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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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6/11/06

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SECTION OFFICER (Judl.)

Sahito
21/12/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 343/2000

Amiruddha Ray APPLICANTS
versus.

Union of India &ors Respondents.

FOR THE APPLICANT(S) Mr. S. Datta
ADVOCATE Mrs. U. Datta

FOR THE RESPONDENT(S) C. G. S.C.

Notes of the Registry DATE COURT'S ORDER

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

Heard Mr S.Datta learned counsel for the applicant. Application is admitted. Issue usual notice. Call for the records.

List on 19.12.2000 for written statement and further orders.

Vice-Chairman

The application is in
for a hearing time
Court's order is
fixed for 19.10.00
for the said
date
vide
Dated

18.10.2000

Dy. Registrar

18/10/2000

mk

19/10/2000

19/10/2000

Notice prepared and sent
to D/S for issuing the
Respondent No 1 to 4 vide
D/No 2498 W 2501 dttd

under PR No 2869

2870 dttd 6/11/2000

23/10/2000

18/12/2000

19.12.00

On the prayer of Mr.A.Deb Roy,
Sr.C.G.S.C. three weeks time is allowed
for filing of written statement. List
on 8.1.01 for filing of written statement
and further orders.

Member

Vice-Chairman

1m

no w/s filw.

b1

Notice of service on
R/No 182. others are
awarded

20/12/2000

5-1-2000

Service report are
not completed.

8.1.01. On the prayer of learned counsel for
the respondents 4 weeks time is allowed for
filing of written statement and further
orders.

ICU Sharmin
Member

Vice-Chairman

1m

Boo

8.2.01

List on 1.3.01 to enable the respondents to file written statement.

ICU Sharmin
Member

Vice-Chairman

No. notice has been
billed.

3/1
7-2-01

1m

1.3.01

List again on 2.4.01 to enable the respondents to file written statement.

ICU Sharmin
Member

Vice-Chairman

3/1
28-2-01

pg

2.4.2001

Written statement has been filed. The applicant may file rejoinder, if any, within two weeks from today. List for orders on 24.4.2001.

5.3.2001

w/s has been furnished
by the respondents.

ICU Sharmin
Member

Vice-Chairman

nkm

24.4.01

Written statement has been filed. The applicant may file rejoinder if any, within two weeks. List on 14.5.01 for hearing.

ICU Sharmin
Member

Vice-Chairman

No. Rejoinder has been
billed.

3/1
3-4-01

1m

14.5- List on 3-6-2001 to enable the respondents to produce records.

14-5
4-4-01

Notes of the Registry	Date	Order of the Tribunal
① W/S has been filed. ② No. respondent has been filed.	5-6-01 29.8.2001 Copy of the Judgment has been sent to the Office for issuing the same to the Applicant as well as to the L.C.S.C for the Respondent.	<p>A prayer has been made by Mr. A. Deb Roy, learned Sr.C.G.S.C. for deferring the case to enable him to produce the records. Accordingly, the case is adjourned to 26-6-2001 for hearing. No further adjournment shall be granted on the ground for production of records.</p> <p>I.C.Ushan Member</p> <p>Vice-Chairman</p>
	bb 17.8.	<p>There is a reference kept again on 8/8/2001.</p> <p>my ANL 13.7</p>
	8.8.01	<p>Heard counsel for the parties. Hearing concluded, judgment delivered in open Court, kept in separate sheets.</p> <p>The application is allowed in terms of the order. No order as to costs.</p> <p>I.C.Ushan Member</p> <p>Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
		</

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 343 & 344 of 2000

Date of Decision. 8.8.2001

— — — — — Sri Aniruddha Roy & Petitioner(s)
Sri Monoranjan Roy

— — — — — Mr. S. Dutta Advocate for the
Versus Petitioner(s)

— — — — — Union of India & Others Respondent(s)

— — — — — Mr. A. Deb Roy, Sr. C. G. S. C. Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN

THE HON'BLE MR K. K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

• Judgment delivered by Hon'ble : Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application Nos. 343 & 344 of 2000.

Date of Order : This is the 8th Day of August, 2001.

HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Sri Aniruddha Roy (O.A.343/2000)

S/O Late Aswini Roy
Vill. & P.O. Channighat
District. Cachar (Assam).

2. Sri Monoranjan Roy (O.A.344/2000)

S/O Late Jogesh Roy
Vill. & P.O. Channighat
District. Cachar (Assam).

... Applicants.

By Advocate Mr. S. Dutta

- Vs -

1. The Union of India

Through the Secretary to the
Government of India,
Ministry of Defence
New Delhi-110001.

2. The Commandant

Counter Insurgency and Jungle Warfare School
C/o 99 APO.

3. The G.O.C.-in-Chief

Headquarter, Army Training Command
Shimla-171003.

4. The G.O.C.-in-Chief

Headquarters Eastern Command (DV)
Fort William
Calcutta.

... Respondents.

By Mr.A.Deb Roy,Sr.C.G.S.C.

O R D E R

CHOWDHURY J. (V.C.) :

Both these two cases were taken up together for disposal, since it involve same question of law based on similar facts.

2. By order dated 27.7.99 the applicant in O.A. No.343 of 2000 was removed from service by the respondents in exercise of power conferred by the Sub Rule (viii) of Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 as Conservancy Safaiwala

with effect from 27.7.99. The applicant in O.A.No.344 of 2000, a Civilian Cook, was also similarly removed from service in exercise of similar power. Both the applicants were removed from service on the grounds of habitual absence.

