

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

✓
Ctg. App/Misc. Petn/Cont. Petn/Rev. Appl. 40/2004

In O.A. 343/2000

Name of the Applicant(s) Aminuddha Roy

Name of the Respondent(s) B.K. Panwar

Advocate for the Applicant Mn S. Dutta

Counsel for the Railway/C.G.S.C.

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
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This C.P. has been filed by the applicant with a prayer for non-compliance of the order dated 8-8-2004 by this Hon'ble Tribunal in O.A. 343/2000.

24.8.2004

Present: The Hon'ble Shri D.C.Verma, Vice-Chairman (J).
The Hon'ble Shri K.V.Prahladan, Member (A).

Heard counsel for the parties.

Order reserved.

[Signature]
Member (A)

[Signature]
Vice-Chairman

Laid before Hon'ble court in order.

27.8.2004

Order pronounced in open Court, kept in separate sheets.

The C.P. is rejected in terms of the order.

[Signature]
Member (A)

[Signature]
Vice-Chairman

[Signature]
23/8/04
Section Officer

bb

9.9.04

Copy of the judgment has been sent to the office for filing the same to the applicant as well as to the respondent by post.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt Petition Nos.39/2004 in O.A.344/2000 &
40/2004 in O.A.343/2000.

Date of Order : This the 27th day of August, 2004.

THE HON'BLE SHRI D. C. VERMA, VICE CHAIRMAN (J).

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Monoranjan Roy
Son of Late Jogesh Roy
Resident of Village & P.O: Channighat
District: Cachar (Assam).. . . Petitioner in C.P.39/2004

Sri Aniruddha Roy
Son of Late Aswini Roy
Resident of Village & P.O: Channighat
District: Cachar (Assam).. . . Petitioner in C.P.40/2004.

By Advocate Mr.S. Dutta.

- Versus -

Sri B.K.Panwar, Commandant
Counter Insurgency &
Jungle Warfare School
C/O 99 A.P.O. . . . Contemner in both the C.P.s.

O R D E R

D.C.VERMA, V.C.(J):

The two petitions under Contempt of Courts Act arise out of a common order passed in O.A.Nos.343 of 2000 & 344 of 2000 passed on 8.8.2001. Both the present petitions have been presented on 23.8.2004.

2. Learned counsel for the applicants submitted that as the respondent side has not complied with the directions issued in the Tribunals' order dated 8.8.2001, notice for contempt be issued against the respondent. It is, however, noticed that both the petitions have been filed after a period of one year prescribed under Section

B

Contd./2

20 of the Contempt of Courts Act. In this respect, learned counsel for the applicants submitted that by communication dated 26.12.2001 (Copy at Annexure-2 in both C.P.s) the applicants were informed by the respondent about filing of an appeal against the Tribunals' order. Subsequently, however, it was found by the applicants that no appeal has been filed by the respondent and hence each of applicants has approached this Tribunal with these two petitions. The submission of the applicants is that the limitation shall start with effect from the date from which it came to the knowledge of the applicants that no appeal has been filed.

3. Section 20 of the Contempt of Courts Act is as below:-

"20. Limitation for action for contempt.- No Court shall initiate any proceeding for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

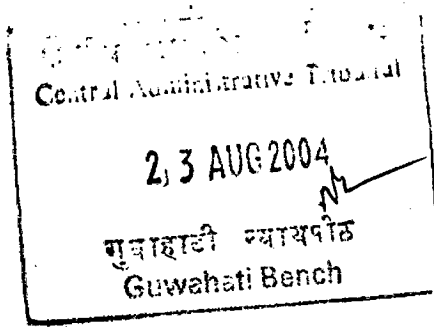
4. A reading of the provision shows that Section 20 operates as an absolute bar to initiation of contempt proceeding after expiry of one year. The starting point of the limitation is relevant date on which the contempt is said to have been committed. In the case in hand, the direction was to "re-instate the applicant forthwith". Thus the limitation would start with effect from the date of the order i.e. 8th Day of August, 2001. Utmost it can be with effect from the date, of the Tribunals' order was communicated to the respondent. In any way, respondents were communicated the order on some date prior to

26.12.2001. The exact date of communication is not mentioned. As per the two Contempt Petitions the applicants went to resume duty on 4.9.2001, but they were not allowed to join and sign the Attendance Register. If it is so, the period would start w.e.f.4.9.2001 and if the applicants were not allowed to join duty it was incumbent on the applicants to approach this Tribunal within one year thereafter. The applicants failed to do so.

