

30/100
13
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A.No.....

R.A/C.P No.101/98.....

E.P/M.A No.....

1. Orders Sheet..... Pg..... to.....
2. Judgment/Order dtd..... Pg..... to.....
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... Pg..... to.....
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P. 101/98..... Pg..... to.....
7. W.S..... Pg..... to.....
8. Rejoinder..... Pg..... to.....
9. Reply to the CP 101/98..... Pg.1..... to 10.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit (P. 101/98 R.101 pg. 1 to 8 + 8 to 8
R.101 pg. 2 R.102 pg. 1 to 9 + 5 R.103 pg. 5 to 11)
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Salma
2021

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO.

C.P 10/98

OF 199

Applicant(s) Smti Amita Baruah & Ors
VS

Respondent(s) Union of India & Ors

Advocate for Applicant(s) Mr. B.K. Sharma
Mr. S. SharmaAdvocate for Respondent(s) Mr. B.C. Parkash for A. Singh, Sh. Mahesh
J.L. Subhda Shukla

Notes of the Registry

Date

Order of the Tribunal

This Contempt petition is filed by Mr. B.K. Sharma Advocate on behalf of the applicants, praying for the complementary of the Judgment and Common order dated 17-9-97 passed in OA 106/95, 107/95, and 115/95.

Kindly favour
of kind orders.

19.5.98
(1)

Issue notice on the opposite party to show cause as to why contempt proceeding shall not be initiated against them.

List on 18.6.98 for show cause and further order.

6
Member

Vice-Chairman

18.6.98
(2)

On the prayer of Mr. D.K. Das learned counsel for all the contemned 10 days time is allowed.

List it on 29-6-98.

6
Member

Vice-Chairman

✓ 10/5/98
2/5
Registar

2/5

1m
2/8
22/6

fr. issue notice

2/8/98

(2)

Notes of the Registry

Date

Order of the Tribunal

29-6-98

On the prayer of Mr.D.K.Das learned counsel 2 weeks further time is allowed for filing of written statement. List it on 14-7-98 for orders.

60
Member

Vice-Chairman

1m

NS
36/6

14-7-98

4

On the prayer of counsel for the parties case is adjourned till 29-7-98.

60
Member

Vice-Chairman

1m

NS
12/7

29-7-98

Mr.N.Dutta learned counsel appearing on behalf of the alleged contemner is not present. Heard Mr.B.K.Sharma learned counsel appearing on behalf of the petitioner. For the ends of justice case is adjourned for 10 days.

List on 10-8-98 for orders.

60
Member

Vice-Chairman

NS
36/7

10.8.98

Two weeks ~~xxx~~ time allowed for filing of objection on the prayer of Mr D.K.Das, learned counsel for the alleged contemner.

List on 25.8.98 for order.

60
Member

Vice-Chairman

pg

12/8

Show cause has not been taken.

No WTS has been filed.

13/7 No WTS has been filed
28/7

Date of the Registry

Date

Order of the Tribunal

3

No. W/S is being
Service reports are
still awaited.

25-8-98

Two weeks further time is allowed on the prayer of Mr. N. Dutta learned counsel for the alleged contemner as last chance. Mr. B. K. Sharma learned counsel for the petitioner has no objection.

Let this case be listed for orders on 9-9-98.

6
Member

Vice-Chairman

1m

28/8

9-9-98

Objection has not yet been filed inspite of several adjournments. We have perused the application.

Heard Mr. S. Sarma learned counsel appearing on behalf of the petitioner and Mr. D. K. Das learned counsel for the alleged contemners.

Issue notice to the alleged contemners. Returnable by 4 weeks.

List on 30-10-98 for orders.

The alleged contemners are directed to personally appear before this Tribunal on 30-10-98 at 10-30 A.M.

6
Member

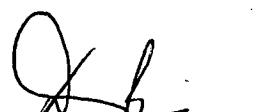
Vice-Chairman

1m

29/10/98

30.10.98

The alleged contemner No. 2, Shri J. C. Sethi is present. His further appearance before this Tribunal is dispensed with for the time being. The alleged contemner No. 1, Shri K. Padmanavan is not present today. An application has been filed explaining the fact that because of certain religious function he is not in a position to appear before this Tribunal and prays for time for appearance. Prayer allowed. Mr. N. Dutta, learned counsel appearing on behalf of the

Notes of the Registry	Date	Order of the Tribunal
① prayer for personal appearance filed on behalf of the respondents No. 1 & 2 through Mr. N. Dutta and Mr. D. K. Das.	30.10.98	<p>alleged contemners has filed objection against the Contempt Petition with copy to the other side. This accepted.</p> <p>Fix it on 24.11.98 for appearance of the alleged contemner No.1 and also for rejoinder, if any, by Mr B.K. Sharma.</p> <p> Member</p>
② Affidavit in opposition filed on behalf of R. No. 2.	24.11.98	<p>The alleged contemner No.1 Sri K. Padmanavan is personally present before this Tribunal. His personal appearance in future date is dispensed with until further orders.</p> <p>List on 1.12.1998 for further orders.</p> <p> Vice-Chairman</p>
2) No rejoinder has been filed 2) Affidavit in opposition has been filed	25.11.98	<p> Member</p>
2) No rejoinder has been filed 2) Affidavit in opposition has been filed	1.12.98	<p>Present:- Hon'ble Justice Sri D.N. Baruah Vice-Chairman and Hon'ble Sri G.L. Sanglyine, Administrative Member</p> <p>The case is otherwise ready for hearing. List on 27.1.99 for hearing.</p> <p> Vice-Chairman</p>
① personal appearance filed on behalf of the R. No. 1 ② Affidavit in opposition filed on behalf of R. No. 1	27.1.99	<p> Member</p> <p>On the prayer of the counsel for the parties the case is adjourned to 11.2.99 for hearing.</p> <p> Vice-Chairman</p>

(5) CP. 10/98.

Notes of the Registry	Date	Order of the Tribunal
10-2-99 1) Personnel appearance has been filed R-Nos. 1 & 2	11.2.99	Leftover. Adjour. to 26.3.99. By order D.K. Das
2) An application for exemption from personal appearance has been filed R-Nos. 1 & 2	4-3-99 pg	Case is ready for hearing. List for hearing on 6-4-99. 6 Member
2) Affidavit in opp. has been filed on R-Nos. 1 & 2	5.3.99	
10-2-99	6.4.99	On the prayer of Mr. D.K. Das, learned counsel for the opposite party the case is adjourned till 6.5.99. 6 Member
1-3-99 1) Personnel appearance has been filed on behalf of R-Nos. 1. 2) Affidavit in opp. has been filed on R-Nos. 1 & 2.	nkm	
10-3-99	6.5.99	On the prayer of Mr. D.K. Das, learned counsel for the opposite party the case is adjourned till 1.6.99. 6 Member
5-4-99 Affidavit - in opp. has been filed	trd 10-5-99	
5/4 31-5-99 Affidavit - in opp. Mr Das filed	1.6.99	On the prayer of the learned counsel for the parties the case is adjourned till 8.7.99. 6 Member
31/5 7-7-99 1) No Rejoinder has been filed. 2) Affidavit in opp. Mr. Das filed	nkm 31/6/99	
31/5 7-7-99 1) No Rejoinder has been filed. 2) Affidavit in opp. Mr. Das filed		

Notes of the Registry

Date

Order of the Tribunal

8.7.99

Counsel for both sides are not present. For the ends of justice the case is adjourned to 26.8.99. Longer adjournment is granted as one of us (Baruah-J) will not be available for next three weeks.



Member

pg



Vice-Chairman


8-9-99

Registration by me. 26.8.99
Served by me

9.9.99

On the prayer of Mr N. Dutta, learned counsel for the alleged contemners the case is adjourned to 12.10.99.



pg



Vice-Chairman



Entries of the Registry	Date	Order of the Tribunal
<u>11-10-99</u> No. Rejoinder has been filed.	12.10.99	Mr S. Sarma, learned counsel for the applicant submits that his senior Mr B.K. Sharma is out of station and prays for an adjournment. Prayer allowed. Let the case be listed for hearing on 25.11.99.
<u>24-11-99</u> 1) Defendant in opp. has been filed. 2) No. Rejoinder has been filed.	nkm	 Member
	25.11.99	On the prayer of the counsel for the parties the case is adjourned to 27.1.2000 for hearing.
<u>25-1-2000</u> 1) Defendant in opp. has been filed. 2) Rejoinder has not been filed.	pg	 Member
	27.1.00	On 27/1. Adjourn to 15-2-00.
	15-2-00	1/10. Adjourn to 28-3-00.
<u>27-3-00</u> Rejoinder has not been filed.	28.3.00	No Division Bench is available to-day. List for hearing on 23.5.00.
<u>27/3</u> The case is ready for hearing.	1.8-00	 Member
	23.5.00	There is no Bench today. Adjourn to 1.8-00.
	1.8-00	There is no Bench today. Adjourn to 23.11.00.
	23.11- 22.11.2000	No D.B. Adjourned to 1.9.3.2001. A.G. Tewari 23/11

The case is ready
for hearing.

By
19.2.01

19.1.01

pg

23.1.01

pg

20.2.01

trd

23.2.2001

On the prayer of the counsel for the parties the case is adjourned to 23.1.01 for order.

IC Usha

Member

Vice-Chairman

List again on 20.2.01 for hearing.

IC Usha

Member

Vice-Chairman

List again on 23.2.2001 for hearing.

IC Usha

Member(A)

Vice-Chairman

Heard the learned counsel for the parties. The matter will be heard again after one month. Mr B.K. Sharma, learned Sr. counsel for the applicants cited the communication dated 15.5.2000 sent by the Executive Engineer to the CGM, Telecom, for regularisation and grant of temporary status of the three applicants and submitted that in view of the pendency of the Review Applications and Contempt Petitions, the respondents were not taking any steps to that effect. We would like to make it clear to all concerned that till now the order of the Tribunal dated 17.9.1997 in O.A.Nos.106, 107 and 115 of 1995 is operative and there is no interim order suspending the operation of the order dated 17.9.1997. Therefore, the pendency of any of the aforementioned applications/petitions shall not stand as an impediment on the part of the respondents to consider the case of the applicants in the light of the communication dated 15.5.2000

alongwith.....

