

18

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

1. ORIGINAL APPLICATION No. : -----/2013
2. Transfer Application No. : -----/2013 in O.A. No.-----
3. Misc. Petition No. : -----/2013 in O.A. No.-----
- ✓ 4. Contempt Petition No. : 7 -----/2013 in O.A. No. 83/2009
5. Review Application No. : -----/2013 in O.A. No.-----
6. Execution Petition No. : -----/2013 in O.A. No.-----

Applicant (S) : Sre P.K. Choudhury

Respondent (S) : Y. S. Dadhwal & Ors.

Advocate for the [Applicant (S)] : Mr. M. Chanda, Mrs. U. Dutta
Mrs. S. Begum.

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

Notes of the Registry	Date	Order of the Tribunal
<p>The's ap. is filed by the applicant, through Mr. M. Chanda, Advocate, praying for non-compliance of the order dated 18.5.2012 passed in OA. 83/2009.</p> <p>Laid before the Hon'ble court for favours of order.</p> <p><u>Section Officer (S)</u> <u>21.2.2013</u></p>	<p>25.02.2013</p> <p>/bb/</p> <p>7.3.2013</p> <p>/lm/</p>	<p>On the request of Mrs. U. Dutta, learned counsel for the petitioner matter is adjourned to 07.03.2013.</p> <p><u>Mugans</u> (V.N. Gaur) Administrative Member</p> <p><u>(Manjula Das)</u> Judicial Member</p> <p>Mr. M. Chanda, learned counsel for the applicant is present. It is a BB matter. List the matter on 22.3.2013.</p> <p><u>Mugans</u> (V.N. Gaur) Member (A)</p>

CP.7 of 2013

22.03.2013

Mr.M.Chanda, learned counsel for the petitioner and Mr.Kankan Das, learned Addl.C.G.S.C. for the respondents are present.

This is a Division Bench matter. Place it before the Division Bench on 05.04.2013.

05.04.2013

/bb/

Mr. M.Chanda, learned counsel appearing on behalf of the petitioner submits that the respondents approached the Hon'ble High Court against the order of this Tribunal and the Hon'ble High Court has been pleased to stay the operation of the order of the Tribunal. Accordingly he prays for withdrawal of this petition. Mr K.Das, learned counsel appearing on behalf of the alleged contemnners has no objection.

Accordingly C.P is dismissed on withdrawal with liberty to file afresh.

(Virendra Narayan Gaur)
Administrative Member

(Manjula Das)
Judicial Member

/pg/

Received copy
24/4/13
(Virendra Narayan Gaur)
INSPECTOR
SSB BHANUPALNA

Received
26/4/13
26/4/13

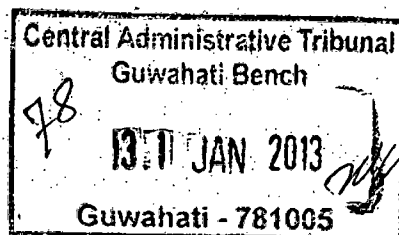
CP
received
9/5/13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 17 of the Administrative Tribunal Act, 1985)

CONTEMPT PETITION NO 7 /2013

In O.A. No. 83/2009.



In the matter of:-

Shri P.K.Choudhury.

.....Petitioner

-Versus-

Union of India and Others.

.....Respondents/
Alleged Contemnors.

-AND-

In the matter of:-

An application under section 17 of the Central Administrative Tribunals Act, 1985, praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the judgment and order dated 18.05.2012, passed in O.A. No. 83 of 2009.

-AND-

In the matter of:-

Shri P.K.Choudhury
Ex-Jt.Area Organiser,SSB
Vill-Santipur, Ward no.5
Near Hindi High School
P.O-Gangia, Bhutan Road.
Dist-Kamrup, Assam.

Petitioner.

-Versus-

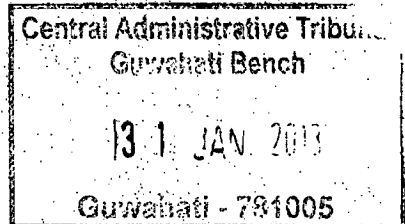
1. Shri Y.S. Dadhwal, IPS

Pradip K. Choudhury

Director General
Sashatra Seema Bal (SSB),
Force HQ, New Delhi.