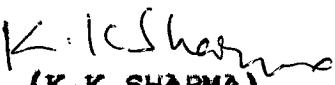
3. Mr. S. Dutta, learned counsel appearing for the applicants mainly focussed his argument on the point that the removal of the applicants were contrary to the Procedure Rule. Admittedly, the applicants were civilian employees and they were covered by the CCS (CCA) Rules, 1965. The respondents also relied upon the CCS Rules, but unfortunately, the procedure prescribed by the Rules were not followed. The respondents on 4.12.98, in both the cases, asked the applicants to show cause for their alleged absence from their duty. The applicants submitted their reply to the show cause. The respondent authority, thereafter, held an enquiry by appointing an Enquiry Officer. By memorandum dated 31.5.99, in both the cases, the applicants were informed that the Enquiry Officer submitted his report and on consideration of the Enquiry Report, the respondent No.2, Station Commander held the applicants guilty of the charges and proposed to impose a major penalty. The applicants, thereafter, were removed by the impugned order dated 27.7.99. The applicants, in these applications, alleged that no formal enquiry was conducted by the respondent authority.

4. The respondents submitted their written statement and contended that the applicants were habitual absentees and disciplinary proceedings was initiated against them. The Enquiry Officer found the applicants guilty of

the charges and on consideration of the entire materials on records, the respondents/competent authority accordingly removed them from service.

5. The records were produced before us. From the records, it appears ^{to} us that the respondent authority did not adhere to the procedure prescribed by the Rules 14 of the CCS (CCA) Rules, 1965. The proceedings against the applicants were initiated for a major penality and state of in that/circumstances, the respondents ought to ^{have} followed the procedure prescribed by the Rule 14. When Enquiry Officer was appointed, it was duty of the authority to prove and establish the charges levelled against the applicants in presence of the charged officials by giving them opportunity to defend their cases. No such procedure was maintained. The applicants were also not provided any defence assistant to protect their cases. Only the Enquiry Officer put questions to the applicants and recorded their statements. The procedure adopted by the authority is totally contrary to the CCS(CCA) Rules. The respondents authority failed to adhere to the procedure prescribed and in that circumstance the impugned order of punishment is arbitrary and violative of principles of natural justice and therefore cannot be sustainable in law. The impugned order of removal dated 27.7.99 ^{are} is accordingly set aside. The respondents are directed to re-institute the applicants forthwith.

The applications accordingly stand allowed to the extent indicated above. There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHRY)
VICE CHAIRMAN

Central Administrative Tribunal
 12/309 1 OCT 2000
 IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

10

GUWAHATI BENCH AT GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

Title of the Case : O.A. No 343/2000

Sri Aniruddha Roy : Applicant

-versus-

Union of India & Ors. : Respondents

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Date : 18.10.2000

Filed by

S. Roy
Advocate

Aniruddha Roy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

11
Filed by the applicant
through
Sri Amr. Roy
Advocate
18.10.2000

O.A. No. _____/2000

BETWEEN
Sri Amr. Roy
Son of late Aswini Roy
Vill. & P.O. Channighat
District-Cachar (Assam).

..... Applicant

-AND-

1. The Union of India

Through the Secretary to
the Government of India,
Ministry of Defence,
New Delhi-110001.

2. The Commandant,

Counter Insurgency and Jungle Warfare
School, C/o 99 APO.

3. The G.O.C.-in-Chief

Headquarter, Army Training Command
Shimla-171003

4. The G.O.C.in Chief

Headquarters Eastern Command (DV)
Fort William,
Calcutta.

....Respondents.

Contd....

Amr. Roy

DETAILS OF APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against (i) the order dated 27.7.1999 passed by the Respondent No.2 arbitrarily and illegally removing the applicant from service without holding any proper inquiry as required under the law as well as (ii) the Memorandum dated 31.5.1999 issued by the Respondent No.2 arbitrarily proposing to impose punishment of major penalty of removal from service.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

4.1 That the applicant is a citizen of India and as such, he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially joined under the respondents as Conservancy Safaiwala and since thereafter was working as such with all integrity and honesty and to the satisfaction of all concerned. Suddenly, during

Contd....

Anup Singh Raj

the month of September 1998 he fell ill due to attack of malarial fever associated with infected hepatitis. As a result of this he had to remain under medical treatment of Dhalai Public Health Centre with effect from 14.9.1998 to 6.12.1998 as such could not attend his duties during this period. Unfortunately, as he was bed ridden he could not timely inform his Controlling Authority regarding his illness and consequently could not apply for leave. However, soon after his recovery he resumed his duties and submitted Medical Certificate showing the cause of his absence.

4.3 That in the meantime on 4.12.1998 the respondent No.2 issued a show cause notice to the applicant to satisfy his absence from duty for the absence period and to show cause as to why necessary proceeding could not follow against him. As stated earlier, the applicant upon receipt of the same submitted his reply to the show cause alongwith a copy of the medical certificate. Be stated that the applicant has misplaced the show cause notice and therefore is unable to annex the copy of the same to this application. The Hon'ble Tribunal may therefore be pleased to direct the respondents to produce a copy of the same, if need be.

Copies of the reply to the show cause and the Medical Certificate dated 8.12.1998 are annexed herewith as Annexures-1 & 2 respectively.

4.4 That the applicant, while submitting the reply to show cause, had duly explained the circumstances under

Anirudha Roy

which he had to remain absent from duty. It was categorically stated that the absence was not intentional rather, due to reasons beyond his control. He, therefore, prayed for favourable consideration of his case on humanitarian ground, as well.

