

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

1. ORIGINAL APPLICATION No : -----/ 2010
2. Transfer Application No : -----/2010 in O.A. No.-----
3. Misc. Petition No : -----/2010 in O.A. No.-----
4. Contempt Petition No : 35 /2010 in O.A. No. 41/2009
5. Review Application No : -----/2010 in O.A. No.-----
6. Execution Petition No : -----/2010 in O.A. No.-----

Applicant (S) : Sri Punu Sharma

Respondent (S) : Liben. Bikram Singh & Anr.

Advocate for the : Mr. A. Ahmed, Ms. J. Dutta  
(Applicant (S))

Advocate for the : CSEC  
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<p>This cp. is filed by Mr. A. Ahmed, Adv. on behalf of the applicant, praying for non- compliance for judgment of order Dtd- 21-01-2010/bb/ passed in OA. 41/2009.</p> <p>Laid before The High Court for favous order.</p> <p><u>8/10/2010</u> <u>14-10-2010</u></p> <p><u>Section Officer (J)</u></p> <p><u>10-10-2010</u></p>	<p>05.10.2010</p> <p>28.10.2010.</p>	<p>Being Division Bench matter, list on 28.10.2010.</p> <p> (Mukesh Kumar Gupta) Member (J)</p>

28.10.2010 Mr A. Ahmed, learned counsel for applicant contends that direction contained vide order dated 21.01.2010 in O.A.No.41/2009 has not been complied with willfully and deliberately despite extension of time to comply the same vide order dated 30.08.2010. On our query, it is stated that Mr A. Ahmed that no steps have been taken even after expiry of aforesaid time limit. Thus, *prima facie* contempt is made out against respondent No.2.

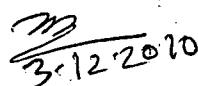
Notice, for the time being, to respondent No.2 returnable on 06.12.2010. Personal appearance is dispensed with for the time being.

List on 06.12.2010.

  
(Madan Kumar Chaturvedi)  
Member (A)

  
(Mukesh Kumar Gupta)  
Member (J)

Notice duly served  
on R.No - 2.

  
3.12.2010

nkm

06.12.2010 Place it before the Division Bench at the earliest possible date.

Adjourned sine die.

  
(Madan Kumar Chaturvedi)  
Member (A)

/pg/

19.05.2011 Mr.A.Ahmed, learned counsel on behalf of the applicant is present.

The order dated 21.01.2010 in O.A. No.41/2009 has not been complied with till date nor stay of the execution of the said order has been obtained by the Hon'ble High Court in WP(C) No.6263/2010.

In order to comply with the order and of to obtain a stay we are inclined to give some more time to the respondents and adjourn the matter to 15.06.2011, failing which appropriate action in accordance with law will be taken.

14-6-11  
Compliance Report  
has been filed by  
the Respondent at page  
No. 18 - 20

29.6.11  
order copy of 19.5.11  
issued to the Respondent  
No. 2 vide No. 899  
Dtd. 29.6.11

gbs.

  
M.K. Chaturvedi

(N.A.B.M.)

CP 35/2010(OA.41/2009)

15.06.2011

Place it before the Division Bench at the

earliest possible date. Adjourned sine die.

  
(Madan Kumar Chaturvedi)  
Member (A)

/bb/

09.09.2011

By this petition under Section 17 of the Administrative Tribunals Act, 1985, petitioner alleges contempt against the respondents for not complying the judgment and order dated 21.01.2010 passed by this Tribunal in OA No.41/2009.

13.9.11  
Final Order dtd. 9.9.11  
issued to the  
Parties vide NO.  
1422-24 dtd. 15/9/11

At the time of hearing, Mr.A.Ahmed, learned counsel for the petitioner appeared and placed before us the judgment and order of the Hon'ble High Court in WP(C) No.6263/2010 dated 10.08.2011. It was submitted by the learned counsel that by the said order Hon'ble High Court directed the respondents to find out ways and means to identify a vacancy commensurate to the petitioner's eligibility and accommodate him in implementation of the impugned order of this Tribunal to the above effect within a period of six weeks from the date of the <sup>service of</sup> certified copy of the said order. It was submitted that certified copy was received on 23.08.2011. As such, six weeks' time has not expired as yet. Therefore, this contempt fails.

In the result, CP stands dismissed as premature. Notice is discharged.

  
(S.K. Kaushik)  
Member (J)

/bb/

  
(M. K. Chaturvedi)  
Member (A)

**THE GAUHATI HIGH COURT AT GUWAHATI**

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

**PRINCIPAL SEAT AT GUWAHATI**

Page No. 1

**CASE NO : WP(C) 6263/2010****District : Kamrup****Category : 10057 (Order of the Appellate or Revisional authority.)**

1 THE UNION OF INDIA  
 REP. BY I.P.S. WALIA, COL., OFFICER COMMANDING  
 NO.1 ADV. BASE STATIONERY DEPOT, NARENGI, C/O  
 99 APO.

**Petitioner/appellant/applicant****Versus**

1 PUNA SHARMA  
 S/O LT. HARI PRASAD SHARMA [EX-EMPLOYEE OF  
 NO.1 ADV. BASE STATIONERY DEPT, NARENGI], R/O  
 COCHPARA, PO. SATGAON, DIST. KAMRUP, ASSAM

**Respondent/Opp. Party****Advocates on record for Petitioner/ap**

1 MR. M BHAGABATI

**Advocates on record for Respondents**

1 MR. A AHMED  
 2 MR. I F ALI  
 3 MS. J DUTTA

**Summary Of Case And Prayer In Brief****CERTIFIED COPY OF JUDGEMENT / ORDER**

DATE OF FILING APPLICATION	DATE WHEN COPY WAS READY	DATE OF DELIVERY
11/08/2011	16/08/2011	16/08/2011

**BEFORE**

**HON'BLE MR JUSTICE AMITAVA ROY**  
**HON'BLE MR JUSTICE P.K.MUSAHARY**

**DATE OF ORDER : 10/08/2011**

(Amitava Roy,J)

The subject matter of challenge in the instant petition is the judgment and order dated 21.1.2010 rendered by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati ( hereafter after referred to as the 'Tribunal') in O.A. No.41/2009.

