government Hospital, the medical wing, Silvassa.
4. The SPM, office investigating, Silvassa.
5. The officials concerned.
6. The S.M. staff of P.O. S. Cashmere, Silvassa.
7. The M. D. B.M. / Staff.
8. The S.D.P.O., Electricity Board, Silvassa.

certified to be
true copy;
A. Deb A. J. du

(Typed Copy)



DEPARTMENT OF POSTS :: INDIA

OFFICE OF THE ASSTT SUPDT OF POST OFFICES::SILCHAR,NORTH-SUB-DIVN., SILCHAR-
788001

Memo No. B2/ K. Roy.

Dated, SILCHAR, 26.07.99

In pursuance of the SSP/HO. memo No.B1-8/Postman/Exam/99 dtd. 16.7.99 the following posting orders are issued to have immediate effect.

Shri Khirodal Roy, Group 'D', Karimganj HO an approved candidate for appointment in Postman cadre and allotted in the unit of the undersigned is posted as Postman, G.C. College S.O. vice Shri Himanshu Paul terminated.

2. Shri Ramchandra Dutta, EDMC, Swastipally, as approved candidate for appointment in Postman cadre is posted as Postman, Rangerkhari SO. Vice Shri Lalmohan Dutta transferred.

Sd/-

Asstt. Supdt. Of Post Offices,
North Sub-Division,
SILCHAR.

Copy to :-

1. The Sr. Postmaster, Silchar
2. The SPM, G.C. College, Silchar.
3. The BPM, Swastipally, for relieving Shri Ramchandra Dutta on office arrangement.
- 4-5. The Officials concerned.
6. The Sr. Supdt. Of P.O's, Cachar Divn. Silchar.
7. File No. B's/Staff
8. The SD. P.O's, Silchar, South Sub Divn., Silchar, note to this memo No.B2/Staff/96 dtd.26.07.99.

Sd/-

Asstt. Supdt. Of Post Offices,
North Sub-Division,
SILCHAR.

Certified to be
true copy,
Deb
Deb

Page 1 of 2nd appointment
APPOINTMENT LETTER

DEPARTMENT OF POSTS - INDIA
OFFICE OF THE SENIOR SUPDT OF POST OFFICES
CACHAR DIVISION SILCHAR-788001

23 JUL 2010

Guwahati Branch
গুৱাহাটী ব্রেচ

To

The SPM
Hafslong S.O.

No.B1-Recrt/Relax/Misc

Dated at Silchar the 07-01-2000.

Sub:- Absorption of approved candidate in short term vacancy case of
Himangshu Paul

Kindly engage Shri. Himangshu Paul, an approved candidate on
compassionate ground in the vacant post of Postman of your unit on short
term duty with clear understanding that he can not claim any seniority/pay
benefit in future for such term of engagement.

An undertaking may be obtained from the candidate before engagement
as stated above with out fail.

SJ
(J. K. Barhuiya)
Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Copy To:-

1. The Sr. Postmaster, Silchar H.O for information and necessary action.
2. Shri. Himangshu Paul; S/O Late Phanibhusan Paul; Ex-Group "D" P&T
Dispensary, Silchar-788001.

A. Hark
Medical Officer
C.B.I. P.H.C.
Silchar, Cachar (Assam)

Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Certified to be
true copy

Reb
Adv

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 JUL 2010

Eligible Permanentality Letter

Ex. 7/10/10 Without Notice
भारतीय डाक विभाग/DEPARTMENT OF POSTS, INDIA

Head Post Office of the

Sub-Inspector of Post Office
Mafatlal Sub-Division,
AHLONG.

Go

The Postmaster,
Mafatlal M.O.
N. C. Hills, 78880.

NO - B/0/H. Paul D.O, 21/6/2010
Sub: Application of wait listed candidates
approved for compassionate ground.

Ref: D.O's no. B/1 Recd/ Relax/Misc dt. 11/6/02

In pursuance of D.O's letter no. and
subject mentioned above you are requested
to release Shri Himangshu Paul, approved
candidate working as Postman on this
affair, positively.

Sub-Inspector of Post Office
Mafatlal Sub-Division,
AHLONG.

Attest
11.07.2010
Year Officer U
S.M. P.I.C.
Sub. Officer (Resign)

certified to be
true copy,

Sub
Adv.