4.5 That surprisingly thereafter on 31.5.1999, the respondent No.2 issued a Memorandum to the applicant proposing to impose upon him a punishment of removal from service. Be stated that, although it was written in the said Memorandum that a copy ~~xxx~~ of the Inquiry Report was annexed to it, in fact no such copy was enclosed and the applicant was not informed about the Inquiry Report. Therefore, he could not make any effective representation against the same, if there was any. However, the said Memorandum revealed that the respondent No.2 had agreed with the findings of the Inquiry Officer and held that the Article of Charges stood proved.

A copy of the said Memorandum dated 31.5.1999 is annexed herewith as Annexure-3.

4.6 That the applicant on receipt of the said Memorandum dated 31.5.1999 submitted his reply on 8.7.1999 stating that the absence from duty was not intentional and therefore prayed for sympathetic consideration of his case. In his said reply he further contended that the delay in filing the same was due to the fact that he was in bereavement as his mother expired in the meantime.

Copy of the said reply dated 8.7.1999 is annexed herewith as Annexure-4.

Contd...

Anubha Dev

4.7 That thereafter the respondent No.2 called the applicant for an interview on 12.7.1999, 13.7.99 and 14.7.1999. The applicant accordingly appeared before the respondent on the specified dates. But on neither of the dates he was interviewed and after taking his attendance on those dates he was ultimately allowed to go. It is therefore apparent that the above act of the respondent No.2 is nothing but an eye-wash and most surprisingly the Respondent No.2 thereafter issued the impugned order dated 27.7.1999 removing the applicant from service from that day.

A copy of the aforesaid order is annexed herewith as Annexure-5.

4.8 That being aggrieved by the impugned order of penalty, the applicant filed an appeal dtd. 20.8.1999 before the respondent No.3, who thereafter forwarded the same vide letter dated 29.8.1999 to the Headquarters, Eastern Command (DV), Fort William at Calcutta for necessary action as the Counter Insurgency and Jungle Warefare School has been placed under them for disciplinary and administrative purposes. The applicant states that since thereafter no action has been taken on the appeal filed by him and his grievances has remained unredressed. Under such circumstance, he filed an application to the respondent No.4 on 10.11.99 praying for early positive action. But till date nothing has been done and thus he has no alternative but to approach this Hon'ble Tribunal seeking redressal.

Copies of the appeal dated 20.8.99, letter dated 29.8.1999 and application dated 10.11.1999 are annexed herewith as Annexures- 6, 7 & 8 respectively.

Anuradha Roy.

4.9 That from what has been narrated above, it is apparent that no formal proceeding whatsoever as required under the law has been held in the instant case. Besides, the applicant was ~~never~~ informed about commencement of any preliminary Inquiry or the disciplinary proceeding or the appointment of the Inquiry Officer etc. It is stated that at no point of time any charge sheet containing the Article of charges was issued to the applicant. It further appears that no Presenting Officer was appointed in the case and perhaps the Inquiry Officer himself acted as the Presenting Officer. Moreover, the applicant was never informed of his right to assistance of or to engage defence assistant to defend his case. Therefore, it can be safely said that the applicant has been denied reasonable opportunity to defend himself and therefore the entire exercise has been vitiated due to non-compliance of the due process of law. Thus, the impugned order dated 27.7.1999 is liable to be set aside.

4.11 That this application is filed bonafide and in the interest of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISION :-

5.1 For that, the impugned order dated 27.7.1999 is bad in law and thus liable to be set aside.

5.2 For that, in view of the fact that the applicant had to remain absent from duty in a compelling circumstance because of his illness, infliction of punishment of removal from service is highly

Anwälte Reg

illegal and not warranted in the facts and circumstances of the case.

5.3 For that, the respondent authorities have acted in a most arbitrary manner in passing the order of punishment and therefore the impugned order dated 27.7.99 is liable to be set aside.

5.4 For that, no formal proceeding as required under the law has been held against the applicant and on the contrary the entire exercise made by the respondents to punish him has been undertaken behind his back and therefore the impugned order imposing punishment is liable to be declared illegal.

5.5 For that, the respondents have wholly ignored the evidence on record in support of the applicant's case and have acted in a manner as if to make out and establish a case of unauthorised absence against him on the basis of past conduct which was beyond the scope and purview of the show cause notice dated 4.12.1998.

5.6 For that, the respondent authorities have exceeded the jurisdiction in passing the impugned order of removal from service inasmuch as the same has been passed without any justifiable reason and basis.

5.7 For that, non-consideration of the appeal of the applicant by the respondents has amounted to denial of justice to him which is unjust and against good conscience.

Anil Chhod

5.8 For that, in any view of the matter the impugned
of
order/punishment is bad in law and is liable to
be set aside.

6. Details of remedies exhausted

That the applicant states that he has no other alternative and other efficacious remedy than to file this application. The applicant has submitted an appeal before the competent authority on 20.8.1999 but no reply has been received by the applicant till filing of this application before the Hon'ble Tribunal.

7. Matter not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

In view of the facts and circumstances stated in paragraph 4 above, the applicant prays for the following reliefs :

8.1 That the impugned order of punishment dated 27.7.1999 be declared illegal and be set aside.

Annucho Roy

8.2 That the respondents be directed to reinstate the applicant in service with full service benefits.

8.3 Costs of the Application.

8.4 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim Relief prayed for :

Pending disposal of this application, an observation be made that pendency of this application shall not be a bar for the respondents in considering the case of the applicant.

10.