2. Shri S.K. Singhal, IPS,
Inspector General, Frontier HQ,
SSB, Guwahati

3. Sh. B. Upadhyaya
Deputy Inspector General,
Station Headquarter,
Bongaigaon,
Dist- Bongaigaon (Assam)



**Respondents/
Alleged Contemnors.**

The humble petitioner of the above
named petition:-

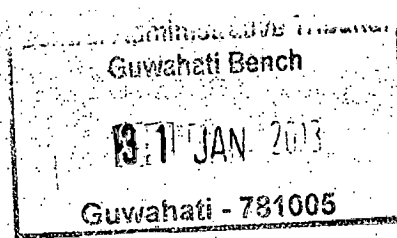
MOST RESPECTFULLY SHEWETH:-

1. That your petitioner had approached before this Hon'ble Tribunal through O.A. No. 83/2009, praying for a direction upon the respondents to hold the review DPC to consider his promotion to the cadre of Area Organiser, ignoring the downgrading un-communicated ACR and further be promoted to the cadre of Area Organiser with all consequential benefit at least from the date of promotion of his juniors i.e. respondent no.5 (Smti. Sushila Sharma).
2. That the Hon'ble Tribunal after hearing the rival submission of both the parties and after perusal of the materials on records was pleased to allowed the original application no. 83/2009 on 18.05.2012, with a direction to the respondent authorities to hold the review DPC to consider his promotion of the applicant to the cadre of Area Organiser, ignoring the downgrading un-communicated ACR as per the ratio laid down in the light of Abhijit Ghosh Dastidar (Supp) with all consequential benefits.

A copy of the judgment and order dated 18.05.2012
is enclosed as herewith and marked as **Annexure-**
'A'.

3. That, the applicant begs to state that immediately after receipt of the judgment and order dated 18.05.2012 passed in O.A. no. 83 of 2009, applicant submitted a representation on 25.05.2012 alongwith the copy of the aforesaid judgment, for implementation of the aforesaid

Pradip Kr. Choudhury



judgment, but no action has been taken by the respondents for implementation of the judgment and order dated 18.05.2012, passed by this Hon'ble Tribunal in O.A. No. 83 of 2009.

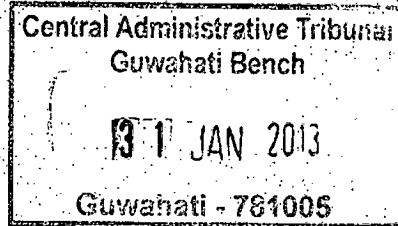
A copy of the representation dated 25.05.2012 is enclosed as Annexure-'B'.

4. That the humble applicant begs to state that already 08 months have elapsed since passing of the judgment passed by this Hon'ble Tribunal, but the alleged contemnors have not taken any action for implementation of the direction passed by this Hon'ble Tribunal on 18.05.2012.
5. That it is stated that the alleged contemnors have deliberately and willfully did not taken any action for implementation of the judgment and order dated 18.05.2012, passed in O.A. No. 83/2009, which amount to contempt of court. Therefore, the Hon'ble Tribunal be pleased to initiate the contempt proceeding under section 17 of the Central Administrative Tribunal Act, 1985, against the alleged contemnor for willful violation of the order dated 18.05.2012 in O.A. No. 83/2009 of this Hon'ble Tribunal and further be pleased to impose punishment upon the alleged contemnors, in accordance with law.
6. That this application is made bonafide and for the ends of justice.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate contempt proceeding under Section-17 of the Central Administrative Tribunals Act, 1985, against the alleged contemnors for willful non-compliance of the judgment and order dated 18.05.2012, passed in O.A. No. 83 of 2009, and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deem fit and proper by the Hon'ble Court.

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

Pradyumn Choudhary



AFFIDAVIT

I, Shri Pradip Kumar Choudhury, aged about 61 years, Ex.Jt. Area Organiser, SSB, resident of Village-Santipur, Ward No. 5. Near Hindi High School P.O. Rangia, Bhutan Road, Dist- Kamrup (Assam), Pin-781 354. do hereby solemnly declare as follows: -

1. That I am the applicant no. 1 in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and duly authorized by the others and also competent to sign this affidavit.
2. That the statements made in paragraph 1, 5, and 6 are true to my knowledge and those made in paragraph 2, 3 and 4 are matter of records and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before this Hon'ble Tribunal, Guwahati Bench, Guwahati for non-compliance of the Hon'ble Tribunal's interim order dated 18.05.2012 passed in O.A. No. 83/2009.

And I sign this Affidavit on this 30th day of January, 2013.

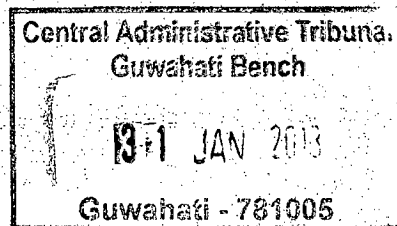
Identified by

S. Begum
Advocate.

Pradip Kumar Choudhury

Signed before me.