Notes of the Registry	Date	Order of the Tribunal
	23.2.2001	<p>alongwith other casual labourers. We have also been made to understand by Mr N. Dutta, learned counsel for the respondents, that at the level of CGM, Telecom, no final decision can be taken and for that matter it is required to take the Director General, Telcom, New Delhi into confidence.</p> <p>Since time is granted we make it clear to the CGM, Telecom that the pendency of this also shall not stand in his way to take up the matter with the Director General, Telecom, New Delhi to explore the possibility of granting relief to these applicants.</p> <p>We have issued the above direction notwithstanding the submission of Mr B.K. Sharma that the CGM is duly authorised by the Department of Telecom, New Delhi to take decision on his own regarding regularisation of casual labourers and Mr Sharma, for that purpose, referred to a communication No.269-94/98-STN-II dated 29.9.2000 issued by the Department of Telecom Services, New Delhi to all CGMs, of all Telecom Circles.</p> <p>List the case for hearing on 27.3.2001.</p>
<p><u>Copy of order dated 23.2.2001 issued to the Counsel for parties.</u></p> <p><u>For B.K. Sharma</u></p>		<p><u>I C Sharma</u> Member</p> <p><u>Vice-Chairman</u></p>
	27.3.01	<p>On the prayer of the counsel for the parties the case is adjourned to 15.5.01 for hearing.</p>
		<p><u>I C Sharma</u> Member</p> <p><u>Vice-Chairman</u></p>
<p>The case is ready for hearing as required Service.</p> <p><u>By</u> <u>15.6.01</u></p>	15.5.01	<p>On the prayer of the learned counsel for the respondents the case is adjourned to 12.6.01.</p>
		<p><u>I C Sharma</u> Member</p> <p><u>Vice-Chairman</u></p>

(9)

Notes of the Registry	Date	Order of the Tribunal
	12.5.01	<p>On the request of Mr.D.K.Das, learned counsel for the respondents, the case is adjourned for the day for four weeks, during which he expects that some order may be passed by the Hon'ble High Court.</p> <p>List for hearing on 17-7-2001.</p>
		<p><i>CCUShaw</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
bb	17.7.01	<p>The Contempt Proceedings is pending since 98. The violation of the Judgment and Order passed by this Bench in O.A.Nos. 106 of 95, 107 of 95 and 115 of 95 dated 17.9.97. The respondents also filed the Review Petition for review of the order which was also dismissed on 15.5.2001. The respondents also assailed the order of this Tribunal before the High Court by Writ Petition (C) No.4247 of 2001 & W.P.(C)No.4318 of 2001. There was similar Writ Petition which was numbered as W.P.(C)No.4177 of 2001 dated 17.9.97 and 15.5.2001. All these proceedings of W.P.(C) were dismissed. The last petition was dismissed on 18th June 2001. The order of the Tribunal thus attains finality and requires early compliance at the instance Mr.B.C.Pathak learned Addl.C.G.S.C. prays for time. Three weeks time is granted to implement the order.</p> <p>List on 7.8.01 for orders.</p>
		<p><i>CCUShaw</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
lm	7.8.01	<p>List it again on 13/8/01 for order.</p>
		<p><i>CCUShaw</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

107

C.P. 10/98

Notes of the Registry

Date

Order of the Tribunal

13.8.01

~~Read Mr. S. Sarma, learned counsel and also perused the application for impleadment of persons mentioned in paragraph 4/ff of the application. Upon hearing the counsel for the parties it ordered for impleadment Shri~~
~~mb~~

13.8.01

List on 14/9/01 alongwith M.P. 190/01 for order.

I.C.U. Shaha

Member

Vice-Chairman

The case is ready.

By
28.9.01

14.9.2001

Let the case be listed on 1.10.2001 along with M.P. 190 of 2001.

I.C.U. Shaha

Member

Vice-Chairman

bb
1.10.01

List on 4.10.2001 alongwith M.P. 190 of 2001.

Vice-Chairman

mb
4.10.01

Mr. J. K. Chabra, Chief General Manager, Telecom. Mr. Mahesh Sukla, Dy. General Manager and Mr. Amarjit Singh, Supdt. Engineer are present today in pursuance of the order dated 13.8.2001 and 14.9.2001 of this Tribunal.

The officers, present before us mentioned about some subsequent development of the matter and referred to us numerous orders passed by the respondents dated 3.10.2001 sent by Asstt. Director, Telecom.

Considering the facts and subsequent development of the matter, the Contempt Proceeding stands dropped.

I.C.U. Shaha

Member

Vice-Chairman

16.11.2001

Copy of the order has been sent to the D.P.C. for issuing the same to the L/Adm for the parties.

SL

12

Notes of the Registry

Date

Order of the Tribunal

3.10.2001

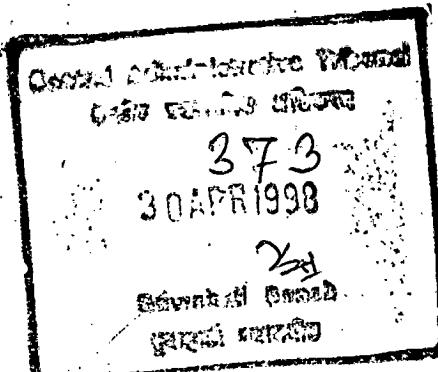
Affidavit in reply
has been submitted
by the Contemny/Respondents
No. 3, 4, and 5.

SD

14
*Filed by
S. Bhattacharya, Secretary
Advocate.*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH



Contempt Petition No. 98

O.A. No. 106/95

O.A. No. 107/95

O.A. No. 115/95

IN THE MATTER OF :

An application under Section 17 of the Central Administrative Tribunal Act.1985 for drawing contempt of Court Proceeding against common order dated 17.9.97 passed in O.A. No.106/95 (Smt.Anita Baishya vs.U.O.I & Ors.) O.A. No.107/95 (Md. Fazar Ali vs. U.O.I & Ors) and O.A. No. 115/95(Namita Das vs. U.O.I & Ors.).

*28
30/4/98*

A N D

IN THE MATTER OF :

An application under section 24 of the Central Administrative Tribunal (Procedure) Rules 1987 for execution of the common order dated 17.9.97 passed in O.A. No.106/95 (Smt.Anita Baishya Vs. U.O.I & Ors.) O.A. No. 107/95 (Md. Fazar Ali Vs.U.O.I & Ors.) and O.A. No.115/95(Namita Das Vs. U.O.I & Ors.)

A N D

IN THE MATTER OF :

Judgement and common order dated 17.9.95, passed in O.A.No.106/95, 107/95 and 115/95.

A N D

IN THE MATTER OF :

Willful and deliberate violation of aforesaid order passed by the Hon'ble Tribunal and non-implementation of the same.

A N D

IN THE MATTER OF :

1. Smt Anita Baishya

Applicant in O.A. No.106/95.

2. Md. Fazar Ali

Applicant in O.A. No.107/95.

3. Smt. Namita Das

Applicant in O.A.No.115/95.

----- Petitioners.

- VS -

1. Mr.K.Padmanavan

Chief General Manager

Assam Telecom Circle

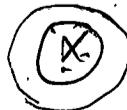
Ulubari, Guwahati - 7.

2. Mr. J.C. Sethi

Superintending Engineer (Civil)

Telecom Civil Circle

Ulubari, Guwahati - 7.



----- Contemptners
Respondents.

contd---p/3.

The humble application on behalf of the petitioners above named -

MOST RESPECTFULLY SHEWETH :

1. That the petitioners above named were working in the office of the Superintending Engineer, Telecom Civil Circle, Guwahati since long. They were appointed in their respective posts after they having been found suitable for the said posts, and after following the due process of law. The petitioner No.1 & 3 were working as Draftman and petitioner No.2 was working as LDC-cum-Typist on temporary basis.
2. That subsequently the petitioners placed thier candidature for their regularisation as departmental candidates along with other departmental candidates. The aforesaid candidates were placed ⁱⁿ the selection, however the respondent authority issued an order by which the said selection process was kept ⁱⁿ abeyance. Accordingly the vacant posts for which the aforesaid selection was processed are still lying vacant including posts of draftman as well as LDC-cum-Typist.
3. That the petitioners made several representations to the respondents authorities for regularisation against the aforesaid vacancies but the said representations were never replied to. Thereafter the respondent authority instead of regularising the services of the petitioners changed their earlier condition of temporary service to contractual basis. Subsequently their their earlier temporary services were terminated and they were asked to submit quotation for their aforesaid contractual jobs.

4. That being aggrieved by the aforesaid action of the respondents authority, the petitioners were constrained to move the Hon'ble Tribunal by way of filing O.A. Nos.106/95 (Anita Baishya Vs. U.O.I & Ors.), O.A. No.107/95 (Fazar Ali Vs.U.O.I & Ors.) and O.A. No.115/95 (Namita Das Vs. U.O.I & Ors.) before this Hon'ble Tribunal for their regularisation as well as continuation of their earlier services. This Hon'ble Tribunal after hearing the parties was pleased to pass common order disposing of the aforesaid applications with a direction to the respondents thereto particularly Respondent No.3 i.e. Superintending Engineer (Contemtner No.2.) to grant temporary status and regularise their services as per the scheme for grant of temporary status and regularisation. The Hon'ble Tribunal was further pleased to allow one month time for implementation of the aforesaid order dated 17.9.97 to the contemtner. It is pertinent to mention here that at the time of hearing of this application and as per the desire of the Hon'ble Tribunal one Sri Aamal Das, Asstt. Surveyor of Works, working under the contemtner No.2 was also present to assist this Hon'ble Tribunal in regard to the aforesaid cases along with the records.

A copy of the order dated 17.9.97 is annexed herewith and marked as
ANNEXURE -A.

5. That after the aforesaid position, the petitioners have been waiting with a bonafide believe that their services will be regularised persuant to Annexure - A order within one month but till date nothing has been

done in the matter so far. All efforts have been made by the petitioners towards implementation of judgement of this Hon'ble Tribunal have fallen in to deaf ears of the contemptners and there has been willful and deliberate violation of the aforesaid order of this Hon'ble Tribunal.

6. That the petitioners state that the contemptners/respondents are still sitting over the matter and have not taken any step for implementation of the aforesaid order of the Hon'ble Tribunal.

7. That being aggrieved by the aforesaid action of the respondents the petitioners served legal notices on 15.1.98 making a demand for implementation of the said order dated 17.9.97 followed by reminder dated 15.3.98 but till date nothing has been done in regard to implementation of the aforesaid order.

Instead of annexing all the copies of legal notices for each petitioner, copies of legal notice dated 15.1.98 along with the reminder dated 15.3.98 are annexed herewith and marked as ANNEXURE - B & C respectively.

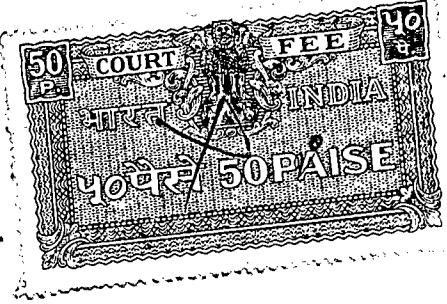
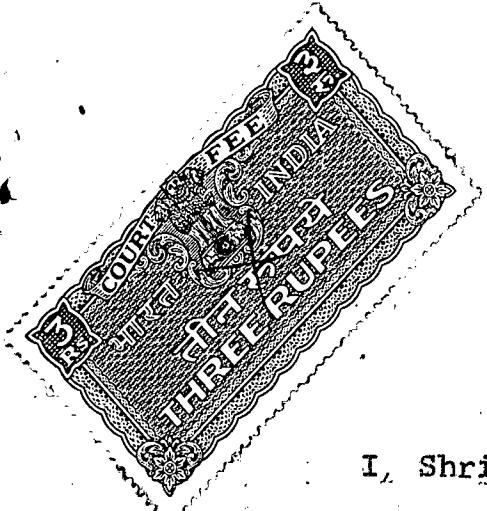
8. That the petitioners are now left with no alternative remedy than to approach the Hon'ble Tribunal once again by way of filing the instant application.

9. That this application has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that the Hon'ble Tribunal may be pleased to issue

notice to the respondents to show cause as to why contempt of court proceeding shall not be initiated against them for willful and deliberate violation of judgement order dated 17.9.97 passed in O.A.Nos.106/95, 107/95 and 115/95 and as to why appropriate direction/order shall not be passed to implementing of the aforesaid order provided under sec.27 of the Administrative Tribunal Act.1985 read with 24 of C.A.T (Procedure) Rules 1987 with a direction of retrospective absorption of the petitioners together with all consequential service benefits including promotion etc. with arrears salaries etc. to the petitioners and upon hearing the parties and on perusal of records be pleased to punish the respondents in accordance with law and be further pleased to pass any such orders as may be deemed fit and proper towards implementation of the aforesaid judgement and order granting the petitioners adequate relief.

And for this act of kindness the petitioners are in duty bound shall ever pray.



- 7 -

A F F I D A V I T

I, Shri Fazar Ali, S/O Late Fazir Ali, aged about 32 years, resident of Hengrabari, Guwahati-36, do hereby solemnly affirm and declare as follows :-

1. That I am the petitioner No.2 in the accompanying petition, conversant with the facts and circumstances of the case and therefore competent to swear this affidavit upon authorisation of other two petitioners.
2. That the statements made in this affidavit and in the accompanying petition in paragraphs 1, 2, 3, 4, 5, 6, 8 & 9..... are true to my knowledge, those made in paragraphs 4 & 7..... are matters of records which are true to my information derived therefrom and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 26th day of April 1998 at Guwahati.