This application is filed through Advocate.

11. Details of I.P.O.

i.	I.P.O. No.	:	26 503721
ii.	Date of issue	:	18.10.2000
iii.	Issued from	:	G.P.O., Guwahati.
iv.	Payable at	:	G.P.O., Guwahati.

12. List of enclosures :

As stated in the Index.

.....Verification

Anupachal Ray

VERIFICATION

I, Sri Aniruddha Roy, Son of late Anwini Roy, aged about 30 years, resident of village & P.O. Channighat, District-Cachar (Assam), do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 18th day of October, 2000 at Guwahati.



Signature

Before the P.S.Mann, Brigadier, Commandant
Counter Insurgency and Jungle Welfare School
C/O. 99 A.P.O...

The Show Cause Reply as well as Mercy Petition of the
Show Cause Reply giver.

Dear Sir,

With due respect I beg to submit the Show
Cause Reply as well as mercy petition as follows :

1. That the present Show Cause Reply giver is an employee under your honours jurisdiction and under your honour mercy the show cause reply giver doing service .
2. That the show cause reply giver and mercy petitioner belongs to very poor family having married wife, minor children, old aged parents alongwith the younger brother and sisters .The entire family members solely depend upon the income of the present show cause reply giver and there is no other sources of income to maintaining the family . If your honour take any necessary legal action either putting suspension or discharge the entire family members shall suffer irreperable loss as well as there is every possibility of death or suicide as such considering the facts and circumstances your honour may be pleased to exempted /exonerated from the liability of sny show cause .

- 2 -

3. That the present show cause reply giver and the mercy Petitioner committed no offence and willfully no gross negligence to perform the duty and it is also necessary to informed regarding his cause of absence and which was sent before your honour was not communicated as such it is no negligence rather it is a lack of information.

4. That the present show cause reply giver and the mercy Petitioner has been suffering from serious illness and sickness at his permanent dwelling house and during the period of illness and sickness he was unable to attend the duty because of ill health and he was medically examine /check up by the competent Doctor of nearest Dholai P.H.C. since 14.9.98 to 6.12.98 and aforesaid period he was absolutely under bed rest on being advised by the concern Doctor.

5. That it appears from the contents of your honour show cause notice and medical certificate issued by the Doctor Dholai P.H.C. there is no negligence and disregards in respect of his duty.

6. That it is therefore prays that your honour may be competent to exonerated /exempted from the liability of the show cause in the interest of principle of natural justice otherwise the show cause reply giver

- 3 -

shall suffer irreparable loss .

7. That it's not only the show cause reply but also a part of mercy petition before your honour and your honour may be pleased to exempted /exonerated from the liability of show cause on account of illness and sickness ground which is absolutely a bonafide one .

8. That the present show cause reply giver undertake and with assurance to your honour in future he will not make any default in respect of performing duty and if found in future your honour may be competent to take disciplinary action as your honour deem fit and proper .

In view of the above facts and circumstances it is prays that your honour may be pleased to exempted /exonerated from the liability of the show cause due to aforesaid reason/reasons as the case may be in the ends of justice and for this act of kindness the show cause reply giver shall ever pray .

N.B.

A copy of Medical
Certificate enclosed
herewith the petition

Yours faithfully

(Sri Anirulha Roy)
No. 14117546 .

Dr. B. Das, M.B.B.S.
S.M.O.
Dholai P.H.C.
Regd. No. 7440 (AMC)

Ph. 52489

Date : 8.12.98

Clinical findings

Rx To whom it may concern

Certified that Shri Anirudha Roy, 29 years,
S/o late Aswini Kumar Roy, of vill & P.O.
Channighat, Dist. Cachar had been suffering
from Fever associated with infective Hepatitis
since 14.9.98 to 6.12.98. During the above
mentioned period he was under my treatment &
supervision.

Sd/- Illegible

(B. DAS)
Senior Medical & Health Officer
Dholai PHC, Dholai.

STANDARD FORM OF MEMORANDUM OF CHARGE FOR MAJOR PENALTIES
(Rule 16 of CCS(CCA) Rule 1965)

Station Headquarters
Vairengte (Mizoram)
C/o CIJW School
C/o 99 APO

No. 6009/AR/Admn

31 May 99

MEMORANDUM

1. The undermentioned is directed to enclose a copy of the Inquiry Report submitted by the Officer appointed to inquire into the charges against No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala of CIJW Schoo, C/o 99 APO.

2. On careful consideration of the Inquiry Report aforesaid, the undersigned agrees with the findings of the Inquiry Officer and holds that the articles of the charges stand proved. Also on careful consideration of your records of service presented before me, I find you to an habitual absentee, an omission amounting to disregard and negligence towards duty (Details at Appx. A). Despite warnings and counselling by superiors and assurance by you to show improvement, (Reply to Show Cause Notice refers (Photocopy att. as Appx.B) you failed to improve your conduct and persisted in usual unauthorised absence from duty. As a result, you were awarded censure on 04 May 91 and minor penalty of withholding of increments for a period of one year on ~~30~~ 30 Jul 93. A lenient view was taken on both the above occasions on humanitarian grounds. Since you have failed to show any improvement, the undersigned has therefore, provisionally come to the conclusion that No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala of the Counter Insurgency and Jungle Warfare School is found guilty and so the undersigned proposes to impose on him the major penalty of REMOVAL FROM SERVICE.

3. No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation you may wish to make on the penalty proposed will be considered by the undersigned. Such representation, if any should be made in writing and submitted so as to reach the undersigned not later fifteen days from the date of receipt of this Memorandum by No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala.