5. The submission of the learned counsel for the applicants that because of the communication dated 26.12.2001 the applicants did not approach the Tribunal can have no merit to give benefit of limitation. Mere filing of appeal/writ is not a bar for the aggrieved person to move Contempt Petition. It would no doubt true that in a given circumstances of each case the Court dealing with contempt matter may not itself proceed with it but that would not give a option to the applicants to sit over the mandatory provision contained under Section 20 of the Contempt of Courts Act. The submission of the learned counsel for the applicants, therefore, cannot be accepted.

6. In view of the discussions made above, proceeding for contempt in both the Contempt Petitions cannot be initiated. Accordingly, both the Contempt Petitions are rejected.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)



Filed by -
Swarnik Datta
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

CONTEMPT PETITION NO. 40 / 2004
IN OA NO. 343/2000

In the matter of: -

Sri Aniruddha Roy

... Petitioner

-Versus-

Sri B. K. Panwar

... Contemner

-AND-

In the matter of: -

An application under Section 17 of the Administrative Tribunals Act 1985 praying for initiation of a Contempt Proceeding for non-compliance of the Order dated 08.08.2001 passed in OA No. 343/2000,

-AND-

In the matter of: -

Willful disobedience and non-compliance of the Order dated 08.08.01 passed by this Hon'ble Tribunal in O. A. NO. 343/2000 directing to reinstate the applicant/petitioner forthwith in service.

-AND-

In the matter of: -

Sri Aniruddha Roy
Son of Late Aswini Roy
Resident of Village & P.O. Channighat.
District - Cachar (Assam).

... Petitioner

Aniruddha Roy

-Versus-

Sri B. K. Panwar, Commandant,
Counter Insurgency & Jungle Warfare School,
C/O. 99 A. P. O.

... Contemner

The humble Petitioner above named –

Most Respectfully States: -

1. That this petition arises out of willful disobedience and non-compliance of the Order dated 08.08.01 passed by this Hon'ble Tribunal in O. A. NO. 343/2000 filed by the petitioner wherein the Contemner, amongst others, was directed to RE-INSTATE the applicant/petitioner forthwith in service.
2. That tersely described, the brief facts and circumstances of the case under which the petitioner had filed the aforesaid original application are that by an order dated 27.07.1999 issued by the Contemner, he was removed from service and having failed to receive any response on an appeal, had approached this Hon'ble Tribunal praying for setting aside the impugned order of removal and for issuance of directions upon the respondents to re-instate him in service.
3. That this Hon'ble Tribunal, after hearing the parties and considering the materials on record, had been pleased to allow the application vide Order dated 08.08.01 and directed the respondents (therein) to re-instate the petitioner forthwith in service.
4. That in terms of the direction contained in the aforesaid order in O. A. No. 343/2000, the Contemner was required to re-instate the petitioner in service but, despite the direction of this Tribunal as stated above, the Contemner did not take any action whatsoever to re-instate the petitioner in service.

A copy of the order-dated 08.08.01 passed by this Hon'ble Tribunal in O. A. No. 343/2000 is annexed herewith as Annexure-1.

Arjun Singh

5. That the petitioner states that in pursuance of the order dated 08.08.01 passed by this Tribunal, he went to resume his duties on 04.09.2001. But the Contemner acted contrary to the direction of the Tribunal and quite surprisingly did not allow him to join and sign the attendance register. It is also stated that the petitioner submitted his joining report on the same day but the same was refused. On the contrary, the Contemner served the petitioner with a registered letter purported to have been issued on 26.12.2001 in response to his joining report dated 04.09.2001 (which the petitioner had received during the month of July 2002) and informed that an appeal against the Judgment of the Hon'ble Tribunal was preferred in the Gauhati High Court, although no particulars of the appeal was mentioned in the said letter.

A copy of the above letter-dated 26.12.2001 is annexed herewith as Annexure -2.

