

50

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. O.A. 145/2007
R.A/C.P No. 29/10/03/2007
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SECTION OFFICER (Judl.)

Salita
04/10/17

CESTU, GUWAHATI, M. C. T.
APPELLATE JURISDICTION

ORDER SHEET

1. Original Application No. 145 /07

2. Mise Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant (S.N.P.S. Baruah) vs. Union of India & Ors

Advocate for the Applicant(s) S. Sarma, R. Devi
H.K. Das.....

Advocate for the Respondent(s) A.C.G.S.C. G. Borthmaya

Notes of the Registry Date Order of the Tribunal

12.6.07 The applicant was appointed in Group D post on 7.12.1993. His services has been terminated vide order dated 22.4.98. The applicant has approached this Tribunal by filing O.A.No.89 of 1998. The Tribunal has passed an order dated 8.12.2000 and allowed the O.A stating that the applicant become entitled to reinstatement in Group D post with full back wages. Respondents instead of implementing the judgment dated 8.12.2000 respondents has filed Writ Petition before the Hon'ble Gauhati High Court. The applicant had to file contempt Petition before the Hon'ble Tribunal. The Hon'ble High Court on 16.11.04 dismissed the said Writ Petition upholding the judgment and order dated 8.12.2000 passed by the Tribunal. The

Contd/-

Steps taken on
25/6/07.

Notice & order
Sent to D/Section
for issuing to
resp. nos. 1,2,4 to 6

by regd. A/D post and
R-3 sent to received by Hand.

Copy D/No - 649 to 654

25/6/07. Dt = 27/6/07

① Service report
awaited.

lm

25/7/07

26.7.07

Notice duly served
on R-2,4,6.

W/S not b/leel.

pg

27.8.07

28.8.07

Four weeks further time is allowed to

file written statement.

Post on 28.9.07 for order

W/S not b/leel.

27.9.07

pg

12.6.07

respondents issued impugned orders dated 4.9.06 and 13.9.06 reinstating the applicant in Group D post but in the said impugned orders the respondents have refused to grant the applicant the back wages and the seniority. Being aggrieved the applicant has filed this O.A. seeking the reliefs.

I have heard Ms. B. Devi learned counsel for the applicant and Mr.G. Baishya learned Sr. C.G.S.C. for the Respondents.

Application is admitted. Issue notice on the respondents. Post the matter on 26.7.07.

Vice-Chairman

Counsel for the respondents wanted to have further four weeks time to file written statement.

Post on 28.8.2007 for order.

Vice-Chairman

Four weeks further time is allowed to

file written statement.

Post on 28.9.07 for order

Vice-Chairman

28.9.07

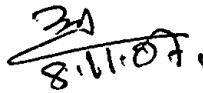
No reply has been filed by the respondents. Call this matter on 12.11.07.


(Khusirram)
Member(A)


(Manoranjan Mahanty)
Vice-Chairman

W/S not filed.

lm

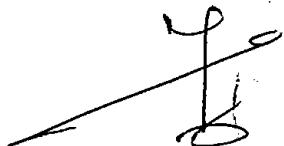

31.10.07

12.11.2007

Mr.H.K.Das, learned counsel for the Applicant is present. Mr.G.Baishya, learned Sr. Standing counsel for the Union of India undertakes to file his appearance memo in this case in course of the day and seeks some more time to file reply.

Call this matter on 18.12.2007 awaiting reply from the Respondents.

Send copies of this order to the Respondents in the addresses given in the Original Application.


(M.R.Mohanty)
Vice-Chairman

/bb/

31.12.11.07.
Pl. send order copies
to respondents.

order dt. 12/11/07
sent to D/Section
for issuing to
R-1 to 6.

Ref : D/No-1397 to
15/11/07. D/ = 1402
15/11/07. D/ = 16/11/07.

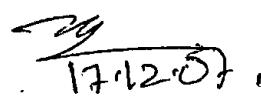
18.12.07 No written statement has yet been filed in this case.

Call this matter on 08.01.2008 awaiting written statement from the respondents.

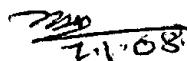

(M. R. Mohanty)
Vice-Chairman

pg

W/S not filed.


17.12.07

W/S not filed.


7.1.08

08.01.2008 Despite five adjournments, the Respondents have not filed written statement in this case.

31.1.08.

Pl. send the order copies to the Respondents.

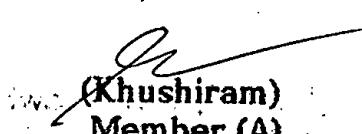
Call this matter on 31.01.2008, awaiting written statement from the Respondents. This is the last chance given to the Respondents, failing which, the respondents shall be set ex parte.

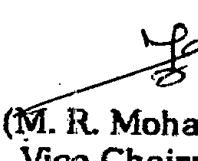
Order dt. 8/1/08 sent to D/Section for issuing to respondents 1 to 6 by regd. A/I D post.

D/No- 104 to 109

Send copy of this order to the

Respondents in the address given in O.A.


(Khushiram)
Member (A)


(M. R. Mohanty)
Vice-Chairman

nk

Written statement filed in Court today; after serving, copy thereof on the counsel appearing for the Applicant. Mr. H. K. Das, learned counsel appearing for the Applicant seeks time to file rejoinder.

Call this matter on 5th March, 2008 awaiting rejoinder from the Applicant.


(Khushiram)
Member (A)


(M. R. Mohanty)
Vice-Chairman

Rejoinder not filed.

Lim

4.3.08.

05.03.2008

Mrs. B. Devi and Mr. H. K. Das, counsel for the Applicant has filed a letter of absence. Mr. G. Baishya, Sr. Standing Counsel appearing for the Respondents is present. Written statement has been filed. Rejoinder has not been filed.

Call this matter on 08.04.2008 awaiting rejoinder from the Applicant.

Rejoinder not filed.

4.4.08.


(Khushiram)
Member (A)

08.04.2008 in this case reply has already been filed; despite opportunities.

No rejoinder as yet been filed by the Applicant.

Call this matter for hearing on 28.05.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

27.5.08

lm

Rejoinder submitted
by the Applicant, undertaking
given for service by
~~28.05.2008~~ 28.05.2008

Mr. H.K. Das, learned counsel appearing for the applicant and Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondents are present.

Call this matter on 27.06.2008.


(Khushiram)
Member(A)

lm

27.06.08 None appears for either of the parties.

Call this matter on 08.07.2008 for hearing.


(M.R. Mohanty)
Vice-Chairman

pg

The Case is ready
for hearing.

19.08.2008

08.07.08 Mr S. Sarma, learned counsel for the Applicant and Mr G. Baishya, learned Sr. Standing counsel for the Respondents are on accommodation.

Call this matter on 20.08.2008 for hearing.


(R.C.Panda)
Member(A)


(M.R. Mohanty)
Vice-Chairman

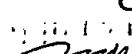
20.08.2008 None appears for the Applicant nor the Applicant is present. It appears that Mr.H.K.Das, one of the counsel appearing for the Applicant is on accommodation. However, Mr.G.Baishya, learned Sr. Standing counsel for the Union of India is present.

Call this matter on 25.09.2008.


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/



24.9.08

25.09.2008. None appears for the Applicant nor the Applicant is present. Mr.G.Baishya, learned Sr. Standing counsel appearing for the Union of India is however, present in Court.

Call this matter on 25.11.2008 for hearing.


(S.N.Shukla)
Member(A)


(M.R.Mohanty)
Vice-Chairman

lm

25.11.2008 Call this matter on 13.01.2009 for hearing.


(M.R.Mohanty)
Vice-Chairman

pg

O.A. 145 of 07

13.01.2009 None appears for the Applicant.

The case is ready
for hearing.

3
20.2.09.

Mr. G. Baishya, learned Sr. Standing
Counsel appearing for the Respondents is
present.

Call this matter on 24.2.2009 for
hearing.

4
(M.R. Mohanty)
Vice-Chairman

Lm

24.02.2009 Call this matter on 17.03.2009 for
hearing.

Send copies of this order to the
parties to come ready for hearing.

4
(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

nkm

17.03.2009 With the consent of the parties put up this
case on 25.03.2009.

Khairul

AKG
1913

/bb/

A.K. Gaur
(A.K. Gaur)
Member (J)

The case is ready
for hearing.

3
12.5.09.

25.03.2009 List on 13.05.2009 for hearing.

/bb/

Khushiram
(Khushiram)
Member (A)

A.K. Gaur
(A.K. Gaur)
Member (J)

0.A.145/07 (8)

13.05.2009

hearing.

Call this matter on 30.06.2009 for

M.R. Mohanty
Vice-Chairman

lm

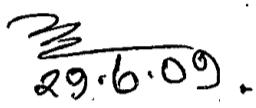
13.05.2009

hearing.

Call this matter on 30.06.2009 for

The case is ready
for hearing


M.R. Mohanty
Vice-Chairman

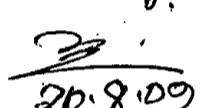

29.6.09.

lm

30.06.2009

Call this Division Bench matter on
21.08.2009 for hearing.

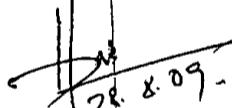
The case is ready
for hearing.


20.8.09

/bb/


(M.R. Mohanty)
Vice-Chairman

Received copy for
applicant


21.8.09.

21.08.2009

Heard Mrs. Bandana Devi, learned
counsel appearing for the Applicant and
Mr. G. Baishya, learned counsel for the
Respondents.

31/08/09

For the reasons recorded
separately, this case stands allowed.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

\ddt

Judgment order

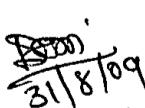
dated 21/08/09

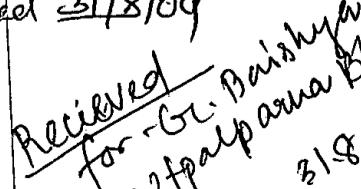
sent to the D/section

for issuing to the Applicant
& Respondents by Regd post.

Free copies of both side

standing counsels by
hand.

D/No 9894-9900 
dated 31/8/09


Received
for - G. Baishya
Vt Palpana Bharadwaj
31/8/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....
O.A. Nos. 145/2007.

DATE OF DECISION: 21-08-2009.

