

203

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

1. ORIGINAL APPLICATION No : ----- / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
- ✓ 4. Contempt Petition No : 31/2010 / 2009 in O.A. No. 41/2009
5. Review Application No : ----- / 2009 in O.A. No. -----
6. Execution Petition No : ----- / 2009 in O.A. No. -----

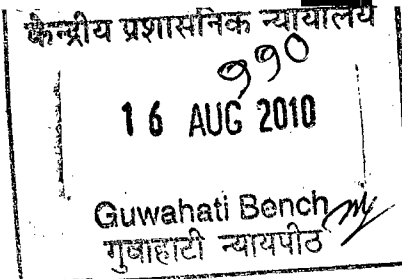
Applicant (S) : Shri Purnu Sharma

Respondent (S) : Lt. Gen. Bikram Singh

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

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

Notes of the Registry	Date	Order of the Tribunal
<p>This CP. is filed by Ms. J. Dutta, Adv. on behalf of the Applicant, praying for punishment of the Respondents for non-compliance of Judgment and order Dtd-21.1.2010 passed in OA. 41/2009.</p> <p>Laid before the Honble court for issue of order.</p> <p><u>17.8.2010</u> Section Officer (S)</p> <p><u>17.8.2010</u></p>	<p>30.08.2010</p> <p>/bb/</p>	<p>CP No.31/2010 has been filed by applicant alleging willful disobedience of the order dated 21.01.2010 in OA 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> <p><u>(Madan Kumar Chaturvedi)</u> (Mukesh Kumar Gupta) Member (A) Member (J)</p>



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI.

CONTEMPT PETITION NO. 31 OF 2010

IN ORIGINAL APPLICATION NO.41 OF 2009

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.

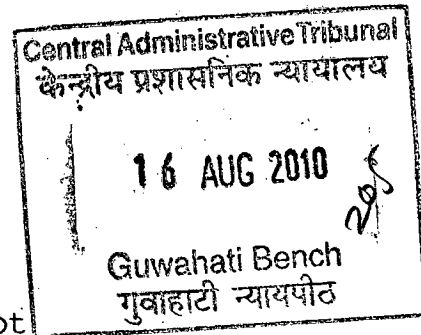
Applicant

-Versus-

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

FILED BY 204
Shri Punu Sharma
Applicant
Through Jilly Datta
Advocate
16.08.2010

Sharma



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:

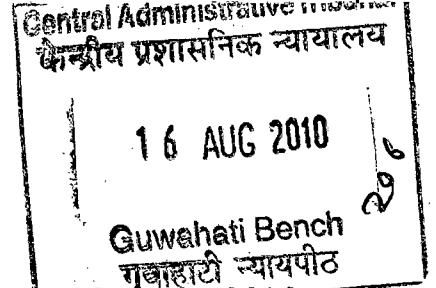
1] That the Petitioner had filed an Original Application No.41 of 2009 before this Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati against the impugned letter No.322/PS/CC/Adm (Civ) dated 04.02.2008 as well as Speaking Order dated 14.03.2008 issued by the Respondent No.3 whereby the appointment of the Applicant on compassionate ground in any Group 'D' post was rejected.

2] That this Hon'ble Tribunal on 21.01.2010 heard both the parties of the Original Application No.41 of 2009 and was pleased to allow the said Original Application. The impugned orders dated 04.02.2008 as well as 14.03.2008 are quashed and set aside by this Hon'ble Tribunal. The Respondents are directed to appoint the Applicant 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, the Applicant has approached this Hon'ble Tribunal by Contempt Petition No.19 of 2010. In meanwhile the Respondents filed a Miscellaneous Petition 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 the order dated 21.01.2010 passed in O.A. No.41 of 2009 till 15.08.2010. On the aforesaid circumstance the

Pranav Sharma



Petitioner withdraw his Contempt Petition No. 19 of 2010 on 04.06.2010 which was pending before this Hon'ble Tribunal. Now, the extended time for implementation of the order dated 21.01.2010 passed in O.A. No.41 of 2009 has already been expired. But till date the 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 the 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.

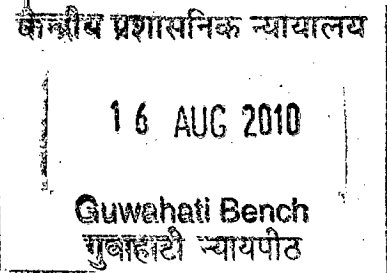
4] That the Petitioner submits by the aforesaid act the Respondents/Contemnors have willfully shown disrespect, disregard and disobedience to this Hon'ble Tribunal order dated 21.01.2010 passed in O.A.NO 41 of 2009. The Respondents/Contemnors deliberately with a motive behind have not implemented this 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 and 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.

5] 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

Punit Sharma

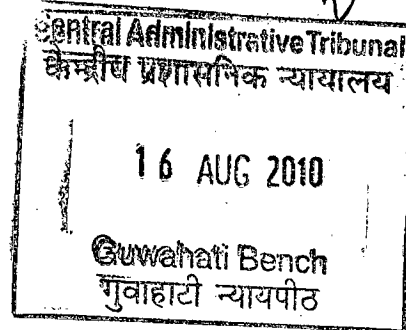


21.01.2010 passed in O.A. No.41 of 2009, the Respondents/Contemnors may be asked to appear in persons before this Hon'ble Tribunal to explain as to why they should not be punished under the contempt of Court proceeding.