DEPONENT

Identified by me:

Siddhartha Sarma
Advocate.

Md. Fazar Ali

Solemnly affirm and state by the deponent who is identified by S. Sarma on this the 26th day of April 1998 at Guwahati.

*Ramchandra
Advocate
27.4.98*

DRAFT CHARGE

10000/-/-/-/-

The respondents / claimants are guilty of wilful and deliberate violation of comm on Order dated 17.9.97 passed in O.A. Nos. 106 / 95, 107 / 95 and 115 / 95 in as much as the services of the applicants have not been regularised .The respondents are well aware of the said Order dated 17.9.97 which is also evident from the fact that they are unreasonably delaying in complying with Order. This being the position , the respondents are guilty of contempt of court's proceeding and accordingly they are liable for contempt of Court Proceeding.

ANNEXURE-A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 17th Day of September, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri O.L.Banglyine, Administrative Member.

Original Application No.106 of 1995.

Smt. Anita Baishya . . . Applicant

- Versus -

Union of India & Ors. . . . Respondents.

Original Application No.107 of 1995.

Md. Fazar Ali (L.D.C. - 111) . . . Applicant

- Versus -

Union of India & Ors. . . . Respondents.

Original Application No.115 of 1995.

Smt. Namita Das . . . Applicant

- Versus -

1. Union of India
represented by the Director General
(Telecom.)
New Delhi.

2. The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati-7.

3. The Superintending Engineer,
Telecom Civil Circle,
Guwahati-7.

. . . Respondents.

Advocate for all the applicants : Shri S.Sarma.

Advocate for all the respondents : Shri S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH J(V.C.)

All the 3 applications involve common questions of law and similar facts. We, therefore, dispose of all the 3 applications by this common order. The facts are :

The applicants were appointed Casual Workers on various dates in the years 1992 and 1993. They are claiming temporary status and also subsequent regularisation. As per statement made in Annexure-4 in O.A.No.106/95 and O.A. 115/95 and Annexure-1 in O.A.107/95 all the applicants

worked for more than 206 days in the year 1993. The applicants claimed that they are working in 5 days week and therefore, as per the scheme prepared by the department of Telecommunications the person working more than 206 days in a 5 days week where the offices observed 5 days a week, they are entitled to get temporary status and subsequent regularisation. This aspect of the matter has not been disputed in spite of that their engagement had been terminated verbally.

2. Heard Mr S.Sarma, learned counsel appearing on behalf of the applicants and Mr S.Ali, learned Sr.C.G.S.C for the respondents. Mr Sarma submits that as per the scheme the present applicants are entitled to be given temporary status and subsequent regularisation. Mr Ali however, disputed the same, in view of the fact that they were working as Draftsman and Typist and therefore, they are not entitled to claim the benefit of the scheme. Mr Sarma on the other hand submits that even if applicants are regularised in a Group D posts they have no objection. Mr S.Ali also agrees to the same. He has stated that there will not be any difficulty in regularising them in the Group D posts. Considering the submissions of the learned counsel for the parties, we dispose of these applications with a direction to the respondents particularly respondent No.3, that is Superintending Engineer, Telecom Civil Circle, Guwahati to grant temporary status in any Group D post as agreed by the learned counsel for the parties and thereafter regularise their posts as per the scheme. This must be done as early as possible and at any rate within a period of 1 (one) month from the date of receipt copy of this order.

Gr D post

Regular

contd... 3

Temporary Status as
contd... 1

(one)

ANNEXURE - A

Contd.

Considering the entire facts and circumstances of the case we however, make no order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (A)

Certified to be true
Bhupen Dasgupta

COURT OFFICER
24/10/95 (10/11)
Central Administrative Tribunal
Regd. No. 1986/SC/1
Guwahati Bench, Guwahati
Date 24/10/95. (10/11)-8

Attn:
SWS

SIDDHARTHA SARMA
ADVOCATE

M. A. Road, Rehabari
Guwahati - 781 008
Phone No. : 522895

Date 15.1.98

To

1. The Chief General Manager

Assam Telecom Circle

Ulubari, Guwahati-7

2. The Superintending Engineer

Telecom Civil Circle

Guwahati-7

Sub : Legal Notice

Sir,

Upon authority and as per instruction of my client Md. Fazar Ali Son of F. Ali. I give you this notice as follows.

1. That my client above named was working as ~~Reception~~ LDC cum Typist in the office of the Superintending Engineers, Telecom Civil Circle, Guwahati-7 since long. He was appointed to the aforesaid post after he having been found suitable for the said post and his such appointment was made following the due process of law.

2. That subsequently my client above named placed his candidature for his regularisation as departmental candidate along with other departmental candidates. However

contd... 2.

Attned
S. Sarma

- 2 -

for the reasons best known to you the said selection process was kept in abeyance although there are still several posts of LDC-cum-Typist lying vacant.

3. That my client above named made several representations to the authority concerned for his regularisation against the vacant posts in the said office, but same has not yet served any purpose in positive. Subsequently her service condition was altered in such a manner which leads to an absurdity in the matter of her regularisation. In the said process of alteration, his initial service was virtually terminated and he was given assurance of jobs by way of contract. To that effect some of quotations were also invited from his for aforesaid contractual jobs.

4. That being aggrieved by the aforesaid decision my client was constrained to approach the Hon'ble Central Administrative Tribunal by way of filing O.A. No. 11507 of 1995 for redressal of grievances. The Hon'ble Tribunal was pleased to dispose of the aforesaid Original Application on 17.9.97 with a direction to regularised his service within one month. The Hon'ble Tribunal during the course of hearing as well as in its order dated 17.9.97 clearly entertained the grievances made by my client which is evident from the aforesaid order. In the aforesaid order dated 17.9.97 the Hon'ble Tribunal has observed the scheme of 1993 prepared for grant of Temporary Status and Regularisation, as a welfare scheme and the Hon'ble Tribunal taking the spirit of the aforesaid scheme made the aforesaid direction for his regularisation in his post of LDC-cum-Typist within one month

- 13 -

ANNEXURE B

CONT'D.

- 3 -

but till date nothing has been done in the matter of his regularisation which is clear violation of the orders passed by the Hon'ble Tribunal.

"In view of the aforesaid facts and circumstances I give you this notice making a demand that my client be regularised in his original post of LDC-cum-Typist w.e.f. the date of his initial appointment as LDC-cum-Typist with all consequential service benefits including arrear salary etc. within one month from the date of receipt of this notice failing which instruction of my client is to take appropriate legal action including contempt of court's proceedings for which you will be solely responsible which may include your personal appearance before the Hon'ble Tribunal.

I hope and trust that there would be no such occasion for such litigation.

Thanking you.

Sincerely yours

(S. Sarma, Advocate)

Alfred

SIDDHARTHA SARMA
ADVUCATE

M. A. Road, Rehabari
Guwahati - 781 008
Phone No. : 522995

Date 15-3-98

To,

1. The Chief General Manager

Assam Telecom Circle

Ulubari Guwahati - 7.

2. The Superintending Engineer

Telecom Civil Circle

Guwahati - 7.

Sub: Reminder to my legal Notice dated 15.1.98

Sir

Upon authority and as per instruction of my client Md. Fazar Ali, S/o Md.F. Ali, I give you this reminder as follows:-

1. That being aggrieved by your action innot regularising the services of my client, he approached the Hon'ble Tribunal by way of filing O.A. No.107 of 1995 and the Hon'ble Tribunal was pleased to dispose of the aforesaid O.A. with a direction to regularised the services of my client. On 15.1.98 as stated above a legal notice was served upon you in regard to willful and deliberate violation of aforesaid order dated 17.9.97 but till date nothing has been done which tantamounts content of Court's proceedings.

contd..... 2.

Alber
1/1

- 2 -

In view of the aforesaid facts and circumstances I give you this reminder making a demand that my client be regularised in this original post of I.D.C.-cum-Typist w.e.f. the date of his initial appointment as I.D.C.-cum-Typist with all consequential service benefits including arrear salary etc. within one month from the date of receipt of this reminder failing which instruction of my client is to take appropriate legal action including content of Court's proceedings for which you will be solely responsible which may include your personal appearance before the Hon'ble Tribunal.

I hope and trust that there would be no such occasion for such litigation.

Thanking you.

Sincerely yours

(S. Sarma, Advocate)

Allego



Filed by:
Sri G.C.Sarma
Applicant

Through:
N. Datta
Advocate
30.10.98

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

IN THE MATTER OF:

Contempt Petition No.10/98

in

O.A. No. 106/95

O.A. No. 107/95

O.A. No. 115/95

Smt. Anita Baishya & 2 Ors.

..Petitioners

-Vs-

1. K. Padmanavan

2. J.C. Sethi

.. Respondents

-AND-

IN THE MATTER OF:

An application praying for
exemption from personal appearance
of Respondent No. 1 on 30.10.98.

-AND-

IN THE MATTER OF:

Shri G.C. Sarma,
Assistant Director Telecom(Legal),
Office of the C.G.M., Telecom,
Guwahati.

..Applicant

-2-

The humble application of the applicant abovenamed-

MOST RESPECTFULLY SHEWETH:

1. That this application is being filed on behalf of Sri K. Padmanavan, General Manager, Telecom District, Alleppey Kendra, who has been arrayed as Respondent No.1 in the aforesaid contempt petition No. 10/98.
2. That by order dated 9.9.98, this Hon'ble Tribunal has directed the aforesaid Respondent No. 1 to personally appear before the Tribunal on 30.10.98 at 10.30 A.M.
3. That the Office of the Chief General Manager, Assam Telecom Circle, Guwahati has received a fax communication from the said Respondent No.1 requesting the said office to communicate the same to this Hon'ble Tribunal through the advocate of said Respondent No. 1.

A copy of the said communication dated 28.10.98 is attached herewith as Annexure - 1.

4. That in the said communication, the said Respondent No.1 has prayed for exemption from personal appearance before this Hon'ble Tribunal on 30.10.98 due to religious function in his family in connection with his mother.

-3-

5. That this petition is being filed bonafide and in the interest of justice.

In the premises aforesaid, it is respectfully prayed that this Hon'ble Tribunal would be pleased to exempt the Respondent No.1 from personal appearance on 30.10.98 in Contempt petition No.10/98.

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

..Verification.....

VERIFICATION

I, Shri G.C. Sarma, Assistant Director, Telecom (Legal) Office of the Chief General Manager, Telecom, Guwahati, do hereby declare that the statements made in paragraphs 1,2,3,4 and 5 are true to my knowledge and I sign this verification on this 30th day of October, 1998 at Guwahati.

Ganesh Ch. Sarma
Declarant

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28/10

Annexe I

(+) 10-
31-20-

ADT (C)
28/10
FAX No. (0361) 541000
From

K. Padmanabhan,
General Manager,
Telecom District,
ALIAPPY.

To

The Chief General Manager,
Assam Telecom Circle,
GUWAHATI.

Sir,

Sub:- Appearance in CAT, Guwahati Bench, Guwahati in case OA No.C.P.10/98
reg

I am submitting, herewith a letter expressing my inability to appear in person before the CAT, Guwahati Bench on 30.10.98. This may kindly be communicated to the Hon'ble Tribunal through my Advocate.

Yours sincerely,

K. Padmanabhan
K PADMANABHAN
Encl As above

File ✓

From

K. Padmanabhan,
General Manager,
Telecom District,
ALLEPPEY.

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench,
GUWAHATI.

Sub:- O.A.No.C.P.10/98 :- CAT.Order dated 9.9.98

Sir,

I have received the CAT.Guwahati judgement & order dated 9.9.98 passed in C.P.No.10/98 arising out of O.A.Nos.106/95,107/95 and 115/98 containing a direction to me to appear before the Tribunal on 30.10.98 at 10.30 A.M.

That Sir, I was Chief General Manager of Assam Telecom Circle upto July '98 and on transfer assumed the charge of General Manager Telecom District, Alleppey in Kerala and till date holding this post.