Shri Nalini Prasad Sarmah BaruahApplicant/s

Mr S. Sarma, Mrs B. Devi & Mr H.K.DasAdvocate for the
.....Applicant/s

-Versus -

Union of India & Ors.Respondent/s

Mr G.BaishyaAdvocate for the
.....Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No.


Vice-Chairman/Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :

O.A. No. 145 of 2007

Date of Decision : 21st day of August, 2009.

HON'BLE MR. M.R. MOHANTY, VICE-CHAIRMAN
HON'BLE MR. M.K. CHATURVEDI, ADMINISTRATIVE MEMBER

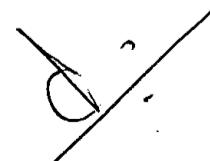
Shri Nalini Prasad Sarmah Baruah
Resident of village Patidarang,
P.O. Deomornoi, Dist. DarrangApplicant

By Advocate Shri S.Sarma, Mrs B.Devi & H.K.Das

•Versus –

1. Union of India represented by
Secretary to the Govt. of India,
Ministry of Communication,
Dept. of Posts, New Delhi.
2. The Director General,
Dept. of Posts, New Delhi.
3. Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati-1.
4. The Superintendent of Post Offices,
Darrang Division, Tezpur.
5. The Superintendent of Post Offices,
Nagaon Division, Nagaon-782001.
6. The Inspector of Posts,
Hojai Sub Division, Hojai Respondents

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



ORDERM.K.CHATURVEDI, MEMBER(A)

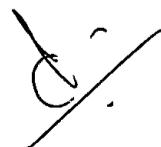
The Applicant was initially appointed in a Group D post (vide order dated 07.12.1993) in the office of the SDI(P). On 16.11.1994 he was posted as Mail Peon cum Packer at Tangla and he worked there till 22.04.1998. The Respondents, by an order dated 22.04.1998 terminated the service of the Applicant. The Order dated 22.04.1998, by which the services of the Applicant were terminated, was assailed before this Tribunal under O.A.89/1998. The Tribunal allowed that O.A. vide order dated 08.12.2000 by setting aside the order of termination and Respondents were directed to reinstate the Applicant forthwith with full backwages. On the strength of the aforesaid judgment, the Applicant made a prayer before the Respondents to reinstate him in Group 'B' post. But the Respondents did not implement the judgment of the Tribunal. Consequently the Applicant filed Contempt Petition No.13/01. The Respondents challenged the order of the Tribunal passed in O.A.89/98 before the Hon'ble Gauhati High Court and the Hon'ble Court vide order dated 27.06.2001 (rendered in W.P.(C) No.4456/2001) admitted the Writ Petition and, at the same time, directed the Applicant not to press the Contempt Petition, which order was subsequently modified vide order dated 21.02.2003 rendered in M.P.683/2002. In view of the pendency of the Writ Petition, Contempt Petition No.13/01 was dropped by the Tribunal.

3. Meanwhile, the Respondents vide communication dated 24.08.2001 asked the Applicant to place his willingness to work as

against a post in GDS Organisation; which carried a lower remuneration comparing to the post the Applicant was holding. The Applicant accepted the post (in GDS Organisation) without prejudice to the aforesaid pending legal proceeding. The Applicant joined the post in GDS Organisation of GDSM on 13.09.2002. This was stated to be a stop gap arrangement till the availability of suitable Group D post.

3. The Applicant made various prayers for implementation of the judgment of the Tribunal but Respondents maintained silence. After dismissal of the Writ Petition on 16.11.2004 the Hon'ble High Court by order dated 04.09.2006, the Applicant was accommodated (by the Respondents) in a Group D post. The Applicant, again, filed a Contempt Petition being C.P. No.11/05 and during pendency of the said C.P.11/05 the Respondents issued orders releasing back wages amounting to Rs.1,99,583/- for the period between 23.04.1998 and 12.09.2002 by treating him to be in service as a Group D and the said petition was closed with liberty to the applicant to approach appropriate forum for redressal of his grievances. On the above factual backdrop it was prayed that seniority of the Applicant in Group D service to be counted from the date of his appointment and all the differential back wages and service benefits be given to him.

4. Having regard to the facts, we are inclined to accept the prayer of the Applicant, which is consistent with the order dated 08.12.2000 of this Tribunal rendered in O.A.No.89/98 of the Applicant. Accordingly we direct the Respondents to make payment of differential backwages to the Applicant, after deducting the amount which was



paid to him as GDS staff. All the consequential benefits be conferred on the Applicant and he should be deemed to have continued in Group D service since his date of initial appointment i.e. 7.12.1993.

6. In the result, the O.A stands allowed.

Chaturvedi
(M.K.CHATURVEDI)
ADMINISTRATIVE MEMBER

Y. Mohanty
2/10/09
(M.R.MOHANTY)
VICE CHAIRMAN

pg

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

File in Court on 21/8/01
Original Application No. 145/07.
Court Officer.
File in Court on 21/8/01
Original Application No. 145/07.
Court Officer.
Filed by: Mr. D. S. G-
The Applicant
through
Advocate
21.8.01

Nalini Prasad Sarma Baruah
Applicant

- VERSUS -

Union of India & Ors.

Respondents

LIST OF DATES WITH BRIEF FACTS

07.12.93 Applicant initially appointed in Gr. D post in the office of the SDI(P).

16.11.94 Applicant was posted as Mail Peon cum Packer at Tangla and he worked there till 22.04.98.

22.04.98 Order terminating the service of the applicant.

1998 O.A. No. 89/98 filed challenging the order of termination dated 22.04.98.

08.12.00 Order of the Hon'ble Tribunal setting aside the impugned termination order dated 22.04.98 with a further direction to reinstate the applicant forthwith with full back wages. **(Annexure- 1) (Page- 16)**

2001 C.P No. 13/01 was filed for non compliance of the order of the Hon'ble Tribunal dated 08.12.00 in O.A. No. 89/98.

2001 To avoid contempt proceeding the respondents filed WPC No. 4456/01 challenging the order dated 08.12.00 of this Hon'ble Tribunal in O.A. No. 89/98.

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24.08.01 Communication issued asking the applicant to submit his willingness to work as GDS. **(Annexure- 2) (Page- 21)**

10.09.01 Representation submitted by the applicant placing his willingness to serve as GDS without prejudice to the contentions made in the pending judicial proceeding also specifying the post lying vacant in the Patidarrang BPO in Darrang district. **(Annexure- 3) (Page- 22)**

11.01.02 C.P No. 13/01 closed due to the pendency of the WPC No. 4456/01.

26.08.02 Order absorbing the applicant in the post of GDS MC, Kenduguri BO. **(Annexure- 4) (Page- 24)**

13.09.02 Applicant was allowed to join in the post of GDS MC after observing all the formalities.

16.11.04 WPC No. 4456/01 dismissed by the Hon'ble High Court. **(Annexure- 5) (Page- 25)**

23.03.05 Applicant once again filed C.P. No. 11/05 for non compliance of the order dated 08.12.00 and Hon'ble Tribunal issued notice to show cause to the respondents.

23.08.05 During the pendency of the contempt proceeding the respondents issued an order releasing back wages amounting to Rs. 1,99,583/- for the period of 23.04.98 to 12.09.02 treating him to be in service as Gr. D. **(Annexure- 6) (Page- 28)**

04.09.06 Impugned order regarding approval of the CPMG, Assam Circle for accommodating the applicant in Gr. D post. **(Annexure- 7) (Page- 30)**

13.09.06 Order by which the applicant was appointed in the Gr. D Cadre in Hojai Sub-Division, Hojai. (Annexure- 8)
(Page- 31)

28.02.07 C.P. No. 11/05 closed with the liberty to the applicant to approach the appropriate forum for the difference in back wages. (Annexure- 9) (Page- 32)

Filed by

Advocate

Abidip Vr. Pw

6 JUN 2007
गुवाहाटी न्यायालय
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 1485 of 2007

Nalini Prasad Sarmah Baruah

..... Applicant.

-VS-

Union of India & ors.

..... Respondents.

SYNOPSIS

That the applicant begs to state that he was appointed in Gr.D post initially vide order dated 7.12.93 in the office of the S.D.I(P). The respondents vide order dated 22.4.98 terminated the service of the applicant. Challenging the aforesaid termination order dated 22.4.98 he preferred original application before the Hon'ble Tribunal which was registered and numbered as OA No.89/98. The Hon'ble Tribunal was pleased to allow the said OA vide judgment and order dated 8.12.00. After the judgment and order dated 8.12.00 passed in OA No.89/98 the applicant became entitled to reinstatement in Gr.D post with full back wages. The respondents instead of implementing the Judgment

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dated 8.12.00, filed Writ Petition before the Hon'ble High Court. The applicant had to file Contempt Petition before the Hon'ble Tribunal. The Hon'ble High Court on 16.11.04 dismissed the said Writ Petition upholding the judgment and order dated 8.12.00 passed by the Hon'ble Tribunal. During the pendency of the aforesaid proceeding on 13.9.02 applicant was provided with temporary appointment as GDS which he accepted with due protest. Such GDS appointment continued till 12.9.06. Thereafter on 13.9.06 he was reinstated in Gr.D post by issuing the impugned orders dated 4.9.06 and 13.9.06. The respondents during the pendency of the aforesaid legal proceeding paid the back wages for the period w.e.f. 23.4.98 to 12.9.02 treating him to be in Gr.D service as the termination order was set aside. It was at the last stage of the contempt proceeding the respondents issued the impugned orders dated 4.9.06 and 13.9.06 reinstating the applicant in Gr.D post but in the said impugned orders the respondents have refused to grant the applicant the back wages and due seniority. It is under this peculiar fact situation of the case the applicant has come under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

Hence this application.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : D.A. No. 145 of 2007

BETWEEN

Nalini Prasad Sarmah Baruah

..... Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

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9.	Annexure-7	30
10.	Annexure-8	31
11.	Annexure -9	32 - 35

Filed by : Abhijit

Regn. No. :

File : d:\private\nalini

Date : 8.6.07

2/
Filed by
The Applicant
through
Hridip Kr. Das.
Advocate
S. 6. 09

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act. 1985)

O.A. No. 145 of 2007

BETWEEN

Sri Nalini Prasad Sarmah Baruah
resident of Village Patidarang,
P.O. Deomornoi, Dist. Darrang.

