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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Withdrawal Date-23/09/02

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Application No. 136 /2001

Applicant(s) :- Mrs. Nibedita Sarbar

Respondent(s) :- W.O. I Army

Advocate for the Applicant :- Mr. B.K. Sharma, Mr. D.K. Sharma

Advocate for the Respondent:- Mr. S. Sinha

Notes of the Registry	Date	Order of the Tribunal
The O.A No. 111/97 was disposed of on 11.1.99 by this Bench and which was appealed in the Hon'ble High Court of W.P.(C) 6655/99.	12.11.01	By order dated 11.1.1999 the O.A. 111/97 was allowed setting aside the order whereby the applicant was removed from service. The aforesaid order was set aside by High Court in W.P.(C) No. 6655/99 on the ground that the due notice was not sent to the respondents. At the instance of the Respondent, the earlier order is set aside and remitted back to the Tribunal to decide on merits. By order dated 14.8.01 the Hon'ble High Court ordered that no order to issue notice. The operative portion of the High Court order dated 14.8.2001 reads as follows :-
The transmission of case records of W.P.(C) 6655/99 received by this Registry on 8.10.2001.		"2. The matter now shall go back to the Central Administrative Tribunal, Guwahati Bench to decide it afresh as per law. The parties shall appear before the Central Administrative Tribunal, Guwahati Bench on 25th of September, 2001 to receive further instruction. There is no need to issue notice to the respondent as we have passed this order in presence of Mr. Sunil Sinha, learned counsel appearing on behalf of Mr. K.K. Mahanta."
Final before the Hon'ble Court for further orders.		For the reason indicated above the matter
<i>See Note 4 11/11/2001 Section Officer</i>		Contd/-

12.11.01

was remitted back to this Tribunal
to decide it afresh.

The case is again listed today.

Mr.S.Sarma, learned counsel appre-
red for the applicant. None is
present for the respondents though
High Court directed the respondents
to appear through counsel. The case
is of 1999, and therefore the
matter requires to be posted for
hearing. We allowed the respondents
4 weeks time to submit written
statement, if any, else the case
will ^{Proceed} ~~take~~ ^{ex parte} for hearing.

List on 13/12/01 for written
statement and fixing the date of
hearing.

Office to communicate a copy
of the order to the respondents.

Copy of order dtd 12/11/01
communicated to the respondents
No 182.

13/11/01

No written statement has
been filed.

3/12/01

mb

13.12.01

I C Usha

Member

Vice-Chairman

No written statement
has been filed.

10.1.02

mb

11.1.02

Respondents are yet to file written
statement though time granted. List the
matter for hearing on 25.2.2002. The
respondents may file written statement, if
any, within 4 weeks from today.

List on 25.2.2002 for hearing.

I C Usha

Member

Vice-Chairman

mb

3)

D.A. No. 436 of 2001

Notes of the Registry	Date	Order of the Tribunal
	25.2.02	<p>By order dated 14.8.2001 of the High Court, the matter was remitted back to this Tribunal. Already respondents are given time to file written statement and no written statement is was forthcoming. Accordingly, the matter was posted for hearing today. Mr. A.Deb Roy, learned Sr. C.G.S.C. prayed for time to file written statement. We had already allowed time to the respondents to file written statement but not filed. We, however, allow ten days time to the respondents to file written statement.</p> <p>List on 8.3.2002 for hearing.</p> <p><i>ICU Sharma</i> Member</p> <p><i>Chairman</i> Vice-Chairman</p>
	8.3.02	<p>Mr. A.Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the Respondents prayed for adjournment of the case to obtain necessary instructions. This is an old matter which was remitted to this Tribunal by order dated 14.8.2001 by the High Court. In the order High Court directed the parties to appear before this Tribunal on 25th of September, 2001 to receive further instructions. It is also ordered that no further notice need to be issued. The order was passed in presence of Mr. C.G.S.C. When the matter was reached here Mr. A.Deb Roy, learned Sr. C.G.S.C. took time to file written statement. No written statement so far is filed nor any step taken. Mr. Deb Roy, again prayed for time to file written</p>

Contd/-

(4)

Notes of the Registry Date Order of the Tribunal

order dtd. 8/3/02 Communicated
to the parties concerned.

18/3

DINo. dtd

8.3.02

We are not inclined to extend further four weeks time to the Respondents. Considering the facts of the case, the matter is posted for hearing on 22.3.2002. No further time shall be granted. The Respondents may produce the departmental proceeding if so advised.

List on 22.3.2002 for hearing.

K. C. Sharma
Member Vice-Chairman

No. written statement has
been filed.

3/3
21.3.02

mb

22.3.2002

Heard in part.
Left again on 24/3/02.

Mr.
A. K. S.
22/3

21.3.2002
WTS submitted by
the Respondents in O.A 111/97
which was disposed of by this
Bench on 12.1.99 and the
same was appealed in the
Hon'ble High Court as W.P (C)
6655/99. The Hon'ble High
Court sent back the same to this
Bench to decide it afresh.

24/3/02

Heard Mr. S. Sharma, learned
Counsel for the applicant
Mr. A. Debroy, Attorney for the
Respondent.

Hearing concluded,
Judgment reserved.

Mr.
A. K. S.
24/3

18.4.02

Judgment delivered in open
Court, kept in separate sheets.
The application is allowed. No
order as to costs.

18/4/02

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 436 of 2001

Date of Decision 18.4.2002

— Mrs Nibedita Sarma

Petitioner(s)

Mr B.K. Sharma, Mr S. Sarma and
Mr D.K. Sarma

Advocate for the
Petitioner(s)

— Versus —

— The Union of India and 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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.436 of 2001

Date of decision: This the 18th day of April 2002

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

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

Mrs Nibedita Sarma
resident of Bye lane No.5,
Zoo Narengi Road,
Guwahati.Applicant
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr D.K. Sarma.

- versus -

1. The Council of Scientific & Industrial Research(CSIR)
represented by its Director General,
Rafi Marg, New Delhi.
2. The Regional Research Laboratory,
(Council of Scientific & Industrial Research)
Jorhat, represented by its Director.
3. The Director General,
Council of Scientific & Industrial Research,
Rafi Marg, New Delhi.
4. The Director,
Regional Research Laboratory,
Jorhat.
5. The Union of India,
represented by the Secretary to the
Government of India,
Ministry of Science and Technology,
New Delhi.
6. Dr C.N. Saikia,
Scientist-II,
Regional Research Laboratory,
Jorhat (INQUIRING AUTHORITY).Respondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The following are the reliefs applied for in this application under Section 19 of the Administrative Tribunals Act, 1985 :

- i) To set aside and quash the impugned order of removal from service imposed upon the applicant vide Annexure-9 order dated 25.4.96;
- ii) Upon setting aside and quashing of the Annexure-9 order dated 25.4.96, the applicant be given all consequential benefits including arrear salary etc.
- iii) Cost of the application.
- iv) Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case and/or as may be deemed fit and proper by this Hon'ble Tribunal.

By the impugned order 25.4.1996 the applicant was imposed the penalty of removal from service as a disciplinary measure. The case has a long and checkered history. The applicant joined the service the Regional Research Laboratory (RRL for short), Jorhat under the Council of Scientific and Industrial Research (CSIR), Government of India in the year 1964. She was confirmed as Junior Technical Assistant. In the year 1977 the applicant took earned leave initially for a period of fifteen days. According to the applicant she applied for extension of leave from time to time. It was pleaded that she submitted leave application supported by medical certificate. She remained absent till January 1986 and by order dated 16.1.1986 she was removed from service for unauthorised absence without holding any enquiry. The applicant knocked

the door of this Tribunal assailing the order of removal. The order of removal was set aside by Judgment and Order dated 23.2.1991 in O.A.No.176 of 1990. While setting aside the order of removal, the Tribunal remanded the case to the Disciplinary Authority with a direction to appoint an Inquiry Officer and also to conduct the managerial enquiry for affording a reasonable opportunity to the applicant. The Tribunal directed the respondents to complete the enquiry within a period of ninety days.

2. The respondents initiated a disciplinary proceeding against the applicant by serving the articles of charge alongwith the statement of imputations on her as per the provisions of Rule 14 of the CCS (CCA) Rules, 1966. The applicant was asked to show cause as to why penal action should not be taken against her. The applicant showed cause in writing vide statement dated 14.8.1991 denying the allegations made against her. The authority decided to enquire into the matter and appointed an Inquiry Officer. By order dated 11.11.1991 the charge was amended by citing the appropriate Rule. The authority recorded some evidence. The applicant was allowed to be defended by a lawyer at Jorhat. The proceeding did not come to an end within the time specified by the Tribunal. The applicant again moved the Tribunal by way of Misc. Petition No.65 of 1991 on the failure of the authority to complete the departmental proceeding within the prescribed period. When the aforementioned M.P. was pending decision, the respondents filed M.P.Nos.149 of 191 and 12 of 1992 praying for extension of time. By order dated 4.2.1992 both the M.P.s filed by the respondents were rejected. The Tribunal also quashed the disciplinary proceeding since the respondents failed to complete the disciplinary proceeding within the period specified. The respondents moved.....

moved the Supreme Court by way of and SLP (Civil Appeal Nos..... of 1996) arising out of SLP (Civil) Nos.477-478 of 1994). The Supreme Court by Judgment and Order dated 26.2.1996 ordered the authority to complete the disciplinary proceeding that was initiated against the applicant within a period of two months from the date of the order of the Supreme Court. By order dated 28.2.1996 a new Inquiry Officer was appointed replacing the earlier Inquiry Officer to enquire into the charges against the applicant. By Annexure 3 the respondents also appointed a Presenting Officer. By communication dated 28.2.1996 the applicant was served with a notice indicating the authority's decision to complete the enquiry as per the direction of the Supreme Court. The applicant was also informed that the written statement against the articles of charge forwarded with her letter dated 14.8.1991 would be taken into account. Accordingly the enquiry was conducted on two dates and two witnesses were examined by the Disciplinary Authority on its behalf. The disciplinary proceeding was closed and the Inquiry Officer submitted his report holding the applicant guilty of the charges. The Disciplinary Authority by the impugned order accordingly imposed the penalty of removal from service. The applicant submitted representation against the enquiry report and alleged that the enquiry was not fairly conducted and the same was concluded with undue haste without providing adequate opportunity to her to adduce the charges in contravention of the rules. The applicant submitted her appeal, but since it was not decided the applicant moved the O.A.No.111 of 1997 before this Tribunal. This Tribunal upon hearing the respective parties and considering the materials on record by

Judgment and Order dated 11.1.1999 set aside the order of removal holding the applicant as deemed to be in service. Against the said order the respondents moved the High Court mainly on the ground that due notices were not sent to the respondents. The High Court accepted the plea of the respondents and held that the Central Government Standing Counsel who accepted the notices was not authorised to accept the notices on behalf of the respondents. The order of the Tribunal dated 11.1.1999 was accordingly set aside by the High Court by its order dated 14.8.2001 and the matter was remanded back to the Tribunal for a decision on merit on quashing the earlier judgment. After the matter was remanded to this Tribunal, the respondents were allowed to submit their written statement and accordingly the respondents submitted their written statement denying and disputing the claim of the applicant.