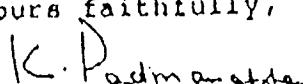
Before the receipt of the CAT.order I had decided to perform the religious function fixed in connection with my Mother's ceremony on 31st October, 1st & 2nd November, '98 and accordingly made all preparation for the function. My presence during the function is essential according to the religious custom.

In view of the above pre-determined function and pre-occupation I am not in a position to appear before the CAT on 30.10.98 despite my sincere eagerness to comply with the direction.

I have the fullest regards for the Tribunal and consider it a pious duty to comply with the directives of CAT. In the instant case, under the compelling circumstances as stated above I beg leave of the Hon'ble Tribunal from appearing in person on 30.10.98.

With kind regards,

Yours faithfully,


(K. Padmanabhan)

Copy to: Shri N.Dutta, Advocate Guwahati High Court for favour of information & necessary action.

Alleppey
R



- 22 -

Filed by :
Sri Jagdish Chandra Sethi
. Registration no 2
through:
N. Datto
Advocate
30-10-98

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN THE MATTER OF:

Contempt Petition No. 10/98

in

O.A. No. 106/95

O.A. No. 107/95

O.A. No. 115/95

Smt Anita Baishya & 2 Ors.

..Petitioners

-vs-

1. K. Padmanavan

2. J.C. Sethi

.. Respondents

-AND-

IN THE MATTER OF:

An application on behalf of
Respondents for exemption from
further appearance in person
in the instant proceeding.

-AND-

IN THE MATTER OF:

1. K. Padmanavan
General Manager,
Telecom District,
Alleppey, Kerela.

... .2

-2-

2. J. C. Sethi,

Chief Engineer (C),

Dept. of Telecommunication,

Chandigarh.

..Applicants/Respondents.

-Vs-

1. Smt Anita Baishya

Applicant in O.A.No.106/95

2. Md. Fazal Ali,

Applicant in O.A. No.107/95

3. Smt Namita Das,

Applicant in O.A.No.115/95

..Opposite parties/
petitioners

The humble application of the
applicants/Respondents herein-

MOST RESPECTFULLY SHEWETH:

1. That the opposite parties who were the
applicants in O.A. 106/95, O.A. 107/95 and O.A.
115/95 have preferred an application under Section
17 of the Central Administrative Tribunal Act, 1985
for drawing Contempt of Court proceedings against
the present applicants who have been arrayed as
Respondents in the said Contempt application which
was registered as Contempt Petition No.10/98.

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2. That by order dtd. 9.9.98 this Hon'ble Tribunal has directed the personal appearance of the Respondents in the contempt application No. 10/98 on 30.10.98 at 10.30 A.M. Accordingly the Respondent No.2 in the said contempt petition (Applicant No.2 herein) has personally appeared today before this Hon'ble Tribunal. The Respondent No.1 in the said contempt petition has prayed for exemption from personal appearance today because of a religious ceremony in his family in connection with his mother.

3. That the answering Respondent No.2 is also filing today the show cause to the contempt petition No.10/98 through counsel, Shri Niloy Dutta, and Shri Debajit Das. The Respondents have engaged the said counsels and have fully briefed them in the matter. All the relevant records have been made available to the aforesaid counsels.

4. That the Respondent No.1 in the contempt petition is no longer the Chief General Manager, Assam Telecom Circle, Ulubari. He has been transferred out in July 1998 and is presently the General Manager, Telecom District, Alleppey, Kerela. Similarly the Respondent No. 2 in the contempt petition is no longer the Superintending Engineer (Civil), Telecom Civil Circle, Ulubari, Guwahati-7. He also was transferred out in July, 1998 and is presently the Chief Engineer (C), DOT Chandigarh.



5. That in view of the present postings, the applicants herein are not the competent authorities to take any action on the orders passed by this Hon'ble Tribunal in O.A. 106/95, O.A. 107/95 and O.A. 115/95 and no fruitful purpose shall therefore be served by continuing the present proceedings against the present applicants. Moreover, the journey from Bangalore and Chandigarh to Guwahati and back shall cause absence of the applicants from the respective offices for at least five days on each occasion. The applicants are holding responsible public offices and there is no possibility of their absconding or evading the instant proceedings any time the Hon'ble Tribunal so directs. The applicants can be represented by their Counsel during further proceedings in the instant Contempt proceedings.

6. That it is respectfully submitted that this is a fit case in public interest to exempt the applicants herein from appearance in person from further proceeding in the contempt Petition No.10/98. The Respondents undertake to be present before this Hon'ble Tribunal in person any time in future as and when directed by this Hon'ble Tribunal.

7. That this petition has been filed bonafide and in the interest of justice.



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In the premises aforesaid, it is respectfully prayed that this Hon'ble Tribunal may be pleased to exempt the present applicants (Respondents 1 and 2 in the contempt petition No.10/98) from appearance in further proceedings of the said contempt petition.

And for this act of kindness, your applicants as in duty bounds shall ever pray.

....Affidavit...



AFFIDAVIT

I, Shri Jagdish Chandra Sethi, Chief Engineer(C), Deptt. of Telecommunication, Chandigarh, aged about 53 years, son of Mr. Tulsidas, presently residing at 424-B/1, Sector 30A, Chandigarh-20, do hereby solemnly affirm and state as follows:

1. That I am the applicant No.2 in the present application and as such I am conversant with the facts and circumstances of the case. I have been authorised by the applicant No.1 to make this application on his behalf and as such I am competent to prefer this application on behalf of all applicants.
2. That this statements made in this affidavit and in paragraphs 1 to 5 and 7 are true to my knowledge, and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 30th day of October, 1998 at Guwahati.

Jagdish Chander Sethi

Deponent

Solemnly affirmed and signed in presence by the deponent who is identified by *SKS*
Advocate

Identified by

Naba Kumar Saikia
Advocate



1018
30.10.98
C.A.T.
GUWAHATI BENCH

Filed by ² Sri Jagdish Chandra Sethi
Respondent 2
Through
N. Dutt
Advocate
30.10.98

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN THE MATTER OF:

Contempt Petition No. 10/98

in

O.A. No. 106/95

O.A. No. 107/95

O.A. No. 115/95

Smt Anita Baishya & 2 Ors.

..Petitioners

-Vs-

1. K. Padmanavan

2. J.C. Sethi

.. Respondents

-AND-

IN THE MATTER OF:

An affidavit-in-opposition filed by Respondent No.2 on behalf of the Respondents in the aforesaid contempt application.

AFFIDAVIT-IN-OPPOSITION

I, Sri Jagdish Chandra Sethi, Chief Engineer(C), Deptt. of Telecommunication, Chandigarh, aged about 53 years, Son of Mr. Tulsidas, presently residing at 424-B/1 Sector 30-A, Chandigarh-20, do hereby solemnly affirm and state as follows:

-2-

1. That I have been impleaded as the Respondent/Contemner No. 2 in the aforesaid contempt petition and a copy of the same has been served upon me. I am well acquainted with the facts and circumstances of the case. I have gone through the petition and have understood the contents made therein.
2. That the allegations made against the Respondents in the aforesaid petition are incorrect and I categorically deny the same. All averments made therein, save and except those which are specifically admitted hereinbelow, shall be deemed to have been denied by the answering Respondents.
3. That the answering Respondent respectfully begs to state that the Respondents have the highest respect for this Hon'ble Tribunal and there is no question of any wilful violation of any order or direction of this Hon'ble Tribunal. The Respondents offers an absolute and unconditional apology for any unintentional lapse on their part in connection with the order dated 17.9.97 passed by this Hon'ble Tribunal in O.A.No. 106/95, O.A. No.107/95 and O.A. No.115/95.
4. That before replying to the averments made in the contempt petition, it is respectfully submitted that the answering Respondents 1 and 2 are no longer



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49

holding the posts of Chief General Manager, Assam Telecom Circle and Superintending Engineer (Civil), Telecom Civil Circle, Ulubari respectively and as such in view of their transfer from these posts, the Respondents are not the competent authorities, at present, to take any action in regard to the orders passed by this Hon'ble Tribunal in O.A. 106/95, O.A. 107/95 and O.A. 115/95. It is humbly submitted that no fruitful purpose shall therefore be served by continuing the present proceeding against the present Respondents. The Respondent No.1 is now functioning as General Manager, Telecom District, Alleppey, Kerela and Respondent No. 2 is now functioning as Chief Engineer (C), Department of Telecommunication, Chandigarh

5. That the order dated 17.9.97 in O.A. No.106/95, ~~107~~ O.A. No.107/95 and O.A. No.115/95 was passed by this Hon'ble Tribunal directing the Respondents particularly Respondent No.3 in the original application (Respondent No.2 in the instant proceedings) to grant temporary status in any Group-D post and thereafter to regularise their posts as per scheme. The judgment was served on the Department on 8.10.97. The Respondent Nos.1 and 2 in the instant proceeding were not competent under the authority in force to sanction post in Group D in temporary status. It was only the Directorate in the Department of Telecommunications which could



have sanctioned the posts in temporary status in Group D. The matter was therefore required to be examined in details to be put up to the Directorate. On a perusal of the records, it transpired that the direction of this Hon'ble Tribunal was on concession given by the counsel for the Department, Shri Shaukat Ali. Since the concession given by the said counsel was totally against the brief given to the learned counsel, more particularly the instruction given to counsel on 18.6.97, the matter was taken up 4.11.97 with Shri Shaukat Ali to find out under what circumstances the learned counsel had to make such concession. He was also requested to seek time of two months for further consideration of the case and also to give his legal opinion. Shri Ali was also instructed on 4.11.97 to prefer a review application if no concession was in fact given.

6. That on 22.11.97 the Respondent No.2 was apprised by Shri Shaukat Ali that no concession was given by him and in fact such concession was put in his mouth by the Hon'ble Tribunal at the time of dictating judgment in the open court. Shri S. Ali further stated that the direction was in accordance with the consent of departmental officer present in the Tribunal. The Respondents state that as per record Shri A.C. Das was the departmental officer



-5-

present in the Tribunal to produce the records. In view of his status, Sri A.C.Das was not competent to bind the Department under any concession. Moreover, in his report, Shri A.Das denied giving any such concession before the Hon'ble Tribunal. In view of this anomalous position, it took some amount of time before the Directorate could be apprised of as regards the entire facts. The Directorate thereafter instructed the Respondents to prefer review application before the Hon'ble Tribunal. Accordingly the drafts of the review applications were settled in consultation with the Advocates of the Department, Shri Shaukat Ali and Shri Anup Chowdhury and the same were filed on 30.4.98 along with applications for condonation of delay in preferring review. The same are pending consideration by this Hon'ble Tribunal and are fixed for orders on 17.11.98. In view of these developments, it was not possible for the answering Respondents to grant temporary status in any group D post to the applicants in the O.A. 106/95, O.A.107/95 and O.A. 115/95. The entire process of consultation required that the matter be processed at various levels including the Directorate as well as in the chambers of the Advocates concerned which required time and as such the time originally allowed by this Hon'ble Tribunal had elapsed.



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7. That the scheme referred to in the judgment/order dated 17.9.97 in the connected original applications applies only to casual mazdoors engaged for performance of Group D duty. The scheme is an one time scheme for conferring temporary status on casual labourers who were currently employed in 1989 ~~as~~ and had rendered continuous service of at least one year as Casual labourer. In terms of the said scheme which was called "Casual Labourers (Grant of temporary status and Regulation) Scheme of the Department of Telecommunications, 1989", the scheme would be effective from 1.10.89 and would be applicable to the casual labourers employed by the department. Under the said scheme, temporary status could be conferred on all casual labourers who were employed on 1.10.89 and who had rendered a continuous service of at least one year prior to 1.10.89. This scheme was not applicable in the case of the three applicants connected in the instant proceedings, firstly, because they were not employed ~~at~~ when the scheme came into force, and secondly, because they were engaged for performance of duty of Draftsman and Typists which are Group C posts.