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

...Draft Charge

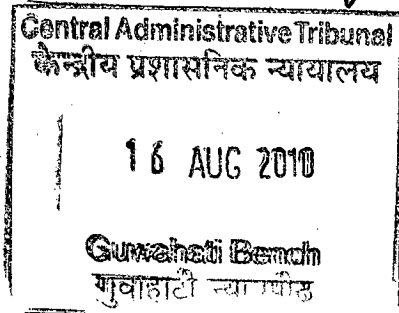
Pune Sharma



-DRAFT CHARGE-

The 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 Petitioner 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.

Punit Sharma



- 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 of the Contempt Petition are true to my knowledge those made in paragraph Nos. 2 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 16th day of August 2010.

Identified by me:

Jilly Dutta

Advocate

Punu Sharma
 DEPONENT

Solemnly affirmed before me by the Deponent who is identified by Jilly Dutta, Advocate.

(Adil Arif)
 Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH:

Original Application No.41 of 2009

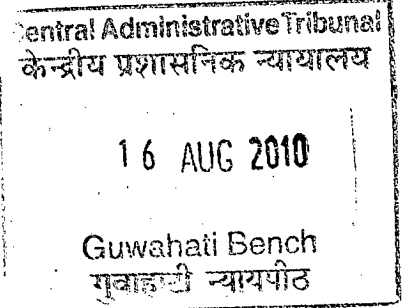
Date of Decision: This, the 21st day of January 2010.

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.



...Applicant

By Advocate: Mr. Adil Ahmed

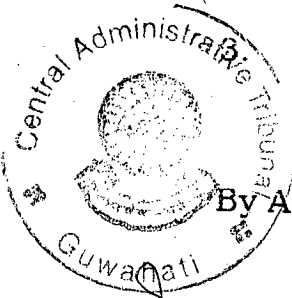
-Versus-

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

Tilly Sullen
ADVOCATE

ORDER (ORAL)

16 AUG 2010

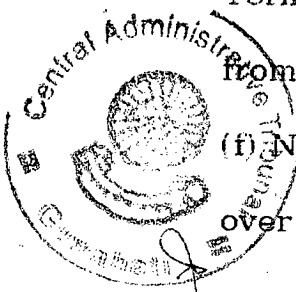
Guwahati Bench
गुवाहाटी न्यायपीठ

MUKESH KUMAR GUPTA, JUDICIAL MEMBER:

In this second round of litigation, Sri Punu Sharma, challenges communication dated 4th February, 2008 as well as speaking order dated 14th 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 10th 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.



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ADVOCATE

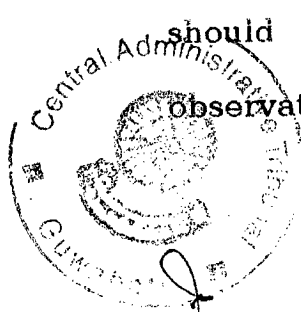
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4. Taking in totality, the marks so fixed and allotted to the candidates, their cases are considered on individual merit and the candidates getting higher marks are preferred first, considering the availability of vacant post.

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



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Tilly Datta
ADVOCATE

16 AUG 2010

O.A. No. 41 of 2009

Guwahati Bench

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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)

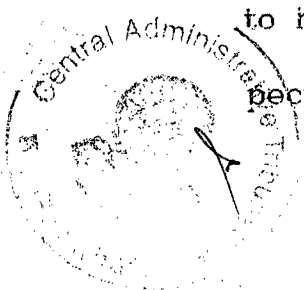
7. In purported compliance of aforesaid direction, applicant's case was considered once again by the Selection Committee which considered as many as 611 candidates. Minutes of the said Committee, meeting of which was held on 17 and 18 January, 2008 was placed before this Tribunal, wherein applicant's 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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ADVOCATE



16 AUG 2010

Guwahati Bench
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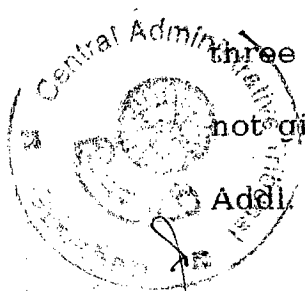
O.A. No. 41 of 2009

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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 14th March 2008 as well as communication dated 4th 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



ATTESTED

Tilly Dutta
ADVOCATE

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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 1st 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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Tilly Sultta
ADVOCATE

16 AUG 2019

Guwahati Bench
गुवाहाटी न्यायपीठ

O.A. No. 41 of 2009

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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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16 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

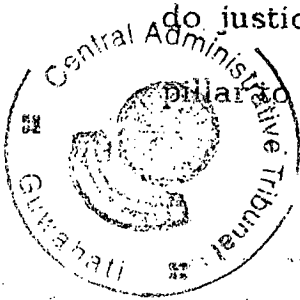
O.A. No. 41 of 2009

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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 4th February 2008 as well as 14th 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
Date on which copy is ready : 15.3.2010
Date on which copy is delivered : 15.3.2010
Certified to be true copy

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

Section Officer (Judl)
C. A. T. Guwahati Bench
Guwahati

/PB/

ATTESTED

Tilly Dutt

ADVOCATE