The backdrop of facts in short is that, the respondent after the demise of his father, Hari Prasad Sharma who died in harness while serving in the Army as a Watchman under No.1 Advance Stationary Depot, Narengi, Assam, applied for such post in terms of the existing policy of "Appointment on compassionate ground" of the appellants in relaxation to the normal Rules. His candidature was examined along with other

candidates in a selection process held on 20.1.2001 and 31.1.2001 and though he seemed to had scored 45 marks on a comparative assessment of his performance with other contenders, he was denied such appointment. The respondent participated in other selection processes that followed on 25/5/2001 and 1.11.2001 and scored 63 and 65 marks respectively. On the same analogy, as the respondent could not display the required level of performance, the compassionate appointment was not accorded to him. Situated thus, he approached this Court with WP( C) No.2103/2005 which was disposed of on 8.10.2007. It transpired from the pleadings laid by the parties and the deliberations that followed that the appellants had awarded 45 marks to the Respondent by adopting a methodology in deviation from one uniformly applied to others. This Court recorded that on the basis of the parameter accepted for the purpose, he was entitled to be awarded 65 marks. The appellants herein were directed to consider the case of the respondent afresh by accepting his marks to be 65 for the relief under the scheme and guidelines provided for selection of candidates for appointment in Group-D posts on compassionate ground.

*Bhagawati*  
*PP*

The appellants in purported deference to this direction of this Court reconsidered the case of the respondent along with other candidates in a fresh selection process by considering him to have scored 65 marks and denied appointment to him for not being able to come within the zone of the selected candidates for appointment to the post.

Being dissatisfied, the respondent approached the learned Tribunal which, by the impugned judgment and order has directed the appellants to appoint him within a time frame of two months . The orders impugned in the Original Application were set aside.

Mr Bhagawati has urged that as the respondent did not qualify on the basis of 65 marks on a comparative evaluation of the performance of the other candidates, the aforementioned direction of the learned Tribunal is palpably illegal and ought to be interfered with. As the case of the respondent has been considered in terms of the judgment and order of this Court, the learned Tribunal ought not to have directed his appointment in the facts and circumstances of the case.

Mr Ahmed, on the other hand, has argued that the consideration of the case of the respondent not being in consonance with the letter and spirit of the judgment and order dated 8.10.2007 passed by this Court in WP( C) No.2103/2005, the direction of the learned 'Tribunal cannot be faulted with.

Upon hearing the learned counsel for the parties and on a consideration of the pleaded facts and the directions contained in the judgment and order

dated 8.10.2007 as aforementioned, we are inclined to agree with the plea raised on behalf of the respondent. Reading between the lines, the judgment and order dated 8.10.2007 does not suggest a fresh consideration of the respondent along with other candidates in a new selection process. This Court while issuing direction for fresh consideration of the respondent was conscious of the fact that in the first selection process the last candidate who had been provided with compassionate appointment had scored 64 marks i.e. one less than that was awarded to the respondent. The fresh consideration was intended to be on the basis of 65 marks vis a vis, the first selection process and the posts involved therein.

In the above view of the matter, having regard to the method of consideration of the case of the respondent adopted by the appellants as is apparent on the face of the records, determination of the learned Tribunal as recorded in the impugned judgment and order is unassailable.

Mr Bhagawati has submitted on instructions that all vacancies identified for compassionate appointment in the first selection process have since been filled up and that there is no post to accommodate the respondent even on the basis of his marks as on date.

It is a matter of record that the judgment and order dated 8.10.2007 passed by this Court in WP ( C ) No.2103/2005 has remained un-assailed as on date and therefore has attained finality. It is noticeable as well that the candidates who had scored 64 marks in the first selection has not been made party in the instant petition or in the proceeding before the learned Tribunal.

In the above view of the matter, while upholding the direction of the learned Tribunal to appoint the respondent, we make it clear that the appellants would find out the ways and means to identify a vacancy commensurate to the respondent's eligibility and accommodate him in implementation of the impugned order of the learned Tribunal to the above effect and affirmed by us. This should be done within a period of six(6) weeks from the date of receipt of the certified copy of this order.

The petition stands disposed in the above terms. No costs.

Sd/- P.K. Musahary Sd/- Amitava Roy  
Judge Judge

Sl. No. 174513  
Dt. 11.08.2011

Certified to be true copy

..... Swagata Saha .....

Date 16/08/2011

Asstt. Registrar (Copying Section)

Gauhati High Court

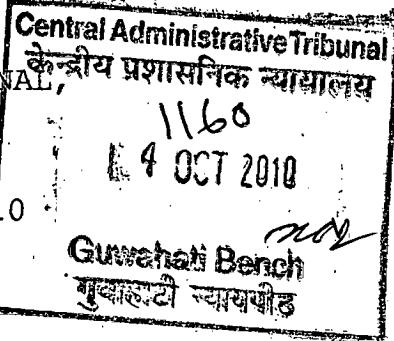
Authorised 11/8/76, Act 1, 1872

2011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI.