[Signature]
Advocate.



DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of the order of the Hon'ble Tribunal dated 18.05.2012, passed in O.A. No. 83 of 2009 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 18.05.2012, passed in O.A. No. 83 of 2009.

Pradeep Mr. Choudhury

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

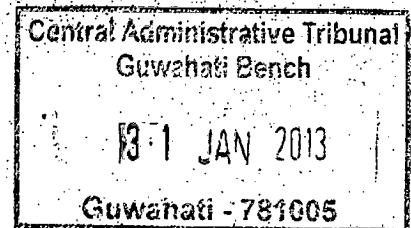
Original Application No. 83 of 2009

Date of Order: This the 18th Day of May, 2012

HON BLE MR. MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

HON BLE SMTI MANJULA DAS, JUDICIAL MEMBER

Shri P.K. Choudhury
Ex-Jt. Area Organizer, SSB
Village - Santipur, Ward No.5
Near Hindi High School
P.O. - Rangia, Bhutan Road
Dist - Kamrup, Assam.



...Applicant

By Advocate: Mr. M. Chanda

-Versus-

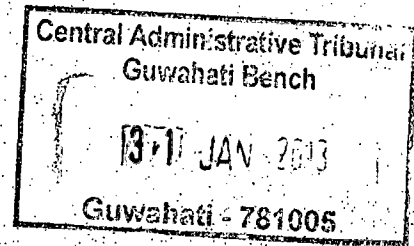
1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Home Affairs
North Block, New Delhi - 110001.
2. The Directorate General, SSB
East Block - V, R.K. Puram
New Delhi - 110066.
3. Assistant Director
East Block - V
R.K. Puram, New Delhi - 110066.
4. Deputy Inspector General
SSB Kheri West at Palia
Dist - Lakhimpur Kheri, Uttar Pradesh.
5. Smti. Sushila Sharma
Area Organizer
Birpur Area, SSB
FTR Hqs, SSB, P.O. - Patna, Bihar.

Attested
V Begum
Advocate

...Respondents

By Advocate: Mr. K. Das, Addl. CGSC.



ORDER (ORAL)MADAN KUMAR CHATURVEDI, MEMBER (A):

By this O.A., applicant makes a prayer to issue direction to the respondents to hold the review DPC to consider his promotion to the cadre of Area Organizer, ignoring the downgrading un-communicated ACR and further be promoted to the cadre of Area Organizer with all consequential benefit at least from the date of promotion of his junior i.e. respondent no. 5.

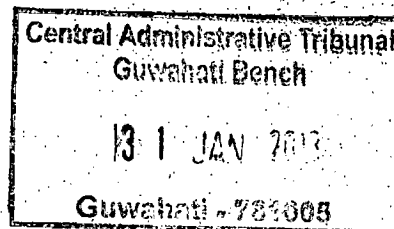
2. Applicant ~~was~~ initially joined as Circle Organizer in the Special Security Bureau (SSB) on 17.04.1976. Thereafter, vide order dated 20.02.1987, he was promoted to the post of Sub-Area Organizer w.e.f. 20.02.1987. The next higher post in the hierarchy is the post of Joint Area Organizer which is to be filled up by promotion from amongst the Sub-Area Organizer who have completed six years service in the grade and have successfully passed the Executive Officers Training Course. After completing six years service, applicant became eligible for promotion to the next higher post i.e. Area Organizer in 1993. The DPC was held on 18.12.1997 for considering the names of the eligible Sub-Area Organizer for promotion to the post of Joint Area Organizer. Applicant was well within the zone of consideration. Accordingly, his name was considered by the DPC but his name was not recommended for promotion on the alleged ground that there had been some adverse remarks in the applicant's ACR w.e.f. 01.04.1995 to 20.07.1995 and hence the persons junior to the applicant were promoted.



3. Mr. M. Chanda, learned counsel for the applicant appeared before us. Respondents were represented by Mr. K. Das, learned Addl. CGSC.

4. Reliance was placed on the decision of the Hon'ble Apex Court rendered in the case of **Abhijit Ghosh Dastidar Vs. Union of India (2009) 16 SCC 146**. Learned counsel also invited our attention on para 15 and 22 of the written statement filed by the opposite party. It is mentioned at para 15 that the applicant was not recommended for promotion to the rank of Area Organizer by the DPC held on 20.10.2005 due to non attending the prescribed bench mark.