8. That it may be mentioned that the applicants in their original applications before this Hon'ble



...7

Tribunal did not make any prayer for grant ~~fix~~ of temporary status and/or regularisation against Group-D posts. In fact even in their legal notices served on the Respondents vide notices dated 15.1.98 and reminder dated 15.3.98, the applicants have demanded regularisation in their original Group-C posts and not in any Group-D post. The Respondents submit that since the scheme of regularisation in Group-D post was not the pleaded case of the applicant, appropriate submission could not be made by the Department regarding the said scheme. It was therefore necessary to apprise this Hon'ble Tribunal regarding this difficulty and hence the review application was filed. The review application is fixed for orders on 17.11.98.

9. That the Respondents respectfully beg to state that averment made in paragraphs 1,2 and 3 of the contempt application are incorrect and are hence denied. The applicants were working in their respective capacity purely on day to day basis. The applicants were given day to day ~~basic~~ jobs and they were paid at intervals on basis of work done by them. The payments were made on hand receipts. The applicant No.2 was never called for any interview as alleged. Only applicant 1 and 3 were called for interview as draftsmen but this interview was also kept in abeyance since it was considered necessary to fill the posts only through Departmental candidates. The applicant



applicant 1 and 3 were not considered as they were not departmental candidates. No consideration was ever made at any time to regularise the applicants. In fact the applicants were never appointed by any regular process of law and there was no question of the applicants ever being in temporary service.

10. That as regards the averments made in paragraphs 4, 5, 6, 7, 8, 9 of the contempt petition, the deponent states that the relevant facts and materials have already been stated hereinabove and the deponent denies any averment made in the said paragraphs which is contrary to the averments made by the deponent. It is denied that the petitioners have asked for implementation of the judgment. As already stated above, the applicants through ~~gh~~ their legal notices have demanded regularisation in their original posts, which prayer has been rejected by this Hon'ble Tribunal.

11. That in the facts and circumstances of the case, it is humbly submitted that there has been no wilful violation of any order or direction passed by this Hon'ble Tribunal in so far as this contempt case is concerned and the instant proceedings may kindly be dropped. It is respectfully submitted that the Respondents are not guilty of any contempt of this Hon'ble Tribunal. As already stated above, this



-9-

this Hon'ble Tribunal. As already stated above, the Respondents have the highest respect for any order or direction passed by this Hon'ble Tribunal and hence there is no question of any wilful violation of any order passed by this Hon'ble Tribunal. In case however, this Hon'ble Tribunal takes any contrary view, the Respondents tender an absolute and unconditional apology before this Hon'ble Court.

12. That this deponent respectfully prays that this Hon'ble Tribunal may be pleased to drop the present proceedings on the facts and circumstances stated above in the present affidavit-in-opposition, against the Respondents.

13. That the statements made in paragraphs 1 to 8, 10 and 11 of this affidavit are true to my knowledge, those made in paragraphs 9 being matters of record are true to my information derived therefrom which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit this 30th day of October, 1998 at Guwahati.

Jagdish Chander Setia

Deponent

Identified by:

Naba Kumar Deka
Advocate

Solemnly affirmed and signed in my presence by the deponent who is identified by *Setia*
Advocate.

38
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BEFORE THE GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Filed by Applicant
Through D. K. Deka
Advocate
24/11/98



IN THE MATTER OF:

Contempt Petition No. 10/98

in

O.A. No. 106/95

O.A. No. 107/95

O.A. No. 115/95

Smt Anita Baishya & 2 Ors

...Petitioners

-vs-

1. K. Padmanavan

2. J.C. Sethi

... Respondents

-AND-

IN THE MATTER OF:

An application on behalf of
Respondent No.1 for exemption from
further appearance in person in
the instant proceeding.

-AND-

IN THE MATTER OF:

K. Padmanavan
General Manager,
Telecom District,
Alleppey, Kerela.

...Applicant/Respondent

-vs-

1. Smt Anita Baishya,
Applicant in OA No. 106/95
2. Md. Fazar Ali
Applicant in OA No. 107/95
3. Smt Namita Das,
Applicant in OA No. 115/95.

..Opposite parties/
petitioners.

The humble application of the
applicant/respondent herein-

MOST RESPECTFULLY SHEWETH:

1. That the opposite parties who were the applicants in O.A. 106/95, O.A. 107/95 and O.A. 115/95 have preferred an application under Section 17 of the Central Administrative Tribunal Act, 1985 for drawing Contempt of Court proceedings against the present applicant who has been arrayed as Respondent No.1 in the said Contempt application which was registered as Contempt petition No.10/98.
2. That by order dtd. 9.9.98 this Hon'ble Tribunal had directed the personal appearance of the Respondents in the contempt application No.10/98 on 30.10.98 at 10.30 A.M. The Respondent No.1 in the said contempt petition had prayed for exemption from

personal appearance on 30.10.98 because of a religious ceremony in his family in connection with his mother. This Hon'ble Tribunal was pleased to grant exemption from appearance on 30.10.98 and had directed personal appearance on 24.11.98. Accordingly, the Respondent No.1 (applicant herein) has personally appeared today before this Hon'ble Tribunal.

3. That the answering Respondent No.1 is also filing today the show cause to the contempt petition No.10/98 through counsel, Shri Niloy Dutta, and Shri Debajit Das. The Respondent has engaged the said counsels and have fully briefed them in the matter. All the relevant records have been made available to the aforesaid counsels.
4. That the Respondent No.1 in the contempt petition is no longer the Chief General Manager, Assam Telecom Circle, Ulubari. He has been transferred out in July 1998 and is presently the General Manager Telecom District, Alleppey, Kerela.
5. That in view of the present posting, the applicant herein is ~~not~~ not the competent authority to take any action on the orders passed by this Hon'ble Tribunal in O.A. 106/95, O.A. 107/95 and O.A. 115/95 and no fruitful purposes shall therefore be served by continuing the present proceedings against the present applicant. Moreover, the ~~long~~ journey from Bangalore

to Guwahati and back shall cause absence of the applicant from his office for at least five days on each occasion. The applicant is holding responsible public office and there is no possibility of his absconding or evading the instant proceedings any time the Hon'ble Tribunal so directs. The applicant can be represented by his counsel during further proceedings in the instant contempt proceedings.

6. That it is respectfully submitted that this is a fit case in public interest to exempt the applicant herein from appearance in person from further proceeding in the contempt petition No.10/98. The Respondent undertakes to be present before this Hon'ble Tribunal in person any time in future as and when directed by this Hon'ble Court.

7. That this petition has been filed bonafide and in the interest of justice.

In the premises aforesaid, it is respectfully prayed that this Hon'ble Tribunal may be pleased to exempt the present applicant(Respondent No.1 in the contempt petition No.10/98) from appearance in further proceedings of the said contempt petition.

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

..Affidavit..

AFFIDAVIT

I, Shri Krishnaswamy Padmanabhan, General Manager, Deptt. of Telecommunication, Telecom District Alleppey, Kerela, aged about 54 years, son of Krishnaswamy, presently residing at Alleppey, Kerela, do hereby solemnly affirm and state as follows:

1. That I am the applicant in the present application and as such I am conversant with the facts and circumstances of the case.
2. That this statements made in this affidavit and in paragraphs 1 to 5 and 7 are true to my knowledge and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 24th day of November, 1998 at Guwahati.

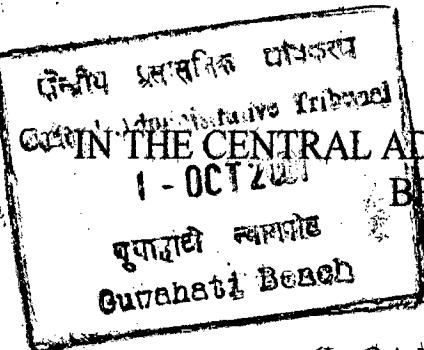
Identified by:

SPD
Advocate

K. Padmanabhan
Deponent

Solemnly affirmed and signed in presence by the deponent who is identified by *V. M. Thomas* Advocate

V. M. Thomas



CP No. 10/98
(In OA No. 106/95, 107/95 and 115/95)

Smti Anita Baishya & 2 others.....Petitioners

Vs

Shri J. K. Chhabra & 2 others..... Respondents

(Affidavit in reply filed by Shri J. K. Chhabra)

I, J. K. Chhabra working as Chief General Manager Telecommunication, Assam Circle, Guwahati-7 do hereby solemnly affirm and state as follows---

1. That I have been implicated as one of the Respondents (Respondent no.3) in the above noted CP No. 10/98. (referred to as the "Contempt Petition"). A copy of the Contempt Petition along with the copy of the Judgement and order passed in OA No. 106/95, 107/95 and 115/95 has been served on me. I have gone through the said petition and understood the contents thereof.
2. That this Hon'ble Tribunal in its order dated 17.9.97 passed in above noted OAs, directed the respondents to regularize the service of the applicants/petitioners in Group 'D' post. In the said Judgement it has also been recorded that the respondents also had no difficulty in regularizing service in Gr 'D'.

Contd....

58
R. C. Pathak - 27/9/01
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

In this connection, I hereby submit that in our written statement we never made any pleading that the applicants could be regularized in Gr 'D' post. There was also no prayer of the applicants in their applications. Therefore, the Sr. CGSC made the concession unauthorizedly and without any basis and the same is illegal, which cannot sustain in law. Moreover, the then Sr. CGSC, also made it clear that he never made any submission that the applicants/petitioners could be regularized against Gr. 'D' post and or there was no difficulty in regularizing them in Gr. 'D' post. In this regard the Sr. CGSC, Mr. S. Ali informed the respondent in writing and the copy of the same was annexed to the Review Applications (RA No. 9/98, 10/98, 11/98) filed in this Hon'ble Tribunal. Unfortunately the said Review Applications were dismissed on the ground of limitation without being considered on merit. I crave the leave of this Hon'ble Tribunal to allow me to rely upon and produce the decision of Hon'ble Supreme Court relating to the unauthorized concession of the Govt. Standing Counsel.

The copy of the said letter of Sr. CGSC is annexed here to as Annexure R1

3. That with regard to the statement made in paragraph 1 of the Contempt Petition, I say that the applicants were engaged on casual basis and they were given payment of wages on daily basis against hand receipts. Hence the contention of the petitioners are denied.
4. That with regard to the statement made in para 2 of the petition, I say that only applicants no. 1 & 3 were called for interview excluding applicant No.2. But as their calling for interview itself was illegal, as they were not departmental regular candidate, the selection process was kept in abeyance, since it was considered necessary to fill the

Contd., ...

post only through departmental candidates. Moreover, the Govt. of India vide office memorandum No. 7(3)/E/(coord)/99 dated 5.8.99 has imposed ban order for recruitment of Gr. 'C' & 'D' staff and also order for 10% cut on the existing sanctioned strength/vacancies as austerity measure. As a result, the Respondents now cannot recruit/appoint any such staff against any such vacancy with effect from the date of said memorandum.

A copy of the said memorandum dated 5.8.99 is annexed as R2.

5. That with regard to the statement made in paragraph 3 of the petition I say that for the recruitment of Gr. 'C' & 'D' staff, the Govt. has its own procedure and therefore, they cannot appoint/recruit any such staff on regular basis dehors such procedures. Therefore, the allegation made by the petitioners cannot sustain in law and hence it is denied.

6. That with regard to the statement in paragraph 4 of the application, I request and reiterate the fore-going statements made in this affidavit.

7. That with regard to the statement made in paragraphs 5, 6 & 7 of the petition, I say that the respondents after the passing of the judgement/order in the afore-mentioned OAs, preferred a Review Application to this Hon'ble Tribunal, particularly on the ground that the order passed by the Tribunal was not consent order. But the said RA was not heard on merit and the same was rejected on the technical ground of limitation. Against the said order, the Respondents then approached the Hon'ble Guwahati High Court through the WP(C) 4177/2001, 4247/2001 and 4318/2001. The said Writ Petitions were heard and were dismissed by said Hon'ble High Court. Against the order of the High Court, the

Contd....

respondents have already filed a special leave petition (SLP) before the Hon'ble Supreme Court and the said petition has been registered under Dy. No. 14900/2001 and SLP Nos 16948, 16949 & 16950 of 2001 and the matter is expected to be heard very soon. In the meanwhile, while the above-mentioned processes were carried in different courts, the petitioners filed this Contempt Petition which is also being delayed for those reasons only. Hence, I deny the allegations made in this paragraph as baseless.