CONTEMPT PETITION NO. 35 OF 2010

IN ORIGINAL APPLICATION NO. 41 OF 2009



Shri Punu Sharma

..... Petitioner

-Versus-

Lt. General Bikram Singh & another

..... Respondents

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Filed by

*Sir*  
Advocate (Adv. AHMED)  
04.10.2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI.

CONTEMPT PETITION NO.

OF 2010

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

IN ORIGINAL APPLICATION NO. 41 OF 2009

4 OCT 2010

IN THE MATTER OF:-

A Petition under Section 17 of the central  
Administrative Tribunal Act, 1985 praying for  
punishment of the Contemnors/Respondents for  
non-compliance of judgment and order dated  
21.01.2010 passed by this Hon'ble Tribunal in  
O.A. No.41 of 2009.

-AND-

IN THE MATTER OF:-

O.A. No.41 of 2009

Shri Punu Sharma

Applicant

-Versus-

The Union of India & Others

Respondents

-AND-

IN THE MATTER OF:-

Shri Punu Sharma  
Son of late Hari Prasad Sharma  
Ex-Watchman  
Office of the Officer Commanding  
No.1, Adv. Base Stationary Depot  
Narengi.  
Permanent resident of  
Village- Kochpara  
Post Office- Satgaon  
District- Kamrup (Metro),  
Assam, Pin code- 781027.

.....Applicant/Petitioner

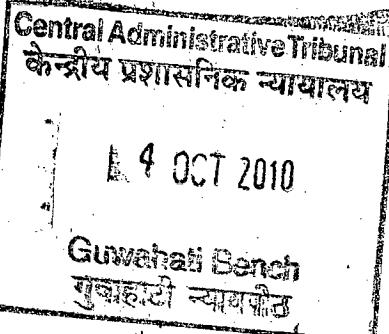
-Versus-

1] Lt. General Bikram Singh  
Commander  
Head Quarter, Army Ordnance Corps  
Fort William, Kolkata  
Pin-700021.

Punu Sharma

Filed by 187  
Shri Punu Sharma  
Petitioner  
for J.I.L.

(Adv. AHMED)  
Advocate 04.10.2010



2] Col. I.P.S. Walia  
Officer Commanding  
No.1 Adv. Base Stationary Depot  
Narengi, C/O 99 A.P.O.

Respondents/  
Contemnors

The humble Petition of the above named  
Petitioner:

MOST RESPECTFULLY SHEWETH:

- 1] That Applicant/Petitioner had filed an Original Application No.41 of 2009 before this Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati against the impugned letter No.322/PS/CC/Adm (Civ) dated 04.02.2008 as well as Speaking Order dated 14.03.2008 whereby Respondent No.3 has rejected his claim for appointment in any Group 'D' post under compassionate ground Scheme.
- 2] That on 21.01.2010 this Hon'ble Tribunal heard both parties of Original Application No.41 of 2009 and was pleased to allow the aforesaid Original Application by quashing and setting aside the impugned letter dated 04.02.2008 as well as order dated 14.03.2008. This Hon'ble Tribunal directed the Respondents to appoint Applicant/Petitioner within 4 (four) months by taking appropriate steps.

Copy of the order dated 21.01.2010 passed in O.A. No.41 of 2009 is annexed herewith and marked as Annexure-1.

- 3] It is to be stated that the Respondents/Contemnors did not complied the order dated 21.01.2010 passed in O.A. No.41 of 2009 within the 4(four) months as directed by this Hon'ble Tribunal. Therefore, earlier Applicant/Petitioner had approached this Hon'ble Tribunal by Contempt Petition No.19 of 2010. In meanwhile, Respondents filed a Miscellaneous Application praying for extension of time before this Hon'ble Tribunal for implementation of the order dated 21.01.2010 passed in O.A. No. 41 of 2009. This Hon'ble Tribunal was pleased to grant time to the Respondents for implementation of order dated 21.01.2010

Puni Shewma

4 OCT 2010

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

passed in O.A. No.41 of 2009 till 15.08.2010. On the aforesaid circumstance the Petitioner withdraw his Contempt Petition No.19 of 2010 on 04.06.2010 which was pending before this Hon'ble Tribunal. After expiry of aforesaid period i.e. till 15.08.2010, the Respondents again approached this Hon'ble Tribunal by Miscellaneous Petition No.143 of 2010 for seeking extension of further time for implementation of the order dated 21.01.2010 passed in O.A. No.41 of 2009. Simultaneously, Applicant/Petitioner had also approached this Hon'ble Tribunal by Contempt Petition No.31 of 2010 for willful disobedience of the Order dated 21.01.2010 in O.A. No.41 of 2009. This Hon'ble Tribunal by order dated 30.08.2010 in Misc. Petition No. 143 of 2010 in the interest of justice extended time to the Respondents for implementation of the order dated 21.01.2010 up to 30.09.2010, it was made clear that no further request on this aspect will be entertain particularly when Applicant has been denied compassionate appointment for almost a decade. For the aforesaid reason Counsel of Applicant also did not press his Contempt Petition No. 31 of 2010 in O.A. No. 41 of 2009.

Copy of the Order dated 30.08.2010 passed in Misc. Petition No.143 of 2010 is annexed herewith and marked as Annexure-2.

Copy of the Order dated 30.08.2010 passed in Contempt Petition No. 31 of 2010 is annexed herewith and marked as Annexure-3.

