

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No. 11/198.....

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order RA 9/11/98*

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SECTION OFFICER (Judl.)

Shah
22-78

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

R.A. 11 OF 1998

Applicant(s) Union of India & Ors. O.A. 115/95
VS

Respondent(s) Smti Namita Das

Advocate for Applicant(s) Mr. A.K. Choudhury,
Addl. C.G.S.C.

Advocate for Respondent(s)

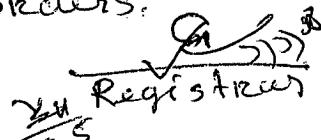
Notes of the Registry	Date	Order of the Tribunal
This Review application is filed by Mr. A.K. Choudhury, Addl. C.G.S.C on behalf of the respondents, against the judgment and order dtd. 17.9.97 passed in R.A. 115/95 in the column of The Hon'ble Vice Chairman and Hon'ble Member (Admin).		On the prayer of Mr. A.K. Choudhury, learned Addl. C.G.S.C the case is adjourned till 4.6.98.
The final order was communicated on 8.10.97 date of received by the respondent No. 3 on 8.10.97.		Sri A.C. Das, Assistant Surveyor of works, office of the Chief General Manager, Telecom, Assam Circle, Guwahati is directed to appear before this Tribunal on that day.

Member



Vice-Chairman

 Admn to 19.6.98
by ad



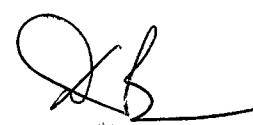
Registrar

2

R.A. 11/98

Notes of the Registry	Date	Order of the Tribunal
<u>20.5.98</u> Copy of Order add 19.5.98 received Certified copy by the respondents.	<u>19.6.98</u> (3)	Let this case be listed alongwith M.P. No. 103 /98 on 13.7.98 for hearing.
<u>20</u> Writ Petition filed by Mr. B.R. Sharma Advocate and Mr. B. Sharma, Adv. on behalf of the respondent opp. party.	<u>14.7.98</u> 4	Let this case be listed on 28.7.98 alongwith M.P.No.103/98.
<u>20</u> 19.6	<u>28.7.98</u> 5	In the prayer of Mr N.Dutta, learned counsel for the opposite party the case is adjourned to 6.8.98. Mr B.K.Sharma has no objection.
	<u>6</u> Member	<u>6</u> Vice-Chairman
	<u>py</u> 28/7/98	
	<u>6</u> Member	<u>6</u> Vice-Chairman
	<u>6</u> Member	<u>6</u> Vice-Chairman
	<u>pg</u> 28/7/98	
<u>18.8.98</u> Copies of the order have been sent to the D/Secy for Safety the time to the Applicant and to the L/Adm of the Recomt.	<u>13.8.98</u>	Mr A.K. Choudhury, learned Addl. C.G.S.C. submits that he is not in the case. There is no representation on behalf of the applicants. The petition is dismissed for default. Mr B.K. Sharma, learned counsel for the opposite party is present.
<u>18.8.98</u> Writ Petition filed by Mr. N. Dutta, Adv. and Mr. D.K. Das Adv. and Vice-Chairman M.P. No. 239 of 19.8.98.	<u>nkm</u>	<u>6</u> Member

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Notes of the Registry	Date	Order of the Tribunal
	27-10-98	<p>In view of the order passed in M.P.No.225/98 the R.A. is restored to file.</p> <p>List on 17-11-98 for orders.</p> <p> Member</p> <p> Vice-Chairman</p>
	17.11.98	<p>On the prayer of Mr D.K.Das, learned counsel for the petitioner the case is adjourned to 24.11.1998 for order.</p> <p> Vice-Chairman</p>
	24.11.98	<p>On the prayer of the counsel for the parties the case is adjourned to 1.12.1998 for order.</p> <p> Member</p> <p> Vice-Chairman</p>
	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.</p> <p>List on 27.1.99 for hearing.</p> <p> Member</p> <p> Vice-Chairman</p> <p><i>27/12/98</i></p>
	27.1.99	<p>On the prayer of the counsel for the parties the case is adjourned to 11.2.99 for hearing.</p> <p> Member</p> <p> Vice-Chairman</p>