6. That the petitioner being an illiterate person had bona fide believed the Contemner. Moreover, having been out of job for a period over three years, he had no means to readily take remedial legal steps to vindicate his rights. In the above circumstance, he had no option but to wait for the outcome of the appeal said to have been filed by the Contemner before the High Court.
7. That despite having waited for a considerable period of time, as the petitioner did not receive any notice from the High Court on any appeal said to have been filed by the Contemner, he enquired with the registry of the High Court through his counsel about subsistence of any appeal said to have been filed by the Contemner against the Order dated 08.08.01 passed by this Hon'ble Tribunal in O. A. NO. 343/2000.
8. That after the inquiry as stated above, the petitioner, to his utter shock and dismay came to know during September 2003 that neither any appeal

Anirudha Dasg.

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against the Order of the Tribunal dated 08.08.2001 passed in OA Nos. 343 of 2000 had been filed by anybody before the High Court nor any such appeal was pending with it.

9. That thereafter, the petitioner feeling aggrieved and defrauded, had again approached the Contemnor through a written representation (sent through Registered with A/D post) highlighting the above facts and demanded immediate compliance of the Order of the Tribunal dated 08.08.2001 passed in OA Nos. 343 of 2000, but to no result.
10. That the Contemnor has received the said representation of the petitioner inasmuch as the A/D card has been received back, but he has not taken any action as yet.
11. That the petitioner states that in terms of the directions passed by this Hon'ble Tribunal in O. A. NO. 343/2000, the contemner was required to allow him to join in service, which he has not done despite due receipt of the copy of the above order. The contemner has defrauded and misled the petitioner and resorted to disobey the order of this Hon'ble Tribunal dated 08.08.01 and thus has willfully flouted the order of this Hon'ble Tribunal. He has, therefore, made himself liable to be punished for violating the order of this Hon'ble Tribunal.
12. That the petitioner states that the above action of the Contemner amounts to willful disobedience to the Hon'ble Tribunal's direction and the same have been committed deliberately and intentionally. The contemner is still acting arbitrarily and capriciously in his own design and this has resulted in substantial interference with the due course of justice. Hence, this petition for appropriate order under the law.
13. That the petitioner submits that the contemner willfully did not take any action to comply the order dated 08.08.01 passed by the Hon'ble Tribunal in O. A. No. 343/2000 and has deliberately defied the order of this Hon'ble

Anurupa Dey

Tribunal which amounts to contempt of Court. Therefore, he is liable to be proceeded against and punished according to law.

14. That this is a fit case for the Hon'ble Tribunal for initiation of contempt proceeding for deliberate non-compliance of the order dated 08.08.01 passed by the Hon'ble Tribunal in O. A. No. 343/2000.
15. That the petitioner files this petition bona fide and in the interest of justice.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to admit this petition and issue notice on the contemnors to show cause as to why a contempt proceeding should not be drawn up against them and to show cause further as to why they should not be punished for willful disobedience and non-compliance of the order dated 08.08.01 passed in O. A. No. 343/2000;

- And -

Cause or causes being shown and upon hearing the parties be pleased to punish the contemner in accordance with law and be further pleased to pass any such other order or orders as deemed fit and proper by the Hon'ble Tribunal.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

Anurag Raj

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AFFIDAVIT

I, Sri Aniruddha Roy, son of Late Aswini Roy, aged about 34 years, resident of Village & P.O. Channighat, District Cachar (Assam), do hereby solemnly affirm and say as follows: -

1. That I am the petitioner in the accompanying Contempt Petition and as such well acquainted with the facts and circumstances of the present case and also competent to swear this affidavit.
2. That the statements made in 1-10 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench, in the matter of non-compliance of the Hon'ble Tribunal's order dated 08.08.01 passed in O. A. No. 343/2000.

Identified by: -

Usha Dutta
Advocate

Aniruddha Roy
DEPONENT

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DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemner for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal dated 08.08.01 passed in O. A. No. 343/2000.

Anirudha Roy

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. . . . Respondants.

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

*Copy to be
to be kept
Sd/-
Advocate*

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 penalty 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 ^{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.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

Recd

Counter Insurgency and
Jungle Warfare School
C/o 99 APO

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Jb Dec 2001

2009/AR/Adm

Shri Anirudha Roy
Ex-Consy S/Wala
Village - Channighat
PO - do-
Teh - Silchar (Cachar)

REINSTATEMENT

It is intimated that an appeal against CAT Judgment of 04 Sep 2001 for your reinstatement has been filed in the Honourable High Court of Guwahati. This is for your info please.