4. The receipt of the Memorandum should be acknowledged.

No. 14117546
Shri Anirudha Roy
Conservancy Safaiwala
CIJW School
C/o 99 APO

Sd/- Illegible
(PS MANN)
Brigadier
Station Commander

BEFORE THE REVEREND P.B. MANN, BRIGADIER, COMMANDANT,
STATION HEAD QUARTERS, NY WAIRINGTE (MIZORAM)
C/O. C.I.W. SCHOOL,
C/O. 99 APO.

Ref No. : 6009/AR/Admin dtd. 31 May 1999.

Sub. : Mercy petition on humanitarian ground.

Dear Sir,

With due respect I beg to submit this mercy petition against the order passed by your Honour in respect of charge for major penalties as follows :

1. That, the mercy petitioner is a 14117546, conservancy Saraiwala belongs to very poor person having no source of income and there is no other ways for maintaining the family but your Honour already been taken charge for major penalty of removal from service. The present mercy petitioner committed no wrong intentionally and due to old aged mother was in seriously illness and sickness and ultimately she died on 15-5-99 and this is the reasons which the present petitioner was found guilty by your Honour.

2. That, the present petitioner finding no other alternative due to performance of mother's death shankers i.e. death celebration the present mercy petitioner failed to submit this mercy petition in time as such your Honour may be pleased to give an opportunity as a last chance on the sympathetic consideration considering the facts and circumstances as stated above and your Honour is competent to grant pardon in the ends of justice otherwise the present mercy petitioner shall suffer irreparable loss, injury, damage, etc.

In view of the above facts and circumstances it is prays that your Honour may be pleased to allow this mercy petition give an opportunity as a last chance with any terms and condition as your Honour deem fit and proper.

And for this act of kindness, the mercy petitioner shall ever pray.

Yours faithfully,

8.7.99

(SRI T. L. SINGH R.C.S.)
No. 14117546.

6009/AR/Admn
Station Headquarter
Vairengte (Mizoram)
C/o CIJW School
C/o 99 APO

27 July 1999

ORDER

WHEREAS No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala convicted being a habitual absentee as per CCS (Conduct) Rules (1964) Rule-3, Para 24 and Sub Para -9. ✓

AND WHEREAS it is considered that the conduct of the said No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala which has led to his conviction is such as to render his further retention in the public service undesirable as to warrant the imposition of a major penalty;

AND WHEREAS No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala was given an opportunity of personal hearing (Intimation sent vide letter No. 6009/AR/Admn dated 13 July 99) and received by No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala on 13 July 99.

AND WHEREAS THE said No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala has given a written explanation vide his letter No. Nil dated Nil received on 09 July 99 which has been duly considered by the undersigned.

NOW THEREFORE, in exercise of the powers conferred by Sub Rule (viii) of Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby removes the said No. 14117546 Shri Anirudha Roy, Conservancy Safaiwala from service with effect from 27th July, 1999.

Sd/- Illegible
(PS MANN)
Brigadier
Station Commandant

Certified to be true
S. M. Mann
F. D. V.



20-08-'99

Sub: Appeal against the Order of removal.

Sir,

I Shri Anirudha Roy, Conservancy Safaiwala, CIJW School, Veirengte, Mizoram prefer this appeal under Rule 23(ii) and Rule 26 of the CCS (CCA) Rules, 1965 against the impugned order dated 27-7-99 removing me from the above post held by me, for favour of your judicious consideration and necessary order quashing the impugned order of removal as stated above.

1. That I had been a permanent employee posted at CIJW School, Veirengte as Conservancy Safaiwala.
2. That due to my serious illness I could not attend duty with effect from 14.9.98 to 6.12.98. As I was completely bedridden I could not intimate to my Controlling Office although I submitted Medical Certificate subsequently.
3. That I was chargesheeted by the Station Commander and initiated Disciplinary action against me under rule 14 of CCS (CCA) Rules, 1965.
4. That I was not given reasonable opportunity to inspect list of documents. More so, the enquiry was conducted in total violation of the CCS (CCA) Rules, 1965.
5. That no Presenting Officer was appointed to present the case. As such Inquiry Officer acted himself both as Inquiry Officer as well as Presenting Officer which is violation of the CCS (CCA) Rules, 1965.
6. That the chargesheet was not issued as per prescribed procedure in which Article of Charges did not speak of the Rule by which action was initiated. CCS (Conduct) Rules, 1964 mentioned in the Article of Charges can not book the charged Official for imposing penalty.
7. That I was not given opportunity by the Inquiry Officer to engage Defence Assistant to defend the case. During enquiry I was asked whether I wanted to call any body as Defence Assistant which was nothing but eye wash. As such I was deprived of the reasonable opportunity to defend the case.
8. That The penalty of removal is too harsh for me and disproportionate to the quantum of offence if at all proved. No reasonable authority can throw his subordinate out of employment leaving his small children and wife in the face of extreme misery of life. More so when such leave of absence was sanctioned formerly, the order of penalty of removal in the present case is illmotivated and against the natural justice. As such penalty of removal needs to be quashed to cite an example before the society that penalty should be proportionate to the quantum of offence and the power of penalty is not abused and misused by any authority to cause sufferings to the low paid employees and their families.

.....2.....

9. That moreover, after the issue of proposed penalty vide Memo No.6009/AR/Adm dated 6.7.99 there is no provision of personal interview under CCS (CCA) Rules, 1965 as was done on 12-7-99, 13-7-99 and 14-7-99 in my case which was ill motivated with malafide intention. Such order for interview was nothing but colourful exercise of power with some vested interest of the authority concern.