RAH 11/98

Notes of the Registry	Date	Order of the Tribunal
	11-2-98	Leftover. Adjudged 4-3-99. By order. Member
	4-3-99	Case is ready for hearing. List for hearing on 6-4-99. Member
	6.4.99	On the prayer of Mr. D.K. Das, learned counsel for the review applicant the case is adjourned till 6.5.99. Member
	6.5.99	On the prayer of Mr. D.K. Das, learned counsel for the review applicant the case is adjourned till 1.6.99. List it on 1.6.99 for hearing. Member
	1.6.99	On the prayer of the learned counsel for the parties the case is adjourned till 8.7.99. Member
	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	26.8.99 Leftover. To be listed on 9.9.99. Vice-Chairman

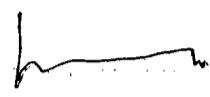
(15)

R.A. 11/98 (O.A. 115/95)

Notes of the Registry	Date	Order of the Tribunal	
	9-9-99	On the prayer of Mr. N. Dutta, learned counsel for the petitioner the case is adjourned to 12-10-99.	
		Member	Vice-Chairman
pg			
	12.10.99	On the prayer of Mr I. Choudhury on behalf of Mr N. Dutta, learned counsel for the applicant the case is adjourned till 25.11.99 for hearing.	
		Member	Vice-Chairman
nkm			
	25.11.99	On the prayer of the counsel for the parties the case is adjourned till 27.1.2000.	
		Member	Vice-Chairman
pg			
	27.1.00	No DB. Adjourned to 15-2-00.	
			15-2-00
	15-2-00	Adjourned to 28.3.00.	
			28.3.00
	28.3.00	Division Bench is not available to-day. List for hearing on 23.5.00.	
		Member	
	1m		
	23.5.00	There is no Bench today. Adjourned to 1-8-00.	
			1-8-00
	1-8-00	There is no Bench today. Adjourned to 23.11.00.	
			23.11.00

Notes of the Registry	Date	Order of the Tribunal
	23.11.00	List on 23.3.01 for hearing. Vice-Chairman
pg trd		
	19.1.01	On the prayer made on behalf of Mr N.Dutta, learned counsel for the petitioner the case is adjourned to 23.1.01 for hearing. K.C.Usha Member
		Vice-Chairman
pg		
	23.1.01	List again on 20.2.01 for hearing. K.C.Usha Member
		Vice-Chairman
pg		
	20.2.01	List again on 23.2.2001 for hearing. K.C.Usha Member
		Vice-Chairman
trd		
	23.2.2001	List the case on 27.3.01 alongwith C.P.No.10/98. K.C.Usha Member
		Vice-Chairman
nkm		
	27.3.01	Mr D.K.Das, learned counsel for the applicant submitted that they have already written to the competent authority of the respondents and waiting the reply and also prays for adjournment. List on 15.5.01 for order. K.C.Usha Member
		Vice-Chairman
pg		

RA 11/98

Notes of the Registry	Date	Order of the Tribunal
<p>30.5.201</p> <p>Copy of the order has been sent to the Officer for issuing the same to the L/Advocates for the parties.</p> <p>st</p>	15.5.91	<p>Heard counsel for the parties. Hearing concluded. Judgement delivered in open court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.</p> <p>U.U. Bhayani Member</p> <p> Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Applications No.9, 10 and 11 of 1998.

Date of Order : This the 15th Day of May, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Union of India & Ors.

... Petitioners.

By Advocate S/Sri N.Dutta, D.K.Das.

- Versus -

1. Smt. Anita Baishya (R.A.9/98)

2. Md Fazar Ali (R.A.10/98)

3. Smt Namita Das (R.A.11/98) . . . Opposite party.

By Advocate S/Sri B.K.Sharma, S.Sarma.