3. The learned counsel for the applicant assailed the order of removal on the ground of procedural impropriety and also for denial of a reasonable opportunity to defend her case. Mr S. Sarma, learned counsel for the applicant also assailed the decision of removal on merit and submitted that the respondents fell into obvious error in holding the applicant guilty of the charges. Lastly, Mr Sarma stated and contended that the impugned order of removal, at any rate was/is arbitrary and disproportionate.

4. Mr A. Deb Roy, learned Sr. C.G.S.C., refuting the plea of the applicant stated and contended that the authroity provided fair and reasonable opportunity to the applicant to defend her case. The applicant participated

in.....

in the enquiry and failed to rebut the charges. The Inquiry Officer rightly and lawfully enquired into the matter and on consideration of the materials on record found the applicant guilty of three charges out of four. The Disciplinary Authority considering the merits of the case and the gravity of the misconduct, on assessing the fact situation passed the impugned order in accordance with law.

5. Before entering into the merits of the decision it would appropriate to refer to and cite below the articles of charge:

"Article I

That the said Smt Nibedita Sarmah while functioning as Technical Assistant in Regional Research Laboratory, Jorhat during the period from June 25, 1979 to January 16, 1986 proceeded on Earned Leave initially for 15 days w.e.f. June 25, 1979 to July 9, 1979 and thereafter extended her leave from July 10, 1979 to October 27, 1979 with the production of medical certificate and from October 28, 1979 to January 15, 1986 without production of medical certificate. She overstayed her leave without any approval from August 14, 1979 to date thereby contravening Rule of C.C.S. (Leave) Rules as applicable to Council employees from time to time."

By Memorandum dated 11.11.1991 the Disciplinary Authority amended the earlier Memorandum dated 30.7.1991, which is reproduced below:

"Whereas an inquiry under Rule 14 of the CCS (Classification, Control and Appeal) Rules, 1964 is proposed to be held against Smt. Nibedita Sarmah, Technical Asstt. III(1) vide Order No.RLJ-19(50-Vig/90 dated 30.7.91 served on her, the undersigned in exercise of powers conferred on him substitute the provisions of Rules quoted in the Article of charges in Annexure I forwarded to Smt Nibedita Sarmah under Memorandum No.RLJ-19(50)-Vig/90 dated 30.7.91 as under:-

In Article I Substitute "CCS (Leave Rules) as applicable to Council employees from time to time" (in line 10 & 11) with " 3 (i) (ii) and (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of CSIR/RRL, Jorhat.

In Article II Substitute "Rule 3 (i) of CCS (Conduct) Rules as applicable to Council employees" (in line 10, 11 & 12) with "Rule 3(i)(ii) and (iii) of CCS(Conduct) Rules, 1964 as made applicable to the employees of CSIR/RRL, Jorhat."

In Article III Substitute "Rule 3 (i) of CCS (Conduct) Rules as applicable to Council servants (in line 9, 10 & 11) with "Rule 3 (i) (ii) & (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of CSIR/RRL, Jorhat."

In Article IV Add "Rule 3 (i) (ii) & (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of CSIR/RRL, Jorhat" at the end of the present charge.

The receipt of the Memorandum may be acknowledged."

6. The applicant submitted her written statement and while denying the charge she stated that she submitted leave application to the Director, RRL from time to time against the period of her leave from 13.8.1979 to 3.4.1989 excluding the period of her illness. During the period of illness she had submitted her leave application through her relatives and friends. All the leave applications excepting a few were supported by medical certificates. She stated that since after her marriage in 1977 she was not physically well and was under continuous medical treatment for a long period. She stated that her illness was borne by medical testimony, which was submitted to the Director, RRL in original with the leave application and referred to some of them. She accordingly denied the charges. The applicant asserted that she submitted leave application to the Director, RRL with effect from 1.1.1983 to 3.4.1989. She attended office regularly thereafter, save and except some days when she was not allowed to attend the office and she was even not allowed to see the Director. From 4.4.1989 to September 23 the applicant was

debarred.....

debarred by the authority from attending the office when she was served with a copy of the order of removal. She submitted representation before the authority. Failing to get appropriate remedy she had to move this Tribunal.

7. After the decision of the Supreme Court, the respondent authority took up the matter and the preliminary hearing took place on 8.3.1996. On 8.3.1996 the applicant submitted two applications - one addressed to the Inquiry Officer and the other to the Director, RRL. In the first application she prayed before the Inquiry Officer to proceed with the enquiry after the stage without taking note of the preliminary hearing held by the earlier Inquiry Officer. The applicant also prayed for assistance of an Advocate. It was contended that as the enquiry was a continuation of the previous one she was to be allowed assistance of an Advocate as was allowed to her earlier. The Inquiry Officer turned down her prayer for legal practitioner on the ground that the new Presenting Officer was not a legal practitioner or a lawman and accordingly the Inquiry Officer ordered that the enquiry will proceed without legal practitioner on either side. The charge was explained to her and she pleaded not guilty of all the articles of charge. The Inquiry Officer had intimated that the Presenting Officer had already supplied copies of the listed documents on 23.12.1991 and therefore, the charged official agreed that there was no need for inspection of documents. The charged official was directed to submit a list of additional documents and list of witnesses, if any in her defence along with full particulars of the documents regarding the relevance to the articles of charge. The next hearing was posted on 14.3.1996 and it was ordered that the hearing

would.....

continue on a day to day basis. On 14.3.1996 the hearing commenced as scheduled. The applicant was asked whether she had her Defence Assistant and the applicant stated that she was away from RRL, Jorhat for a long time and she was not in a position to take assistance from any Council employee as defence assistant and she would proceed with the enquiry without any defence assistant. On the prayer of the Inquiry Officer the case was adjourned for a day and it was posted on 15.3.1996.

8. From the records it appears that one Shri P.C. Tamuly was examined on behalf of the Disciplinary Authority. In his deposition he stated that he took charge of the Head of the Division during 1985 for about three months when Shri A.K. Hazarika the then Head of the Division went abroad for higher studies. Shri Tamuly stated that the applicant who was attached to his Division during 1979 to 1986 was absent from 25.6.1979 and to the best of his knowledge he did not receive any joining report from her. The witness was crossexamined by the applicant. The witness did not prove any document. The other witness examined by the Disciplinary Authority was the Section Officer and Administrative Officer during 1979 to 1986. He was handling the personal file of the applicant. He stated that the charged official submitted twentyone leave applications during the period from 25.6.1979 to 31.12.1982. Only in her application dated 25.6.1979 she mentioned the nature of leave. In all other applications the nature of leave was not mentioned. In all the applications the ground for leave was illness. She submitted medical certificate covering the period from 25.6.1979 to 27.10.1979. No medical certificate was submitted for the remaining period. There was no leave

application for the months of March, July, August and September 1982. She was sanctioned leave due and admissible from 25.6.1979 to 13.8.1979 and no leave was sanctioned to her for the remaining period. She was directed to submit medical certificate in support of her illness. By telegrams dated 11.1.1980 and 10.6.1981 and O.M.s dated 13.6.1980, 5.3.1981 and 23.4.1981 she was directed to report for duty. He also stated that there was no application for leave from 1.1.1983 to 15.1.1986. The Inquiry Officer submitted his report holding the applicant guilty of the articles 1, 2 and 4 of the charges. In respect of Article 1 the Inquiry Officer came to the finding that the evidence adduced on behalf of the Disciplinary Authority was clear and was not in any way contradicted by the charged official. Therefore, the charge was proved. So also as regards Articles 2 and 4. The Inquiry Officer, however, held that charge 3 was not proved. In analysing and assessing the evidence on record as regards the articles of charge, the Inquiry Officer took note of the applicant's submission that she took leave as she was under treatment of a Sr Government Doctor and therefore, if medical leave could not be sanctioned, other kinds of leave should have been sanctioned to her in view of the fact that she had rendered long service. The Inquiry Officer held that the oral evidence of CW-2 on behalf of the Disciplinary Authority had given a clear picture of the circumstances surrounding the case that the charged official was not sanctioned leave from 14.8.1979 to 31.12.1982. In other words, the charged official did not impeach the accuracy or credence of the deposition of CW-2. Addressing to her

plea.....

plea that the applicant submitted application for leave alongwith medical certificates, the Inquiry Officer held that the statement lacked conviction as the same was not supported by any evidence like Certificate of Posting, Acknowledgement slips, letter of confirmation of delivery from the Postal authorities etc. The allegation of other charges were also explained by the Inquiry Officer and held that the charged official did not produce any oral or documentary evidence to impeach the value of evidence submitted by the Disciplinary authority.

9. The applicant submitted her representation on the enquiry report. In her written statement she stated that she was a Government servant without any legal training or background and that the accusation threatened her very livelihood. Her prayer to take assistance of a legal practitioner was rejected outrightly by the Inquiry Officer without considering the relevant facts. She also pointed out that it was not possible for her to engage a Council employee to assist her in the proceeding after a lapse of so many years. She alleged that the enquiry was conducted hastily and the enquiry report was based on the versions and the written brief of the Presenting Officer. The Inquiry Officer did not call for the relevant files and the Attendance Register to verify her categorical denial of charge-IV, that except on certain days she attended office on other working days. She stated that as against article IV she denied the charge as receipt of all the applications for the entire period of leave was very clearly admitted by the Disciplinary Authority in article I. She mentioned that her absence from office was due to her protracted illness supported by the certificates from the medical experts. The RRL authority doubted.....

doubted about her illness and requested the Superintendent, Gauhati Medical College to constitute a Medical Board for her medical examination. However, the constitution of the Medical Board was avoided when the authority came to know that she was bedridden with illness.

10. The Disciplinary Authority by its order dated 25.4.1996 passed the penalty of removal of the applicant from service. The full text of the order is reproduced below:

"WHEREAS Smt Nibedita Sarmah, Technical Assistant Gr. III(1) was informed of the proposal to hold an inquiry against her under Rule 14 of the CCS(CCA) Rules, 1965 vide this Office Memo. No.RLJ-19(50)-Vig/90 dt. 30.7.91 & 11.11.91 and Memo. No.RLJ-19(50)-Vig/90-96 Vol.IV dt. 28.2.96 along with which a Statement each of (i) Articles of Charge, (ii) Imputations of Misconduct or Misbehaviour in support of the Charges, (iii) & (iv) A list, each of the document by which and of witnesses by whom, the articles of charges were proposed to be sustained, were also forwarded to her.

2. AND WHEREAS an inquiry in the case of Smt. Nibedita Sarmah was conducted by Dr. C.N. Saikia, Scientist E.II, who was appointed to inquire into the articles of charge vide this office Order No. RLJ-19(50)-Vig/90-96 Vol.IV dated 28.2.96. The Inquiring Authority submitted his findings vide his report dated 2.4.96, a copy of which was forwarded to her vide letter No.RLJ-19(50)-Vig/90-96 Vol.IV dated 4.4.96.

3. AND WHEREAS on careful consideration of the report of the Inquiry Officer, other records of the case and the representation dt. 16.4.96 of Smt. Sarmah, the undersigned has agreed with the Inquiry Officer in respect of the charges with findings of the Inquiry Officer in respect of the articles of charges No.I, II and IV and holds that these charges also stand proved due to the reasons that the CO was given all reasonable opportunities to defend her case and her failure to produce documentary evidences of submission of her applications for leave with MC with proper acknowledgement in support of her claim.