From the above your honour may kindly admit that the Disciplinary proceeding against the undersigned as above is in violation of CCS (CCA) Rules, 1965 which could not prove the charge of misconduct under CCS Conduct Rule 1964. Rather the Disciplinary authority was biased who did not feel necessary to appoint Presenting Officer to present the case and also did not apply his mind while imposing the penalty of removal. He also being ~~was~~ bias did not pay heed to my petition dated 31-5-99 submitted for mercy on humanitarian ground.

As such when the Disciplinary authority failed to perform his duty with due application of mind and also acted in violation of CCS (CCA) Rules, 1965 the order dated 27-7-99 imposing the penalty of removal is disproportionate, void, and is liable to be quashed.

It is therefore prayed that yourself being the Appellate Authority in this case may kindly issue necessary order for my reinstatement in service with all benefits so that as to save my family due to whimsical decision and illegal order of the above mentioned Disciplinary Authority and for this act of your kindness I shall remain ever pray.

Yours faithfully,

✓ Anirudha Roy
(ANIRUDHA ROY)

14117546

Tele : 2730

Headquarters
Army Training Command
Shimla - 171 003 (HP)

300052 / A

29 Aug 99

Headquarters
Eastern Command (DV)
Fort William, Calcutta

APPEAL AGAINST THE ORDER OF REMOVAL

1. Appeal against the order of removal recd from the following
of CIJW School is encl herewith in oroginal for your necessary action
as CIJW School has been placed under your comd for admn and discp
purposes :-

(a) Sh. Anirudha Roy, Consy S/W.

(b) Sh. Monoranjan Roy, Civ Ck.

2. Action taken on the applications may please be intimated to the
applicants.

Sd/- Illegible
(M.S.Chikara.)
Col
Col 'A'
For GOC-in-C

Enclo : As above

Copy to :-

CIJW School - Alongwith a photostat copy of the appeal against the
order of removal of the abovementioned pers.

2. Please inform the qdr accordingly.

Sh. Anirudha Roy, Consy S/W.
O/O.CIJW School, C/O. 99 APO

Sh. Monoranjan Roy, Civ Ck.
O/O.CIJW School, C/O. 99 APO.

60

14.07.98 b
6.12.98

Headquarters,
Eastern Command (DV),
Fort William,
C A L C U T T A

Dt. 10-11-1999

Sub:- Appeal against the order of removal

Hon'ble Sir,

With due respect and humble submission I am to state that I have appealed under Rule 23(ii) & Rule 26 of the CCS(CCA) Rules, 1965 to the Lt.General, GOC in-C, H-Q -WTHC, Shimla (HP) against the impugned order of removal (Copy enclosed for your ready reference) and the same has already been forwarded to you vide letter No. 300052/A dt. 29-8-99 by the Headquarters, Army Training Command, Shimla-171 003 (HP) for taking action in this respect with a intimation to the undersigned. (copy encl)

Sir, what is most unfortunate is that till date I have received no communication from your end.

I would request your goodself to enquire into the matter so as to enable me to join as early as possible thereby save me alongwith my family members from financial hardship.

Your positive action in this regard will highly be acknowledged.

With regards,

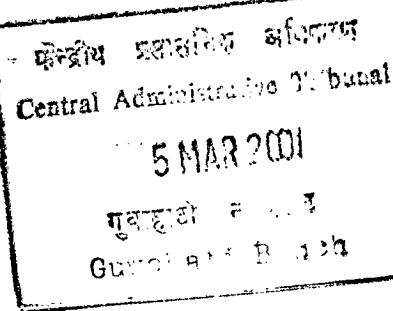
Yours faithfully,

S. P.

(ANIRUDHA RAY)

No. 14475 (6)

CO 99 A-02
C-11 W SCHOL,
Vadgaon
Muzirpur



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI.

File No. 573/2001
 (A. D. E. B. R. O. D.)
 Sr. C. G. S. C.
 C. A. T., Guwahati Bench

O.A. NO. 343 OF 2000.

Shri Anirudha Roy

- Versus -

Union of India and others.

- And -

In the matter of :

Written Statement submitted by
the Respondents

The respondents Most Respectfully beg to submit
the written statement as follows :

FACTS OF THE CASE

1. No. 14117546 Ex Civilian Conservancy Safaiwala
Anirudha Roy was employed as a Conservancy Safaiwala on
01 August 1989.
2. Ever since the appointment of the applicant in
1989 to 31 Dec, 1998, he absented himself for a total period
of 925 days. The individual was found to be a habitual
offender for absenting himself without sufficient cause. His
indiscipline is evident from the punishments/warnings as
mentioned below :-

Contd.....

<u>Ser No</u>	<u>Details</u>	<u>Date of Award</u>	<u>Punishment</u>
<u>Punishment</u>			
(a)	Habibual offender to remain absent from Govt. duties	04 May 91	Censure Issued by Comdt.
(Rule 3 and 22 of C.C.S (Conduct) Rules 1964)			
(b)	Absented himself from duty wef 15 Feb 93 to 29 Mar 93 without prior sanction of leave.	30 Jul 93	<u>Minor Penalty</u> Withholding of increment for one year.
(Under C.C.S. (C.E.A.) Sub Rule (iv) of Rule 11, 1965)			
(c)	Absent without Leave (AML) wef 02.14 May 92	18 May 92	Warning No. 6009/AR/Adm dated 18 May 92 OC Adm Wing.
(d)	Absent from Duty	18 May 96	Warning issued vide No. 6009/2/Adm dated 18 May 96.