O.R D E R

CHOWDHURY J.(V.C)

have
By these 3 applications the petitioners/sought for review of the order passed in O.A.106/95, 107/95 and 115/95 dated 17.9.97. By a common judgment and order the said 3 applications were disposed of directing the respondents, more particularly respondent No.3, the Superintending Engineer, Telecom Civil Circle to provide temporary status to the applicants/respondents in any group D post as agreed and thereafter regularised the posts as per the scheme. The said order was passed on 17.9.97 in presence of the parties with a direction to implement the order within the period specified. In all the three cases the applicants Union of India filed the Review Applications before the Tribunal on 30.4.98 admittedly after expiry of the period of limitation accompanied by application for

condonation of delay. The applications for condonation of delay which were registered and numbered as M.P.101, 102 and 103 of 1998 and notices were issued to the opposite parties and the opposite party submitted its objection in writing. The aforementioned 3 opposite parties in the meantime filed Contempt petition which was registered and numbered as C.P.10/98.

2. We have heard the learned counsel for the parties at length. In the applications for condonation of delay the petitioner stated that the judgment of the Tribunal dated 17.9.97 was despatch by despatch No.3015 on 8.10.97 and the same was received by respondents on 8.10.97 itself. It was asserted at para 6 of the application that the senior C.G.S.C was requested to draft the review application. It was asserted that an unusual situation arose as the Senior C.G.S.C was not convinced and did not draft review application on factual position which landed the respondents in a trouble spot. The matter was thereafter referred to the Telecom Headquarters at New Delhi and after a series of discussions at various levels, it was finally decided to file review application and accordingly review application were filed. No explanation whatsoever, ~~indicating the~~ grounds not to speak good grounds save and except the assertion that the senior C.G.S.C was advised to file a review application was forth-~~coming~~. Neither the name of the Senior C.G.S.C nor any date specified in the application as to when such move was taken and it was also did not indicate when the series of discussions at various levels concluded and why the application could not be presented earlier. In the review application the Union of India pleaded that the applicant did not make any prayer for grant of temporary status and regularisation against any Group D post because

they knew that it could not be done under the scheme. The grant of temporary status and regularisation as Group D was not the material fact for consideration anywhere in the O.A. Similarly the petitioners/respondents in O.A. did not make any submission regarding grant of temporary status. The oral submissions and prayer was totally different and beyond the scope of O.A. The issues raised are basically the issues relating to merit of the application. The said issues are not the ground for reviewing of an order. At para 7 of the said application it was also asserted that the petitioner, Union of India was surprised at the oral prayer of the applicants regarding absorption as Group D employees. They did not get any time to submit a proper reply. It was also asserted that the review applicants were not able to furnish the correct position to the Tribunal. All that the senior C.G.S.C was asserted was that there existed Group D posts in the department. There was nothing beyond that in the oral submission of the senior C.G.S.C. It was not the intention of the senior C.G.S.C to give consent on behalf of the opposite party. In the review application there was no mention to the fact that the said senior C.G.S.C was asked to file review application and he was refused to file. At any rate if there was wrong recording by the Tribunal in the judgment for fitness of things the respondents were to bring those facts to the notice of the Tribunal instantly when matters were fresh before the Bench. The set of counsel engaged during the relevant time are now changed. The situation was different as on today. The grounds mentioned in the applications are not ground for review. The members of the Bench are all ~~retired~~ retired. The review is not an appeal in disguise. The power to review of an order is provided by Section 22(f).

of the Act for reviewing its decision. The power of review under Section 22(f) is to be confined within the parameter of Section 114 read with Order 47 Rule 1 of the Civil procedure Code. An order can be reviewed on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reasons. The sufficient reason is to be read ejusdem generis as analogous to those specified in Order 47 Rule 1 of CPC clauses. No obvious error is pointed out. Considering all the aspects of the matter including the merit referred to in the Review Applications we do not find any sufficient reason for condoning the delay. The application for condonation of delay is accordingly dismissed.

The review applications stands dismissed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

37

Field day
HKL Marcellino
Field C of 50
30/4/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI.

REVIEW APPLICATION NO 11 OF 1998.

IN OA NO. 115/95

IN THE MATTER OF:

A review Application Under Section 22(F) of the Central Administrative Act, 1986.