..... Applicant.

-- AND --

1. Union of India represented by
Secretary to the Govt. of India,
Ministry of Communication,
Dept. of Posts, New Delhi.
2. The Director General,
Dept. of Posts, New Delhi
3. Sri Chief Post Master General,
Assam Circle, Meghdoott Bhawan,
Guwahati-1.
4. The Superintendent of Post Offices,
Darrang Division, Tezpur.
5. The Superintendent of Post Offices
Nagaon Division, Nagaon-782001.
6. The Inspector of Posts,
Hojai Sub-Division, Hojai.

..... Respondents.

Sarmah

DETAILS OF THE APPLICATION

1. THE PARTICULARS AGAINST WHICH THIS APPLICATION IS MADE:

This application is directed against the orders dated 4.9.86 and 13.9.86 by which the respondents have virtually denied the applicant his due seniority and other consequential service benefits including seniority as directed by the Hon'ble Tribunal and this application is also directed against the action of the respondents in not fixing his seniority treating him to be in service w.e.f. 7.12.93 and not releasing his arrear salary due to him w.e.f. 12.10.82 till date.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of this Hon'ble Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant begs to state that he was appointed in Gr.D post initially vide order dated 7.12.93 in the office of

the S.D.I(P). On 16.11.94 he was posted as Mail Peon cum Packer at Tangla and he was working as such till 22.4.98. The respondents vide order dated 22.4.98 terminated the service of the applicant.

4.3. That the applicant begs to state that challenging the aforesaid termination order dated 22.4.98 he preferred original application before the Hon'ble Tribunal which was registered and numbered as OA No.89/98. The Hon'ble Tribunal after hearing the parties to the proceeding and after meticulous scanning of the records, was pleased to allow the said OA vide judgment and order dated 8.12.00 by setting aside the order of termination dated 22.4.98 and directed the respondents to reinstate the applicant forthwith with full back wages.

A copy of the said judgment and order dated 8.12.00 passed in OA No.89/98 is annexed herewith and marked as Annexure-1

4.4. That the applicant begs to state that immediately after the judgment and order dated 8.12.00 he submitted the same before the respondents with a prayer to reinstate him in Gr.D post. But the respondents have not implemented the judgment of the Hon'ble Tribunal which led the applicant to approach the Hon'ble Tribunal again by way of filing CP No.13/01. Having receipt the notice in the said Contempt Petition, the respondents challenging the order dated 8.12.00 passed in OA No.89/98 preferred WP(c) No.4456/01 before the Hon'ble High Court. Hon'ble High Court on 27.6.01 was pleased to admit the said writ petition but at the same time the Hon'ble High Court also directed the present applicant not to press the aforesaid Contempt Petition, which was subsequently

modified vide order dated 21.2.03 passed in Misc. Case No.683/02 in WP(C) No. 4456/01.

4.5 That the applicant begs to state that taking into consideration the pendency of the WP(c) No.4456/01, the Hon'ble Tribunal was pleased to drop the said CP NO.13/01 vide judgment and order dated 11.1.02. In the mean time the respondents vide communication dated 24.8.01 asked the applicant to place his willingness to work as Grain Dak Sevak (ED) which is a lower post than the post which he was holding. Accordingly the applicant submitted his willingness vide representation dated 10.9.01 where he categorically stated that he was placing his willingness to work as GDS without prejudice to the pending legal proceeding. It is stated that the respondents have put tremendous pressure on the applicant to accept the post of GDS to absolve them from committing contempt.

Copies of the communication dated 24.8.01 and the representation dated 10.9.01 are annexed herewith and marked as Annexure-2 and 3.

4.6. That the applicant begs to state that the respondents thereafter issued an order dated 26.8.02 regarding absorption of the applicant as GDS MC, Kendurugi B.O. After observing all necessary formalities the respondents allowed the applicant to join the post of GDSMC on 13.9.02. In fact this arrangement was made till the applicant is reinstated in a suitable Gr.D post.

A copy of the said order dated 26.8.02 is annexed herewith and marked as Annexure-4

4.7. That the applicant begs to state that he was continuously pursuing the respondents towards implementation of the judgment and order dated 8.12.00 passed in OA No.89/98. But the respondents were kept silent inspite of repeated persuasion of the same by the applicant. Situated thus the applicant again preferred a contempt petition being CP No.25/03 before the Hon'ble Tribunal. But the Hon'ble Tribunal vide judgment and order dated 16.6.03 was pleased to close the said contempt petition on the ground of pendency of the writ petition before the Hon'ble High Court.

4.8. That the applicant begs to state that the aforesaid writ petition (WP (c) No.4456/01) came up for hearing before the Hon'ble High Court on 16.11.04 and the Hon'ble Court was pleased to dismiss the same.

A copy of the judgment and order dated 16.11.04 passed in WP(c) No.4456/01 is annexed herewith and marked as Annexure-5

4.9. That the applicant immediately after passing of the aforesaid judgment and order dated 16.11.04 apprised the respondents about the same with a prayer to implement the judgment and order dated 8.12.00 passed by the Hon'ble Tribunal in OA No.89/98. But the respondents were silent towards implementation of the said judgment and order dated 8.12.00. Having found no alternative the applicant had to approach the Hon'ble Tribunal once again by filing CP No.11/05. The Hon'ble Tribunal on 23.3.05 was pleased to issue notices to the alleged contemners for violation of the judgment and order dated 8.12.00.

4.10. That the applicant begs to state that after receipt of the contempt notice the respondents have filed their show cause

reply. It is pertinent to mention here that after perusal of the show cause reply filed by the respondents, the Hon'ble Tribunal directed them to implement the judgment and order dated 8.12.00 as early as possible. Having found no alternative the respondents have released an amount of Rs.199583/- towards back wages w.e.f. 23.4.98 to 12.9.02 to the applicant vide communication dated 23.8.05. It is stated that on 13.9.02 the applicant was appointed as GDS which is a lower post than a Gr.D post. The direction of the Hon'ble Tribunal was to reinstate him in Gr.D post. The amount that was paid to him was for the period w.e.f. 23.4.98 to 12.9.02 (treating him to be in service as Gr.D), this was the period in which he was out of service.

A copy of the said communication of release of back wages is annexed herewith and marked as Annexure-6.

4.11. That the applicant begs to state that thereafter during the pendency of the said contempt proceeding, the respondents have issued the impugned order dated 4.9.06 regarding approval of the Chief Post Master General, Assam Circle for accommodating the applicant in Gr-D post. The said communication was followed by the other impugned order dated 13.9.06 by which the applicant was appointed in Gr-D cadre in Hojai Sub-Divn, Hojai.

Copies of the impugned orders dated 4.9.06 and 13.9.06 are annexed herewith and marked as Annexure-7 and 8.

4.12. That the applicant begs to state that in the aforesaid impugned order dated 4.9.06 the respondents have mentioned that the applicant will not be entitled to the benefit of working as GDS, stop gap temporary arrangement or any other benefit earlier

to accommodating in the present place of posting. By the said order the respondents have denied the actual seniority of the applicant. The applicants submits that his seniority should be counted w.e.f. 7.12.93 i.e. the date of initial appointment. It is pertinent to mention here that his appointment in Gr-D post in Nagaon Divn. vide order dated 4.9.06 is not a fresh order of appointment but the applicant has been reinstated in his service, as per the direction of the Hon'ble Tribunal. The applicant ought to have been reinstated in Gr-D post in the year 2000 itself. But the respondents have unnecessarily delayed the matter and reinstated him in the Gr-D post in the 2006.

4.13. That the applicant begs to state that the Hon'ble Tribunal vide judgment and order dated 8.12.2000 directed the respondents to reinstate the applicant in Gr.D post forthwith with full back wages. But the respondents have allowed the applicant to join his service in the year 2002 i.e. on 13.9.02 that too in a lower post by which the respondents have violated the judgment of the Hon'ble Tribunal. The applicant has accepted the offer of appointment as GDS under protest. So, the respondents are now duty bound to refix the seniority of the applicant w.e.f. 1993 not 2006 treating him to be service as the order of termination was set aside by the Hon'ble Tribunal which has attained its finality in view of the dismissal of the Writ Petition by the Hon'ble High Court.

4.14. That the applicant begs to state that he is entitled to back wages w.e.f. 23.4.98 to 12.9.2002 in Gr-D post and w.e.f. 13.9.02 to 12.9.06 he is entitled to difference in pay scale of GDS and Gr-D employee. Because on 13.9.02 he joined the post of GDSMD, Darrang Divn. and has been receiving the pay scale of

GDSMD which is lower than that of Gr.D post, till he has been appointed in the Gr-D post vide order dated 13.9.06. It is noteworthy to mention here that vide communication dated 23.8.05 the respondents have released an amount of Rs.1,99,583/- to the applicant towards back wages w.e.f. 23.4.98 to 12.9.02 treating him to be in Gr.D service. But till date the respondents have not granted the rest part of back wages to the applicant i.e. w.e.f. 13.9.02 to 12.9.06.

4.15. That the applicant begs to state that while working as GDS he has earned three increments. Had the applicant been reinstated in Gr-D post in the year 2000 itself he might have earned increments in the said Gr-D post. Therefore the applicant is entitled to have the increments calculated and refixation of his pay.

4.16. That the applicant begs to state that the aforesaid CP No.11/05 was came up for hearing before the Hon'ble Tribunal on 28.2.07. The counsel for the respondents during the course of the hearing has produced the impugned order dated 13.9.06. After perusal of the said impugned order dated 13.9.06, the Hon'ble Tribunal was pleased to close the aforesaid CP No.11/05 vide judgment and order dated 28.2.07, but at the same time the Hon'ble Tribunal granted liberty to the applicant to approach the Hon'ble Tribunal towards release of back wages which is due to the applicant.

A copy of the aforesaid judgment and order dated 28.2.07 passed in CP No.11/05 is annexed herewith and marked as ANNEXURE-9.