E. Gurus...

(Purusothaman M)
IAJ
OC Adm Wing
For OIA Comdt

*Certified to
be true copy
Sunder
Advocate*

To,
The Commandant
Counter Insurgency and Jungle Warfare School
C/O. 99 A.P.O.

Sub: - Order dated 08.08.2001 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in OA Nos. 343 & 344 of 2000 (Aniruddha Roy Vs. Union of India & others and Monoranjan Roy Vs. Union of India & others).

Ref: - Letter bearing no. 6009/AR/Adm dated 26.12.2001 issued from your office on the Subject cited above.

Respected Sir,

In inviting your attention to the aforesaid, I have to say that being aggrieved by the order dated 27.07.1999 whereby I was removed from service; I had approached the Hon'ble Central Administrative Tribunal, Guwahati Bench in OA No. 343 of 2000 and challenged the order of removal.

The Hon'ble Tribunal, after hearing the arguments advanced by the respective parties on merit and on perusal of records of the case, had been pleased to set aside the impugned order of removal dated 27.07.1999 and directed for my re-instatement in service forthwith.

I had, thereafter, submitted a certified copy of the above order of the Tribunal to your good office and prayed for appropriate action from your end to re-instate me in service in terms of the order of the Hon'ble Tribunal mentioned above. But surprisingly, the said order of the Tribunal was not implemented and by a letter bearing no. 6009/AR/Adm dated 26.12.2001 which I had received on a much later date, it was intimated that an appeal against the order of the Tribunal had been filed before the High Court although no particulars of the appeal was mentioned in the said letter.

I have checked the matter in the Registry of the High Court through my counsel and it has been informed that neither any appeal against the Order of the

*Certified
be true copy
S. S. Saha
Advocate*

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Tribunal dated 08.08.2001 passed in OA Nos. 343 & 344 of 2000 has been filed by anybody before the High Court nor any such appeal is pending with it.

In the circumstances, I would request you to immediately comply with the Order of the Hon'ble Tribunal, in OA Nos. 343 & 344 of 2000 (Aniruddha Roy Vs. Union of India & others and Monoranjan Roy Vs. Union of India & others) and re-instate me in service failing which, I shall have no alternative but to take recourse in a Court of Law to initiate appropriate proceeding for violation of the order of the Tribunal mentioned above.

For your ready reference, a copy of the Order dated 08.08.2001 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in OA Nos. 343 & 344 of 2000 (Aniruddha Roy Vs. Union of India & others and Monoranjan Roy Vs. Union of India & others) is annexed herewith.

Thanking You
Yours faithfully

(Aniruddha Roy)
Conservancy Safaiwala
Counter Insurgency and Jungle Warfare School -
99 APO, Vairengte (Mizoram)

Aniruddha Roy

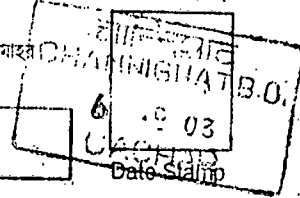
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आर. पी.-54
अं. नि.-48
R.P.-54

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DEPARTMENT OF POSTS, INDIA

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Name-Stamp of office of posting.



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~~Mr~~ Anirudha Roy

V.P.O. Channighat B.O.

Via: Bhaja Bazar S.O. Dist./জেলা/Plin

722120

Cachar (Assam)

प्रभासमु सन्त/MGIP(FU), Sant- Postal

★ अनावश्यक को काट दिया जाये /অপ্রয়োজনীয় অংশ কেটে দিন /Score out the matter not required.

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प्राप्ति-स्वीकृति (सीद)/প্রাপ্তি-স্বীকৃতি/ACKNOWLEDGEMENT

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★ रेजिस्ट्रीकृत/बीमाकृतपत्र/पोस्ट कार्ड/प्याकेट/पार्सेल/सुरतुआ
★ Received a Registered Insured Letter/Postcard/Packet/Parcel

क्रमांक

नं.

No.

- पाने वाले का नाम
आपके नाम ठिकाना
Addressed to (name)
● बीमे का मुल्य (रूपयों में)
● बीमाकृत अर्थेपर परिमाण
● Insured for Rupees

वितरण तारीख

दिनांक

To, The Commendant ~~Cachar~~ School
Insurgency and jungle relief school.
C/O. 99 A.P.O.

Original to be
made copy
J. S. S. S.
Advocate