(Typed Copy)

DEPARTMENT OF POSTS, INDIA

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 JUL 2010

To

The Postmaster,
Haflong MDG,
N.C. Hills, 78880019.

Guwahati Bench
গুৱাহাটী ন্যায়ালয়

No. B2/ H. Paul

Dated : Haflong, The 9th July/02.

Sub :- Absorption of wait listed candidates approved for compassionate ground.

Ref :- D.O's No. B1/Rectt./Relax/Misc. dated. 11/6/02.

In pursuance of D.O's letter No. and subject mentioned above your are requested to relieved Shri Himanshu Paul, approved candidate working as Postman on this afternoon positively.

Sd/-

Sub-Divisional Inspector of Post Offices

Haflong Sub-Division,

HAFLONG.

Certified to be
true copy,

R. Deb

Adm.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI

Original Application No.240 of 2007

Date of Order: This the 20th Day of February, 2009

— HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN

1. Sri Himangshu Paul & Others
S/o- Late Phanibhusan Paul
(Ex-Group- D employee)
Vill-Karatigam, P.O.-Rongpur
P.S.-Silcha, Dist-Cachar (Assam)
2. Sri Babudhan Dhree
S/o -Late Bijoy Kumar Dhree
P.O.-Pallorband
Dist.-Cachar (Assam)
3. Sri Nilotpal Roy
S/O - Late N.C.Roy
Gumra Bazar,
P.O.-Kalain
Dist-Cachar (Assam)
4. Sri Gopal Ch. Mamasudra
(Ex-Group - D employee
Ward No.4, P.O.- Lala
Dist.-Hailakandi (Assam)
5. Sri Kajal Das
S/O - Late Suniti Bala Das
(Ex-Group- D employee
Vill & P.O.-Barkhola
Dist.-Cachar (Assam)

By Advocate Dr.J.L.Sarkar, Mr.B.C.Pathak,
Mr.B.Pathak

Petitioners

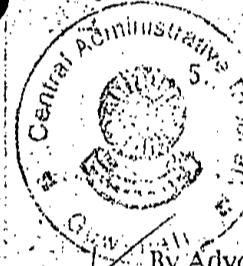
-Vs-

1. Union of India
Represented by the Secretary,
Government of India
Ministry of Communications
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi-1
2. The Director General
Department pf posts
Dak Bhawan, Sansad Marg
New Delhi-1

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 JUL 2010

Guwahati Bench
গুৱাহাটী ন্যায়পাইঠ



certified to be
True copy
Babu
Adm

3. The Chief Post Master General
Assam Circle, Meghdoott Bhawan
Guwahati-1.

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

Respondents

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

ORDER(ORAL)

20.02.2009

23 JUL 2010

M.R.MOHANTY, V.C:

Guwahati Bench
गुवाहाटी न्यायालय

When prayer of the Applicants (made in the previous O.A. Nos. 213 of 2002 & 261 of 2002) to get an employment on compassionate ground was turned down (on the ground of non availability of vacancies), they approached the Hon'ble Gauhati High Court by way of filing Writ Petitions. Before the Hon'ble Gauhati High Court, it is stated, materials were produced to show that a large number of vacancies were available to accommodate the Applicants by providing them with employment on compassionate grounds. In the said premises, the Hon'ble Gauhati High Court directed the Respondents to consider the prayer (of the Applicants) for providing them employment on compassionate ground. On consideration of the matter, the Respondents turned down the prayer of the Applicants; for which they moved the Hon'ble Gauhati High Court with Contempt Petitions. It is said that since the Respondents passed orders on the grievances of the Applicants, the Contempt Petitions were dismissed. Challenging the said (rejection) orders passed by the Respondents, the Applicants, however, have jointly filed the present O.A.No.240 of 2007 (in this Tribunal) under Section 19 of the Administrative Tribunals Act 1985.

2. Non availability of 5% of direct recruitment quota of vacancies (meant for providing employment on compassionate ground) has been shown to be the reason for not providing employment(on compassionate

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Babu
sdv

ground) to the five Applicants of this O.A.No.240 of 2007. Respondents have placed on record the revised Office Memorandum dated 9th October, 1998 (filed as Annexure-1 to the written statement); in which provision for granting employment on compassionate ground was limited only to 5% of the direct recruitments vacancies ; as mentioned in Para 7 (b), (c) and (d) of the Revised Scheme (dated 9th October, 1998) for compassionate appointment.