4] That Applicant/Petitioner state that the extended time for implementation of the order dated 21.01.2010 passed in O.A. No.41 of 2009 has already been expired on 30.09.2010. But till date Respondents/Contemnors have not appointed the Petitioner on compassionate basis under them nor they have taken any steps for implementation of the judgment and order dated 21.01.2010 passed in O.A. No. 41 of 2009. As such, Applicant/Petitioner is compelled to approach again before this Hon'ble Tribunal by this Contempt Petition for willful and deliberate violation of this Hon'ble Tribunal order dated 21.01.2010 passed in O.A.NO 41 of 2009 by the Respondents/Contemnors.

Punu Sharma

5] That Applicant/Petitioner submits the Respondents/Contemnors have again and again willfully and deliberately shown disrespect disregard and disobedience to this Hon'ble Tribunal by not implementing order dated 21.01.2010 passed in O.A.NO 41 of 2009. The Respondents/Contemnors deliberately with a motive behind have not implemented this Hon'ble Tribunal Judgment and Order dated 21.01.2010 passed in O.A. No.41 of 2009. Hence, the Respondents/Contemnors deserve punishment from this Hon'ble Tribunal. It is a fit case wherein your Lordships may be pleased to direct the Respondents/Contemnors to appear before this Hon'ble Tribunal to explain as to why they have shown disrespect to this Hon'ble Tribunal.

6] That this Petition is filed bona fide to secure the ends of justice.

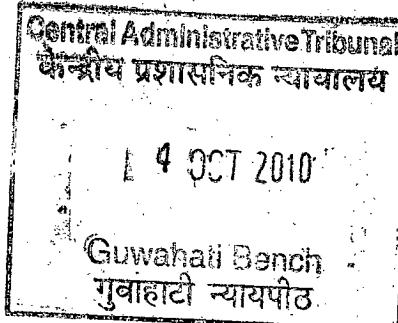
In the premises, it is, most humbly and respectfully prayed that your Lordships may be pleased to admit this Petition and issue Contempt notice to the Respondents/Contemnors to show cause as to why they should not be punished under Section 17 of the Central Administrative Tribunal Act, 1985 or pass such any other order or orders as this Hon'ble Tribunal may deem fit and proper.

Further, it is also prayed that in view of the deliberate disrespect and disobedience to this Hon'ble Tribunal order dated 21.01.2010 passed in O.A. No.41 of 2009, the Respondents/Contemnors may be asked to appear in persons before this Hon'ble Tribunal to explain as to why they should not be punished under the contempt of Court proceeding.

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

...Draft Charge

Ram Sharma



**-DRAFT CHARGE-**

The Applicant/Petitioner aggrieved for non-compliance of Judgment and Order dated 21.01.2010 passed by this Hon'ble Tribunal in O.A. No.41 of 2009. The Contemnors/Respondents have willfully and deliberately violated this Hon'ble Tribunal Judgment and Order dated 21.01.2010 passed in O.A. No.41 of 2009 by not appointing the Applicant/Petitioner in any Group 'D' post on compassionate basis. Accordingly, the Respondents/Contemnors are liable for prosecution under the Contempt of Court Act. 1971 proceedings and severe punishment thereof as provided and also to appear in persons before this Hon'ble Tribunal to reply the charges leveled against them.

Purni Sharma

4 OCT 2010

Guwahati Bench  
गुवाहाटी न्यायालय

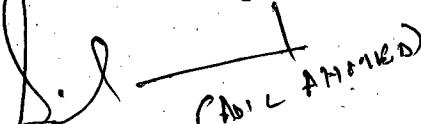
- AFFIDAVIT -

I, Shri Punu Sharma, aged about 27 years, Son of Late Hari Prasad Sharma, Ex-Watchman in the Office of the Officer Commanding, No.1, Adv. Base Stationary Depot, Narengi, Permanent resident of Village- Kochpara, P.O.- Satgaon, under Kamrup (Metro) District, Assam, PIN-781027, do hereby solemnly affirm and state as follows:-

1. That I am the Applicant of O.A. No.41 of 2009 and also Petitioner of the instant Contempt Petition and as such I am fully acquainted with the facts and circumstances of the case and I do hereby swear this Affidavit as follows:-
2. That the statements made in paragraph Nos. 1, 3 (Partly), 4 of the Contempt Petition are true to my knowledge those made in paragraph Nos. 2, 3 (Partly) of the Petition being matters of records are true to my information which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

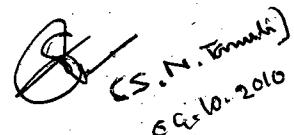
And I put my hand hereunto this Affidavit on this 09<sup>th</sup> day of October 2010.

Identified by me:

  
Adil Ahmed  
Advocate

Punu Sharma  
DEPONENT

Solemnly affirmed before me by the Deponent who is identified by Adil Ahmed Advocate.

  
CS. N. Tamuli  
6 Oct. 2010

CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH:

Original Application No.41 of 2009

Date of Decision: This, the 21<sup>st</sup> day of January 2010.

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

HON'BLE MR. MADAN KUMAR CHATURVEDI, MEMBER (A)

Sri Punu Sharma  
Son of Late Hari Prasad Sharma  
Ex-Watchman  
Office of the Officer Commanding  
No.1, Adv. Base Stationary Depot  
Narengi.