4.17. That in a nutshell the grievance raised by the applicant as well as the highlighted facts are that after the judgment and order dated 8.12.00 passed in OA No.89/98 the applicant became entitled to reinstatement in Gr.D post with full back wages. The respondents instead of implementing the judgment dated 8.12.00, filed Writ Petition before the Hon'ble High Court. The applicant had to file Contempt Petition before the Hon'ble Tribunal. The Hon'ble High Court on 16.11.04 dismissed the said Writ Petition upholding the judgment and order dated 8.12.00 passed by the Hon'ble Tribunal. During the pendency of the aforesaid proceeding on 13.9.02 applicant was provided with temporary appointment as GDS which he accepted with due protest. Such GDS appointment continued till 12.9.06. Thereafter on 13.9.06 he was reinstated in Gr.D post by issuing the impugned orders dated 4.9.06 and 13.9.06. The respondents during the pendency of the aforesaid legal proceeding paid the back wages for the period w.e.f. 23.4.98 to 12.9.02 treating him to be in Gr.D service as the termination order was set aside. It was at the last stage of the contempt proceeding the respondents issued the impugned orders dated 4.9.06 and 13.9.06 reinstating the applicant in Gr.D post but in the said impugned orders the respondents have refused to grant the applicant the back wages and due seniority. It is under this peculiar fact situation of

Barnabas

the case the applicant has come under the protective hands of this Hon'ble Tribunal seeking redressal of his greivances.

4.18. That the applicant begs to state that the respondents while passing the impugned orders dated 4.9.06 and 13.9.06 have failed to take into consideration the judgment and order passed by the Hon'ble Tribunal. The word "reinstatement" as referred to in the judgment has been misinterpreted by the respondents while passing the impugned orders and hence same are liable to be modified suitably providing the applicant the arrear salary w.e.f. 14.9.02 to 12.9.06 and to refix his seniority treating him to be in service and to refix his salary by calculating the arrear and the increments that would have earned during that period and the increments actually he earned during his service as GDS along with the interest @ 21% pa on such delayed settlement.

4.19. That the applicant begs to state that he is a permanent resident of village Patidarrang and he waas initially recruited and posted in the Darrang Division of Postal Department . However the respondents inspite of repeated pursuasion as well as judicial pronouncement have reinstated him Gr.D post under Nagaon Postal Division. The respondents while reinstating him have

mentioned that he would not get his due arrear and seniority and he would not be posted back to his original post under Darranh Division in future. This clearly shows the attitude of the respondents that they are under any circumstances not going to implement the judgment passed by the Hon'ble Tribunal. The applicant resorted to all sorts of remedies available to him but same yeilded no result in positive. Hence the present OA.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted contrary to the settled law and have failed to apply their mind while passing the impugned orders dated 4.9.06 and 13.9.06 and as such same are liable to be suitably modified by this Hon'ble Tribunal, setting aside the part thereof which is contrary to the judicial pronouncement of the Hon'ble Tribunal which was affirmed by the Hon'ble High Court.

5.2. For that the respondents have acted in contrary to the settled position of law by denying to the applicant his correct seniority, posting and pay scale as entitled to by him by issuing the impugned orders dated 4.9.06 and 13.9.06 and as such same are liable to be interfered with by this Hon'ble Tribunal.

5.3. For that the respondents have failed to apply their mind towards implementation of the judgment and order passed by the Hon'ble Tribunal and with some ulterior motive tried to mislead the Hon'ble Tribunal and passed the impugned orders which are not sustainable in the eye of law and liable to be interfered with.

5.4. For that the respondents have acted contrary to the settles proposition of law in setting out some inconsignable clauses in the order of reinstatement and by which they have flouted the judgment of the Hon'ble Tribunal.

5.5. For that the respondents have failed to appreciate the wording used by the Hon'ble Tribunal in allowing the OA No 89/98 and failed to understand the implications towards implementation of the said judgment. The respondents have failed to understand the entitlement of the applicant flowing from the said judgment and have passed the impugned orders which are not sustainable in the eye of law and liable to be interfered with .

5.6. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be interfered by this Hon'ble Tribunal.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the

grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside the part of the impugned orders dated 4.9.86 and 13.09.86 which has caused hindrance in proper implementation of the judgment passed by the Hon'ble Tribunal.

8.2. To direct the respondents to re-fix the seniority of the applicant taking into consideration the applicant to be continuing in the group - D service since his date of initial appointment (7.12.93.)

8.3. To direct the respondents to re-fix the pay of the applicant while allowing the prayer made in para 8.2. taking into consideration the increments that he would have earned and actually he earned during the period 13.9.82 to 12.9.86 as GDS.

8.4. To direct the respondent to release his arrear salary w.e.f, 14.09.2002 to 12.09.2006, i.e, the difference of pay between Group D and GDS, along with an interest of 21 % p.a. on the delayed payment of such arrear and adequate compensation (Rs

1,00,000.00) for delayed implementation of the judgment of the Hon'ble Tribunal to be recovered from the earring officials of the respondents.

8.5. To direct the respondents to post the applicant to the post from which he was terminated or any other post in the Darrang Division, and/or to transfer him to such place of posting.

8.6. Cost of the application.

8.7. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicant pray for an interim order directing the respondents to release his arrear salary w.e.f.14.9.82 to 12.9.86, along with the interest @ 21 % p.a.

10. *****

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. :

2. Date :

3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

Ranabir

VERIFICATION

I Shri Nalini Prasad Sarmah Baruah, aged about ... years, S/O Late Satya Prasad Sarmah Baruah, Vill & P.O. Patidarrang via Deomorroi, Darrang, do hereby solemnly affirm and verify that the statements made in paragraphs 4.1, 4.19 are true to my knowledge and those made in paragraphs 4.2 - 4.18 are also matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

I am the applicant in the instant application and as such well convergent with the facts and circumstances of the case and also competent and authorised by the other applicant to sign the verification.

And I sign on this the Verification on this the 29 day of May, 2007.

Nalini Prasad Sarmah Baruah

-16-

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure - 1

51-3

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Original Application No. 89 of 1998.

Date of decision : This the 8th day of December, 2000.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Shri Nalini Prasad Sarmah Baruah,
resident of village Patidarang,
P.O. Deomornoi,
District-Darrang

Applicant

By Advocate Mr. B.K.Sharma.

VERSUS-

1. The Union of India,
represented by the Secretary to the
Government of India, Ministry of
Communication, Department of Posts,
New Delhi.
2. The Director General,
Posts, New Delhi.
3. The Chief Postmaster General,
Assam Circle, Meghdoott Bhawan,
Guwahati-1.
4. The Superintendent of Post Offices,
Darrang Division,
Tezpur.
5. The Sub-Divisional Inspector of
Post Offices, Mangaldai Sub-Division,
Mangaldai.

. Respondents

By Advocate Mr. B.S.Basumatary, Addl. C.G.S.C.

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The sole controversy is relatable to the order of removal from service of the applicant via Annexure-B order No. B-2/Staff/Gen/98 dated 22.4.1998. The father of the applicant late Satya Prasad Sharma Baruah was working as Cash Overseer at Mangaldai Head Post Office under the respondents. Satya Prasad Sharma Baruah died in harness on 10.10.1992 leaving behind his wife, four sons including the

Attested

[Signature]

Advocate.

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applicant and three daughters. The applicant applied for compassionate appointment under the respondents as per the scheme prevalent in the department. The application was duly forwarded. It appears from the records that the Selection Committee in fact upon considering the case of the respective applicants recommended in its meeting dated 8.11.1993 for appointment under relaxation of normal rules in Group 'D' cadre about thirty six candidates. In the said list the name of the applicant Sri Nalini Prasad Sharma Baruah at serial No. 28 also surfaced. The recommendation of the committee was duly approved by the competent authority. As per the recommendations the Divisional Heads were asked to engage them in leave or stop gap temporary vacancy. It was also directed to the Divisional Heads for engaging them on daily wage basis against leave vacancies/vacant posts till they were regularly allotted to the units under relaxation vacancy. The applicant alongwith four others were found suitable and their names had been approved for appointment under relaxation of normal rules in Group D cadre vide C.P.M.G., Guwahati letter No. APMG(S) Confidential - 1/93 Relaxation dated 7.12.1993 and they were allotted to the unit shown against their names to engage them in leave or stop gap temporary vacancy of Departmental/E.D. post till they were allotted by Circle Office to the Division. The order further indicated that those persons were to be made to understand that they would not be entitled to claim any seniority or pay benefit in future for such short term engagement. The applicant was accordingly allotted to the S.D.I.(P). He worked as such in the cadre of Group 'D' till he was posted as Mail Peon cum Packer vide order dated 16.11.1994. While he was serving at Tangla as Mail Peon by the impugned order dt. 22.2.98 he was removed from service with effect from 23.4.98. Hence the application challenging the order of removal is arbitrary.

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Contd..

2. The respondents in its written statement stated that the applicant was ordered to work as Mail Peon cum Packerman, Kheirabari. The respondents stated that as per his appointment letter the applicant could not claim seniority/ pay benefit in future and his engagement in Group P cadre was to be terminated any time. He was engaged in Group D cadre as per instructions of CPMG's letter No. APMG(S)/Confidential-1/93-Relaxation dated 7.12.93 and the termination order was also issued as per instructions contained vide CPMG, Guwahati letter No. Staff/16-Misc./97 dated 20.2.98. The respondents stated that the applicant had to be removed from service in view of the direction contained in letter dated 28.2.98. Apparently there is no dispute as to the approval for appointment under relaxation of normal rules in Group D cadre. There is also no dispute in the engagement of the applicant on leave or stop gap arrangement till he was allotted in circle office as per the policy of the respondents. By a communication dated 30.3.1998 addressed to all SDIPOs, Darrang Division which referred to the communication of the CPMG, Assam Circle, Guwahati letter No. Staff/16-Misc/97 dated 20.2.98. The aforementioned letter contained the message that the approved candidate in respect of relaxation appointment should not be engaged unless and until clear vacancy was secured. Therefore the approved candidates engaged temporarily, if any was to be removed immediately. The direction contained in the memo dated 20.2.98 was on the basis of the letter issued by the Superintendent of Post Offices, Darrang Division dated 11.2.1998. The said memo infact was the order issued by the Superintendent of Post Office, Darrang Division to engage Shri Sushil Chandra Deka, Ex. P.A. in any leave vacancy or stop gap vacancy till he was appointed against regular.