- AND -

IN THE MATTER OF:

Judgement and order dated 17.9.97 passed by the Hon'ble Tribunal in O.A. No. 115/95.

- AND -

IN THE MATTER OF:

1. Union of India
represented by DG Telecom., New Delhi.
2. The Chief General Manager,
Assam Telecom Circle, Guwahati.
3. The Superintending Engineer,
Telecom Civil Circle, Guwahati **Petitioners**
Respondents.

- Versus -

1. Smti Namita Das, **Opposite Party**
C/o Sri C. K. Das,
Akshipath, R. G. Baruarh Road,
Guwahati - 781 024. **Applicant.**

contd.....2.....

The humble petition of the above named petitioners :-

MOST RESPECTFULLY SHEWETH :-

1. That the opposite party as applicant filed the above O.A. No. 107/95 before the Hon'ble Tribunal praying for regularisation of his service as Draftsman from the date she was engaged on casual basis.

The petitioners/respondents contested the case by submitting written statements.

2. That the Draftsman is a Group 'C' post and recruitment to the post is regularised and governed by the statutory Recruitment Rules.

3. That from the written submission of the Opposite Party as applicant to the O.A., it is clear that she pressed a case for her regular appointment to the Group 'C' post on the ground that she had been discharging the duties attached to the post.

4. That the petitioners and respondents in their written statements elaborately explained as to why the Opposite Party can not be appointed to the post.

5. That the opposite party as applicant did not make any prayer for grant of temporary status and/or regularisation against any Group "D" post because she knew that it can not be done under the scheme. The grant of Temporary status and regularisation as Group 'D' is not the material fact for consideration in the O.A. Similarly, the petitioner as respondents to the O.A. did not make any submission regarding grant of Temporary Status as Group 'D'.

6. That on the day of hearing on 17.9.97, the opposite party sensing the dismissal of the O.A. made an oral submission that if the applicant was regularised in Group 'D' post she had no objection. The oral submission and prayer was totally different and beyond the scope of O.A. In all practical purpose, it was a fresh application made orally.

contd.....3.....

The Hon'ble Tribunal was pleased to accept the oral prayer of the applicant and directed the Department to appoint her in Group 'D' post. The petitioners submit that it was not in the pleadings of the case and the petitioners was not prepared for the new-turn of the case.

7. That the petitioners was taken by surprise at oral prayer of the opposite party regarding her absorption as Group 'D' employee. The petitioners did not get any time to examine the case or to submit a proper reply.

8. That for the above reasons, the petitioners were not able to instantly furnish the correct position when the Hon'ble Tribunal orally desired to know about the position of Group 'D' post in the department of Telecom. All that the Sr. CGSC asserted was that there exists Group 'D' posts in the Department. There was nothing beyond that in the oral submission of the Sr. CGSC. It had never been the intention of the Sr. CGSC to give consent on behalf of the respondents to absorb the opposite party against Group 'D' post. The petitioners further submits that there was misunderstanding between the Sr. CGSC and the official present which resulted in the Sr. CGSC agreeing to absorb the applicant in the Department.

9. That the opposite party has given separate notice dated 15.3.98 through her pleader making a demand for regularisation in the Group 'C' post of Ddraftsman in pursuance of the Hon'ble Tribunal order dated 17.9.97. It becomes clear that the opposite party is also not agreed to regularise in Group 'D' post and is still insisting on regularisation in Group 'C' post from the date of her initial engagement.

The notice dated 15.3.98 is enclosed herewith and marked as Annexure-A.

contd.....4.....

10. That the Casual Labourer (Grant of Temporary Status and Regularisation) 1989 Scheme was formulated by the Department of Telecom as a measure to provide security of the tenure of service to the Casual Labourer recruited upto 22.6.88. The term 'Casual Labourer' is used to denote those workers who performed the nature of duty which is normally attended by Group 'D' cadre. The daily wage of the Casual Labourer is determined on the basis of minimum pay of the lowest scale of Group 'D'. The provision of the scheme applied to those Casual Labourers who had rendered at least 1 year service on the date of introduction of the scheme i.e. 1.10.1989.