3. In the year 1998, he remained absent for a period of 85 days wef 14 Sep 98 to 06 Dec 98. The individual failed to substantiate his Claim that he was not unwell with the relevant supporting documents like prescription of medicines, receipt for purchase of medicines except the medical certificate perhaps obtained on payment from SHO Dholai Primary Health Centre (P.H.C) to cover up the absence period. It is pertinent to mention that PHC Dholai is not a nominated medical centre. All such cases need to be referred to Silchar Medical College.

12/17 | 19
13/17 |
14/17 |

Contd.....

-3-

4. An inquiry was conducted against the individual for his absence, after he had shown utter disregard to rules and regulations and a total indifference to discipline. Loose discipline is contagious with many civilian employees and he proved to be a star example in this. It is likely that the individual would not have joined duty, as it is evident that he woke up to re-join duty only after a notice was served on him on 04 Dec 98. The individual had failed to show any improvement, even though conmetically he had been promising to improve him conduct. In the year in which the Inquiry was conducted, he had absented himself for a period of 85 days.

6. Thus, as per directions and findings of the inquiry, the individual was removed from service under the provisions of ~~xxxx~~ sub rule (viii) of Rule 11 C.C.S. (C.C.A.) 1965 wef 27 Jul 99, after giving adequate opportunities for improvement.

PARAWISE COMMENTS

7. That with regard to para 1 the respondents beg to state that the order for removal of the applicant was not illegally and arbitrarily passed. A proper Inquiry was conducted as per the provisions of C.C.S. (C.C.A) 1965.

8. That with regard to paras 2, 3, and 4.1 the respondents beg to offer no comments.

9. That with regard to para 4.2 the respondents beg to state that your ~~xxxxxx~~ remarks that the applicant had been discharging his duties with sincerity and devotion are not

substantiated by facts and are not agreed to. Since the appointment of the applicant as Conservancy Safaiwala on 01 Aug 89, the individual had absented himself for a total period of 925 days in addition to his leave entitlements. The same is verifiable from his record of service.

Photocopy of details of absence are attached herewith as Appendix 'A' .

Secondly, there are number employees who regularly commute to School from Dholai which is only 15 Kms of distance for their duty. Some of these employees are :-

- (i) CSBO (Exchange Operator) Shri JR Roy.
- (ii) Civilian Cook Shri Narayan Paul.
- (iii) Civilian Fatigueman Shri Ramu Paul.

The applicant could have forwarded his requirement of leave of absence and information through these employees. The reason of sickness for the individual not being able to travel a distance of 20 Kms in almost two months indicates lack of aptitude as borne by the details of absence. The fact that the individual was a habitual offender is amply clear from warnings/ show cause notices served to the individual, the details of which are mentioned in Para 1 of Annexure -I of your notice. The contention of the applicant that he was bedridden because of a disease like viral hepatitis is also not convincing, as this disease does not limit the person to bed only.

10. That with regard to para 4.3 the respondents beg to offer no comments.

Contd.....

11. That with regard to para 4.4 the respondents beg to state that this establishment has a well equipped medical centre, which is also open to civilian employees paid out of defence estimates of the School. The applicant did not report to the Medical Inspection Centre neither during his illness nor later.

(ii) The individual has managed to get medical certificate from PHC Dholai. However, during the Inquiry, he had failed to substantiate his claim by producing supporting documents like prescription of medicines, receipts for purchase of medicines etc. Had the individual been actually ill he could have produced the above to substantiate his claim. Silchar Medical College is also located at a distance of about 30 Kms from Dholai. The place is connected by NH road and transport from School plies to Silchar on an every day basis. The applicant could have availed the facilities at Silchar Medical College in case of serious illness.

(iii) In the Inquiry report, the individual has himself pleaded guilty.

(iv) All the above adequately substantiate the claim that the applicant obtained the medical certificate from SMO Dholai to cover up his absence, where details of medicines prescribed or administered have not even been mentioned. Sole reason for a prolonged absence as being because of viral hepatitis is not convincing, as this disease in no way restricts the movement of the patient for almost 85 days.

(v) The circumstances explained by the applicant are not at convincing and were in no way beyond his/him family members control. Even a letter posted cold have been a proof enough. The fact that he has been taking his leave of absence for granted is a habit is largely clear from his record of past absence which is annexed as Appendix 'A' to this affidavit in opposition. The fact that all his cases, including the present one was considered on humanitarian grounds is amply clear from ~~in~~ the punishments already mentioned in para 2 of this affidavit, wherein he was left with only minor punishments. Each time the individual has only given false assurance, but he has never improved his conduct. In repeatedly absenting himself he has wilfully denied the men of the School the services for which he was employed.

(vi) It is therefore amply clear that the case was considered favourable a number of instances before including this one. Documentary and circumstantial evidence adequately pointed out the habitual absence and wilful neglect of the applicant to duty.

(vii) The individual did not plead for mercy before the disciplinary authority.

12. That with regard to para 4.5 the respondents beg to state that the Memorandum No. 6009/MR/Adm dated 31 May 99 clearly states in para 1 that copy of the Inquiry report is enclosed. The contention of the individual at this belated ~~stage~~ stage that Inquiry report was not attached, holds no water. The signature of the individual were obtained on a receipt

while handing him a copy of the Memorandum.

Photocopy of the same is attached herewith as Appendix 'B₁' and 'B₂' respectively.