Contd..

vacancy. The full extracts of the aforementioned order is reproduced below :

Shri Sushil Ch. Deka, son of Late Satish Ch. Deka, Ex-PA, Tezpur HQ has been approved for appointment under relaxation of normal rules in Postman Cadre vide C:P.M.G., Assam Circle, Guwahati Memo No. Staff/16-Misc/97 dtd. 3.2.98 and he is allotted to the Unit of Postmaster, Tezpur HO to engage him in any leave vacancy or Stop gap temporary vacancy till he is appointed regularly. Shri Deka should be given clear understanding that he cannot claim any seniority/pay benefit in future for such short term engagement.

A copy of the aforementioned memo dated 11.2.1998 was sent to the Postmaster, Tezpur and to the CPMG, Assam Circle, Guwahati. Pursuant to the aforesaid information the full instruction was issued by the CPMG vide Memo No.

Staff/16-Misc/97 dated 20.2.98, which reads as follows :

"I am directed to inform you that appointment under relaxation of normal recruitment rules is restricted to 5%. As such arrangement for short period is ordered vide your above cited letter will create some problem. You are therefore requested not to make such arrangement in future unless there is any clear vacancy for absorption of the candidate over the arrangement made vide your letter u/r may be treated as cancelled".

From the facts narrated above it thus emerges that the sole ground for removal of the applicant was the instruction on the basis of the instructions issued by the aforementioned memo dated 20.2.98. Apparently the aforementioned CPMG's instruction was relatable to the case of Sushil Ch. Deka and did not bear any nexus to the appointment of the applicant. The engagement of the applicant alongwith others were made by the respondents after completing the necessary exercise for such engagement through the recommendation CSC. The recommendation of the CSC was approved for absorbing in the future vacancies as per order of Directorate letter dated 30.7.93 till they were finally absorbed in regular Group 'D' posts. The respective Divisional Heads were also advised to engage

Contd..

them in leave or stop-gap temporary vacancies of the department till they were allotted by C.O. to units accordingly as and when such vacancy arises. Such engagement by itself was not conferred the pay benefit in future.

3. In the facts and circumstances of the case the removal of the applicant was unjustified. The grounds relied for removal of the applicant therefore cannot be legally sustained. For the reasons mentioned above the order of removal of the applicant issued under letter No. B-2/Staff/Gen/98 dated 22.4.98 is liable to be set aside accordingly the order of removal of the applicant from service dated 20.2.98 (Anexure-6) is set aside. The applicant shall now be reinstated in service forthwith with full back wages.

4. The application is allowed to the extent indicated above. However, there shall be no order as to costs.

sd/ VICE CHAIRMAN

TRUE COPY

सत्यपात्र

From
14/2/2002

Section Officer
Central Administrative Trial
Court
High Court
Walton Bench, Guwahati
Assam, India

2000

Received *Bob*

Deptt. Of Posts: India
Office Of The Supdt. Of Post Offices: Darrang Division
Tezpur ----- 784001

No: Bx/Relaxation/Rlg/Ch I

Dated at Tezpur, 21-08-2001

To

Sri/Smt. Valini Prasad Sarangi Baruah
S/o Late Satya Prasad Sarangi Baruah
Vill & P.O. Patidarrang
Via: Deomathia

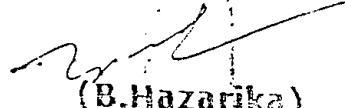
Sub:

**Compassionate appointment - willingness to work as
Gramin Dak Sevak.**

You have been approved for appointment under relaxation rules but you could not be absorbed against regular vacancy as only 5% of vacancies are reserved for relaxation appointment. Hence your absorption against regular Group D post is remote.

However, you may submit your willingness to work as Gramin Dak Sevak (ED) in your locality in case such vacancy arises. It is also made you clear that if you accept Gramin Dak Sevak post you would have no further claim against regular Deptt. vacancies.

You should submit your willingness within 10 (ten) days from the date of receipt of this letter.


(B. Hazarika)
Supdt. Of Post Offices
Darrang Division, Tezpur-784001

Attested


Advocate.

Dated. 10.09.2001

To
The Superintendent of Post Offices
Darrang Division, Tezpur.

Sub.: Order bearing No.Bx/Relaxation/Rlg/Ch-1
dated 24.8.2001.

Sir,

With due deference and profound submission I beg to lay the following few lines before Your Honour for kind consideration and necessary action thereof.

That I being aggrieved by the order issued under letter No.B-2/Staff/Gen/98 dated 22.4.98 approached the Hon'ble Central Administrative Tribunal, Guwahati Bench by way of filing OA No.89/98. The said Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OA by setting aside the aforesaid order dated 22.4.98, by which I was removed from my service. The Hon'ble Tribunal while passing Its judgement and order dated 8.12.2000 issued a further direction to you for my reinstatement forthwith with full back wages.

That the aforesaid judgement and order dated 8.12.2000 has made it clear that I may be reinstated in my service immediately but unfortunately same is yet to be materialised.

In the midst of judicial proceedings I have received a letter dated 24.8.2001 in which intimation has been made that regarding my absorption chance is remote and I may place my willingness to work as Gramin Dak Sevak (ED) and subject to availability my case would be considered against the said post of Gramin Dak Sevak (ED).

Since there has been a judgement in my favour regarding my reinstatement against Group-D post, question of accepting the post of Gramin Dak Sevak(ED) does not arise. On the other hand there are as many as seven vacancies available in the Group-D cadre in various post offices namely Hatigarh, Tangla and Mangaldoi Head Office and taking into consideration the aforesaid judgement my case is required to be considered against those vacancies. Since

Attested

Advocate.

there is no question of fresh appointment in my case taking into consideration the aforesaid judgement, my case is required to be considered even without referring any existing vacancies as mentioned above.

However, considering the facts and circumstances and my plight, I place my willingness to serve as Gramin Dak Sevak (ED), without prejudice to the contentions made in the pending judicial proceedings. To that effect mention may be made of one vacant post of EDDA which is presently lying vacant in the Patidarrang Branch Post Office in the Darrang District.

Thanking you.

Yours faithfully

(Nalini Prasad Sharma Baruah)

Copy to:

1. The Director General of Post Offices
Dak Bhawan, New Delhi.
2. The Chief Postmaster General,
Assam Circle, Meghdoot Bhawan.

Enclo: Judgement and Order dated 8.12.2000
passed in OA No.89/98.

Dept. Of Posts: India
Office Of The Supdt. Of Post Offices: Darrang Division
Tezpur ----- 784001

No: Bx/Relaxation/Corr/1

Dated at Tezpur, 25-08-2002

To

The SDI(P)
Mangaldoi

Sub:

Absorption against GDS post.

You are hereby requested to absorb Sri Nalini Prasad Sarmah Baruah, Vill & P.O.: Pati Darrang, Via: Deomarnai, against the post of GDSMC, Konduguri B.O. as identified already. Before appointment necessary papers may be collected.

C-1
Supdt. Of Post Offices
Darrang Division, Tezpur-784001

Copy to:

1. Sri Nalini Prasad Sarmah Baruah, Vill & P.O. Pati Darrang
Via: Deomarnai, Dist: Darrang.
2. The Postmaster, Mangaldoi H.O.
3. The SPM, Duni S.O.
4. The Plg. Branch, Divl. Office.

Supdt. Of Post Offices
Darrang Division, Tezpur-784001

3.

Attested
dk

Advocate.

3x Application for copy.	संस्था राजित करने की तिथि तारीख Date fixed for notifying the requisite number of stamps and folios.	देवी की तारीख Date of delivery of the requisite stamps and folios.	प्रतिस्पृश तिथि यी Date on which the copy was ready for delivery.	विराम Date of mailing over the copy to the applicant.
10/12/04	13/12/04	13/12/04	13/12/04	14/12/04

प्राप्तिक्रिया दिन

.01

01/01/05

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

(W.C.)

No. 4456 of 19.2.2001

Union of India *vs* Appellant
Versus
Sri Nalin Prasad Baruah Petitioner

Respondent

Opposite-Party

Appellant

For

Petitioner

M. Sadan Lalik

Addl. C.G.S.C

Respondent
For

Opposite-Party

*S.
P.*

Attested

JK

Advocate.

Administrative ~~.....~~ ²⁵
Application No. 89 of 1993 that has been
been under challenge 12 No

- A N D -

IN THE MATTER OF :-

(1) Union of India

Represented by the Secretary to
the Govt. of India,
Ministry of Communication,
Department of Posts,
New-Delhi.

(2) The Director General, Posts
New-Delhi.

(3) The Chief Post Master General,
Assam Circle,
Meghdoott Bhawan, Guwahati-781001.

(4) The Superintendent of Post Office
Darrang Division,
Sarupi Path (Old) - 781001
Tezpur.

(5) The Sub-Divisional Inspector
of Post Offices,
Mangaldoi Sub-Division,
Mangaldoi

..... Petitioners.

- Versus -

Shri Nalini Prasad Sarma Baruah,
Resident of village Patia Tang
P.O. - Deomorhai, Dist. - Darrang.

..... Respondent.

Officer or Advocate	Serial No.	Date	Office Notes Report or orders proceedings With signature
		16/12/04	BEFORE The Hon'ble The Chief Justice (Acting) The Hon'ble Mr. Justice B.P. Kalsarkar Heard Mr. B. Scaria, learned counsel for the petitioner. The petitioner has become profoundly unwell & has missed the hearing.

Ch. Secy. (Acting) S. P. B. Kalsarkar
S. P. B. Kalsarkar, Ch. Secy. (Acting)
J. C. -

24637
10/12/04

CERTIFIED TO BE TRUE COPY	
Akorn Raypatra & Main	
Date 14/12/04	
S. P. B. K. (Copyist Section), Court of Mys. Court	
Subscribed U.P. 76, A.L. 1. 1571	

14/12/2004

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL:ASSAM CIRCLE
GUWAHATI - 781001.

No. Staff/7-15/2005

Dated Guwahati-1 the 04-09-2006

In compliance with the judgement/order dated 08-12-2000 delivered by the Hon'ble Tribunal, Guwahati Bench in OA No.89/98, the approval of the Chief Postmaster General, Assam Circle, Guwahati is hereby conveyed for accommodating Shri Nalini Prasad Sarma Baruah, now working as GDS Mail Carrier, Kenduguri B.O. in account with Duni S.O. in Darrang Postal Division, in Nagaon Postal Division against the existing vacancy of Group 'D' cadre in ex-serviceman quota for the year 2003.