3. It is seen that all the Government Servants (of whom the Applicants were dependants) died much before aforesaid 09.10. 1998 and, thus, vacancies were available well before 09.10.1998 and as against the said vacancies all the five Applicants could have been appointed on compassionate ground. Law is well settled in the case of A. Manoharan and Others Vs. Union of India & Others (reported in 2008 (1) SCC (L&S) 870) that the law governing the field on the date of vacancies would prevail and law brought subsequently can not be enforced as against those vacancies; unless the law is enacted retrospectively. To state in other words, while filling up the vacancies, which were existed prior to the amendment are necessarily to be filled up as per the un-amended rules. In Para -25 of the Judgment rendered by the Apex Court in the case of A. Manoharan (Supra) it has been stated as under:-

"25. Furthermore, the Regulations have been amended only with effect from 11-8-2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto.(State of Rajasthan v. R. Dayal 12 SCC para 8.)"

The same view was expressed by the Apex Court in the case of Y.V.Rangaiah Vs. J. Sreenivasa Rao (reported in (1983) 3 SCC 284; wherein it has been held that:

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Central Administrative
केन्द्रीय प्रशासनिक

23 JUL 2008

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"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

4. It is seen that the revised Scheme dated 9th October, 1998 is an executive instructions (therefore, prospective in character) without any retrospective effect. Thus non availability 5% of the direct recruitment of quota vacancies could not have been shown as a reason to deny the compassionate appointment to the Applicants of this case ; especially when vacancies arose (on the premature death of Govt. Servants) much prior to 9th October 1998.

5. However, more deserving cases only could have superseded the Applicants and, therefore, these matters (pertaining to the five Applicants) are hereby remitted back to the Respondents to give reconsideration in the matter, in order to provide them an employment on compassionate ground. While reconsidering the matter, pertaining to the Applicants; fresh representation dated 03.12.2008 of the Applicants need be taken into consideration by the Respondents and that it should be remembered by the Respondents that the Applicants unjustly deprived of employment on compassionate ground; which led to miscarriage of justice in the decision making process. Entire exercise should be completed by the Respondents within 120 days from the date of receipt of copies of this order.

6. With the aforesaid observations and directions the Original Application No.240 of 2007 along with the M.P. 149 of 2008 and M.P.No.91 of 2007 stand disposed of.

23 JUL 2010

Gujarat Panchayat
कर्त्रीय प्रशासनिक अधिकार

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7. Send copies of this order to the Applicants and the Respondents in the address given in the O.A. and free copies of this order be supplied to the Advocates appearing for both parties.

Sd/-
M.R. MOHANTY
VICE CHAIRMAN

TRUE COPY
प्रतीक्षित
M.R. MOHANTY
अनुभाग अधिकारी
Section Officer (Judi)
Central Administrative Tribunal
गुवाहाटी न्यायालय
Guwahati Bench
प.न. 2010/Guwahati-5
10/13/3

कानूनीय प्रशासन न्यायालय
23 JUL 2010
Guwahati Bench
गुवाहाटी न्यायालय

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P. Deb
Adv.

Department of Post : India :
Office of the Chief Postmaster General : Assam Circle :
Meghdoott Bhawan 4th floor : Guwahati : 781 001.

23 JUL 2010

Guwahati Bench
गुवाहाटी बैच २०१०

No :: VIG/5/XXI/2007

Dated 27th July, 2009

ORDER

In accordance with the directions contained in order dated 20.2.2009 in connection with CAT Guwahati Bench OA No. 240/2007, the case of the Shri Himangshu Paul has been reconsidered. The brief history of the case is as follows.

Brief History

The applicant is a dependant of a former postal employee Shri Phani Bhushan Paul, Group D, P&T Dispensary, Silchar who died in harness on 27.07.95. The case of the applicant was considered by the Circle Selection Committee and he was approved for appointment in **Postman** cadre on compassionate grounds in 1997 in response to his application dated 25.09.95 under relaxation of normal rules of recruitment.