4. NOW, THEREFORE, after considering the records of Inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Smt. Nibedita Sarmah is not a fit person to be retained in Council (CSIR) Service and hence ends of justice require that the penalty of removal from service which shall not be a

disqualification.....

disqualification for future employment under Rule-II(viii) of CCS(CCA) Rules, 1965. The penalty of removal from service under the above stated rules is accordingly hereby imposed on Smt. Nibedita Sarmah with immediate effect."

The applicant submitted her appeal before the Director General, CSIR by appeal dated 17.5.1996. Since the same was not disposed of the applicant again moved the Tribunal assailing the legitimacy of the impugned order of removal dated 25.4.1996 as arbitrary and discriminatory.

11. In this application the applicant assailed the order of removal on the ground of procedural impropriety and also challenged the said order on merit as legally unsustainable. The respondents after remand of the order of the Tribunal by the High Court submitted their written statement denying the allegations. According to the respondents the applicant was provided the reasonable opportunities. She participated in the enquiry and taking into account the report of the Inquiry Officer and other relevant records the applicant was found guilty of the charges and accordingly the impugned order of penalty was imposed.

12. Mr S. Sarma, learned counsel for the applicant, pressed the ground of infraction of Rule 14 of the Rules by not allowing the applicant to take the aid of a legal practitioner and of defence assistant to defend her case. Admittedly, the applicant was allowed to defend her case through a legal practitioner, but when the case was remanded by the Supreme Court at a subsequent stage, the authority engaged a Presenting Officer substituting the earlier Presenting Officer who was an advocate. As mentioned earlier the applicant prayed for the assistance of an advocate. The Inquiry Officer on his own, instead

of.....

of referring to the Disciplinary Authority, rejected her prayer for assistance of a legal practitioner and ordered that the enquiry was to proceed without legal practitioner on either side and the next date of hearing was fixed on 14.3.1996. The Inquiry Officer posted the matter for enquiry on 14.3.1996. The Inquiry Officer even enquired from the applicant as to whether she had any defence assistant, where the applicant answered that she could not enlist the help of any Council employee as defence assistant. It is not improbable for such a person not finding a person from amongst the employees to render assistance within the short period. The applicant was at least not ordered on 8.3.1996 for arranging a defence assistant. The statutory rule itself makes provisions for engaging legal practitioner as well as Government servant. Such measures are provided in the statute enabling the delinquent officer a fair and reasonable scope to defend its interest. Rules as well as instructions are made to render justice and to enable the officer to take steps for defending his/her case. The Inquiry Officer and for that matter the Disciplinary Authority seemingly overlooked those aspects of the matter. There was thus infraction of Rule 14 of the Rules and the applicant was denied a fair enquiry. We have already indicated about the nature of testimony. Save and except the oral testimony there was no other documentary evidence in support of the charges that the applicant overstayed her leave without approval and that her leave was not sanctioned and directed to report for duty as well as the allegation that she remained unauthorisedly absent from duty without any application.

13. In the written statement filed by the respondents before the Tribunal one of the documents annexed is a letter bearing No.RLJ-13(43)-Estt/64 dated 25.2.82 addressed to the Superintendent, Gauhati Medical College for medical examination of the applicant, copy of which was endorsed to the applicant, wherein she was informed that her request for grant of leave or otherwise would be decided only after receipt of the medical report from the Medical Board. The said document itself indicated that the applicant at least applied for leave and the respondents informed her that her request for leave would be decided only after receipt of the report from the Medical Board. The departmental witness, Shri P.C. Tamuly did not state anything as to her leave applications. The witness No.2 only spoke about her sanctioned leave and stated that there was no application for leave for the months of March, July, August and September 1982, whereas the communication dated 25.2.1982 itself described the applicant as on leave and she was told that her request for grant of leave would be decided only after receipt of the medical report.

14. We have already referred to the articles of charge. The article I itself indicated that the applicant proceeded on leave with production of medical certificate upto 27.10.1979 and from 28.10.1979 to 15.1.1986 she was on leave without production of medical certificate. The Inquiry Officer in holding the applicant guilty of the charges failed to take note of the nature of the charge and the materials available on record and acted on presumption without considering the fact situation. The applicant at least pointedly referred to the lapses of the Inquiry Officer in her representation submitted to

the.....

the Disciplinary Authority. The Disciplinary Authority only took note of the report of the Inquiry Officer without even considering her representation and imposed the penalty of removal without due application of mind to the facts and circumstances set out therein. According to the Inquiry Officer and the Disciplinary Authority charges I, II and IV were proved. Charge I was for contravention of the CCS Leave Rules and charge IV was for unauthorised absence. According to the own showing of the respondents the applicant was on leave at least as per the letter dated 25.2.1982. Charge II was for failure to maintain devotion to duty under Rule 3(i) of the CCS Conduct Rules and therefore, for the alleged contravention of Rule 3 (i) (ii) and (iii) of the CCS (Conduct) Rules, 1964. While passing the impugned order the respondents also failed to take into account the relevant factors. The gravity of misconduct always depends on the nature of the conduct. The findings of the Inquiry Officer are thus not sustainable on the ground of perversity. The Disciplinary Authority also faltered in its decision making process in totally relying upon the report of the Inquiry Officer without considering the version of the applicant reflected in his written statement and the written representation.

15. On an overall consideration of the facts and circumstances in its entirety, the impugned order of removal of the applicant from service dated 25.4.1996 is not sustainable in law and accordingly the same is set aside and quashed.

16. The applicant has by this time attained the age of superannuation and therefore, the question of her reinstatement.....

reinstatement does not arise. She will, however, be deemed to be in service carrying all the service benefits till the date of her attainment of the age of superannuation. In addition she will also be eligible for all the service benefits including the retiral benefits. In the circumstances of the case the applicant shall be entitled for 50% of her salary till she attained the age of superannuation on adjustment of her leave. The respondents are directed to complete the exercise as early as possible, preferably within three months from the date of receipt of the order.

17. The application is accordingly allowed. There shall, however, be no order as to costs.

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकार

11a/ 500-271

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM & NAGALAND & MEGHALAYA & MANIPUR
TRIPURA & MIZORAM & ARUNACHAL PRADESH)

Guwahati Bench
গুৱাহাটী ব্যাপিৰ

NO. 3744-46/RM dtd. 19.9.01

From : Sri D Goswami,
Asstt. Registrar(B)
Gauhati High Court, Guwahati

GAUHATI HIGH COURT, GUWAHATI - 781001.

To

The Registrar,

Central Administrative Tribunal,

Bhangaghat, Guwahati

Dated Guwahati, the

2000.

Subject : Transmission of Case Record of W.P.(C) No. 6655/99

Reference : Hon'ble Court's Order dtd. 24-8-01

Sir,

I am directed to send herewith the marginally noted Case Record along with the Original Judgment for disposal of the same at your end.

Please acknowledge the receipt of the same at an early date.

Yours faithfully,

Asstt. Registrar(B)
Gauhati High Court, Guwahati

Enclo :-

W.P. (C) No. 6655/99
H.C. File - I and II with O/S 2 sheets and
Original Judgment dtd. 24-8-01 (3 sheets)

Copy
6/9/01

Memo No. 3744-46 R.M. dtd. 19.9.01.

Copy for information to :-

1. Mr D.K. Sarma, Advocate, Gauhati High Court, Guwahati.
2. Mr S. Sinha, Advocate, Gauhati High Court, Guwahati.

sd/-

Asstt. Registrar(B)
Gauhati High Court, Guwahati

ASR. (H.C.) 334/96-80,000-9-1-5

The Case was directed to be listed before
H.C. Bench on 25/9/01 as per order of double High Court
of Guwahati, but the file is sent to me today only
why delay in submitting the file.

Copy
6/9/01

5/10/01

SD(E)

~~1st~~ Section

24

As desire by the Deputy Registrar
this case is received to-day dated
5/10/07 only in the 1 P.M. Therefore
questions to submit in time perhaps
may not rise on the same may be
sent to the Judicial Section for the
necessary action.

S. Pathak

Despatch Section

5/10/07

See
NB
5/10/2007

Mr. Datta
Re: to the need to delay
the case received to-day
NB
5/10/2007

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO.6655/99.

1. The Council for Scientific And Industrial Research (CSTR) represented by its Director General, Rophi Marg, New Delhi.
2. The Regional Research Laboratory (Council of Scientific and Industrial Research), Jorhat, represented by its Director.
3. The Director General, The Council of Scientific and Industrial Research, Rophy Marg, New Delhi.
4. The Director, Regional Research Maboratory, Jorhat.

.....Petitioners.

-Versus-

1. Mrs. Nibedita Baruah, resident of By-lane No.5, Zoo-Narengi Road, Guwahati-781021.
2. The Central Administrative Tribunal, Guwahati Bench, represented by the Registrar, Guwahati.

.....Respondents.

P R E S E N T

THE HON'BLE MR JUSTICE JN SARMA
THE HON'BLE MR JUSTICE PG AGARWALA

Appearance for the Petitioners.... Shri S.Sinha, Advocate.

Appearance for the Respondents.... Shri B.M.Sarma,
Shri DK Sharma, Advocates.

Date of hearing 14/08/2001.

Date of Judgment(Oral) 14/08/2001.

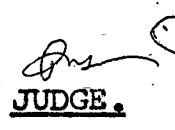
BY HON'BLE MR JUSTICE
JN SARMA.

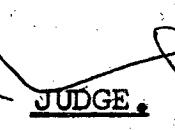
1. This Writ petition has been filed by Respondents No.1 to 4 against the judgment in the original application No. 111 of 19997 before Central Administrative Tribunal, Guwahati. The whole grievance of the petitioners is that the Judgment dated 11th day of January, 1999 was passed by the Tribunal without issuing notice to them and without hearing the learned counsel for the petitioners. It is contended that notice was deemed to be served as it was served on learned counsel for Union of India and at the time of hearing only the Senior Central Government Standing Counsel was heard. But he is not the authorised representative of the present petitioners. As a matter of fact no notice was issued to the Respondents. The Central Government Standing Counsel on a wrong understanding accepted the notice. The petitioner before the Tribunal was an employee of the Respondent No.1 and her removal order was challenged before the Tribunal. As such it was the bounden duty to send notice to the Respondent. The Central Government Standing Counsel was not authorised by the Council to accept notice on behalf of them. In that view of the matter the impugned order dated 11th day of January, 1999 shall stand set aside as it was passed ex parte without giving a chance to the Respondent to make their submission. It is violative of principle of natural justice.

2. The matter now shall go back to the Central Administrative Tribunal, Guwahati Bench to decide it afresh as per law. The parties shall appear before the Central Administrative Tribunal, Guwahati Bench on 25th of September, 2001 to receive further instruction. There is no need to issue notice to the Respondent as we have passed this order in presence of Mr. Sunil Sinha, learned counsel appearing on behalf of Mr. K. K. Mahanta.