Permanent resident of  
Village - Kochpara  
P.O. - Satgaon  
Dist- Kamrup, Assam  
Pin - 781027

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

4 OCT 2010

Guwahati Bench  
গুৱাহাটী ন্যায়পাল

...Applicant

By Advocate: Mr. Adil Ahmed

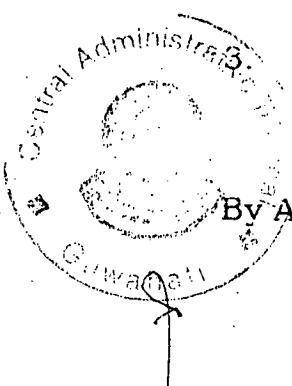
-Versus-

1. The Union of India  
Represented by the Secretary  
to Government of India  
Ministry of Defence, South Block  
New Delhi, Pin - 110011.
2. The Commander  
Head Quarter, Army Ordnance Corps  
Fort William, Kolkata  
Pin - 700 021.

The Officer Commanding  
No. 1 Adv. Base Stationary Depot  
Narengi, C/O A.P.O.

...Respondents

By Advocate: Mr. M.U. Ahmed, Addl. CGSC.



\*\*\*\*\*

ATTESTED  
ADVOCAATE

ORDER (ORAL)

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

14 OCT 2010

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

Gauhati Bench

Sri Punu Sharma

In this second round of litigation, Sri Punu Sharma challenges communication dated 4<sup>th</sup> February, 2008 as well as speaking order dated 14<sup>th</sup> March, 2008 (Annexure - 9 & Annexure - 10 respectively) rejecting his claim for appointment on compassionate basis.

2. The facts in a nutshell are Hari Prasad Sharma, Watchman in the office of the Officer Commanding, No. 1 Adv. Base Stationery Depot, Narengi, died in harness on 04.06.2000. Applicant being a dependent, applied for such a post on compassionate ground on 19.09.2000. He was considered for such claim. Vide communication dated 22.01.2002 he was conveyed that he was considered for employment in relaxation to normal rules on three occasions but he was not selected due to limited number of vacancies. Similar communication was made on 10<sup>th</sup> May, 2002. In such circumstances, he approached Hon'ble Gauhati High Court by way of filing Writ Petition (C) No. 2103 of 2005.

3. His claim was contested by the Respondents stating that he was considered for three times but he could not come within the zone of appointment and as such he could not be appointed. Hon'ble High Court disposed of said Writ Petition vide order dated 08.10.2007 noticing that the scheme formulated by Respondent's had also a specific provision for allotment of marks under certain head such as (a) Family Pension; (b) Terminal benefits; (c) Monthly Income of earning member (d) income from property; (d) Movable/Immovable Property; (e) No. of dependants; (f) No. of unmarried daughters; (g) Number of minor Children & (h) Left over Service.

ATTESTED  
ADVOCATE

4 OCT 2010

O.A. No. 41 of 2009

4. Taking in totality, the marks so fixed and allotted to the candidates, their cases are considered on individual merit and the candidates getting higher marks are preferred first, considering the availability of vacant post.

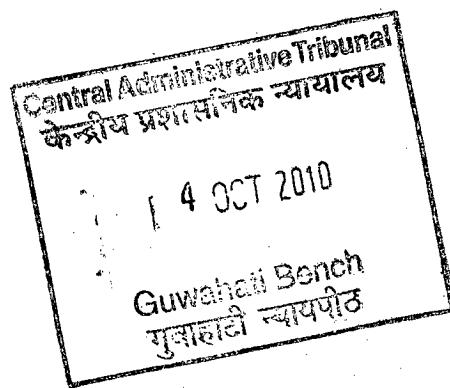
5. On examination of the records provided by the Respondents, having considered for three occasions along with other candidates the Hon'ble High Court observed that his case was examined by Selection Board on 20-31 January, 2001 and he was awarded 45 marks and the candidate appointed had been awarded 64 marks. On second occasion, the matter was considered on 25.05.2001, wherein he was awarded 63 marks. Third consideration was made on 01.11.2001, wherein he was awarded 65 marks, in total.

6. The grievance of the applicant was that he ought to had been awarded 65 marks on the first occasion. Accepting said contention raised by the applicant & based on the records produced, the Hon'ble High Court concluded that on the third consideration he was awarded 65 marks, based on criteria set for such appointment which should have been awarded on first occasion itself, and taking note of the number of vacancies at the relevant time, he was entitled for 65 marks making him eligible for appointment as the person appointed on first occasion had secured 64 marks. Hon'ble High Court further observed that the authorities had committed error in the decision making process and his case was required to be considered afresh, accepting his marks as 65, he should be entitled to all consequential reliefs. The directions and observations made by Hon'ble High Court reads thus:

"9. From the counter affidavit the stand taken by the respondents it is found that the petitioner not having obtained higher marks than the other

ATTES.  
ADVOCATE

appointed candidate, he could not be accommodated. From the record submitted by the department it is seen that the petitioner was not recommended on the first consideration for getting 45 marks. The petitioner as indicated above, was entitled, and in fact later on provided with 65 marks. Thus the marks obtained by the petitioner is higher than the criteria set for such appointment and taking note of the number of vacancies at the relevant time which is 64 marks, the petitioner was entitled for appointment.



10. The above discussion makes it clear that the authorities have committed error in the decision making process and as such the petitioner's case is required to be considered afresh accepting his marks as 65 to which he was found to be entitled under the scheme and guidelines provided for selection of candidates for appointment in Group - D posts under compassionate ground.

11. In that view of the matter, the case is remanded to the authorities to take such appropriate decision in accordance with law within the period of 2 (two) months from the date of receipt of a certified copy of this order."

(emphasis supplied)

7. In purported compliance of aforesaid direction, applicant's case was considered once again by the Selection Committee which considered as many as 611 candidates. Minutes of the said Committee, meeting of which was held on 17 and 18 January, 2008 was placed before this Tribunal, wherein applicant's name figure at serial No. 171 and he was allowed 65 marks. Thereafter, impugned orders were passed rejecting his claim.