8. That with regard to the statement made in paragraph 8 of the petition, I say that right of the appeal to the Supreme Court is a legal right of the respondents and when the matter is subjudiced before the Hon'ble Supreme Court in appeal, the respondents have no other way out but to wait for the decisions to be rendered by the Hon'ble Apex Court and they will abide by the decisions of the said Court.

9. That with regard to the statement made in paragraph 9 and prayer portion of the petition, I say that the noncompliance of the Hon'ble Tribunal's order dated 17.9.97 does not amount to 'Civil Contempt' as defined under section 2(b) of the contempt of Court's Act, 1971. As the ingredients to constitute 'wilful' disobedience within the meaning of said provisions of law, the Hon'ble Supreme in a catena of decisions has held that for holding the respondents to have committed contempt it has to be shown that there has been 'wilful' disobedience of the judgement or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of Court's order. Since notice of Contempt and punishment for contempt has far reaching consequences, these powers should be invoked only when a clear case of wilful disobedience of the court's order has

Contd....

been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience, particularly when the attention of the person is drawn to the Court's order and its implications. Disobedience of the Court's order strikes at the very root of the rule of law, on which Indian system of Governance is based. Power to punish for contempt is for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice. Jurisdiction to punish for contempt exists to provide ultimate sanction against the person, who refuses to comply with the Court's order or disregards the order continuously. No person can defy Court's order. 'Wilful' would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order.

In this connection I also humbly submit that it is not a case where the respondents are to purge the contempt first before they are being heard by this Hon'ble Tribunal or the Hon'ble Apex Court where the appeal is subjudiced. The conditions so required for purging of contempt is to show that the alleged contempt has impeded the course of justice by making it more difficult for the court to ascertain the truth or to enforce its order and there was no other effective means of securing the compliance as the respondents have already shown good reasons for the delay in compliance of the order.

Contd....

10) I also respectfully submit that the case of the applicants/petitioners was not covered by the scheme of 1989 for regularization and grant of Ty. Status to casual labourer as the applicants/petitioners were contract workers doing the job of Gr. 'C'. Hence, they in no way can claim the benefit of the aforesaid scheme meant for casual labourers within the meaning as laid down there. In a similar case, of Indian Airport Employees' Union Vs Rajan Chatterjee and another it was held that interpretation involving notification etc. can be done only in an appropriate proceeding not in a contempt proceeding, as the correctness of interpretation put forward by the respondents and the petitioners could not be decided in a contempt proceeding. Under such circumstances the non-regularization of the applicants/petitioners against Gr. 'D' the post is bonafide and is based on interpretation of the scheme for the regularization and conferment of Temporary Status to casual labourers and, therefore, cannot be said to amount to wilful disobedience of the Hon'ble Tribunal's order.

11. That I also respectfully submit that the noncompliance of the Hon'ble Tribunal order does not amount to wilful disobedience as the non-compliance is bonafide and unintentional in addition to genuine inability to comply with the terms of the order as explained herein above. And, therefore, I may be exonerated from the alleged contempt, for which I hereby seek my unqualified apology before this Hon'ble Tribunal.

12. That I also categorically submit that I have joined as Chief General Manager

Contd....

Telecom in this Telecom Circle with effect from 12.05.2000 when the matter was subjudiced and the decision was taken by my predecessors to prefer other alternative remedy considering the terms of the order of the Tribunal. However, I do not have any intention or any wilful disobedience in compliance with the aforesaid order.

13. In view of the above facts and circumstances about the case as stated above, I may be exonerated from the alleged Contempt by accepting my unqualified apology.

14) That the statements made in paragraphs 1, 3, 5 to 13..... are true to my knowledge and belief, those made in paragraphs 2, 4..... being matter of records are true to my informations derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on the 27/9 day of Sept'2001 at Guwahati.

Identified

by me

Dipak Chatterjee
(Advocate) 27/9/01

J. K. CHHABRA
Deponent

Solemnly affirmed and declared before me by the deponent
who is identified by Shri B. C. Borthakur Advocate
on this 27/9 day of Sept'2001 at Guwahati.

Dipak Chatterjee
Magistrate/ Advocate.

Annexure A (228)

RESIDENCE

Islampur
Islampur Road,
Guwahati - 7
Dist. Kamrup (Assam)
Phone: 540743

Date:

Md. Shaukat Ali, M.A., LL.B., Advocate
Senior Central Govt. Standing Counsel,
Central Administrative Tribunal, Guwahati Bench.
Bhangagarh, Ralgarh Road, Guwahati- 5
Advocate, Gauhati High Court, Guwahati

The S.E. Telecom Circle, circle No. 1
Guwahati

Ref: - Your letter No. 566) 95/ TCC/164/1466
dated 09/11/97
Sub: - Legal opinion on the judgment
passed by C.A.T. in OA 106/95
& OA 115/95

Res.
With reference to the above judgments no.
566, because in judgment as an administrative
Concurred judgment given by your officer though
it has been put on my work by the C.A.T.
at the time of dictating the judgments in
open Court in presence of your representative.
At best we may take two months time
to implement the judgments.
For information

Yours faithfully
Md. Shaukat Ali
S. No. 8/ C
22/11/97

9-10.14

Annexure-R

No. 7(b)/E(Coord)/99

Government of India

Ministry of Finance

Department of Expenditure

New Delhi, 5th August, 1999

Office Memorandum

Subject : Guidelines on Expenditure Management – fiscal prudence and austerity.

In continuation of this Department's O.M.No. 19(1)-E.II(A)/98 dt. 20th August, 1998 and 10th February, 1999 on the subject cited above, it has been decided to implement the following additional austerity measures with immediate effect:-

(1) Ban on creation of Plan and Non-Plan posts

The existing ban on creation of Non-Plan posts will continue and should be strictly enforced. Any unavoidable proposals for the creation of plan posts including Groups 'B', 'C' and 'D' posts shall continue to be referred to the Ministry of Finance (Department of Expenditure) for approval.

(2) Ban on filling up of vacant posts

Every Ministry/Department shall undertake a review of all the posts which are lying vacant in the Ministry/Department and in the Attached and Subordinate Offices, etc., in consultation with the Ministry of Finance (Dept. of Expenditure). FAs will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc., are available. Till the review is completed no vacant posts shall be filled up except with the approval of the Ministry of Finance (Department of Expenditure).

(3) 10% cut in posts

Those Ministries/Departments which have not fully implemented Government's decision to achieve 10% reduction in the number of posts (as on 1.1.92) shall implement the said decision immediately.

(4) Purchase of new vehicles

Purchase of new vehicles is banned until further orders. Exceptions will be allowed only for meeting the operational requirements of Defence, Central Para Military Forces, etc.

(5) 10% mandatory cut on Non-Plan non-salary expenditure

Every Ministry/Department shall make a 10% mandatory cut during the current year (1999-2000) on Non-Plan, non-salary expenditure, i.e., on TA, Office Expenses, POL, OTA, honorarium, etc. No re-appropriation of funds to augment

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those heads of expenditure would be allowed during the current financial year. Austerity must be reflected in functions organised by the Govt. of India, (meetings, conferences, inaugurations, etc.) and in furnishing of offices/offices at residences. The expenditure limit prescribed for these purposes shall be strictly enforced.

(6) Foreign Travel

Foreign travel funded by the Govt. of India, unless it is absolutely unavoidable, shall not be undertaken till the end of the current financial year.

(7) New expenditure proposals

No new expenditure proposals will be entertained during the current financial year except those announced in the budget.

(8) Expenditure on existing schemes/programmes

Any unavoidable increase in expenditure on existing schemes/projects shall be met out of savings; no additional funds will be provided for this purpose. Proposals for inter State transfer of funds in respect of schemes covering all the States will not normally be entertained.

2. All existing instructions on austerity/economy in expenditure issued by the Ministry of Finance (Department of Expenditure) from time to time shall be strictly enforced.

Secretaries to the Govt. of India and Financial Advisers are requested to ensure strict compliance of the above instructions.

Take care
(C.M. Vasudev)

Secretary to the Govt. of India

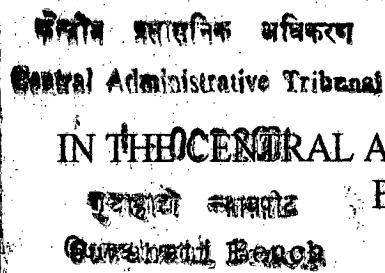
To,

All Secretaries to the Govt. of India (By name)

All Heads of Public Sector Enterprises

All FAs (By name)

All Chief Secretaries of State Governments with the request that they may consider issuing similar instructions in respect of their State Governments.



CP No. 10/98
(In OA No. 106/95, 107/95 and 115/95)

Smti Anita Baishya & 2 others.....Petitioners

Vs

Shri Mahesh Shukla & 2 others.....Respondents

(Affidavit in reply filed by Shri Mahesh Shukla)

I, Mahesh Shukla working as Deputy General Manager (A), O/o the Chief General Manager Telecommunications, Assam Circle, Guwahati-7 do hereby solemnly affirm and state as follows---

1. That I have been implicated as one of the Respondents (Respondent no. 4) in the above noted CP No. 10/98 (referred to as the "Contempt Petition"). A copy of the Contempt Petition along with the copy of the Judgement and order passed in OA No. 106/95, 107/95 and 115/95 has been served on me. I have gone through the said petition and understood the contents thereof.
2. That this Hon'ble Tribunal in its order dated 17.9.97 passed in above noted OAs, directed the respondents to regularize the service of the applicants/petitioners in Group 'D' post. In the said Judgement it has also been recorded that the respondents also had no difficulty in regularizing service in Gr 'D'.

Contd....

66
File Copy
Original
(B. C. Pathak) 27/9/97
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

In this connection, I hereby submit that in our written statement we never made any pleading that the applicants could be regularized in Gr 'D' post. There was also no prayer of the applicants in their applications. Therefore, the Sr. CGSC made the concession unauthorizedly and without any basis and the same is illegal, which cannot sustain in law. Moreover, the then Sr. CGSC, also made it clear that he never made any submission that the applicants/petitioners could be regularized against Gr. 'D' post and or there was no difficulty in regularizing them in Gr. 'D' post. In this regard the Sr. CGSC, Mr. S. Ali informed the respondent in writing and the copy of the same was annexed to the Review Applications (RA No. 9/98, 10/98, 11/98) filed in this Hon'ble Tribunal. Unfortunately the said Review Applications were dismissed on the ground of limitation without being considered on merit. I crave the leave of this Hon'ble Tribunal to allow me to rely upon and produce the decision of Hon'ble Supreme Court relating to the unauthorized concession of the Govt. Standing Counsel.

The copy of the said letter of Sr. CGSC is annexed here to as Annexure R1

3. That with regard to the statement made in paragraph 1 of the Contempt Petition, I say that the applicants were engaged on casual basis and they were given payment of wages on daily basis against hand receipts. Hence the contention of the petitioners are denied.
4. That with regard to the statement made in para 2 of the petition, I say that only applicants no. 1 & 3 were called for interview excluding applicant No.2. But as their calling for interview itself was illegal, as they were not departmental regular candidate, the selection process was kept in abeyance, since it was considered necessary to fill the

Contd....

65

post only through departmental candidates. Moreover, the Govt. of India vide office memorandum No. 7(3)/E/(coord)/99 dated 5.8.99 has imposed ban order for recruitment of Gr. 'C' & 'D' staff and also order for 10% cut on the existing sanctioned strength/vacancies as austerity measure. As a result, the Respondents now cannot recruit/appoint any such staff against any such vacancy with effect from the date of said memorandum.