5. It was further stated in the written statement that as per the instructions in vogue at that particular point of time, no ACRs other than adverse entries were required to be communicated to the Government servant. In the case of **Abhijit Ghosh Dastidar Vs. Union of India (2009) 16 SCC 146** at para 8, Hon'ble Supreme Court has held that - "Non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution." The same view has been reiterated in the case of **Dev Dutt Vs. Union of India and Ors. (2008) 8 SCC 725**. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade.



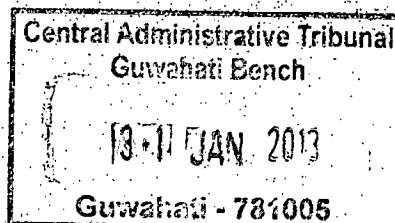
6 In the facts of the present case, respondents admitted in the written statement that the appellant had ⁿever been informed of the nature of the grading given to him. We, therefore, respectfully following the precedents, direct the respondents to hold the review DPC to consider promotion of the applicant to the cadre of Area Organizer, ignoring the downgrading un-communicated ACR as per the ratio laid down in the light of **Abhijit Ghosh Dasidhar (Supp)** with all consequential benefits.

7 In the result, O.A. stands allowed. There will be no order as to cost.

Sd/-
M.K. CHATURVEDI
MEMBER (A)
Sd/-
MANJULA DAS
MEMBER (J)



TRUE COPY
प्रतिलिपि
अनुभाग अधिकारी
Section Officer (Judicial)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी/Guwahati-5



Attested
Signature
Sd/-

SP RANGIA MDG <781354>
ES557879639 IN
Counter No:1, OP-Code:PA
To: DIRECTOR GENERAL, SSB
NEW DELHI, PIN:110036
From: P.K. CHOUDHURY, RANGIA
Wt:45grams,
Ant:25.00, 25/05/2012, 14:43
Taxes:Rs.2.36 EDD (If not a holiday):00:00:00

The Director General, SSB,
East Block- V,
R.K. Puram,
New Delhi- 110066.

ANNEXURE - B

SP RANGIA MDG <781354>
ES557879758 IN
Counter No:1, OP-Code:PA
To: THE SECRETARY, NORTH BLOCK
NEW DELHI, PIN:110001
From: P.K. CHOUDHURY, RANGIA
Wt:45grams,
Ant:25.00, 25/05/2012, 14:44
Taxes:Rs.2.36 EDD (If not a holiday):00:00:00

Sub: - Judgment and order dated 18.05.2012 passed in O.A No. 83 of 2009 (Shri P.K. Choudhury Vs- Union of India); Implementation of;

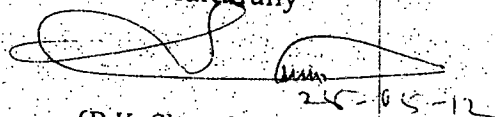
Sir,

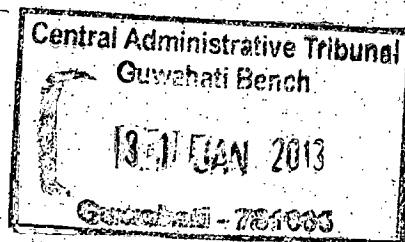
Most respectfully I would like to draw your kind attention on the subject cited above, and further beg to state that I had approached the Hon'ble Central Administrative Tribunal through O.A No. 83/2009, praying for a direction to the authority to hold review DPC to consider my promotion to the cadre of Area Organizer, ignoring the downgraded uncommunicated ACR and further for a direction for my promotion to the cadre of Area Organizer with all consequential benefit at least from the date of promotion of my junior Smt Sushila Sharma. The Hon'ble Tribunal on 18.05.2012 after considering materials on record and after hearing the Counsels of the parties pleased to allow the O.A No. 83/2009 with a direction to the authorities to hold the review DPC to consider my promotion to the cadre of Area Organizer, ignoring the downgraded uncommunicated ACR with all consequential benefits.

I am enclosing a copy of the judgment and order dated 18.05.2012 passed in O.A No. 83 of 2009, which is self detailed, for your perusal and necessary action for early implementation of the direction of the Hon'ble Tribunal.

Enclosure:- As stated above.

Yours' faithfully


25-5-12



(P.K. Choudhury)
Ex- Jt. Area Organizer, SSB,
Vill- Santipur, Ward No. 5,
Near Hindi High School,
P.O- Rangiya, Bhutan Road,
Dist- Kamrup, Assam.

Copy to:

The Secretary, Ministry of Home Affairs, North Block, New Delhi- 110001. a copy to the
copy of judgment and order dt 18-5-12, CAT, Guwahati, Assam.

Attested
By
Signature
of Advocate