8. The contentions raised by the Applicant is that the competent authority committed a procedural mistake in assessing him on first consideration, which has also been the explicit finding, so recorded by Hon'ble High Court which decision has attained finality. His case ought to have been reviewed as it was considered for the first time. In the peculiar facts and circumstances of the present case as observed by

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4 OCT 2010

O.A. No. 41 of 2009

Hon'ble High Court, the applicant was Entitled to 65 marks, which should have been taken as if obtained by him on the very first occasion and, therefore, the entire action ought to have been reviewed. It was vehemently urged that such course of action has not been followed and therefore the speaking order dated 14<sup>th</sup> March 2008 as well as communication dated 4<sup>th</sup> February 2008 rejecting his claim being perverse in nature are liable to be declared null and void. It was emphasized that he cannot be made to be penalized by the mistake committed on the part of Respondents in not considering him appropriately.

9. Mr. Adil Ahmed, learned counsel for applicant further urged that as revealed by the minutes of Board Officers Meeting held on 17 and 18 January, 2008, he was considered along with as many as 611 candidates, which course of action was not justified. What ought to have been done was that the proceedings of first consideration should have been reviewed and he was not liable to be considered along with those who became eligible subsequently in the year 2008. The consideration made by the committee in its meeting held on 17 and 18 January 2008 was a farce and mere consideration and not fair and just consideration.

10. Contesting the claim laid by applicant and by filing reply, it was stated that applicant's case had been considered on 4 occasions. Normally a candidate is considered for 3 times. Basically the consideration made on 4 time was in transgression of Respondent's policy on the said subject which provides maximum consideration for three years. If certain peculiar illegalities were committed, the same will not give him any cause of action, emphasized Sri M.U. Ahmed, learned Addl. CGSC for Respondents. Allegations of malafide, arbitrariness and

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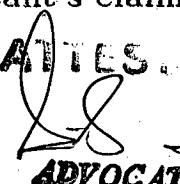
Guwahati Bench

illegality etc. were denied. Vide reply para 14, it was stated that he was considered on 4 occasions "giving due importance of Hon'ble High Court order even after time barred of the case after a gap of number of years, i.e. from 2000."

11. We have heard Mr. Adil Ahmed, learned counsel appearing for applicant and Mr. M.U. Ahmed, learned Addl. CGSC for Respondents.

12. We have heard this matter at certain length besides perusing the minutes of the Board of Selection Committee meeting held on 17 and 18 January 2008, which no doubt considered the applicant pursuant to directions of Hon'ble High Court. The question which arises for consideration is whether Hon'ble High Court's directions have been considered in its right perspective or this was "mere" consideration.

13. At the outset we may observe that the plea of time barred case cannot be raised when there is specific direction of Hon'ble High Court to reconsider his claims. On examination of matter with reference to records produced, we may note that matter was remanded to the respondents to take appropriate decision in accordance with law. Ultimately prior to it, Hon'ble High Court made a categorical finding that the authorities had committed error in the decision making process and as such his case was required to be considered afresh "accepting his marks as 65 to which he was found to be entitled under the scheme and guidelines." Such observations ex-facie indicates and reveals that basically his case ought to have been reviewed. The marks obtained by him namely 65 ought to have been recorded by Respondents as of 1<sup>st</sup> consideration, particularly when finding rendered on said aspect by Hon'ble High Court has attained finality. The Respondents were not expected to consider the applicant's claim along with 611 candidates, as

  
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done by them, who became eligible much subsequently. It was merely required to review the first consideration taking his marks as 65 and thereafter expected to regulate the other decision, which in fact, has not been done. It is an undisputed fact that the person who had secured 64 marks on such first consideration, had been appointed. That being the case, applicant claimed ought to have been regulated by taking appropriate steps. It is well settled law that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. Law courts will lose their efficacy if they cannot possibly respond to the need of the society – technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system-affectation of the people has been taken note of rather seriously and the judicial

concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages

See (2001) 8 SCC 151 M.S. Grewal and Another Vs. Deep Chand Sood and Ors.]

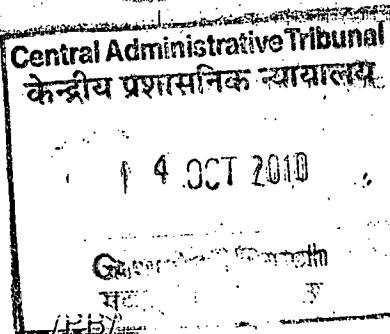
14. We may note another disturbing feature of the case namely the contentions raised by Respondents that reconsidering him amounts to transgression of policy on the said subject. We may observe that Hon'ble High Court's Judgment rendered in W.P. (C) No. 2103/2005 dated 08.10.2007 has not been appealed by Union of India before any higher court and as such attained finality. In such circumstances the Respondents are restrained from making any observations on said

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aspect. It is not expected from the State to use such harsh & derogatory language against court judgment. Having accepted the judgment, they are bound by it and directions issued therein have to be complied with with respect.

15. Taking a cumulative view of the matter, we hold that if the Respondents had undertaken review of first consideration, and as already observed by Hon'ble High Court, he was entitled to and in fact later provided 65 marks. he was entitled to appointment on compassionate basis. A person who was least meritorious and having scored only 64 marks was appointed. In such circumstances O.A. is allowed. Impugned orders dated 4<sup>th</sup> February 2008 as well as 14<sup>th</sup> March 2008 are quashed and set aside. Respondents are directed to appoint him within 4 (four) months by taking appropriate steps. Normally this Tribunal would not have issued a direction straight away to the Respondents to appoint him but keeping in view the peculiar facts of the present case as well as law noticed & narrated herein above, in order to do justice to the person concerned who have been made to run from pillar to post, issuing such directions become imperative.