The competent authority will issue formal appointment order in respect of Shri N P Sarma Baruah in Group 'D' post under the unit of Nagaon Postal Division observing all the formalities as required for the purpose. The said appointment to be made in compliance to the aforesaid order of the Hon'ble Tribunal, Guwahati Bench and Shri Sarma will not be entitled to the benefit of working as GDS, stop gap temporary arrangement or any other benefit earlier to accommodating under Nagaon Postal Division and also will not be entitled to repatriation to other Division/Unit in future.

Asstt. Postmaster General (Vig),
O/O the Chief Postmaster General,
Assam Circle, Guwahati-781001.

Copy to :-

1. The Superintendent of Post offices, Nagaon Division, Nagaon-782001, for information and necessary action. A compliance report may be submitted immediately for onward compliance to the CAT's judgement.
2. The Superintendent of POs, Darrang Division, Tezpur-784001, for information and necessary action. He will direct Shri N P S Baruah to report to SP Nagaon without delay.
3. The APMG (Vig), O/O the Chief Postmaster General, Assam Circle, Guwahati-1
4. The Postmaster General (Vig), Dibrugarh Region, Dibrugarh-786001.
5. Shri Nalini Prasad Sarma Barua, S/O Late Satya Prasad Sarma Baruah at Village - Patidarang, P.O. - Deomornoi, Dist. - Darrang (Assam) for information. He is directed to report to SPOs Nagaon immediately.
6. The Registrar, CAT, Guwahati-781005 for information in compliance to the judgement/order in OA No.89 of 1998.

Read

Shri Gautam Baishya, Senior CGSC, CAT Guwahati-781005, for information and causing compliance to the judgement/order of the Hon'ble Tribunal Guwahati.

Asstt. Postmaster General (Vig),
O/O the Chief Postmaster General,
Assam Circle, Guwahati-781001.

Attested

[Signature]

Advocate

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, NAGAON D.M. NAGAON-782001

Memo No B1/Recd/Gr-784/2005 dated at Nagaon the 13.09.06.

In pursuance of the Chief PMG, Assam Circle, Guwahati memo No staff/7-15/2005 dtd 04.09.06 Sri Nalini Prasad Baruah now working as GDS Mail carrier Kenduguri BO in account with Duni SO under Darrang Postal Division approved for appointment in Group 'D' cadre in the scale of pay of Rs.2550-55-2660-60-3200 is allotted to the unit as shown below.

Sl. No.	Name & designation of the official	Unit to which allotted	Remarks
1.	Sri Nalini Prasad Baruah, GDS Mail carrier Kenduguri BO in account with Duni SO in Darrang Postal Dm.	IPO Hojai Sub Dm, Hojai	Against vacant post of LR GR D

(B R Halder)
Supdt. of Post Offices,
Nagaon Dm Nagaon-782001.

Copy to :-

- ✓ 1. Sri Nalini Prasad Baruah, GDS Mail carrier Kenduguri BO in account with Duni SO Mangaldoi. He will please report for duty to the Inspector of Posts Hojai Sub Dm, Hojai.
2. P/F of the official through the Inspector of Posts Hojai.
3. The Inspector of Posts, Hojai Sub Dm, Hojai. He will please issue necessary appointment and posting order in respect of the official observing all formalities.
4. The Inspector of Posts Mangaldoi Sub-Dm, for information and necessary action.
5. The Supdt of Pos, Darrang Dm, Tezpur w.r.t CO's memo cited above.
6. The Postmaster Dipu/Mangaldoi HO.
7. The Chief Postmaster General (staff) Assam Circle, Guwahati-781001 for favour of information w.r.t CO's memo cited above.
8. ThdAPMC, (Vig) o/o the Chief PMG, Assam Circle, Guwahati-781001.
9. The Postmaster General (staff) Dibrugarh Region, Dibrugarh-786001.

Supdt of Post Offices,
Nagaon Dm Nagaon-782001.

Attested

[Signature]

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No. 11 of 2005 &
Misc. Petition No. 23 of 2006

In
Original Application No.89 of 1998

Date of Order: This, the 28th day of February 2006.

THE HON'BLE SRI K.V. SACHIDANANDAN, VICE-CHAIRMAN.

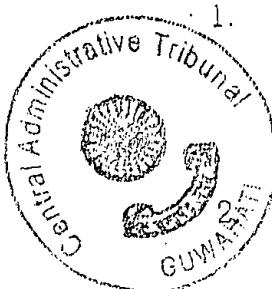
THE HON'BLE MRS.CHITRA CHOPRA, ADMINISTRATIVE MEMBER.

Sri Nalini Prasad Sarmah Baruah
Resident of Vill:-Pati Darrang
P.O: Deomornoi, Dist: Darrang.

... Petitioner

By Advocates Mr.S.Sarma, Mr.H.K.Das & Ms.B.Devi.

Versus -



1. Sri S.K.Das
The Chief Post Master General
Assam Circle, Meghdoot Bhawan
Guwahati-781 001.

Sri Jagabandhu Biswas
The Superintendent of Post Offices
Darrang Division, Tezpur

... Contemners.

Mr.C.Balshya, Sr.C.G.S.C.

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

This Contempt Petition has been filed by the petitioner for
non-compliance of the orders of this Tribunal passed in O.A. 89/1998 on

Attested

AB.

Advocate

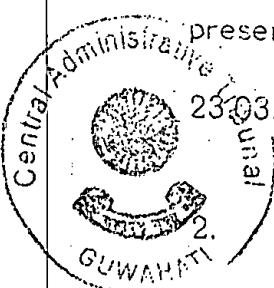
✓

8.12.2000. The paragraph 3 of the said order is reproduced herein below:-

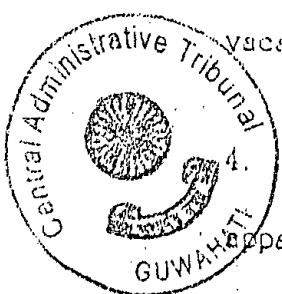
"3. In the facts and circumstances of the case the removal of the applicant was unjustified. The grounds relied for removal of the applicant therefore cannot be legally sustained. For the reasons mentioned above the order of removal of the applicant issued under letter No.B-2/Staff/Gen/98 dated 22.4.98 is liable to be set aside accordingly the order of removal of the applicant from service dated 20.2.98 (Annexure-6) is set aside. The applicant shall now be reinstated in service forthwith with full back wages."

Alleging non-compliance of the said order Contempt Petition No.13/2001 was filed before this Tribunal. In the meantime, the matter was taken before the Hon'ble Gauhati High Court in W.P.(C) No.4456/2001 and in view of the pendency of the aforesaid W.P.(C) the C.P. No.13/2001 was dropped by this Tribunal. However, the aforesaid W.P.(C) was later on withdrawn by the writ petitioners/contemners. Since the order was not complied with the present Contempt Petition has been filed. Notices were issued on 23.03.2005.

2. Show Cause reply by the both contemners were filed in the month of June, 2005. One Additional Affidavit was also filed annexing Annexure-A order dated 04.09.2006. By the said order the petitioner was accommodated in Group 'D' post in Nagaon Postal Division against the existing vacancy of Group 'D' cadre in ex-serviceman quota for the year 2003.



3. Mr.S.Sarma, learned counsel for the petitioner submitted that though the petitioner was accommodated vide order dated 4.9.2006 he was not paid the back wages. Mr.G.Baishya, learned Sr.C.G.S.C., on the other hand, submitted that in the absence of any Group 'D' vacancy the petitioner could not be accommodated in Group 'D' post but during that time he was working in GDS post. It is an admitted fact that after withdrawal of the aforementioned W.P.(C) the petitioner was issued an order for GDS post since there was no vacancy of Group 'D' in the Division.



From the pleadings advanced by the Contemners it is apparent that there is no willful disobedience on the part of the alleged Contemners and they have put their bonafide attempt to accommodate the petitioner but due to non-availability of Group 'D' vacancy he was given GDS post during that period. The GDS wages were also being paid to the petitioner. Mr.G.Baishya has taken our attention to a decision rendered by the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Duggar and Others reported in (1996) 6 SCC 291. The relevant portion of the said judgment and order is reproduced below:-

"It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause

✓

of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be willful violation of the order."

It is submitted that for contempt proceeding there should be willful disobedience on the part of the Contemnors in not complying with the orders of this Tribunal. Counsel for the Respondents submitted that order of the Tribunal has been complied with.

5. Considering all the aspects and upon hearing counsel for the parties we are of the view that there is no willful disobedience on the part of the Contemnors. The petitioner has already been accommodated in Group 'D' post. What is left out is only difference of back wages for which the petitioner is at liberty to approach appropriate forum.

6. In the circumstances, the C.P. is closed. Notices issued are discharged. Accordingly the M.P. is also closed.

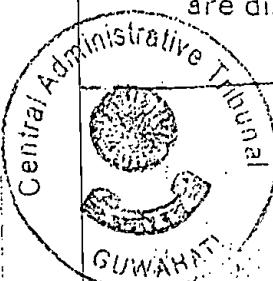
sd/ VICE CHAIRMAN
sd/ MEMBER (A)

TRUE COPY

প্রতিপাদ্য

অক্ষয় পাতিল
Section Officer (Hindi)
Central Administrative Tribunal
মাধুবন্ধু রোড
পুরুষ পুরুষ
পুরুষ ১১-১
পুরুষ ১১-১

12/3/07
12/3/07



केन्द्रीय प्रशासनिक अधिदरण
Central Administrative Tribunal

31 JAN 2006

गुवाहाटी न्यायपीठ

GUWAHATI BENCH OF THE CENTRAL ADMINISTRATIVE TRIBUNAL

File in Court on.....

16/1/06

Court Officer,

GUWAHATI BENCH AT GUWAHATI

Filed by
The respondents

Subroto Baruah
Sar 1652

31.01.08

O.A.No.145 of 2007

Sri N.P.Sarmah Baruah

...Applicant

-Versus-

Union of India & Ors.