4. It is needless to say that We have not decided this matter on merit. But We have remitted back this matter because of the position as indicated above by quashing the earlier Judgment.

5. We have heard Shri B.K.Sarma, learned counsel for the Respondent.

 JUDGE.

 JUDGE.

A.M.

Notes by Office or Advocate.	Sl. No.	Date	Office Notes, Reports, Orders or proceeding with Signature.
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14.3.2000

Notices issued
on Representants

No 5 132
through Regd
Post with AID

Side Memo

No 5199/RM

DT 14.3.2000

Honghu
14/3/2000

18/2001

Dr. B. K. Sharma
Dr. D. K. Barman
Dr. R. K. Borthakur
do care have
intered appearance
behalf of res-
idents by filing
- v. Kalakshetra.

1
2/8

IN THE GAUHATI HIGH COURT

(High Court of Assam Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

wp(e)

No. 6655 of 1999

Civil Rule

Appellant

Petitioner

The Council for Scientific and Industries vs.

Versus

Nibedicta. Saromah.

Respondent

Opposite-Party

Appellant
For
Petitioner

Mr. K. K. Mahanta St. G.G.S.I.C

Mr. S. Bhakarbothy
Miss. S. S. Choudhury

Respondent
For —————

M.B.K. Sharma, M.B.B.K. Sarmah &
M.B. R.K. Borthakur, Advs.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

31
Noting by Office or
AdvocateSerial
No.

Date

Office notes, reports, orders
proceedings with signature

31.1.2000

1/1/2000

1/1/2000

D.V.P.

Second Step X is made
learned counsel for the app

Admit

Issue notice.

(cc)

Order No.

GAUHATI HIGH

02/02/2000

Steps not yet
required for
issuance of
notices on Respondents
Nos 4 & 2

11.2.2000

4A is allow

Can't do & leave
Can't do &
order.2 (two) weeks' time
for taking steps

1/2/2000

Notices sent to
Despatch Section for
issue notices on
Respondents Nos 4 & 2
through Civil Judge
JD Divisional Despatch

1/3/2000

REGISTRAR
GAUHATI HIGH
GUWAHATI

32

DISTRICT : JORHAT

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
MIZORAM, TRIPURA AND ARUNACHAL PRADESH)

(CIVIL EXTRA-ORDINARY JURISDICTION)

W.C. (P) NO. 6655 /99

CATEGORY :

CODE : 10076

The Council for Scientific and Industrial Research

... Petitioner

- Vs -

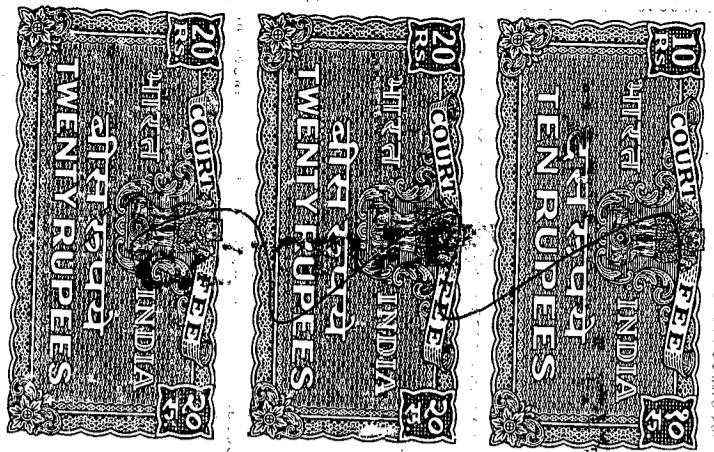
Nibedita Sarmah, ... Respondent

I N D E X

<u>S.I. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Main Petition	—
2.	Affidavit	—
3.	Annexure - 1	—
4.	Annexure - 2	—

Filed by -





DISTRICT : JORHAT

33
Filed by
10/12/1999
ORSHINA KANTA MAHANE
Advocate
Gauhati High Court

S.R. C. G. S. C.
Gauhati High Court

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

(CIVIL EXTRA-ORDINARY JURISDICTION)

W.P. (C) NO. 6655 / 99

To

The Hon'ble Shri Brijesh Kumar, B.A., LL.B.,
the Chief Justice of the Hon'ble Gauhati
High Court and His Companion Justices of the
said Hon'ble Court.

IN THE MATTER OF :-

An Application under Article 226 and
227 of the Constitution of India for
issuance of a Writ of Certiorari
and/or any other Writ, direction,
order or orders of the like nature.

AND

IN THE MATTER OF :-

The Judgment and order dated 11
January, 1999 passed by the learned
Central Administrative Tribunal,
Gauhati Bench, in Original

Contd.....

RECEIVED
GAUHATI HIGH COURT
JANUARY 12, 1999

Application No. 111/1997 setting aside the order of removal from service dated 25.4.96 holding further that the Respondent No.1 shall be deemed to be in service.

AND

IN THE MATTER OF :-

1. The Council for Scientific and Industrial Research (CSIR) represented by its Director General, Rophi Marg, New Delhi.

2. The Regional Research Laboratory (Council of Scientific and Industrial Research) Jorhat represented by its Director.

3. The Director General, the Council of Scientific and Industrial Research, Rophy Marg, New Delhi.

4. The Director, Regional Research Laboratory, Jorhat.

***** PETITIONERS

-- VS --

1. Mrs. Nibedita Sarmah, resident of By-lane No.5, Zoo-Narengi Road, Guwahati - 781 021.

Contd.

2. The Central Administrative Tribunal, Gauhati Bench, represented by the Registrar, Guwahati.

***** RESPONDENTS

The humble petition of the Petitioners above named

MOST RESPECTFULLY SHEWETH :-

1. That the Respondent No.1 filed an application before the Central Administrative Tribunal, Gauhati Bench, challenging the penalty of removal from service imposed on her by the Petitioners vide order No. RLJ-19(5D)Vig-90-96 Vol. IV dated 25.4.96. The said application was admitted and registered as Original Application No. 111/97.

2. That the case of the Respondent No.1 as stated before the learned Central Administrative Tribunal (CAT) is that she joined the service of the Regional Research Laboratory, Jorhat under the Council of Scientific and Industrial Research (CSIR) way back in 1964 and that she was confirmed as Junior Technical Assistant in the said Laboratory. In the year 1977 she took Earned Leave for her serious illness and she had

Contd.....

to extend her leave from time to time as she fell seriously ill. She submitted leave application from time to time supported by Medical Certificates during the period of her absence from duty. On 3.4.89 she was removed from service with effect from 16.1.86 for alledged unauthorised absence vide Memo No. RLJ(14)43-Estt.64/11 dated 15.1.86 without holding any enquiry whatsoever. She approached the Central Administrative Tribunal by filing Original Application No. 176/90 challenging the validity of the order of removal issued vide order dated 16.1.86. The CAT by its Judgment dated 23.2.91 set aside the order of removal dated 16.1.86 granting liberty to the authorities to hold a fresh enquiry giving opportunity to her to defend her case. The authority failed to hold any enquiry within the time fixed by the CAT as well as during the extended period of 90 days allowed by the CAT by its order dated 3.7.91. Hence, the CAT by its order dated 4.2.92 quashed the entire departmental proceedings directing the authorities (Petitioner here-in) to reinstate the applicant (Respondent No.1) in service. Her further case was that the Respondent (the Petitioners here-in) preferred an appeal before the Hon'ble Supreme Court and the Apex Court vide order dated 26.2.96 permitted the authorities to complete the disciplinary proceeding within a period of 2 months from the date of the order.

Contd.

Pursuant to the said order of the Apex Court, the Director, RRL, Jorhat, vide order dated 28.2.96 appointed Dr. C.N. Saikia, Scientist E-II, RRL, Jorhat, as the Enquiring Authority to enquire into the charges framed against the applicant. He also appointed Presenting Officer and forwarded the Charge-sheet dated 30.7.91. The Respondents submitted her written statements vide her letter dated 14.8.91 denying all the charges and the Enquiring Authority vide letter dated 1.3.96 asked the Applicant (Respondent herein) to attend the enquiry on 8.6.96 at 11.00 A.M. in the office of the RRL, Jorhat. Accordingly she appeared before the Enquiring Authority on the said date. However, her request for Defence Assistant was turned down by the Enquiring Authority on the ground that such a request does not fall within the purview of the situation under which engagement of legal practitioner is justified. The Enquiring Authority then hurriedly conducted the proceeding for completing the same without giving the applicant the minimum opportunity of adequate defence and closed the proceedings and submitted the report to the Disciplinary Authority. The Disciplinary Authority vide its letter dated 4.4.96 forwarded a copy of the said Enquiry Report to the applicant. Thereupon she submitted her representation dated 14.6.96. However, the Disciplinary Authority

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without applying its mind to her representation against the enquiry report passed the impugned order of removal from service vide order dated 25.4.96. It was further alleged that the applicant submitted her departmental appeal dated 17.5.96 to the Director General, CSIR, but the same was not disposed of. It was also stated by the applicant that although in the previous proceedings she was allowed to take assistance of a legal practitioner to defend her interest in the departmental proceeding, the said permission was subsequently denied to her and hence, she challenged the order of removal as illegal and unfair amongst other grounds.

The Petitioner crave leave of this Hon'ble Court to refer and rely upon the application submitted before the learned CAT at the time of hearing.

3. That in the said application the present petitioners No.1-4 were arrayed as Respondent No.1-4 in the said application also before the learned CAT while the Union of India and one Dr.C.N.Saikia, Scientist-E-II of the RRL, Jorhat (the Enquiring Authority) were arrayed as Respondent No.5 and 6 respectively. When the said application came up before the learned CAT for admission on 3.6.97, the learned Tribunal was pleased to admit the petition and issued notice upon the

Contd.....

Respondents. However, notice on behalf of the Petitioners (i.e. Respondent No.1-4 before the CAT) was accepted by the learned Sr.C.G.S.C. (Mr.S.Ali) who entered appearance before the learned CAT on the said day and hence the learned Tribunal by its order dated 3.6.97 ordered that no formal notice need be sent to the Respondents.

A copy of the said order dated 3.6.97 is annexed hereto and marked as ANNEXURE-1.

4. That since no notice was issued to the Petitioners as aforesaid neither through the Tribunal nor through the learned Sr.C.G.S.C., CAT, to the Petitioners, they did not at all come to know about the said case. It may be stated in this connection that the Council of Scientific and Industrial Research is an Autonomous Body and the Regional Research Laboratory, Jorhat is a laboratory under the said Council. Therefore, the notices should have been issued directly to the Petitioners since the Council does not have any standing counsel in the Central Administrative Tribunal. However, the learned Sr.C.G.S.C., CAT, who volunteered to accept the notices on behalf of the Petitioners having accepted ~~ed~~ the same ^{should} ~~and~~ have informed the Petitioners about the case enabling them to defend

Contd.

their interest. However, the Petitioners did not receive any communication from the learned Sr.C.G.S.C., CAT, about the case at any point of time and remained totally unaware about the said case and as such they did not get an opportunity to defend their interest and the case was ultimately decided ex-parte against the Petitioners. It may further be stated here that it transpires from the records that the learned Sr.C.G.S.C., CAT, prayed and took time for several occasions for filing written statements on behalf of the Petitioners. However, no such written statement could file and was filed and in fact, the Petitioners were never asked to do so by the learned Sr.C.G.S.C., CAT, and being totally unaware about the case, the Petitioners also could not take initiative to contact the Sr.C.G.S.C., CAT and/or to file any written statement in the said case.