Though the applicant was approved for appointment, owing to absence of vacancies in the prescribed quota he could not be appointed either in 1997 or in subsequent years until owing to overly long lists of approved candidates awaiting appointment, the system of maintaining a waiting list was abolished vide Postal Directorate memo no. 24-1/99-SPB-I dated 08.02.2001. The applicant had initially filed a case in the CAT vide OA NO. 213 OF 2002 which held that the action taken by the Department was correct and that the applicant had no case. This judgement was challenged in the Guwahati High Court by the applicant through WP(C) No. 8141/2002 wherein the High Court directed the Chief

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PMG, Assam vide order dated 27.9.05, to consider the case of the applicant for appointment. The case for appointment was duly considered by the Chief PMG, Assam vide his order dated 20.4.2006 wherein he held that it was not possible to now give appointment considering the existant rules and court rulings on the subject.

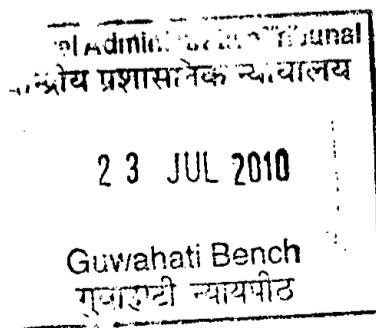
The applicant thereupon filed a contempt case vide no. 310/2006 against Chief PMG, Assam for non compliance of orders which was dismissed vide Guwahati High Court (hereinafter referred to as the High Court) order dated 11.4.07 which held that the judgement and order dated 27.9.05 had duly been complied with. Now the applicants have once more filed an application in the CAT, Guwahati Bench, in response to which the direction as referred in Para-1 above has been given. While giving direction to reconsider the matter the Tribunal has further directed that the fresh representation dated 3.12.08 of the applicant will also need to be taken into consideration.

One representation that of Sri Himangshu Paul dated 19.03.09 has been received wherein he has enclosed the order of the CAT Guwahati Bench dated 20.2.09 along with annexures. As directed by the CAT, I have gone through the representation dated 3.12.08 annexed with the representation dated 19.03.09. The issues in the representation are listed briefly and discussed ad-seriatim.

Issues raised

Para 1. This is a matter of record and not disputed.

Para 2. This relates to documents submitted by the applicant in connection with WP(C) No. 8141/2002. Copy of item XII, "the



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scheme of 1992 for appointment on compassionate grounds" has not been furnished by the applicant. The document that has been submitted is "the scheme for appointment on compassionate grounds". which was issued through Postal Directorate memo No. 14014/6/94-Estt(D) dated 09.10.1998 in 1998 and not in 1992.

Para 3.

The applicant has stated that the vacancy position could not be shown by the department presumably in connection with WP(C) No. 8141/2002

Para 4.

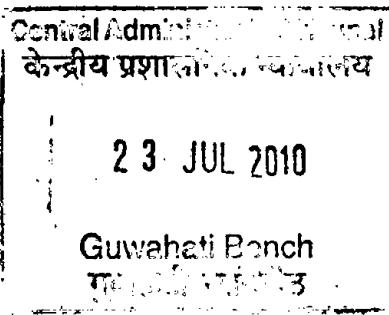
The applicant has discussed the findings of the Guwahati High Court presumably with reference to WP(C) No. 8141/2002. In this para the applicant has stated that direction has been given by the High Court to register his case and consider him for appointment as and when vacancies arise.

Para 5.

The applicant has stated that the orders of the Guwahati High Court issued on 27.9.05 (in connection with WP(C)no. 8141/2002) were illegally rejected by the Chief PMG vide his order dated 20.4.06.

Para 5.1.

The applicant has stated that the order of termination of appointment that had been given to him was illegal and that the discontinuation of waiting lists (in accordance with Postal Directorate memo no. 24-1/99-SPB-I dated 08.02.2001) was also illegal.



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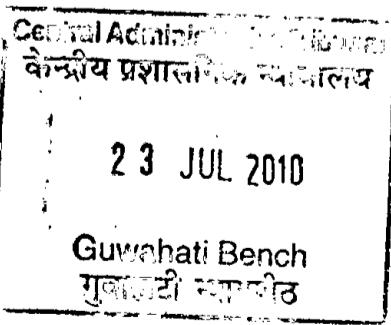
Para 5.2. The applicant has stated that the fact that he had been offered appointment in GDS post earlier, is no reason why he can not once more be offered the same post in accordance with the orders of the Guwahati High Court.

Para 5.3. The applicant has made a reference to a certain para-9 wherein he has stated that the plea that vacancy position for direct recruitment was very few for compassionate appointment was vague and evasive. He has also stated that he has submitted an authentic document showing that as many as 3025 vacancies were available in the department from 2001 onwards.