A copy of the said memorandum dated 5.8.99 is annexed as R2.

5. That with regard to the statement made in paragraph 3 of the petition I say that for the recruitment of Gr. 'C' & 'D' staff, the Govt. has its own procedure and therefore, they cannot appoint/recruit any such staff on regular basis dehors such procedures. Therefore, the allegation made by the petitioners cannot sustain in law and hence it is denied.

6. That with regard to the statement in paragraph 4 of the application, I request and reiterate the fore-going statements made in this affidavit.

7. That with regard to the statement made in paragraphs 5, 6 & 7 of the petition, I say that the respondents after the passing of the judgement/order in the afore-mentioned OAs, preferred a Review Application to this Hon'ble Tribunal, particularly on the ground that the order passed by the Tribunal was not consent order. But the said RA was not heard on merit and the same was rejected on the technical ground of limitation. Against the said order, the Respondents then approached the Hon'ble Guwahati High Court through the WP(C) 4177/2001, 4247/2001 and 4318/2001. The said Writ Petitions were heard and were dismissed by said Hon'ble High Court. Against the order of the High Court, the

Contd....

respondents have already filed a special leave petition (SLP) before the Hon'ble Supreme Court and the said petition has been registered under Dy. No. 14900/2001 and SLP Nos 16948, 16949 & 16950 of 2001 and the matter is expected to be heard very soon. In the meanwhile, while the above-mentioned processes were carried in different courts, the petitioners filed this Contempt Petition which is also being delayed for those reasons only. Hence, I deny the allegations made in this paragraph as baseless.

8. That with regard to the statement made in paragraph 8 of the petition, I say that right of the appeal to the Supreme Court is a legal right of the respondents and when the matter is subjudiced before the Hon'ble Supreme Court in appeal, the respondents have no other way out but to wait for the decisions to be rendered by the Hon'ble Apex Court and they will abide by the decisions of the said Court.

9. That with regard to the statement made in paragraph 9 and prayer portion of the petition, I say that the noncompliance of the Hon'ble Tribunal's order dated 17.9.97 does not amount to 'Civil Contempt' as defined under section 2(b) of the contempt of Court's Act, 1971. As the ingredients to constitute 'wilful' disobedience within the meaning of said provisions of law, the Hon'ble Supreme in a catena of decisions has held that for holding the respondents to have committed contempt it has to be shown that there has been 'wilful' disobedience of the judgement or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of Court's order. Since notice of Contempt and punishment for contempt has far reaching consequences, these powers should be invoked only when a clear case of wilful disobedience of the court's order has

Contd....

been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience, particularly when the attention of the person is drawn to the Court's order and its implications. Disobedience of the Court's order strikes at the very root of the rule of law, on which Indian system of Governance is based. Power to punish for contempt is for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice. Jurisdiction to punish for contempt exists to provide ultimate sanction against the person, who refuses to comply with the Court's order or disregards the order continuously. No person can defy Court's order. 'Wilful' would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order.

In this connection I also humbly submit that it is not a case where the respondents are to purge the contempt first before they are being heard by this Hon'ble Tribunal or the Hon'ble Apex Court where the appeal is subjudiced. The conditions so required for purging of contempt is to show that the alleged contempt has impeded the course of justice by making it more difficult for the court to ascertain the truth or to enforce its order and there was no other effective means of securing the compliance as the respondents have already shown good reasons for the delay in compliance of the order.

Contd....

10) I also respectfully submit that the case of the applicants/petitioners was not covered by the scheme of 1989 for regularization and grant of Ty. Status to casual labourer as the applicants/petitioners were contract workers doing the job of Gr. 'C'. Hence, they in no way can claim the benefit of the aforesaid scheme meant for casual labourers within the meaning as laid down there. In a similar case, of Indian Airport Employees' Union Vs Rajan Chatterjee and another it was held that interpretation involving notification etc. can be done only in an appropriate proceeding not in a contempt proceeding, as the correctness of interpretation put forward by the respondents and the petitioners could not be decided in a contempt proceeding. Under such circumstances the non-regularization of the applicants/petitioners against Gr. 'D' the post is bonafide and is based on interpretation of the scheme for the regularization and conferment of Temporary Status to casual labourers and, therefore, cannot be said to amount to wilful disobedience of the Hon'ble Tribunal's order.

11. That I also respectfully submit that the noncompliance of the Hon'ble Tribunal order does not amount to wilful disobedience as the non-compliance is bonafide and unintentional in addition to genuine inability to comply with the terms of the order as explained herein above. And, therefore, I may be exonerated from the alleged contempt, for which I hereby seek my unqualified apology before this Hon'ble Tribunal.

12. That I also categorically submit that I have joined as Deputy General Manager (A), in o/o the Chief General Manager Telecom, Assam Circle, Guwahati

Contd....

7

with effect from 23.03.2000 when the matter was subjudiced and the decision was taken by my predecessors to prefer other alternative remedy considering the terms of the order of the Tribunal. However, I do not have any intention or any wilful disobedience in compliance with the aforesaid order.

13. In view of the above facts and circumstances about the case as stated above, I may be exonerated from the alleged Contempt by accepting my unqualified apology.

14) That the statements made in paragraphs 1, 3, 5 to 13..... are true to my knowledge and belief, those made in paragraphs 2, 4, being matter of records are true to my informations derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on the 27/10 day of Sept'2001 at Guwahati.

Identified

by me

Deb Lahiri
(Advocate) 27/10/01

Dilip Baruah
Deponent

Solemnly affirmed and declared before me by the deponent
who is identified by Shri B C Pathak Advocate
on this 27/10 day of Sept'2001 at Guwahati.

Dilip Baruah.
Magistrate/ Advocate.

Annexure - R

RESIDENCE :

Islampur
Islampur Road,
Guwahati - 7
Dist. Kamrup (Assam)
Phone : 540743

Date :

13

Md. Shaukat Ali, M.A., LL.B., Advocate
Senior Central Govt. Standing Counsel,
Central Administrative Tribunal, Guwahati Bench.
Bhangagarh, Rajgarh Road, Guwahati - 5
&
Advocate, Gauhati High Court, Guwahati.

To

The S.E. Telecom Circle,
Guwahati.

Ref:- Your letter No. 566) 95/TCC/1644/1466
dated 4.11.97

Sub:- Legal opinion on the judgment
passed by CAT. in OA 106/95,
107/95 & OA 115/95

Sir,

With reference to the above judgments no
revised file, because the judgment is an admitted/
consented judgment given by your Officer with
it has been put on my work by the CAT.
at the time of dictating the judgments in
open Court in presence of your representative.
At best we may take two months time
for preparation of judgments, this is for
your information.

Yours faithfully

Shaukat Ali

Sr. C.B.S.C

22/11/97

-9-
5/10. JV

Annexure - B

No. 7(b)/E(Coord)/99

Government of India

Ministry of Finance

Department of Expenditure

HISTOLOGY OF ROTTEN FISH

New Delhi, 5th August, 1999

Office Memorandum

Subject : Guidelines on Expenditure Management – fiscal prudence and austerity.

In continuation of this Department's O.M.No. 19(1)-E.II(A)/98 dt. 20th August, 1998 and 10th February, 1999 on the subject cited above, it has been decided to implement the following additional austerity measures with immediate effect:-

(1) Ban on creation of Plan and Non-Plan posts

The existing ban on creation of Non-Plan posts will continue and should be strictly enforced. Any unavoidable proposals for the creation of plan posts including Groups 'B', 'C' and 'D' posts shall continue to be referred to the Ministry of Finance (Department of Expenditure) for approval.

(2) Ban on filling up of vacant posts

Every Ministry/Department shall undertake a review of all the posts which are lying vacant in the Ministry/Department and in the Attached and Subordinate Offices, etc., in consultation with the Ministry of Finance(Deptt. of Expenditure). EAs will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc., are available. Till the review is completed no vacant posts shall be filled up except with the approval of the Ministry of Finance(Department of Expenditure).

(3) 10% cut in posts

Those Ministries/Departments which have not fully implemented Government's decision to achieve 10% reduction in the number of posts (as on 1.1.92) shall implement the said decision immediately.

(4) Purchase of new vehicles

Purchase of new vehicles is banned until further orders. Exceptions will be allowed only for meeting the operational requirements of Defence, Central Para Military Forces, etc.

(5) 10% mandatory cut on Non-Plan non-salary expenditure

... Every Ministry/Department shall make a 10% mandatory cut during the current year (1999-2000) on Non-Plan, non-salary expenditure, i.e., on TA, Office Expenses, POL, OTA, honorarium, etc. No re-appropriation of funds to augment

25

these heads of expenditure would be allowed during the current financial year. Austerity must be reflected in functions organised by the Govt. of India (meetings, conferences, inaugurations, etc.) and in furnishing of offices/offices at residences. The expenditure limit prescribed for these purposes shall be strictly enforced.

(6) Foreign Travel

Foreign travel funded by the Govt. of India, unless it is absolutely unavoidable, shall not be undertaken till the end of the current financial year.

(7) New expenditure proposals

No new expenditure proposals will be entertained during the current financial year except those announced in the budget.

(8) Expenditure on existing schemes/programmes

Any unavoidable increase in expenditure on existing schemes/projects shall be met out of savings; no additional funds will be provided for this purpose. Proposals for inter State transfer of funds in respect of schemes covering all the States will not normally be entertained.

2. All existing instructions on austerity/economy in expenditure issued by the Ministry of Finance (Department of Expenditure) from time to time shall be strictly enforced.

Secretaries to the Govt. of India and Financial Advisers are requested to ensure strict compliance of the above instructions.

(C.M. Vasudev)

Secretary to the Govt. of India

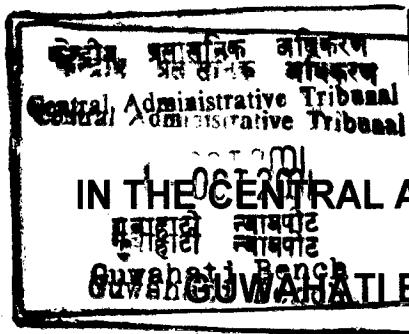
To,

All Secretaries to the Govt. of India (By name)

All Heads of Public Sector Enterprises

All FAs (By name)

All Chief Secretaries of State Governments with the request that they may consider issuing similar instructions in respect of their State Governments.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH AT GUWAHATI

CP No. 10/98, MP No. 190/2001

(In OA No. 106/95, O.A. No. 107/95, O.A. No. 115/95)

Smt Anita Baishya & 2 Others Petitioners

Vs

Shri Amarjeet Singh & Others Respondents

(Affidavit in reply filed by Shri Amarjeet Singh Respondent No. 5)

I, Amarjeet Singh working as Superintending Engineer(Civil), BSNL Civil Circle Guwahati – 7 do hereby solemnly affirm and state as follows :

1. That I have been implicated as one of the respondents (Respondent No. 5) in the Contempt Petition No. 10/98 (referred to as the "Contempt Petition") through M.P. No. 190/2001. A copy of the Contempt Petition along with the copy of the Judgment order passed in OA No. 106/95, 107/95 and 115/95 have been served upon me. I have gone through the said petition and understood the contents thereof.