Thus O.A. stands allowed in above terms. No costs.



Date of Application : 15.3.2010 Sd/- M.K.Gupta  
Date on which copy is ready : 15.3.2010 Member (J)  
Date on which copy is delivered : 15.3.2010 Sd/- M.K.Chaturvedi  
Certified to be true copy Member (A)

Section Officer (Judi) 15.3.2010  
C. A. T. Guwahati Bench  
Guwahati 15.3.2010  
K. S. 15.3.2010

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FORM NO. T  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:  
ORDERS EDT

ANNEXURE - 2

(a)

1. ORIGINAL APPLICATION No. .... /2009  
 2. Transfer Application No. .... /2009 in O.A. No. ....  
 3. Misc. Petition No. .... /2009 in O.A. No. .... (O.A. 11/2009)  
 4. Contempt Petition No. .... /2009 in O.A. No. ....  
 5. Review Application No. .... /2009 in O.A. No. ....  
 6. Execution Petition No. .... /2009 in O.A. No. ....  
 Applicant (S) : *Union of India & Ors*  
 Respondent (S) : *Sri Purna Sharma*  
 Advocate for the  
(Applicant (S)) : *Mr. M. U. Ahmed, Addl. Cols.*  
 Advocate for the  
(Respondent (S)) : *Mr. A. Ahmed*

Notes of the Registry

Date

Order of the Tribunal

30.08.2010

Mr. M.U.Ahmed, learned counsel for  
Misc. petitioners and Mr.A.Ahmed, learned  
counsel for opposite party (original applicant).

This is the second time when  
respondents have filed application seeking  
extension of time. Initially, OA No.41/2009 was  
allowed vide order dated 21.01.2010 requiring  
the applicant to appoint on compassionate  
ground within four months. Since, within said  
time limit, adequate steps were not taken, on  
prayer made vide MA No.95/2010, time was  
extended upto 15.08.2010. Vide present MA,  
respondents have again sought two months  
time "to complete the official formalities  
towards implementation of the judgment and  
order dated 21.1.2010 passed in O.A.  
No.41/2009", which request has been opposed  
by respondent (original applicant in OA). We  
may note that the respondents have not  
elaborated the status of the case, vide present  
MA.

Confd..

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MA 143/2010 (OA 41-2009)

Contd.  
30.08.2010

On overall consideration of the matter, and in the interest of justice, time is extended upto 30.09.2010. It is made clear that no further request on this aspect will be entertained, particularly when applicant has been denied compassionate appointment for almost a decade.

MA is disposed of.

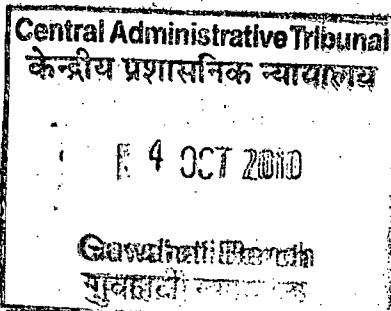
Sd/- M.K.Gupta  
Member (J)  
Sd/-M.K.Chaturvedi  
Member (A)

Memo No :- 323-511

Dated:- 20-9-2010

Copy for information and necessary action to:-

1. Sri Luru S. Rao, Son of Dr. L. S. Rao & Sharmi Ex. Captain of Officer, Office of the Commanding No. 1. Adv. Base Stationary Depot, Morongi, Permanent residence of Vill. Kochapara  
Dist. Kamrup Assam Pin-781027
2. The Union of India. Represented by the Secretary to the Government of India, Ministry of Defence, South Block, New Delhi-110011
3. The Commander, Head Quarter, Army Ordnance Corps, Fort William, Kolkata, Pin- 700021
4. The Officer Commanding No. 1. Adv. Base Stationary Depot Morongi C/o 99 APO



14.9.2010  
(S.K. Das)  
SECTION OFFICER (JUL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GAUHATI BENCH

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FORM NO. 4 -17-  
(See Rule 18)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:  
ORDERS UNIT

ANNEXURE-3

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ORIGINAL APPLICATION No. 41/2009

1. Transfer Application No. 41/2009 in O.A. No. 41/2009  
 2. Misc. Petition No. 1/2009 in O.A. No. 31/2010  
 3. Contempt Petition No. 31/2010 in O.A. No. 41/2009  
 4. Review Application No. 1/2009 in O.A. No. 31/2010  
 5. Execution Petition No. 1/2009 in O.A. No. 41/2009

Applicant (S) : Shri Dulmu Sharma

Respondent (S) : Lt. Gen. B.K. Singh

Advocate for the  
(Applicant (S)) : Adv. A. Ahmed  
Ms. J. Datta

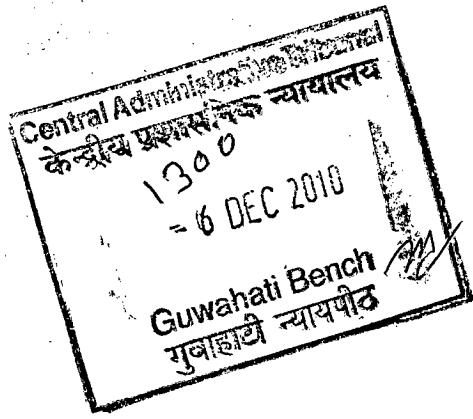
Advocate for the  
(Respondent (S))