Para 5.4. The applicant has stated that "findings given in para 10" could not be sustained in view of the directions given by the High Court in its judgement and that these findings need to be reviewed and reconsidered to comply with the direction given by the High Court.

Para 5.5. The applicant has stated that the High Court has given a positive direction to consider his appointment in Group-C or D or GDS post and not to pass a speaking order or to reject the case of the petitioner since this is a genuine case and to be considered genuinely as directed by the High Court.

Para 6. The applicant has requested for his immediate appointment in view of his sufferings.



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Para 7.

The applicant has further elaborated by stating that he has a meagre source of income and that his family is in dire straits as there is no other earning member. Finally the applicant has prayed for appointment in any Group-C or D or GDS post as directed by the High Court.

Discussion on Issues raised

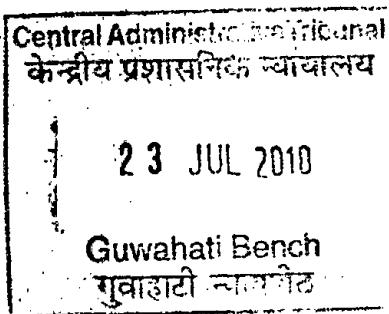
It is now proposed to discuss the issues raised in the representation dated 3rd December, 2008. No comments are offered on para-1. The remaining paragraphs are discussed ad seriatim.

Para 2.

That the applicant was approved for appointment on compassionate grounds is not disputed considering that the applicant was duly approved for appointment in the year 1997 vide C0, Guwahati memo No. staff/16-Misc/97 dated 06.10.1997

Para 3.

The applicant has stated in para 3 that the department could not show that there was no vacancy within the permissible quota wherein the candidate could be appointed. The vacancy position from the year 1995 to the year 2000 in Postman and Group-D cadres for Assam Circle has been duly reconstructed. It is noted here that the applicant vide his application dated 25.09.95 had applied for the post of Postman. During the period from 1995 to 2000 there were in all 102 applications considered for appointment on compassionate grounds in Assam. Against this number 63 cases were approved and 39 cases were rejected. During the



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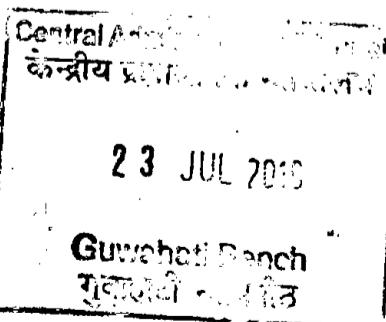
same period, from the year 1995 to 2000, the total number of vacancies for compassionate appointment in Assam calculated on the basis of 5% of direct recruitment quota works out to the numbers as indicated below.

Postman = 9 vacancies between 1995 to 2000.

Group-D = 9 vacancies between 1995 to 2000.

This means that over a 5 year period, 63 approved candidates were required to be appointed against 18 vacancies. This was the position in Assam Circle and there is no reason to believe that the waiting list position in any other circle was any different.

The claim made by the applicant that there were 3025 vacancies available to him for compassionate appointment is vague and not supported by facts. Firstly, the figure cited pertains to the year 2000/2001 and not to the year 1997 when the applicant was approved for appointment. Secondly, the figure pertains to the entire country, 5% of which works out to just 151 vacancies for the entire country. The applicant is completely silent on how many applicants in the country may have been waiting for appointment against these 151 posts when in Assam alone there was a backlog of almost 50 candidates. Thirdly, if for purposes of argument the figures supplied by the applicant are taken to be authentic and relevant, even then the number of vacancies available to Assam Circle according to the applicant's figures was only 34 in PA cadre, 14 in Postman cadre and 14 in Group-D cadre.