*File No. 10/101
Bench*

(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

27

2. That this H'ble Tribunal in its order dated 17th September 1997 passed in the above noted OAs, directed the respondents to grant temporary status to the applicant/ petitioners in any Group D post and thereafter regularise their posts as per the scheme. The scheme referred to herein is the "Casual Labourers(Grant of Temporary Status and regularization) Scheme" of 1989 of the Department of Telecommunications for grant of temporary status and subsequent regularization of the casual labourers in Group 'D' cadre.
3. In the said judgment it has also been recorded that the counsel for the respondents had stated that there would not be any difficulty in regularising the applicant/ petitioners in the Group D posts. In this connection I hereby submit that in the written statement filed by the respondents, the respondents have never made any such pleading that the applicant/ petitioners could be regularized in Group D posts. There was also no any written prayer of the applicants/ petitioners in their original applications on record. As per provisions of the Rule 12(6) of "The Central Administrative Tribunal(Procedure) Rules, 1987 the applicant/ petitioners were bound to amend their pleadings in the same manner as provided under Order 6, Rule 17 of the Code of Civil Procedure, 1908. In the humble opinion of the answering respondent it is submitted that in the matter of the relief granted by the H'ble Tribunal to the applicants on 17-09-97, on the basis of their oral prayer on the final day of the hearing without any amended written- applications from the applicants, the respondent department did not get the fair opportunity to defend the amended oral prayers of the applicants and the H'ble tribunal was pleased to grant relief to the applicants on the basis of the oral concessions made by the Govt.

18

counsel on the back of respondents and also without submission of any written affidavit/undertaking by the Govt. counsel.

4. It is humbly submitted that the oral concessions granted by the Govt. counsel on behalf of Union of India in the O.A. No. 106/95, 107/95 & 115/95, without submission of any written undertaking by the said Govt. counsel duly countersigned by the authority competent and vested with powers to sign such a written undertaking on behalf of the Govt. of India, are not binding upon Govt of India as held by H'ble Supreme Court in a case of Jogindar Singh Vs State of Punjab reported in (1994) ISCC-184. The said Govt. counsel was neither competent nor was vested with any powers nor was authorized to give such an oral concession on behalf of the Govt of India specially which was against the rules/policy of the Govt of India more so when the counsel did not submit any written undertaking duly countersigned by the competent public-servant in support of his such oral concession.
5. That with regard to the statement made in paragraph 1 of the Contempt Petition, I say that the applicant/ petitioners were engaged on purely casual basis as per requirements for performing certain specific skilled tasks and they were paid for the specific work rendered by them on daily basis against hand receipts. Hence the contention of the applicants/ petitioners are denied.
6. That with regard to the statement made in para 2 of the contempt petition I say that only applicants no. 1 & 3 were called for interview excluding applicant No.2. But as their calling for interview itself was illegal and against the rule/ law because they were neither the

91

departmental candidates nor were eligible to be called for such an interview, the selection process was kept in abeyance. The draughtsman cadre in the civil wing of the organisation is a dying cadre and there is a ban on the recruitment of draughtsman.

7. That with regard to the statement made in paragraph 3 of the contéempt petition, I submit that for the recruitment of public servants in Group 'C' & Group 'D' category, the Govt. of India has prescribed certain well laid norms and procedure for selection and recruitment and the respondents cannot recruit/ appoint any such staff either on regular or on temporary basis without following the prescribed norms and procedure. Therefore, the allegation made by the applicant/ petitioners is denied.
8. That with regard to the statement in paragraph 4 of the contempt petition, I request and reiterate the fore-going statement made in this affidavit. Moreover as per rule 2(1) of the Government of India (Authorization of officers for verification of pleadings and other documents to be filed in the Central Administrative Tribunal) Rules, 1993 only Group A officers in the Ministries / Departments of the Govt of India are authorised to sign/ verify the pleadings on behalf of the Govt. of India. The said Shri Amal Das, Asstt. Surveyor of Works was present in the H'ble Tribunal only to carry the departmental files/ records to be produced if required before the H'ble Tribunal during the course of arguments. Being a Group B officer the said shri Amal Das was neither authorised nor competent to make any commitment or to sign any written undertaking/ pleading on behalf of the Govt. Any oral or written undertaking or commitment, if any, given by said Shri Amal Das is invalid and unlawful in view of the provisions of the

80

“Government of India (Authorization of officers for verification of pleadings and other documents to be filed in the Central Administrative Tribunal) Rules, 1993”.

9. That with regard to the statements made in paragraphs 5, 6 & 7 of the contempt petition, I submit that after passing of the judgment order in the above mentioned OAs the respondents preferred a Review Application to this Hon'ble Tribunal which was rejected on the technical ground of limitation. Against the said rejection-order, the Respondents then approached the Hon'ble Guwahati High Court through the WP(C) 4177/2001, 4247/ 2001 and 4318/ 2001. The said Writ Petitions were heard and were dismissed by said Hon'ble High Court. Against the dismissal-order of the H'ble High Court, the respondents have already filed a special leave petition (SLP) before the Hon'ble Supreme Court and the said petition has been registered under Dy. No. 14900/2001 and SLP Nos 16948, 16949 & 16950 of 2001 and the matter is expected to be heard very soon. In the meanwhile, while the above-mentioned processes were being carried out in different courts, the petitioners filed this Contempt Petition. Hence, I deny the allegations made in this paragraph as baseless.

10. That with regard to the statement made in paragraph 8 of the contempt petition, I say that the right of the appeal to the Supreme Court is a legal right of the respondents and when the matter is sub-judice before the Hon'ble Supreme Court in appeal, the respondents have no other way out but to wait for the decisions to be rendered by the Hon'ble Apex Court and they will abide by the decisions of the said H'ble Supreme Court.

81

11. The answering respondent begs to submit that as a Govt servant the Superintending Engineer(Civil) in the Department of Telecommunications now BSNL, is neither authorized nor competent nor has been vested with any powers by Govt. of India to either engage or appoint any individual as a casual or as a temporary or as a regular employee in any of the posts under Group "C" or Group "D" category. The answering respondent is also not competent to grant Temporary Status to any casual worker. For implementing the orders of the H'ble Tribunal the authority and the power is vested in the Ministry of Communications Govt. of India. Therefore any action on the part of the answering respondent without proper approval and authorization from the competent authority i.e. Ministry of Communications Govt. of India, specially in the matters of grant of temporary status to the casual workers and their regularization etc, amounts to grave misconduct on his part for which the answering respondent is liable to be proceeded with the disciplinary proceedings by Govt. of India. The answering respondent has no authority under delegated power from the Govt. of India to grant temporary status to the applicants without receipt of the approval/ permission of the competent authority for which efforts have been made by the predecessors and such approval/ permission is still awaited. In view of above submissions the impleadment of answering respondent as a contemnor through the M.P. No. 190/2001 will be against the law of natural and fair justice.

12. That with regard to the statement made in paragraph 9 and prayer portion of the contempt petition, I say that the non-compliance of the Hon'ble Tribunal's order dated 17.9.97 does not amount to 'Civil Contempt' as defined under section 2(b) of the Contempt of Courts

67

Act, 1971. For the ingredients to constitute 'wilful' disobedience within the meaning of the said provisions of the law, the Hon'ble Supreme Court has held that for holding the respondents to have committed the contempt it has to be shown that there has been "wilful disobedience" of the order of the Court on the part of the contemner. Power to punish for contempt is to be resorted to when there is clear violation of Court's order. Since notice of Contempt and punishment for contempt has far reaching consequences, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether the disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience, particularly when the attention of the person is drawn to the Court's order and its implications. Disobedience of the Court's order strikes at the very root of the rule of law, on which Indian system of Governance is based. Power to punish for contempt is for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice. Jurisdiction to punish for contempt exists to provide ultimate sanction against the person, who refuses to comply with the Court's order or disregards the order continuously. No person can defy Court's order. 'Wilful' would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's order must allege deliberate disobedience of the Court's order.

13. I humbly submit that I have the highest respect and regard for the Hon'ble Tribunal and there is no intention of any willful violation of any order or the direction of this Hon'ble Tribunal by the answering

respondent. Under the circumstances explained in para 11 above there is no wilful disobedience of the H'ble CAT's order on the part of the answering respondent.

14. I also respectfully submit that the case of the applicants/ petitioners is not covered under the "Casual Labourers(Grant of Temporary Status and regularization) Scheme" of 1989 for grant of temporary status and subsequent regularization of the casual labourers as Group 'D' employees. The applicants/ petitioners were neither the casual labourers within the meaning of the said scheme nor were performing the jobs done by Group 'D' employees. They were merely contract workers doing the specific type of jobs as and when required on irregular basis and the nature of jobs done by them were similar to those done by Group 'C' employees. Hence they do not fall within the purview of the said scheme meant for casual labourers and in no way can claim the benefit of the aforesaid scheme meant for casual labourers within the meaning as laid down therein. Under such circumstances the non-grant of the temporary status to the applicants/ petitioners against Group 'D' posts by the competent authority is bonafide and cannot be said to amount to wilful disobedience of the Hon'ble Tribunal's order on the part of answering respondent.

15. The answering respondent begs to submit that the petitioners in their Contempt petition have alleged the answering respondent for having committed the contempt of the H'ble tribunal by not implementing its judgment-order dated 17th Sep 1997. The answering respondent has joined as Superintending Engineer (Civil) BSNL Civil Circle Guwahati on 30th march 2001 i.e. more than three and half years after the said judgement and two years after the commitment of the alleged

91

contempt. At the time of joining of the answering respondent the matter was sub-judice as per the decisions already taken by the competent authority and by the predecessors to prefer other alternative remedies. In the humble opinion of the answering respondent no proceedings for contempt are justified against him much after the time limit prescribed under section 20 of the "Contempt of Courts Act, 1971" specially when the answering respondent was nowhere present on the scene till after two years of the alleged commitment of the contempt.

16. Though the answering respondent has acquired the legacy of the predecessor Superintending Engineers(Civil) but the application (MP No. 190/2001) for my impleadment as one of the contemners has been filed by the applicants/ petitioners only in 2001 i.e. after nearly four years of the passing of the judgement. Hence in the humble opinion of the answering respondent the M.P. No. 190/2001 is time-barred and is fit to be dismissed on the grounds of limitation.

17. Answering respondent further submits that the following officers have been functioning as Superintending Engineer (Civil) BSNL Civil Circle on the date of the said judgment and onwards till date:

(a) Shri J.C. Sethi	3-6-97	to	13-7-98
(b) ,, Mukesh Bhargava	14-7-98	to	6-10-98
(c) ,, M.K. Chawla	7-10-98	to	10-3-99
(d) ,, Alok Sahdev	11-3-99	to	30-3-2001
(e) ,, Amajeet Singh	30-3-2001	to	Continue

If for the sake of administration of justice it is to be held that the answering respondent is guilty of the contempt of the H'ble Tribunal due to non-implementation of its judgment order then all

the above named predecessors of the answering respondent should also be impleaded for the similar contempt to meet the fair ends of the justice. Impleadment of the answering-respondent alone by ignoring his predecessors is likely to be against the law of natural justice and detrimental to his fundamental rights of equality before law as protected under article 14 of the Constitution of India.

18. That I also respectfully submit that the non-compliance of the Hon'ble Tribunal's judgment order dated 17th September 1997 does not amount to wilful disobedience as the non-compliance is bonafide, unintentional, due to absence of proper delegated authority/competency and is due to genuine inability to comply with the terms of the said order as explained herein the above paragraphs.

19. In view of the above facts and circumstances on the case as explained herein above, I hereby pray this H'ble Tribunal that

(a) I may very kindly be exonerated from the alleged contempt for my unwilful non-performance as per the H'ble Tribunal's order dated 17th Sep 1997 by accepting my unconditional apology before this Hon'ble Tribunal, and

(b) The order dated 13-8-2001 of the H'ble Tribunal in M.P. No. 190/2001 may kindly be stayed in respect of the answering respondent and

85

(c) The answering respondent may very kindly be exempted from the personal appearance before H'ble Tribunal in the case, and

(d) M.P. No. 190/2001 may kindly be dismissed with sufficient benefits of cost to the answering respondent for suffering mental agony and harassment.

20. That the statements made in paragraphs above are true to my knowledge and belief/ being matter of records and are true to my information as derived there from and are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on the 28th day of September 2001 at Guwahati.

Identified
Bojrajna
by me

A. S. Saha
28.9.2001

ADVOCATE

DEPONENT

Solemnly affirmed and declared before me by the deponent who is identified by Shri B. C. Pathak
on this day 28/9/2001 Advocate of September 2001 at Guwahati.

Dilip Baruah
Advocate