...Respondents

Received copy
16/1/06

The written statement filed on behalf
of the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraph 1 of the instant application, the respondents have no comment.
2. That with regard to the statement made in paragraph 2 and 3 of the instant application the respondents beg to offer no comment.
3. That with regard to the statement made in paragraph 4.1 of the instant application the respondents have no comment.

Subroto Baruah
Sar 1652

दरांग प्रभाग, দেশপুর-৭৮৪০০১
Supdt. of Post Offices
Darrang Division, Tezpur-784001

31 JAN 2001
गुवाहाटी न्यायालय
Guwahati

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4. That with regard to the statement made in paragraph 4.2 of the instant application the Respondents beg to state that the applicant was approved for appointment under relaxation of normal rules in Group-D Cadre vide Chief PMG/Guwahati letter No.APMG (S) / Confidential-1/93/Relaxation dated 7.12.1993 and allotted to the Darrang Division, Tezpur to engage him against leave or stop gap vacancy of Department/ED post due to non availability of vacancy under Group-D Cadre in Darrang Division and with the instruction that he would not be entitled to claim any seniority or pay benefit in future for short term temporarily engagement. The applicant was allotted to the SDI Pos, Mangaldoi Sub Division, Mangaldoi and accordingly engaged temporarily in Group-D Cadre as Mail peon cum packer at Tangla Post Office vide Superintendent of Post Offices, Darrang Division, Tezpur Memo No.B2/N.Sarmah Dated 16.11.1994. The temporary engagement was terminated w.e.f.23.04.1998 vide CPMG/Guwahati letter No.Staff-16/Misc/97 dated 20.2.1998.

5. That with regard to the statement made in paragraph 4.3 of the instant application the Respondents beg to state that the judgment and order dated 08.12.2000 of the Hon'ble Tribunal in OA No.89/98 was complied by payment of back wages for the period from 23.4.1998 to 12.9.2002 as Group-D. There was no vacancy of Group-D cadre in Darrang Division

Jagdeep Singh Biswas
आम वर्चालक
दर्ता, प्रभाषण, तेरपुर-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001

31 JAN 2002

गुवाहाटी न्यायपीठ
Guwahati Bench

and the applicant was appointed in GDS post w.e.f.13.9.2002
 with the consent and on willingness of the applicant as the
 Group-D appointment was against temporary and short term
 vacancy as the applicant could not be re-instated in Group-
 D for want of vacancy.

6. That with regard to the statement made in paragraph 4.4 of the instant applicant the Respondents beg to state that the applicant could not be reinstated as per judgement and order dated 8.12.2000 for non availability of vacancy in Group-D post in Darrang Division and had to challenge the contempt petition filed by the applicant to the Hon'ble Tribunal.
7. That with regard to the statement made in paragraph 4.5 of the instant application the Respondents beg to state that the Hon'ble Tribunal was pleased to drop the GP No.13/01 vide judgement and order dated 11.01.2002 considering the pendency of WPO No.4456/01. In the meantime considering the financial hardship of the family the applicant was appointed as GDSMC/Kenduguri BO w.e.f.13.9.2002 as the applicant desired. The appointment was given to the applicant on the basis of his willingness, giving tremendous pressure on the applicant to accept the post of GDS is totally baseless, the applicant was appointment as GDS Mail Carrier, Kenduguri BO without any precondition.

Jagabandhu Dasgupta

दाक अधीक्षक
दरां प्रमणड, तेजपुर-784001

Supdt. of Post Offices

Darrang Division, Tezpur-784001

31 JAN 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

8. That with regard to the statement made in paragraph 4.6 of the instant application the Respondents beg to state that the non availability of vacant post in Group-D Cadre was known to the applicant and he was willing to work in GDS post if available. The applicant was appointed as GDS MC, Kenduguri BO w.e.f. 18.9.2002 without any precondition.

9. That with regard to the statement made in paragraph 4.7 of the instant application the Respondents beg to state that as the writ petition before the Hon'ble High Court was pending, the applicant's persuasion was not correct. The contempt petition bearing CP case No.25/03 was closed on the ground of pendency of the WP(C) Case before the Hon'ble High Court.

10. That with regard to the statement made in paragraph 4.8 of the instant application the Respondents have no comment.

11. That with regard to the statement made in paragraph 4.9 of the instant application the Respondents beg to state that the contention of the applicant regarding up holding the judgement and order of the Hon'ble Tribunal in OA No.89/98 dated 8.12.2000 is not true. The Hon'ble High Court Vide its order dated 16.11.2004 disposed and dismissed the WP as "Infructuous" after having been informed that the applicant was appointed regularly as GDS MC, Kenduguri BO -

Jagabandhu Das
दाक अधिकारी
दरबंग प्रमुख, तेजपुर-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001

31 JAN 2003

गुवाहाटी न्यायपीठ
Guwahati Bench

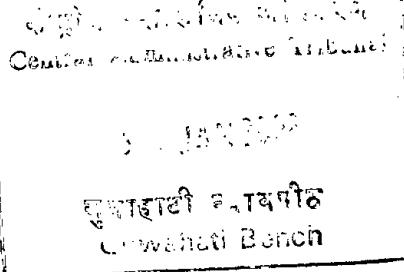
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w.e.f. 13.9.2002 on acceptance of the offer by the applicant. The Hon'ble High Court did not pass any order against the appointment of the applicant in GDS post nor directed to implement the judgment and order dated 8.12.2000 of the Hon'ble Tribunal in OA No.89/98 cancelling the appointment of the applicant in GDS post. Hence the violation of the judgment and order dated 8.12.2000 does not arise.

12. That with regard to the statement made in paragraph 4.10 of the instant application the Respondents beg to state that the applicant was appointed as GDS MC, Kenduguri BO w.e.f. 1.9.2002 on his willingness to work in GDS post. The back wage for the termination period of Group-D i.e. from 23.4.1998 to 12.9.2002 was paid to the applicant. The applicant was paid TRCA for his duties w.e.f. 13.9.2002 as he willingly joined and worked in GDS MD post. There was no vacancy in Group-D post in Darrang Division as such the reinstatement does not arise. The applicant was appointed in Group-D Cadre in Nagaon Postal Division, Nagaon for want of vacancy in Group-D post at Darrang Division.

13. That with regard to the statement made in paragraph 4.11 of the instant application the Respondents beg to state that the applicant was ordered to join in Nagaon Division against the vacancy of the Group-D Cadre in accordance with

Jageberandhukar
दाक अधीक्षक
दरां प्रमण, ते-पुर-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001



judgment and order dated 8.12.2000 of the Hon'ble Tribunal, Guwahati Bench in OA No.89/98 as there was no vacancy in Darrang Division.

14: That with regard to the statement made in paragraph 4.12 of the instant application the Respondents beg to state that the applicant was not appointed against any vacant Group-D post, but he was engaged against leave vacancy/Short gap vacancy in Group-D Cadre. After termination of temporary engagement from Group-D Cadre the applicant was appointed against GDS MC permanently on the basis of his willingness without any precondition. The applicant has no right to claim any seniority to his temporary engagement in Group-D Cadre. In the temporary engagement the applicant is entitled only pay benefit. The applicant got TRCA for his regular appointment in GDS MC for the period from 18.9.2002 to 12.9.2006 as per his entitlement. The appointment of the applicant was delayed for want of vacancy, he was finally allotted to Nagaon Division to follow the judgment and order of the Hon'ble Tribunal. It does not mean that he is reinstated against the original post.

15. That with regard to the statement made in paragraph 4.13 of the instant application the Respondents beg to state that the applicant was appointed in GDS MC post on the basis of his willingness without any precondition. There was no -

Farzana Begum
Farzana Begum
Supdt. of Post Offices
Darrang Division, Tezpur-784001

3 JAN 2018

गुवाहाटी बायपीठ
Guwahati Bench

67

vacancy in Group-D Cadre under relaxation quota. The applicant had joined in GDS MC post willingly and without any protest. After appointment against GDS post, the applicant has no right to claim seniority of other Group-D at the same time.

16. That with regard to the statement made in paragraph 4.14 of the instant application the Respondents beg to state that the applicant was regularly appointed in GDS MC post on the basis of his willingness to work in GDS post and he had drawn the wages of the GDS post since 13.9.2002. the applicant is not entitled to draw wages of two post i.e. GDS and Group-D at the same period. Hence the payment of back wages does not arise.

17. That with regard to the statement made in paragraph 4.15 of the instant application the Respondents beg to state that the applicant was not appointed in Group-D post rather he was engaged temporarily against leave vacancy and stop gap vacancy for want of regular vacancies under Group-D Cadre in Darrang Division. This temporary engagement was terminated and the applicant was given regular appointment in the GDS on the basis of his willingness. As the applicant accepted the appointment in GDS post and the engagement against Group-D post was not regular, he is not entitled for any increment in Group-D post for any period.

Jagadeesha Biswas

पात्र अधिकारी
दर्तने प्रबन्धक, तेजपुर-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001

18. That with regard to the statement made in paragraph 4.16 of the instant application the Respondents beg to state that the Hon'ble Tribunal by its order dated 28.2.2007 in OP Case No.11/05 has agreed that there was no willful disobedience in the post of the respondents in not complying with the orders of the Tribunal. The respondents put their bonafide attempt to accommodate the applicant but due to non availability of Group-D vacancy, he was offered the GDS post and the applicant accepted the same and GDS wages were also paid accordingly. As the applicant accepted GDS post willingly and he was paid wages for the GDS post now the applicant is estopped from claiming the wages of GDS and he is not entitled back wages in Group-D post for the same period.

19. That with regard to the statement made in paragraph 4.17 of the instant application the Respondents beg to state that the applicant was not appointed in Group-D post as stated, rather he was engaged against leave vacancy, stop gap vacancies as there was no regular vacancy in Group-D under relaxation quota in Darrang Division. The applicant was given regular appointment in GDS post on the basis of his willingness. The applicant accepted the GDS and joined without any protest. He was appointed in Group-D of Nagaon Division against clear vacancy to honour the judgment and order of the Tribunal, Guwahati 8.12.2000. The respondents

Jogendra Dass
শাক স্বামী
দরং পুরুষ, তেজপুর-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001

গুৱাহাটী স্বাদৰ্শন
Guwahati Bench

had filed WP(C) before the Hon'ble High Court against the judgment and order dated 8.12.2000. The Hon'ble High Court dismissed the WP(C) Case on the ground that its becoming "Infractuous" as the applicant was appointed regularly in GDS MC w.e.f. 13.9.2002 on acceptance by the applicant. The Hon'ble High Court did not pass any order against the appointment of the applicant in GDS post nor directed the implement the judgment and order dated 8.12.2000 of the Tribunal. As such the applicant is not entitled to seniority and back-wages for the period of his working in the GDS post. One person is not entitled for wages of two posts for the same time.