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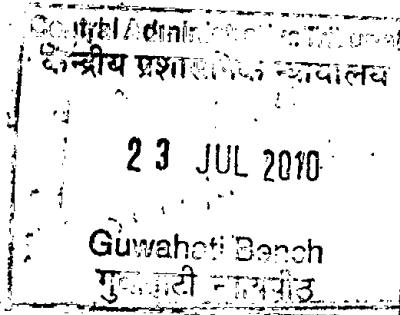
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As per Postal Directorate memo No. 14014/6/95-Estt(D) dated 26.9.95, the total number of vacancies available for compassionate appointment was limited to 5% of the quota of outsider vacancies. This 5% quota was reiterated vide Directorate order No. 14014/6/94-Estt(D) dated 09.10.1998. It may be noted that this 5% quota thus existed even before issue of the seminal order on compassionate appointment issued vide Postal Directorate memo No. 14014/6/94-Estt(D) dated 09.10.98. Five percent of the vacancies as shown by the applicant works out to $34 + 14 + 14 = 62 \times 5\%$ i.e. 3.1 or 3 vacancies for compassionate appointment in three cadres combined. Thus there is a huge gap between the claim that 3025 vacancies were available for compassionate appointment and the fact that as per the rules in force not more than 3 vacancies would actually have been available. It may also be noted that this was the position in 2001 and not the position in 1997. It would appear that the applicant has been trying to show a huge number of vacancies only to mislead various fora whereas it is clear from the position in Assam itself that the number of applicants far exceeded the number of vacancies actually available.

Para 4.

The applicant has described the direction of the Guwahati High Court in WP(C) No.8141/2002. It is clear from the order of the High Court in Cont. case (C) No. 310/2006, that its orders were duly complied with. The judges have stated, and I quote "we are therefore of the considered view that the judgement dated 27.9.2005 has already been complied with". That being the position as stated by the High



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Court itself in its own judgement, I do not see where there is scope for the applicant to disagree.

Para 5: The applicant has claimed that the scheme for appointment as endorsed by the High Court by its judgement dated 27.9.05 was illegally rejected vide order no. Vig/5/VII/WP/05 dated 20.4.06. In view of High Court order Cont case (C) No. 310/2006 dated 11.04.07 referred to in para-4 above there is no ground to claim that the High Court order dated 27.09.05 was illegally rejected.

Para 5.1: The applicant has claimed that the order of termination of his service was illegal as was the order directing the discontinuance of the waiting lists. It is beyond the competence of this authority to discuss what is legal and what is illegal. These are the matters of law and better decided by an authority competent to do so.

Para 5.2: In this para the applicant has claimed that because he was once already offered appointment as GDS (which he did not accept) there is no reason why he once more can not be offered the same appointment as endorsed by the High Court.

It has already been pointed out in memo No. Vig/5/VII/WP/05 dated 20.4.06 that the scheme for appointment in ED cadre was a one time offer limited to a period of one year only and that this offer is no longer available. The reason why the High Court order could not be complied with was also indicated in the same order.

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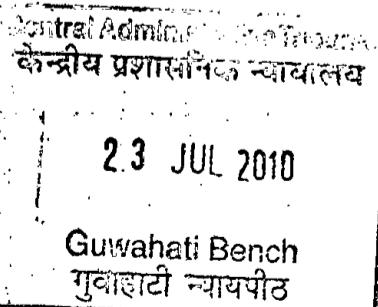
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Para 5.3: The vacancy position for compassionate appointment in Assam between the years 1995 and 2000 has already been indicated in para 3 above. Considering that the applicant has not substantiated in his representation with documents to show what was the basis on which he has arrived at 3025 vacancies available for compassionate appointment, it is his claim that is vague. Had there been a plethora of vacancies as suggested by the applicant there would have been no need for government to firstly dispense with the waiting lists for compassionate appointment and secondly to issue the order whereby vacancies if not available in one department could be sought for from other departments. Order No. 14014/18/2000-Estt(D) dated 22.06.01 clearly states that the problem of non availability of vacancies for compassionate appointment ran right across the Government of India in all departments. This was why even this order was finally withdrawn.

Para 5.4: The applicant here seeks to present a fait accompli declaring that his claim as to the number of vacancies available to him for compassionate appointment has been accepted by the High Court and therefore the undersigned has no choice but to comply with the orders of the High Court. This is far from the case as is evident from Guwahati High Court order No. 310/2006 dated 11.04.2007 which clearly states that the orders of the High Court stand complied with.



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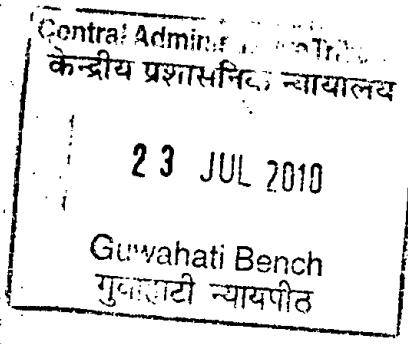
Para 5.5.