Notice of the Registry	Date	Order of the Tribunal
Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय 4 OCT 2010	30.08.2010	<p>CP No.31/2010 has been filed by applicant alleging willful disobedience of the order dated 21.01.2010 in O.A No.41/2009.</p> <p>As time has already been extended to comply with directions contained in aforesaid order, vide separate order of even date in MA 143/2010. Mr.A.Ahmed, learned counsel for applicant does not press the CP for the time being. Ordered accordingly.</p>

Sd/- M.K.Gupta  
Member (J)  
Sd/-M.K.Chaturvedi  
Member (A)

JKW  
14.9.2010  
VERIFIED  
ADVOCATE

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH



Contempt Petition No 35/2010  
Arising out of O.A. 41/2009

Shri Punu Sharma

..... Petitioner

-Vs-

(1) Lt Gen Bikram Singh

(2) Col IPS Walia

..... Respondent/Alleged  
Contemnor

I Col IPS Walia, Officer Commanding No 1  
Advance Base Stationery Depot, C/O 99 APO  
aged about 50 Years do hereby solemnly  
affirm and state as follows.

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

Contd...P/2

Col  
Officer Commanding  
No 1 Adv Base SLY Depot

16/12/ - Mr. U. Ahmed  
Case No. 128

5 DEC 2010

Guwahati Bench  
vide গুৱাহাটী চৰকাৰী চায়পোঠ

2). That the Hon'ble Tribunal judgement order dated 21-01-2010 directed the Respondent to appoint the Applicant within 4 months by taking appropriate steps. In order to comply the aforesaid direction this respondent , immediately took the appropriate steps before the higher authority having power to do the same. But the Higher authority after sincere consideration had decided to prefer an appeal before the Hon'ble High Court . And as such as per direction of IHQ of Ministry of Defence (Army) vide letter No-A/24302/18/PS/OS-8C(II) dt 23 Sep 2010 an appeal has been filed before the Hon'ble High Court vide WP(C) No – 6263/2010 dt 12-10-2010 .The copy of the said WP(C) was sent to Sri Punu Sharma , the applicant for his information.

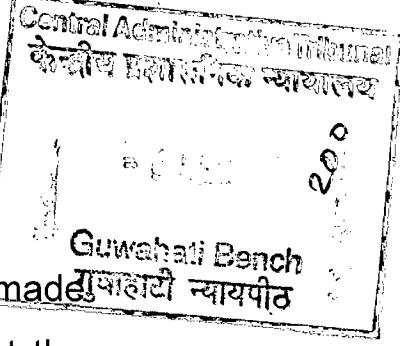
Further, it is under compulsion not wilful to cause any delay for any other purpose but to meet the procedural requirement of the depot/Govt.

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

Contd...P/3

  
(IPS Walia)

Col  
Officer Commanding  
No 1 Atv Base Shy Depot



In view of the facts and submission made hereinabove, it is more respectfully prayed that the contempt petition be dismissed or kept alliance till disposal of WP(C) No 6263/2010 and replying respondents be discharged from the notice under reply to meet the ends of Justice.

  
(IPS Walia)  
Col  
Officer Commanding  
No 1 Adv Base Stry Depot

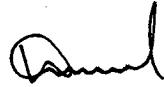
21  
AFFIDAVIT

I, Col IPS Walia, Officer Commanding No 1 Advance Base Stationery Depot, C/O 99 APO aged 50 Years, do hereby solemnly affirm and state as follows :-

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

That the statement made in Para 1 to 3 of the affidavit are true to my knowledge, belief and information based on the records.

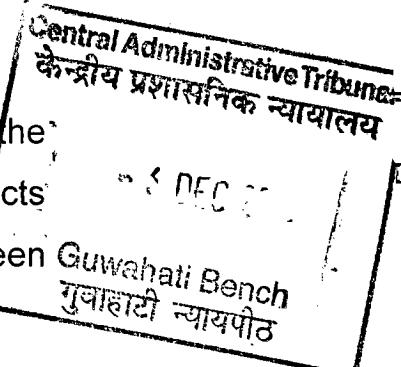
And sign the affidavit/report on the 6<sup>th</sup> day of Dec 2010 at Guwahati.

  
Deponent  
(IPS Walia)  
Col  
Officer Commanding  
No 1 Adv Base Sty Depot

Identified by

  
(Advocate)

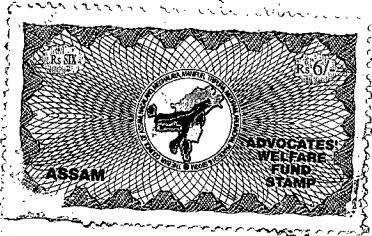
Solemnly affirm and declare  
before me by the deponent  
who is identified by M. H. Ahu  
Advocate at Guwahati on  
06<sup>th</sup> day of Dec 2010



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## MEMORANDUM OF APPEARANCE

Date : .....6/12/10



To,

**The Registrar**

Central Administrative Tribunal  
Bhangagarh, Rajgarh Road,  
Guwahati.

**IN THE MATTER OF :**

C.P. ~~CA.~~ No. 35 of 2000 (In OA-91/09)

Purna Sharone

----- Applicant

- Vs -

**Union of India & Others**

----- Respondents

I, M. U. Ahmed, Addl. Central Govt. Standing Counsel, Central Administrative Tribunal, Guwahati, hereby enter appearance on behalf of the Union of India & Respondents Nos. \_\_\_\_\_ in the above case. My name may kindly be noted as Counsel and shown as Counsel for the Respondent/s.

  
**(Motin Ud-Din Ahmed)**  
Addl. C.G.S.C.