20. That with regard to the statement made in paragraph 4.18 of the instant application the Respondents beg to state that there was no regular vacancy against which the applicant was engaged. He was engaged and allowed to work against leave vacancy/stop gap vacancy temporarily. As the applicant was not appointed against any regular post and there was no vacancy in Group-D his reinstatement does not arise. As such the applicant is not entitled any back wage or seniority as claimed.

21. That with regard to the statement made in paragraph 4.19 of the instant application the Respondents beg to state that the applicant was approved for the appointment in Group-D Cadre under compassionate ground subject to availability of vacancies under relaxation quota. There was no vacancy -

Jyoti Bora
জ্যোতি বোৱা
শাক বাবীলক
দরাং প্রশান্ত, তেজপুর-৭৮৪০০১
Supdt. of Post Offices
Darrang Division, Tezpur-784001

গুৱাহাটী পোর্ট
Guwahati Port

available under relaxation quota at the time of his approval in Darrang Division. The applicant was engaged against leave vacancy/stop gap vacancy temporarily to provide some relief to the deceased family. As the applicant was not engaged in any regular vacancy, his reinstatement does not arise as claimed. The applicant was given regular appointment in Nagaon Division against regular vacancy.

22. That with regard to the statement made in paragraph 5 of the instant application the Respondents beg to state that the ground set forth by the applicant in the instant application are not good grounds and also not tenable in the eye of law and as such the instant application is liable to be dismissed.

23. That with regard to the statement made in paragraph 6,7 & 8 of the instant application the Respondents have no comment.

24. That with regard to the statement made in paragraph 9 of the instant application the Respondents beg to state that the claim of the applicant is illegal,baseless and not admissible by the law and as such the instant application is liable to be dismissed.

25. That the Respondents submit that the claim or the applicant has no merit and therefore the instant application is liable to be dismissed.

Jyoti Bora
জ্যোতি বোৱা
১০১ প্রতাপনগুল, তেজপুর-৭৮৪০০১
Supdt. of Post Offices
Darrang Division, Tezpur-784001

VERIFICATION

1. T. C. T. R. No. 18
Guwahati bench

I, Sri Jagabandhu Biswas..... s/o late L. Ch. Biswas

Aged about 59 years, R/o Tezpur

District Tezpur..... And competent officer of the

answering respondents, do hereby verify that the statement made

in paras..... 1 to 24..... are true

to my knowledge and those made in paras.....

being matters of record are true to my information delivered

therefrom which I believe to be true and the rests are my humble

submission before this Hon'ble Tribunal and I have not
suppressed any material fact

And I sign this verification on this 31th day

of January..... 2008 at Guwahati.

Jagabandhu Biswas
Signature

শাক বিশ্বাস
দরবং প্রশান্ত, তেজপুর-784001
Supdt. of Post Offices
Darrang Division, Tezpur-784001

27 MAY 2008

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench

GUWAHATI BENCH:

O.A. No. 145 of 2007

BETWEEN

Nalini Prasad Sarmah Baruah

..... Applicant.

AND

Union of India & Ors.

..... Respondents.

REJOINDER

1. That the applicant has received the copy of the written statement and has gone through the same. Save and except the statement which are specifically admitted hereinbelow, other statements made in the written statement may be treated as total denial. The statements which are not borne on records are also denied and the respondents are put to the strictest proof thereof.
2. That with regard to the statements made in para 1, 2 and 3 of written statement the deponent does not admit anything contrary to the relevant records of the case.
3. That with regard to the statements made in para 4 of the written statement the deponent while denying the contentions made therein begs to state that the statement made by the respondents that the applicant would not be entitled to claim seniority and pay fixation, itself is contemptuous in nature. In this connection it is stated that the Hon'ble Tribunal vide judgment and order dated 8.12.00 in OA No 89/98 directed the

gri Nalini prasad sarma Banerji

reinstatement of the applicant in full back wages while setting aside the order dated 22.4.98 and the said judgment has been further affirmed by the Hon'ble High Court and in such an eventuality, the respondents have no other alternative to pay the back wages to the applicant and to refix his pay and seniority.

4.

That with regard to the statements made in para 5 of the written statement the deponent while denying the contentions made therein begs to state that the respondents for want of vacancies can not refuse to reinstate as directed by the Hon'ble Tribunal. The applicant was compelled to accept the post of GDS and he was forced by the respondents to accept the same. Under any circumstances the respondents can not deny the legitimate dues of the applicant as directed by the Hon'ble Tribunal. The stand taken by the respondents that reinstatement of the applicant could not be effected due to non-availability of the vacancies is nothing but a clear violation of the order of the Hon'ble Tribunal and which encourages contempt of court. When there is a direction from a court of law for reinstatement the authority is duty bound to comply with the same. The said authority simply can not delay the compliance by showing vacancy position. If required the respondents ought to have created supernumerary posts to reinstate the applicant if there was no vacancy at that relevant point of time.

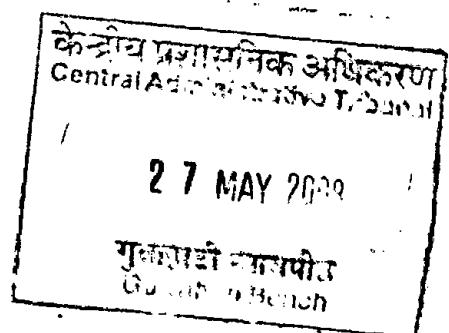
5.

That with regard to the statements made in para 6, 7, 8, 9 and 10 of the written statement the deponent while denying the contentions made therein begs to state that the closure of the contempt proceeding for part compliance does not absolve the respondents from further contempt. The respondents put tremendous pressure on the applicant and he was made to accept the

appointment as stop gap arrangement till finding out the vacancy by the respondents. The applicant made several representations pointing out the fact that he had no intention to accept the post in the cadre of GDS. Even assuming but not admitting the acceptance by the applicant without precondition does not indicate full compliance of the judgment and order passed by the Hon'ble Tribunal. The respondents ought to have apprised the Hon'ble Tribunal by way of filing review application against the judgment passed by the Hon'ble Tribunal showing the difficulties faced by them in implementing the judgment. The contentions raised by the respondents clearly shows their disregard to the judgment passed by the Hon'ble Tribunal.

6. That with regard to the statements made in para 11 of the written statement the deponent while denying the contentions made therein begs to state that the legal implication of the dismissal of the writ petition by the Hon'ble High Court indicates the consequential upholding of the judgment and order passed by the Hon'ble CAT. The interpretation given by the respondents in this regard is totally baseless and same depicts that they even does not have the basic knowledge of the law holding the field.

7. That with regard to the statements made in para 12 of the written statement the deponent while denying the contentions made therein begs to state that in terms of the Judgment and order passed by the Hon'ble Tribunal the applicant is required to be treated to be in service (Group - D) post from the date of his initial appointment (17.12.93) and his seniority shall be counted from the said date. Apart from that he shall be paid his salary as Group D w.e.f. 23.04.98 till 12-09-06 (out of which



Sri Nalini prasad sarma Banerji

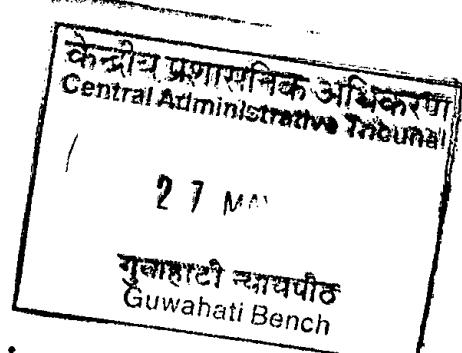
arrear paid w.e.f. 23.4.98 to 12.9.02 and w.e.f. 13.9.02 to 12.9.06 as he withdrew salary as GDS, he shall be entitled to the difference of pay) and pay fixation and benefit of increments along with the interest of pay @ 21% p.a on the delayed settlement of pay, including compensation.

8. That with regard to the statements made in para 13, to 19 of the written statement the deponent while reiterating and reaffirming the statements made above as well as in the OA begs to state that the action on the part of the respondents are contemptuous in nature and they are liable to be punished for non compliance of the order of the Hon'ble Tribunal.

9. That with regard to the statements made in para 20 of the written statement the deponent while denying the contentions made therein begs to state that the respondents have made the remark that there arose no question of reinstatement as directed by the Hon'ble Tribunal, - this statement made by the respondents is a serious offense and the deponent craves leave of the Hon'ble Court to draw suo-motto contempt proceeding against the respondents for their such attitude.

10. That with regard to the statements made in para 21 to 25 of the written statement the deponent while denying the contentions made therein begs to state that at this stage of the proceeding more so when the matter has been settled by the Hon'ble Tribunal and affirmed by the Hon'ble High Court, such statements are nothing but an attempt of the respondents to rewrite the said judgment of the Hon'ble Tribunal.

11. That in view of the above the present OA deserves to be allowed with cost.



Sri Nalin Prasad Sarma Barrister.

VERIFICATION

I Shri Nalini Prasad Sarmah Baruah, aged about ...
years, S/O Late Satya Prasad Sarmah Baruah, Vill & P.O.
Patidarrang via Deomornai, Darrang, do hereby solemnly affirm
and verify that the statements made in
paragraphs 3^{(a)(i)}, 4, 5, 6, 8, 9, 10..... are true to
my knowledge and those made in
paragraphs 3^{(a)(ii)}, 7..... are also matter
of records and the rest are my humble submission before the
Hon'ble Tribunal. I have not suppressed any material facts of the
case.

I am the applicant in the instant application and as
such well convergent with the facts and circumstances of the case
and also competent and authorised by the other applicant to sign
the verification.

And I sign on this the Verification on this the 25th day
of May, 2007.

sri Nalini prasad sarmah Baruah

SIGNATURE