The claim made here that the High Court had given direction not to pass any speaking order or to reject the case of the petitioner is far from the truth. I have gone through the judgement dated 27.09.05 and find no such direction. The claim made by the applicant is therefore a complete misrepresentation of fact.

The Supreme Court has held in its judgement dated February 28 1995 in the case of Life Insurance Corporation of India Vrs Mrs Asha Ramchandra Ambedkar and others [JT 1994(2) SC 183] that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such appointment. I do not believe that the High Court was unaware of this position, in view of which the claim made by the applicant is completely without basis.

Para 5.6.

In Para 6 and 7 the applicant has made a reference to his circumstances wherein he has indicated that he is living in dire straits and that he is in great need of the appointment as sought for. I am compelled to make reference to the judgement of the Supreme Court dated May 4 1994 in the case of Umesh Kumar Nagpal Vrs State of Haryana and others [JT 1994(3) SC 525] which laid down that compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future. The fact that the family has been able to manage over a length of time clearly shows



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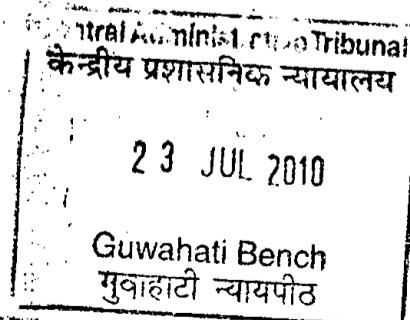
that the immediate need has been met in other ways. Keeping the views of the Supreme Court in mind, I am not in a position to accept the claim that the immediate needs of the applicant have not been met almost 15 years after the death of his father.

Conclusion :

The following is clear from the above discussion.

1. That the quota for compassionate appointment between the year 1995 and 1998 was governed by Postal Directorate order No. 14014/6/95-Estt(D) dated 26.09.1995 under which the quota for appointment on compassionate grounds was limited to 5%.
2. That the 3025 vacancies shown by the applicant as being available to him for compassionate appointment was not actually available for the purpose.
3. That the number of vacancies available for compassionate appointment in Assam between the years 1997 when the applicant was approved for appointment to the year 2001 when the system of having waiting lists was dispensed with was far less than the number of candidates approved for appointment on compassionate grounds.
4. That there has been no infraction of orders as contained in Guwahati High Court case No. 8141/2002 & 425/2003 dated 27.09.05
5. That there is no scope for appointing him as GDS today.

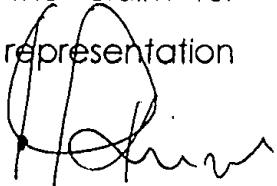
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6. That the scheme for compassionate appointment is for the purpose of providing immediate relief and that by no stretch of the imagination can a requirement be taken to be immediate after almost 15 years.

In view of the above, it is regretted that the claim for appointment made by Sri Himangshu Paul through his representation dated 19.03.2009 can not be accepted.

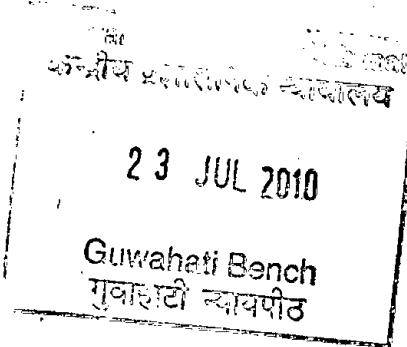

(Monojit Kumar)
Chief Postmaster General
Assam Circle, Guwahati.

Copy forwarded to :-

Recd AD

1. Shri Himangshu Paul, S/o Late Phani Bhusan Paul, VIII – Karatigram, PO – Rongpur, P.S. – Silchar, Distt- Cachar, Pin – 788 009.
2. The Postmaster General, Dibrugarh Region, Dibrugarh for information.
3. The SSPOs., Cachar Division, Silchar for information along with copy of the applicant concern. He is requested to deliver the letter and intimate this office the date of delivery of the letter.
4. Section Officer(Judl), CAT Guwahati Bench, Guwahati w.r.t. CAT Guwahati Bench order dated 20.02.2009 in OA 240/2007
5. Staff branch, CO, Guwahati for information.


(Monojit Kumar)
For Chief Postmaster General,
Assam Circle, Guwahati.



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Abel
Adv.