5. That the case was ultimately heard ex-parte by the learned CAT and vide its Judgment and order dated 11 January, 1999 allowed the Application of the Respondents and set aside the impugned order of removal and directed that the Applicant shall be deemed to be in service.

A copy of the aforesaid Judgment and order of the learned CAT is annexed hereto and marked as ANNEXURE-2.

Contd.....

6. That the Petitioners respective state that on 13-4-99 the RRL, Jorhat received a copy of the Judgment and Order dated 11-1-99 passed by the learned CAST in Original Application No. 111/97 and on receipt of the said copy, the Petitioners for the first time came to know about the case and thereafter the Laboratory took up the matter with the learned C.G.S.C., CAT, through Shri B.S.Bosumetary, learned Advocate, to explore the possibilities of filing a Review Petition before the Hon'ble High Court. The learned C.G.S.C. after examining the records declined to file application for review for setting aside the ex-parte order and opined that the Petitioner who, rather, filed Writ Application before the Hon'ble Gauhati High Court challenging the legality and validity of the Judgment and Order of the learned CAT dated 11.1.99. Accordingly, thereafter, the case was ultimately taken up with the learned Sr.C.G.S.C. of this Hon'ble High Court for filing this Writ Application against the said Judgment and Order of the learned CAT, who after examining all the documents in details agreed to challenge the said Judgment and Order of the learned CAT before this Hon'ble Court and accordingly this Petitioner has been now preferred before this Hon'ble Court.

Contd.....

7. That the Petitioners respectfully state that if the Petitioners would have got an opportunity to defend their interest in the case before the learned CAT by filing a written statement, they would have been able to show that there was no infirmity or illegality in the order of the removal of the Respondents/Applicant. The departmental proceedings was conducted in accordance with law by giving adequate opportunity to the Respondent/Applicant to defend her interest and the Respondent duly participated in the said proceedings and the order of removal was passed in accordance with law after following the due process of law. There was sufficient valid reasons for denying the Respondent No.1, the assistance of a legal practitioner, and thereby no prejudice was caused to her. Similarly, the Presenting Officer was to be changed subsequently due to some compelling reasons and the charge in respect of which the disciplinary proceedings was conducted could not be said to be vague and indefinite. However, since all these facts and other material facts/records could not be placed/produced before the CAT, the learned CAT did not have an opportunity to hear the Petitioners and to know the other side of the case and hence passed the ex parte order in favour of the Respondents which has caused much prejudice to the Petitioners besides causing

Contd.....

miscarriage of justice. Hence, the Petitioner have been compelled to approach this Hon'ble Court for the ends of justice.

8. That it is respectfully stated that the departmental enquiry against the Respondent No.1 was conducted in accordance with law and one Shri(Dr.) C.N.Saikia, Scientist-E-II of RRL, Jorhat (Proforma Respondent No.3 here in) was appointed as the Enquiry Officer to conduct the departmental proceedings. The said Enquiry Officer was neither a lawyer nor he had any legal background. Hence, by the denial of assistance of a legal practitioner to the Respondent No.1 cannot cause any prejudice to her. On the other hand, Shri N.Joiram, who earlier served in RRL, Jorhat, as Section Officer and was later on transferred to CSIR, Madras Complex, Chennai, was appointed as the Presenting Officer. He also did not have any legal background, not to speak of law degree. His appointment also cannot cause prejudice to the Respondent No.1. The Respondent No.1 was at liberty to chose any other officer excepting a legal practitioner to assist her as her defence counsel. However, the learned CAT wrongly appreciate te entire facts and decided the case illegally on these points.

9. That the Petitioners respectfully state that

Contd.

the Respondent No.1 is out of service since 1979. Initially she availed leave and subsequently on the plea of sickness she continued to remain absence in office without any prior intimation and/or leave granted by the appropriate authority on the ground of her unauthorised absence she was ultimately removed from service w.e.f. 16.1.86. However, when the said order of removal was set aside by the learned CAT in Original Application No. 176/1990 granting liberty to hold a fresh enquiry, the departmental enquiry was started afresh and on the basis of the findings of the said departmental enquiry, the Respondent No.1 was ultimately removed from the service vide order dated 25.4.1996 against which order she filed Original Application No. 111/1997 before the learned CAT. Thus, the Respondent No.1 is not in service since 1979. However, as per the impugned order of the learned CAT, the Respondent No.1 is required to be taken back and she is entitled to all the service benefit, though, in the meanwhile, the Respondent No.1 has attained the age of superannuation in the year 1998 itself. Hence, the said impugned order of the CAT has caused serious inconvenience and complications which shall also lead to financial loss to the Petitioners. Hence the operation of the impugned order should be stayed until the matter is finally decided by this Hon'ble Court.

Cont'd.

1.1.1. *Effects of Antibiotics
on the Egg Shell
Growth*

10. That the Petitioners respectfully submitted that the ex-parte Judgement and Order of the learned CAT is bad in law and liable to be set aside in as much as the learned CAT committed a serious illegality and/or material irregularity by directing not to issue formal notice to the Petitioner.

11. That it is respectfully submitted that the learned CAT failed to appreciate that the Council of Scientific and Industrial Research is an Autonomous Body and it has no standing Counsel in CAT and as such the notices should have been directed to be sent to the Petitioners to give them an opportunity to defend their interest in the case.

12. That it is respectfully submitted that the learned Sr.C.G.S.C. who volunteered to accept the on behalf of the Petitioners also failed to intimate them about the case and as a result they could not appear and defend themselves before the learned CAT and consequently they have suffered injuries for no fault of theirs.

(i) It may be further stated in this connection that even the Private Respondent No.6 before the learned CAT (Proforma Respondent No.3 here in this Petition) also did not receive any notice of the case

Contd.....

*Attos of Andamans
A. S. G. S. C.
Armed*

from the learned CAT although there was direction to send notice to him.

13. That the impugned Order if allowed to stand, will result serious injustice and for the sake of justice, the same should be set aside and quash directing the CAT to hear the matter afresh in presence of all the parties.

14. That it is respectfully submitted that the learned CAT took a erroneous view so far the change made in the Presenting Officer and Shri N.Joyaram an earstwhile Section Officer, RRL, Jorhat, who was later on transferred to C.S.I.R., Madras Complex, Chennai, as the Presenting Officer in as much as it is respectfully stated that there is no bar in law in appointing any officer of the organisation as the Presenting Officer.

15. That it is respectfully submitted that the learned CAT committed a serious illegality apparent on the face of the records in holding that the Respondent No.1 was illegally denied the assistance of a legal practitioner in as much as it failed to consider that the Enquiring Officer was not a Lawyer/Legal Practitioner and/or with a legal background and as such

Contd.....

no prejudice to be caused to the Applicant/Respondent No.1 by denying the assistance of a legal practitioner.

16. That it is respectfully submitted that when the Respondent No.1 understood the charges and submitted her defence in reply to those charges, the findings of the learned CAT that the charges are vague and indefinite is absolutely illegal, unjust and not tenable in law.

17. That in any view of the matter the impugned Judgment and Order of the learned CAT is bad in law and cannot sustain a judicial scrutiny.

18. That there is alternative and efficacious remedy available to the Petitioners and remedy, if granted, would be just and proper.

19. That this Application is made bona fide and for the ends of justice.

In the premises aforesaid it is respectfully prayed that your Lordships may be pleased to admit this Petition, call for the records, issue a rule calling upon the Respondents to show cause as to why

Contd. . . .

Submissions of Advocate
Gurbat Singh Grewal

a writ in the nature of Certiorari and/or any other appropriate writ, direction, order or orders shall not be issued/passed quashing the impugned Judgment and Order dated 11.1.99 passed by the learned Central Administrative Tribunal, Gauhati Bench, in Original Application No. 111/1997 and upon perusal of the records and upon hearing the show cause, if any, be graciously pleased to make the Rule absolute.

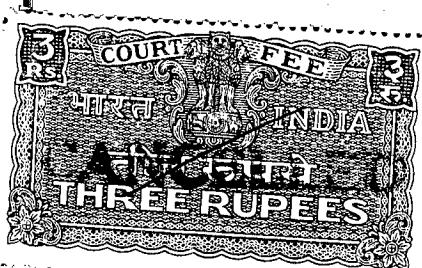
AND

It is further prayed that pending disposal of the application, the operation of the impugned Judgment and Order may kindly be stayed.

And for which act of kindness, the humble Petitioners, as in duty bound, shall ever-pray.

..... AFFIDAVIT

Government of Assam
Gauhati High Court
Tribunal



- 17 - 19

AFFIDAVIT

I, Shri (Dr.) Jagir Singh Sandhu, aged about 56 years, son of Late Sadar Labh Singh, resident of Jorhat, Assam, a Hindu by religion, Govt. employee by profession, do hereby solemnly affirm and state as under :-

1. That I am serving as the Director of Regional Research Laboratory, Jorhat and fully conversant with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements made in this Affidavit as well as those made in paragraph 4 (partly), 6, 7, 8, 18, 19 of the accompanying petition are true to my knowledge, those made in paragraph 1, 2, 3, 4 (partly), 5, 9 being the matters of record are true to my information, derived therefrom and the rest are my humble submission before this Hon'ble Court.

And in witness whereof I put my hand unto this affidavit on this 23rd day of December 1999 at Guwahati High Court.

Identified by
Phenix Nauta,
Advocate's clerk.

23/12/99

DEPONENT

23rd day of December 1999
The deponent is identified by
Mr. P. J. S. ... generally
known to me to be a ... and
employed the court ... and
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Commissioner of Affidavits
Guwahati High Court
Assam

(51)

RE. F. O. 2
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Case No. 3.2.3.1554
Date 11.4.2.97

M/s. Nitiditor Services
F. No. 31/97

Applicant(s)

Union of India

Versus

Mr. B. K. Sharma, D. S. Bhattacharya

Respondent(s)

Mr. S. Swami, Advocate for Applicant(s)

Mr. S. Ali, Sr. C.G.S.C.

Advocate for Respondent(s)

Office Notes

Date

Court Orders

Ents to note notice for hearing
Date 3.6.97
need evnd information

3.6.97

Heard Mr. B.K. Sharma, learned couns-
el appearing on behalf of the appli-
cant and also Mr. S. Ali, learned Sr.

C.G.S.C. for the respondents No.1 to
5. No formal notice need be sent
to the 6th respondent. Notice should
go. Notice is returnable within four
weeks. The application is admitted.
List on 7.7.97 for written state-
ment and further orders.

Versus

Sd/- MEMBER(A)

Sd/- VICE-CHAIRMAN

82-1-3

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7.7.97

82-4-65

Court Orders

Two weeks further time extended
for filing of written statement on the prayer
of Mr. S. Ali, learned Sr. C.G.S.C.

List on 21.7.97.

ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Sd/- MEMBER(A)

Sd/- VICE-CHAIRMAN

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50/100

Ex-197-A

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-B

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-C

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-D

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-E

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-F

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-G

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-H

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-I

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-J

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-K

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-L

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-M

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-N

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-O

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-P

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-Q

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-R

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-S

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-T

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-U

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-V

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-W

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-X

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-Y

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-Z

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-A

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-B

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-C

versus

Therefore no, the original case
list on 20.7.97.

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Ex-197-D

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list on 20.7.97.

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Ex-197-X

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Therefore no, the original case
list on 20.7.97.

versus

Ex-197-Y

versus

Therefore no, the original case
list on 20.7.97.

versus

Ex-197-Z

versus

Therefore no, the original case
list on 20.7.97.

versus

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 111 of 1997.

Date of Order : This the 11th Day of January, 1999. X

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

Shri G.L.Sanglyine, Administrative Member.

Mrs Nibedita Sarma
resident of Bye lane No.5,
Zoo Narengi Road,
Guwahati-781021.

... Applicant

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

- Versus -

1. The Council of Scientific & Industrial Research (CSIR), represented by its Director General, Rafi Marg, New Delhi.
2. The Regional Research Laboratory, (Council of Scientific & Industrial Research), Jorhat, represented by its Director.
3. The Director General, Council of Scientific & Industrial Research, Rafi Marg, New Delhi.
4. The Director, Regional Research Laboratory, Jorhat.
5. The Union of India represented by the Secretary to the Government of India, Ministry of Science and Technology, New Delhi.
6. Dr. C.N.Saikia, Scientist-II, Regional Research Laboratory, Jorhat (INQUIRING AUTHORITY).

... Respondents.

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

ORDER

BARUAH J.(V.C)

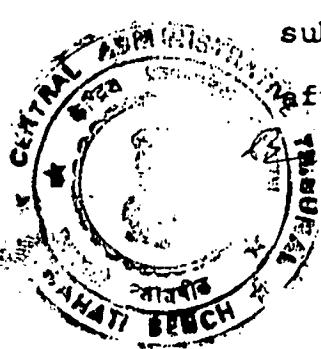
The applicant is an employee in Regional Research Laboratory, Jorhat under the Council of Scientific and Industrial Research. In the year 1979 she fell ill and therefore applied for Medical Leave initially for a period of 15 days. Thereafter, she applied for extension of leave from time to time. According to the applicant she submitted leave applications supported by medical certificates. In this way she remained absent till January 1986 and on 16th

contd..2

January 1986 the authority removed the applicant from service for unauthorised absence. However, no enquiry was held before her removal.

2. Being aggrieved she moved this Tribunal by filing Original Application No.176 of 1990. The said Original Application was heard and disposed of by this Tribunal by an order dated 23.2.1991, setting aside the order of removal. However liberty was granted to the respondents for holding fresh enquiry. The Tribunal also directed to complete the enquiry within a period of 90 days. Pursuant to the said order of this Tribunal, the respondents initiated disciplinary proceedings by serving Article of Charge alongwith the statement of imputations as per the provisions of Rule 14 of CCS (CCA) Rules 1966. The applicant was asked to show cause as to why penal actions should not be taken against her. The applicant duly replied to the show cause by Annexure-5 letter dated 14.8.1991 denying the allegations made against her. The authority not being satisfied with the reply decided to proceed with the enquiry and for that purpose Dr S.K.Roy, Senior Controller of Administration, NML, Jamshedpur was appointed Enquiry Officer by Annexure-2 order dated 9.9.1991. By Annexure-4 order dated 11.11.1991 the charge was amended quoting appropriate Rule. This memorandum was forwarded to the Enquiry Officer. Shri Ashok Kr. Sarma was appointed Presenting Officer. Some evidence was recorded. At that time the applicant was defended by Shri J.Baruah, a local Advocate of Jorhat. However, proceedings did not come to an end within the specified time granted by this Tribunal. Considering unreasonable delay in completing the disciplinary proceedings, the applicant submitted Misc.Petition No.65/91 stating inter alia that after the judgment of the Tribunal no steps had been taken

contd..3



to complete the enquiry as per the direction given by this Tribunal. As the disciplinary proceeding was not likely to be completed within the period prescribed the respondents filed x Misc.Petition No.149/91. Before any final order could be passed on the M.P. the respondents had filed yet another Misc.Petition No.12/92 with a prayer for extension of time. By order dated 4.2.92 both the Misc.Petitions were rejected. The Tribunal also quashed the disciplinary proceeding as the respondents could not complete the disciplinary proceeding within the stipulated period. Against the order passed by this Tribunal on 4.2.92 the respondents approached the apex Court by filing S.L.P (Civil No.477-478/94). The above civil appeal was disposed of by the apex Court by a common order dated 26.2.1996 allowing the respondents to complete the disciplinary proceeding within two months from the date of the order i.e. 26.2.1996. The relevant portion of the order of the apex Court is quoted below :

"Having regard to the facts and circumstances of these cases, we are of the view that the appellants may be permitted to complete the disciplinary proceedings that have been initiated against the respondent within a period of two months from the date of this order. It is, therefore, directed that the respondent shall appear before the Inquiry Officer entrusted with the inquiry at Jorhat on March 8, 1996 at 11.00 a.m."


Thereafter several orders had been issued by Dr. A.K.Ghosh, Director of Regional Research Laboratory, Jorhat. By Annexure-2 order dated 28.2.1996 Dr C.N.Saikia was appointed Enquiry Officer in place of Sri S.K.Roy. The ~~personnel~~ appointing a new Inquiry Officer was assigned as under :

"Whereas Shri S.K.Roy because of stay orders from CAT, Guwahati Bench, could not proceed further and is not available, it is necessary to appoint another officer as Inquiry Authority to inquire into the charges against Mrs Nibedita Sarmah (Baruah)."

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By Annexure-3 order one Sri Jayaram, Section Officer, C.S. Madras was appointed Presenting Officer. As per the order of the Supreme Court the Director proposed to hold the enquiry against the applicant under Rule 14 of the CCS (CCA) Rules 1965. Alongwith Annexure-4 order once again the charges were issued and served. The next date was fixed on 14.3.1996 for evidence. Accordingly on that day two witnesses were examined. After examining the witnesses on behalf of the disciplinary authority the proceeding was closed and on 4.4.1996 the report was forwarded to the disciplinary authority and on 25.4.1996 by Annexure-9 order the applicant was found guilty and she was removed from service. The disciplinary authority in Annexure-9 order dated 25.4.1996 observed as follows :-

"NOW, THEREFORE, after considering the records of Inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Smt. Nibedita Sarmah is not a fit person to be retained in Council (CSIR) Service and hence ends of justice require that the penalty of removal from service which shall not be a disqualification or future employment under Rule-11(viii) of CCS(CCA) Rules, 1965. The Penalty of removal from service under the above stated rules is accordingly hereby imposed on Smt. Nibedita Sarmah with immediate effect."

A representation was submitted against the enquiry report not alleging that the enquiry was conducted properly and it was completed most hurriedly without giving any opportunity to the applicant to adduce evidence in support of her contention as envisaged under Rule 14 of the CCS(CCA) Rules. This was duly received by the Director. However, nothing was done. On the other hand by Annexure-9 order the applicant was removed from the service. The applicant had submitted an appeal dated 17.5.1996 against the order dated 25.4.1996. It has not been disposed of. Hence the present application.

3. In due course the respondents have entered appearance. In spite of repeated extension of time the respondents

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failed to file any written statement. On 14-8-1997 the former Dr.C.G.S.C. Mr.S. Ali prayed for further extension of time. The Tribunal declined to grant further extension of time as several adjournments had already been granted. Thereafter, also no attempt was made to file the written statement. Records have also not been produced today before us.

4. We have heard both sides. Mr.B.K. Sharma, assisted by Mr.S. Arma, learned counsel appearing on behalf of the applicant has challenged the impugned order on various grounds, namely, (a) respondents were totally negligent in disposing of the enquiry proceeding, (b) the disciplinary proceeding could not be completed by the Enquiry Officer even after granting several extension of time by the Tribunal, ultimately the order of removal was set aside, (c) they also in most perfunctory manner conducted the enquiry even when the Apex Court granted 2 months time to dispose of the disciplinary proceeding as per direction,

(d) the enquiry was conducted with unnecessary haste and that to without affording reasonable opportunity to the applicant to produce defence evidence, (e) the Enquiry Officer most unreasonably rejected the prayer of the applicant to engage a defence counsel in support of her case in complete violation of the mandatory provision of Rule 14 of the CCS(CCA) Rules 1965, (f) the charges on the basis of which the applicant was removed was vague, indefinite and misleading.

5. Mr.A. Deb Roy has however, strenuously argued in favour of the impugned action of the respondents. His submission is that the enquiry was conducted in strict compliance of the provisions of Rule 14 of the CCS(CCA) Rules.

6. On the submissions of the learned counsel for the parties it is now to be seen whether the impugned order can sustain in law.

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7. The applicant was removed from service on the ground of his absence from duty unauthorisedly. The initial removal from service was without holding any enquiry which was set aside by this Tribunal in Original Application No. 176/90 by order dated 23-2-1991. Thereafter, the disciplinary proceeding was initiated by serving article of charges and the statements of imputation. The applicant having realised that there had been inordinate delay in disposing of the Disciplinary Proceeding, moved a Misc. Petition (M.P.65/91) for direction of early disposal. This Tribunal accordingly passed order directing the Respondents to dispose of the Disciplinary Proceeding within 90 days. However, the disciplinary proceeding could not be completed within the time allowed by the Tribunal. The respondents sought for extension of time, which was granted on several occasions. Ultimately this Tribunal declined to grant any further extension of time and in consequence whereof the disciplinary proceeding was quashed. Being aggrieved, the respondents approached the Apex Court by filing two (Civil Appeals No. 477-478/94) and the said Civil Appeals were disposed of by a common order dated 26-2-1996 with direction to complete the disciplinary proceedings within two months from the date of the order. The Apex Court also directed the applicant to appear before the Enquiry Officer on 8-3-1996. Accordingly, the applicant appeared before the Enquiry Officer. The respondents fixed the next date on 14-3-1996 and on 14-3-1996, evidence of two witnesses were recorded. Thereafter the next date was fixed for sending the report. The report was accordingly sent and the Disciplinary Authority decided to remove the applicant. The contention of Mr. Sharma is that the disciplinary proceeding was vitiated for non-compliance of the provisions of Rule 14 of CCS(CCA) Rules. The relevant provision of Rule 14 is:

Extracted below:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his

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headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

NOTE - The Government servant shall not take the assistance of any other Government servant who has (three) pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

The contention of Mr Sharma is that the Enquiry Officer totally ignored the provisions of Rule 14 while refusing the applicant to get the assistance of an Advocate which was earlier granted. In this connection Mr Sharma has drawn our attention to instruction Nos. 20 and 21 of the Swamy's Compilation of CCS(CCA) Rules. We quote the said instructions below :-

"(20) Conditions for engaging retired Government servants as defence assistants - Reference is invited to O.M.No.11012/18/90-Estt.(A), dated the 13th February, 1991 (not printed) and to say that the matter regarding restrictions on accused Government servants for engaging retired Government employees to present their case in departmental disciplinary proceedings has been reviewed in the light of the demand of the staff side in the National Council of JCM for putting a ceiling on the number of cases a retired Government servant can take up as a defence assistant and in supersession of earlier orders on the subject, it has been decided in terms of Rule 14(8)(b) of CCS(CCA) Rules, 1965, that assistance of retired Government servants may be taken subject to the following conditions :-

(i) The retired Government servant concerned should have retired from service under Central Government.