That the opposite party was engaged in the year 1992 on casual basis for performance of duty which required specialised knowledge and expertise of Draftsman which is a job of Group 'C' post. She was in receipt of daily wages on the basis of minimum of the respective post in Group 'C'.

Clearly the opposite party (applicant in the O.A.) do not fit in the scheme and he is not entitled for the benefit of the scheme.

11. For that, the impugned judgement and order dated 17.9.1997 is liable to be reviewed.

**It is, therefore, respectfully prayed that the Hon'ble
Tribunal may be pleased to admit the Review Petition, call
for records and after hearing the parties, review the
judgement and order dated 17.9.97 passed in the O.A. No.
115/95.**

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

contd.....5.....

BEFORE THE ADVOCATE OF THE HON'BLE TRIBUNAL,
GUWAHATI BENCH :: GUWAHATI.

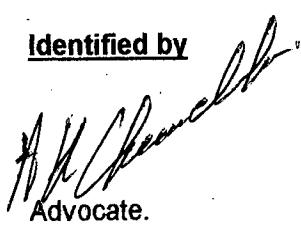
- AFFIDAVIT -

I, Sri Bimal Chandra Pal, son of Late B. K. Pal, serving in the Office of the Chief General Manager, Telecommunications Department as Assistant Director, by religion Hinduism do hereby solemnly state and affirm as follows:-

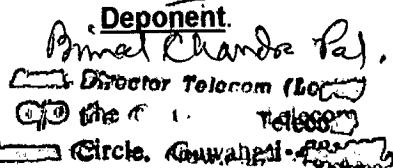
1. That I am the Asstt. Director (Legal) of Legal Section in the Office of the Chief General Manager, Telecommunications Department and as such, I am fully conversant with the facts and circumstances of the case.
2. That the statements made in paras 1, 3, 9 & 10 are true to my knowledge, those made in the rest in the instant petition are my humble submissions before this Hon'ble Tribunal.

And I put my hand here unto this Affidavit today on this 30th day of April, 1998 at Guwahati.

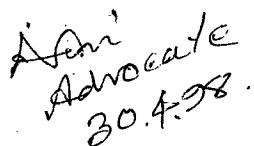
Identified by


Advocate.

Deponent


Bimal Chandra Pal,
Asstt. Director Telecom (Lo)
C.G. the C. Telecom
Circle, Guwahati.

Solemnly affirmed before me by the declarant Mr Bimal Chandra Pal
who is identified by A. K. Chandra Pal Advocate on this
30th day of April, 1998 at Guwahati.


Sri
Advocate
30.4.98.

-6-

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

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

Shri G.L.Sanglyine, 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 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

Attested.

Shri. Director (b/sd)
S/O Shri G. G. M. Telecom
Circle, G. G. M. Telecom
1007

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.

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

Sd/- VICE CHAIRMAN
Sd/- MEMBER (A)

Wanted to be true copy
S. S. D.

Subrata Nagarkar (S.N.)
Member Secretary of the Committee
Guwahati Branch

10/3/92
K. N. G.

Affixed.

Surj
Ass't. Director Telecom Bhopal
O/O the G. G. M. Telecom
Assam Circle, Guwahati-781007

SIDDHARTHA SARMA
ADVOCATE

- 8 -

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

ANNEXURE - A

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 Smt. Namita Das, W/O I Das, I give you this reminder as follows :-

1. That being aggrieved by your action in not regularising the services of my client, she approached the Hon'ble Tribunal by way of filing O.A. No. 115 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 amounts contemt of court's

contd..... 2.

Attestd.

Surj
Asst. Director Telecom (Legal)
O/O the G. G. M. Telecom
Assam Circle, Guwahati-781007

proceedings.

In view of the aforesaid facts and circumstances, I give you this reminder making a demand that my client be regularised in her original post of Draftman w.e.f. the date of her initial appointment as Draftman 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 contempt of Court's proceeding 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 occasion for such litigation.

Thanking you.

Sincerely yours

(S. Sarma, Advocate)

Attested,

Surj
Asstt. Director Telecom (Legal)
O/O the G. G. M. Telecom
Assam Circle, Guwahati-781007