13. That with regard to para 4.6 the respondents beg to state that the case was considered sympathetically but circumstantial and documentary evidence pointed out that the applicant was at fault which was not beyond his control.

14. That with regard to para 4.7 the respondents beg to state that the individual intimated in writing regarding interview with the Commandant Counter Insurgency and Jungle Warfare School on 14 July 1999 vide our letter No. 6009/AR/Adm dated 13 July 1999 and a receipt also obtained from the individual. Record of hearing, wherein 5 questions were asked is available.

15. (ii) The contention of the applicant, that the interview was an eye wash, is therefore untrue. The copy of record of Interview is attached as Appendix 'C' as already mentioned in reply to para 4.7 above.

15. That with regard to para 4.8 the respondents beg to state that the complete case files were in the process of scrutiny by Headquarters Eastern Command Fort William Calcutta. Legal Branch. The case was also scrutinised by Headquarters Army Training Command. The contention of the applicant that his grievances have remained unredressed, therefore, is not correct.

16. That with regard to para 4.9 the respondents beg to state that ~~t~~ a complete Inquiry was conducted. The applicant's belated claim that no formal proceedings were conducted is untrue.

(ii) The Inquiry Officer was detailed vide our Convening Order No. 5040/00/A dated 29 December 1998.

Copy of the same is attached as Appendix - 'D'.

(iii) The Presenting Officer was not appointed as it not a mandatory requirement as per Rule 14, sub para 5(c) of the C.C.S. (C.C.A) Rules 1965. Where the disciplinary authority itself inquires into any article of charge, or appoints an inquiry authority for holding any inquiry into such charge, it may appoint Presenting Officer. However, the same is not a mandatory requirement.

Photocopy of Rule 14, sub para 5(c) of the C.C.S. (C.C.A.) Rule 1965, is attached herewith as Appendix -'E'.

(iv) As regards the opportunity for defence of the applicant, the Inquiry Officer had clearly asked the applicant in Question No. 3 of ~~6~~ statement given by him during the Inquiry, held on 05 Jan 99, whether he would like to call any person in his defence, to which the applicant replied in the negative. After having read out the articles of charge, to the applicant, he was asked whether he pleads guilty to the Charge, and whether he has any defence to make. To this also, the applicant pleaded guilty to the Charges framed against him.

Copy of this extract of Inquiry Report, duly signed by the applicant and the Inquiry Officer is attached as Appendix - 'F'.

17. That with regard to paras 4.11 and 5.1 the respondents beg to offer no comments.
18. That with regard to para 5.2 the respondents beg to state that as already mentioned earlier, the reasons for the individual to absent himself were in no way compelling. Punishment of removal from service was warranted keeping in view his loose discipline. Leave is not a right, but only a privilege. The applicant not only violated this, but also absented himself illegally. His attitude and indiscipline is further highlighted by the fact that he was living out side the school premises without legal authority.
18. That with regard to para 5.3, the respondents beg to state that no arbitrary order has been passed by the concerned authority. Orders for his removal were based on facts of the case, that emanated during the Inquiry.
19. That with regard to para 5.4, the respondents beg to state that a proper Inquiry was held as required by Rules.
20. That with regard to para 5.5 the respondents beg to state that the facts of the case which emerged during the Inquiry adequately point out the applicant's guilt, which he has himself pleaded. The case of unauth absence has not been made based on his past conduct of illegal absence, but

on his present offence and absence which was included in the Show Cause Notice. Though his past conduct is beyond the scope and purview of the inquiry, but the law cannot be blind to his past misconduct, which only highlights his attitude and non seriousness towards his profession, and his indifference to discipline.

21. That with regard to para 5.6 the respondents beg to state that the authorities have not exceeded the jurisdiction in passing the order for removal from service of the applicant. The appointing and disciplinary authority is fully empowered to remove from service any employee who is proved a habitual offender and acts in an indisciplinary manner, which is proved by an Inquiry.

22. That with regard to para 5.7 the respondents beg to state that the appeal of the applicant was adequately considered by the Commandant Counter Insurgency and Jungle Warfare School and was under consideration of Headquarters Eastern Command and Headquarters Army Training Command.

23. That with regard to para 5.8 the respondents beg to offer no comment.

24. That with regard to para 6 the respondents beg to state that the appeal was suitably considered by the Comdt. CIJM School, but was rejected, based on the findings of the Inquiry, and the habit and past practice of the Indl. where he had made a No of such please without showing any improvements

25. That with regard to para 7 the respondents beg to offer no comment.

26. That with regard to paras 8.1, 8.2, 8.3, 8.4, 9 and 10 the respondents beg to offer no comments.

27. That it is prayed that the grounds for relief with legal provisions are found unconvincing. It is also stated that in view of the details mentioned above, it is amply evident that a proper Inquiry was conducted and the order to remove the applicant was fully legal, and in conformity with the Rules.

28. That it is therefore requested to the Hon'ble Tribunal that the case be considered in the light of the facts mentioned herein and plea of an indisciplined Civilian employee seeking for an unwarranted redress be not entertained further and case be treated as null and void.

VERIFICATION

Administrative
Admin Wing

I, Shri Maj Sandeep Singh, officiating Officer Commanding being authorised do hereby solemnly declare that the statement made in this written statement are true to my knowledge, belief and information and I have not suppressed any material fact.

And I sign this verification on this 27 day
of Dec 2000 Jan 2001.

Sandeep Singh
CAG
Officer Commanding
CJW SCh.

Declarant.