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(ii) If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 14(8) of the CCS(CCA) Rules, 1965 would apply.

(iii) The retired Government servant concerned should not have, in any manner, been associated with the case at investigation stage or otherwise in his official capacity.

(iv) The retired Government servant concerned should not act as defence assistant in more than five cases at a time. The retired Government servant should satisfy the inquiring officer that he does not have more than five cases at hand including the case in question.

(21) Permission to engage a legal practitioner for the defence. - Rule 14(8) (a) of the CCS (CCA) Rules 1965, provides inter alia, that delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority, having regard to the circumstances of the case, so permits. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant."

From a reading of these instructions it appears that the rule does not debar the Disciplinary Authority to permit a charged employee to engage a legal practitioner for his/her defence. But, that has to be decided by the Disciplinary Authority

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after proper application of mind. From the materials before us we find that this exercise was never done in the present case as will be evident from Annexure-7. On the other hand the Inquiry Officer rejected the prayer of the applicant for assistance of a legal practitioner as quoted above. Instruction 22 further indicates as follows:

"(22) Assistance of legal practitioner to be decided on merits of each case. The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the judgments delivered by some High Courts on this point it has been decided that the Disciplinary Authority should bear, in each case, such circumstances in mind, as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself."

We have examined the instructions and we find that the submission of Mr. Sharma has full force. This has also not been disputed by Mr. Deb Roy. In the present case, on the previous occasion when the disciplinary proceeding was conducted but could not be completed within the time allowed, the authority engaged an advocate, Shri A. Sarma as a Presenting Officer. Thereafter when the matter was sent back from the Apex Court the Disciplinary Authority decided to appoint Shri N. Jayaram from Madras as Presenting Officer. We do not know what was the compelling reason to engage an officer from Madras. Was it a case that there was no person locally available having similar qualification of



Mr. Sarma to substitute him, we feel such situation might not have arisen. At any rate, the respondents have chosen to remain total silence. It is also not known whether Shri A. Sarma was available or not. As the written statement has not been filed by the respondents all these things remain in darkness. Be that as it may, the fact is that once an advocate was engaged as Presenting Officer and the applicant was allowed to be defended by a legal practitioner, Shri J. Baruah, we do not find any plausible reason why this was changed. If Shri A. Sarma was for some reason not available another legally trained person ought to have been appointed. We cannot believe that such persons were not available. As no written statement was filed and records not produced, we are inclined to accept the case of the applicant that Presenting Officer was brought from Madras just to deprive the applicant. It is settled law that the state or instrumentality of state is bound by public law limitation. Every action of the state or instrumentality of state must be fair, reasonable and just. The respondents are therefore, bound by those limitations.

8. The third ground of Mr. Sharma is that no reasonable opportunity was given to the applicant to defend herself by adducing defence evidence. In this connection he has drawn our attention to Sub rules 16 and 17 of Rule 14. We quote sub rules 16 and 17 below:

"(16) when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced (emphasis added). The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority."

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The contention of Mr. Sharma is that no opportunity was given to the applicant though two witnesses on behalf of the Disciplinary Authority were examined and the disciplinary proceeding was concluded without giving adequate opportunity to the applicant. There is a specific averment made by the applicant in para 4.12. is quoted below :

"4.12 That after depriving the applicant of her valuable right of a defence assistant, the enquiry authority hurriedly conducted the proceeding for completing the same without giving the applicant the minimum opportunity of adequate defence. On the other hand, the disciplinary authority was well represented in the enquiry proceeding by its Presenting Officer as well as the Inquiring Authority. Through out the enquiry proceeding the inquiring authority acted as per the dictation of the disciplinary authority. In view of the Apex Court directive for completion of the enquiry within two months from the date of the order dated 26-2-96, the inquiring authority with a bias attitude as per directive of the disciplinary authority conducted a farcical enquiry with undue haste so as to complete the proceeding by any means and to bring home the guilt against the applicant."

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These averments made by the applicant have not been controver-
ted by the respondents, in-as-much as no written statement has
been filed by them. The respondents have also not produced the
records pertaining to the disciplinary proceedings to enable
this Tribunal to know what were the steps taken by them.
In the absence of any such document and in view of the clear
averment made by the applicant in the application we hold that
proper opportunity as contemplated under Rule 14, Sub Rules
16 and 17 had not been given to the applicant before disposal
of the disciplinary proceedings. The case was fixed on
14-3-1996 and the report was submitted on 4-4-1996. We do
not find any reason why an opportunity could not be given by the
enquiry officer. Therefore, we feel that the enquiry was
conducted in a most perfunctory manner without complying the
procedures prescribed under the said Rule. The entire

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proceeding, we feel, was vitiated for non-compliance of the procedure prescribed.

9. In short the submission of the learned counsel for the applicant is that there was a complete violation of the procedure prescribed. Law is well settled in this regard. It is well known principle of law that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. It should be borne in mind that where the complaint is not that there was no hearing but one of not affording the proper hearing or violation of a procedural rule or requirement governing the enquiry, the complaint should be examined on the touchstone of prejudice. The test is, all things taken together whether the delinquent officer/employee had or did not have a fair hearing. Interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. These principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. A substantive provision of any rule or any statutory rule has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. In case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity

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to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. There may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. In case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it, the prejudice is self evident. No proof of prejudice as such need be called for in such a case. So the test is one of prejudice i.e. whether the person has received a fair hearing considering all things.

(See State Bank of Patiala vs. S.K. Sharma reported in (1996) 3 SCC 364).

10. Rule 14 of the CCS (CCA) Rules specifically provides that after the closure of the evidence from the side of the disciplinary authority the applicant should be given an opportunity to adduce evidence. In this case we do not find anything that such opportunity was given to the applicant. This will amount to denying of a fair

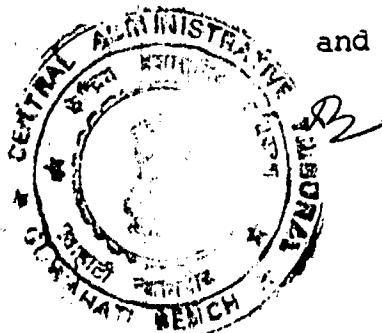
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trial and the question of prejudice is apparent from the fact that the applicant was denied the fair hearing. On such an enquiry the applicant cannot be removed from service. The submission of Mr. Sharma is that charge Nos. 1 and 4 were wrong in view of the fact that as per those charges she was alleged to be unauthorisedly absent during the period from the date of removal from service till the date of the order by which the order of removal was set aside by this Tribunal. The applicant was thereafter put under suspension. During this period there could be no charge for unauthorised absence. On these points Mr. Deb Roy finds no answer as it is apparent that during that period as per the order of the authority she was removed from service and then after the order of removal from service was set aside by this Tribunal she was placed under suspension. Therefore, charge Nos. 1 and 4 were vague and indefinite and on these charges she could not be punished. We agree with the submission of learned counsel.

11. The last submission of Mr. Sharma is that the Enquiry Officer found the charge No. 3 not proved and the Disciplinary Authority had not disagreed with the findings of the Enquiry Officer. Therefore, according to him charge No. 3 could not have been proved.

12. Considering the entire facts and circumstances of the case we hold that the assistance of a legal practitioner was denied to the applicant contrary to the provisions of the Government of India's instructions and the Presenting Officer was changed for the subsequent

contd/-15

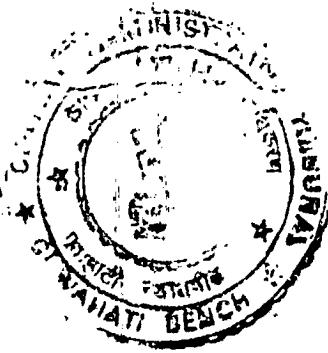


disciplinary proceeding after the order of the Apex Court without any valid reason and adequate opportunity was not given to the applicant to establish the case of the defence and the charge being vague and indefinite the punishment awarded on such finding is untenable in law. Accordingly, we have no hesitation to set aside the impugned order of removal and the applicant shall be deemed to be in service.

Application is allowed. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)



TRUE COPY

प्रतिलिपि

Signature
23/3/99

Section Officer (J)
गान्धीजी अधिकारी (न्यायिक दाख)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक उपिषद
Guwahati Bench, Guwahati
गुवाहाटी न्यायालय, गुवाहाटी

Signature
23/3/99

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:TRIPURA:
MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION(CIVIL)NO.6655/99

THE COUNCIL FOR SCIENTIFIC & I Petitioners.

- Vs. -

MRS.NIBEDITA SARMAH & ANR. Respondents.

P R E S E N T
THE HON'BLE THE CHIEF JUSTICE
&
THE HON'BLE MR JUSTICE DN CHOWDHURY

For the Petitioners : Mr KK Mahanta, Sr.CGSC, Mr
S Chakraborty & Miss SS Choudhury, Advs.

For the Respondents : -

Date of Order : 03.01.2000.

O R D E R

Heard Shri KK Mahanta, learned counsel for the
appellant.

Admit.

Issue notice.

Sd/- DN CHOWDHURY,
Judge.

Sd/- BRIJESH KUMAR,
Chief Justice.

.....

rm/24012000

No. 5199/12M

From

At 14-3-2000

The Assistant Registrar (J) of the Gauhati High Court at Gauhati.

To

Civil Judge, 1st Division
The.....
Gauhati (Assam)

Dated Gauhati, the of 19

W.P.C 6655
Civil Rule No. of 19

Civil Revn.

The council for Scientific & Industrial Research
(CSIR) vs. ^{Venus}
Mr. Nivedita Samanta
vs. ^{Opposite party}
Sir,

I am directed to forward the accompanying notices in connection with the above matter. The necessary process fees have been paid and I am to request that you will be good enough to cause the same to be duly served upon the opposite-parties..... named therein.

2. Your return of service should be submitted to this Court as early as possible.

Yours faithfully,

Asstt. Registrar.

63/3/2000

Disposed of 11.1.99

Central Administrative Tribunal

21/1/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWALIATI BENCH :: GUWALIATI.

O.A. No. 436/01
11/1/99

Filed by
29/3/99

(A. D. D. Roy)
Sr. C. C. G.
C. A. T. Central Bench

Mrs Nibedita Sarma.

- VS. -

Union of India & Ors.

- And -

In the matter of ::

Written statements submitted by the respondents.

The respondents beg to submit written statement as follows :-

1. That with regard to para - 4.1 of OA, the respondents beg to offer no comments.
2. That with regard to para - 4.2 of OA, the respondents beg to state that the applicant's service was not confirmed as Jr Technical Assistant. Her service was confirmed as Sr. Technical Assistant only.
3. That with regard to para 4.3 of OA, the respondents beg to state that the applicant initially took leave for 64 days in 1977. In 1978 she took leave for 283 days. In 1979 she took leave for 50 days upto 30.8.79. After that she was unauthorisedly absented herself from duty from 14.8.79 to 16.1.86. It is not at all a fact that the applicant during the period of her absence from duty submitted leave applications from time to time supported by Medical Certificates. She only initially submitted her leave applications.

4. That with regard to para - 4.4 of CA, the respondents beg to state that it is not at all a fact that the applicant was removed from service w.e.f. 15.1.86 without holding any enquiry whatsoever and without giving any opportunity of being heard to the applicant. All the time she was informed by the disciplinary authority regarding initiation of disciplinary proceedings against her for her unauthorised absence. On the other hand, the applicant by all means was trying her best to deny the receipt of those intimations. The laboratory has gathered some information from the postal department regarding receipt of these intimations to her. A few copies of intimations regarding confirmation of receipt of those registered letters are enclosed herewith as Annexure - I

5. That with regard to para - 4.5, 4.6, 4.7, 4.8, 4.9 & 4.10 of CA, the respondents beg to offer no comments.

6. That with regard to para - 4.11 of CA, the respondents beg to state that ~~s&k~~ at all times discipline authority applied his mind & decisions were made ~~xxxxxxxxxx~~ accordingly. The inquiry authority also put his best effort and tried to complete all these exercise in a pious manner. The Inquiry authority while exercising his independent mind, facts and circumstances of the case, ~~s~~he would have to discharge his duties based on the rules as far as possible. Under these circumstances, the departmental proceeding is certainly to be sustained.

7. That with regard to para - 4.12 of OA, the respondents beg to state that what has contended by the applicant in this para is itself a contradictory statement in as much as the above para 4.11 is concerned. In one hand the applicant is contending that the disciplinary authority has to decide these matters by applying his mind which the disciplinary authority did not do as per previous para. Now in this para the applicant has contended that the inquiry authority has to decide these matters by applying his mind which the disciplinary authority did not do as per previous para. Now in this para the applicant has contended that the inquiry authority acted as per the dictation of the disciplinary authority. It will be a travesty of truth that the disciplinary authority did not apply his mind in every time during the initiation of disciplinary proceedings. Similarly the Inquiring Authority also put his best foot foremost to conduct the disciplinary proceedings with all fair and judicious way by applying his own mind and not as per the dictation of the disciplinary authority. The contention of the applicant regarding the bious attitude of the Inquiring Authority and as per the directive of the disciplinary authority conducted a farcial enquiry with undue haste so as to complete the proceedings by any means and to bring home the guilt against the applicant has been denied in toto.

8. That with regard to para - 4.13 of CA, the respondents beg to state that the contention of the applicant in this para too has been denied in toto. As per clause (21) of Govt. of India Instruction under Rule - 14 of CCS(EOCA) Rules, 1935 the engagement of a legal practitioner by the applicant was disallowed since the disciplinary authority also did not engage any legal practitioner as presenting Officer this time. This disallowance of engaging any legal practitioner as defence assistant to the charged Officer/applicant herein by disciplinary authority cannot be said to be made totally handicapped on the part of the applicant so far as this disciplinary case is concerned. The Inquiring Authority never acted as per dictation of the disciplinary authority.

9. That with regard to paras - 4.14, 4.15 & 4.16 of CA, the respondents beg to offer no comments.

10. That with regard to para - 4.17 of CA, the respondents beg to state that it is absolutely baseless and without any substance that the disciplinary authority without applying his mind to the representation against the enquiry report passed the order of removal from service mechanically as per order dated 25.4.96. The disciplinary authority after making strenuous exercise and applying mind in full to the report of the report of the Inquiring authority visa-vis the representation against the enquiry report passed the order of removal from service of Mrs Nibedita Sarma as per order dated 25.4.1996 (Copy of order note enclosed as Annexure - II).

11. That with regard to para - 4.18 of OA, the respondents beg to offer no comments.

12. That with regard to para - 4.19 of OA, the respondents beg to state that although the charge against the applicant was for her unauthorised absence from duty, the other charges levelled against her by the disciplinary authority were the co-charges as far as her case of unauthorised absence from duty is concerned. As a public servant the charged officer/applicant herein should have applied her mind or by any of her family member to inform regarding her illness from time to time. Her contention in this petition are totally denied which are not based on records.

13. That with regard to para 4.20 of OA, the respondents beg to state that the contention made by the applicant that the Inquiring authority in his finding had not given any weightage to the evidence adduced by the applicant and rather his reasonings are tilted favoured of the disciplinary authority depicting his bias and partition attitude towards the applicant is denied in toto. It is also not at all a fact that the disciplinary authority has also not acted in accordance with the rule holding the field in passing the order of removal from service. The order of removal was totally a speaking order and it depicts total application of mind only.

14. That with regard to para - 4.21 of OA, the respondents beg to state that the disciplinary authority after careful perusals of the report of the Inquiry Authority and after application of his mind in full passed the order of removal from her service. The disciplinary authority as a quasi-Judicial authority has not acted in any way which is contrary to law and ruled of COS9CCA) Rules, 1965. The disciplinary authority has passed order of removal from service of Mrs Nibedita Sarma by applying all canons of natural justice and fairplay.

15. That with regard to para 4.22 of OA, the respondents beg to state that the applicant's statement to reply upon the statements made by her in her written defence representation against the enquiry report and the departmental appeal in support of her contentions raised in this application and the contentions raised therein cannot be treated to be the contention raised in this application since before disposal of her appeal and without exhausting her all remedies she has come to the Hon'ble Tribunal with her declaration that she has no other alternative ~~max~~ efficacious remedy by filling this application before this Hon'ble Tribunal without being disposed of her appeal.

The respondents, therefore, pray that the application be dismissed.

VERIFICATION.....

VERIFICATION.

I, Dr.Jagir Singh Sandhu, Director, R.R.L. Jorhat be duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 4 to 9 and 11 to 14 are true to my knowledge and belief, these made in para 2, 3 and 10 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal, I have not suppressed any material facts.

And I sign this verification on this 19th day of March, 2002 at Guwahati.



निदेशक
DIRECTOR
संस्कृत अनुसंधान प्रबन्ध
Regional Research
JORHAT
JORHAT

Declarant.

TELEGRAM

STATE

EXPRESS

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MRS NIBEDITA SARMAH BARUAH
C/O ROMESH SARMAH
AREA MANAGER
STATFED TEZPUR

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REFURLET NINETEEN DECEMBER STOP
JOIN DUTY IMMEDIATELY

RESEARCH

N.T.T.

Date:-11.1.80

(Kishori Lal) 11/180
SECTION OFFICER.
R.R.L., Jorhat.

REGIONAL RESEARCH LABORATORY:::JORHAT:::ASSAM
(Council of Scientific & Industrial Research)

No.RLJ-13(43)-Estt/64

Date: 11.1.80.

Copy by post in confirmation to:

Mrs. Nibedita Sarmah Baruah,
C/O Shri Romesh Sarmah,
Area Manager, Statefed.
Tezpur.

(Kishori Lal) 11/180
SECTION OFFICER.

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14/1/80

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STATE

EXPRESS

TELEGRAM

MRS NIBEDITA SARMAH
CARE SHRI RAMESH SARMAH
AREA MANAGER
STATEFED
TEZPUR 784 001

REFURLET EXTENSION OF LEAVE NOT
SANCTIONED (.) REPORT FOR DUTY
IMMEDIATELY

RESEARCH

N.T.T.

Dated 10.6.81

Ref 10/6
(I. Rajkumar)
Section Officer
Regional Research Laboratory
Jorhat -785006(Assam)
C.R.C.

REGIONAL RESEARCH LABORATORY:JORHAT:ASSAM
(Council of Scientific and Industrial Research)

No.RLJ-13(43)-Estt/64

Dated 10.6.81

Copy by post in confirmation to:

Mrs. Nibedita Sarmah,
C/O. Shri Ramesh Sarmah,
Area Manager,
Statefed.
Tezpur - 785001.

Ref 10/6
SECTION OFFICER

Regional Research Laboratory Jorhat (Assam)	Copy to:
No. 97 (Ans)	Date 12.6.81
By <i>Dispatcher</i>	

RLJ-13(43)-Estt/64

21.1.82.

Registered

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W
NO

The Superintendent,
Gauhati Medical College,
Gauhati.

Sub:- Medical Examination of Mrs N. Sarmah, J.T.A.

Sir,

I am directed to state that Mrs N. Sarmah, J.T.A. of this laboratory is continuously on leave w.e.f. 25.6.79 stating that she has been suffering from Chronic Duodenal Ulcer and under-going treatment from Dr. R.N. Pathak, Prof. of Medicine, Gauhati Medical College, Gauhati. In this connection two Medical Certificates dated 29.9.79 and 9.8.79 given by Dr. Pathak are enclosed. Thereafter she has been applying for leave from month to month till 31.12.81 on the plea of her illness, but inspite of several Office Memoranda issued to her from time to time, no Medical Certificate has been furnished by her in support of her leave.

Now that she is continuously on leave for about 19 months, a doubt has arisen as to whether she is still suffering from illness and she will ever be fit to resume her duty in this laboratory. I therefore, request you kindly to constitute a Medical Board for her Medical Examination and the result communicated to this laboratory at an early date. This laboratory may also kindly be intimated the date and time fixed for her examination well in advance so that Mrs Sarmah can be directed to appear before the Board accordingly. Any fee payable on this account will be borne by Mrs Sarmah.

Yours faithfully,

Regd 21.1.82
(H.P. Pathak)
Administrative Officer.

Copy to :-

1. Mrs N. Sarmah, J.T.A. (on leave), C/o. Shri Romesh Sarmah, Area Manager, Statfed, Tezpur. She may appear before the Board as and when she is directed to do so by this Office. She may also pay the required fee which will subsequently be re-embursed to her.
2. Head, I & L Division.

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21.1.82

21.1.82
(H.P. Pathak)
Administrative Officer.

dc

21.1.82

RLJ-13/43-Batt/64

25-2-82.

The Superintendent
Gauhati Medical College,
Gauhati.

Sub :- Medical Examination of Mrs. Nibedita Samah, J.T.A.

Sir,

I am directed to invite a reference to this office letter of even number dated 21.1.82 on the above subject and to request you kindly to let this office know whether the board as requested for has been constituted and Mrs. Samah appeared before the board. If so, the result of her Medical Examination may kindly be communicated to this office as early as possible.

Yours faithfully,

(N.C. Samah)
Section Officer.

Copy to :-

(1). Mrs. Nibedita Samah, J.T.A. (on leave)
C/o. Shri Monohar Samah, Area Manager,
Statfed, Tezpur. Her request for grant of
leave or otherwise will be decided only after
receipt of the medical report from the Medical
Board.

(2). Head, I & L Division. for *D.M.* *26/2/82*

(N.C. Samah)
Section Officer.

3759, 3780
25.2.84

D.G.

QJ

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REGIONAL RESEARCH LABORATORY, JORHAT-6, ASSAM
(Council of Scientific & Industrial Research)

No.RLJ-19(50)-Vig/90-96 Vol.IV

Dated, April 25, 1996

O R D E R

WHEREAS Smt. Nibedita Sarmah, Technical Assistant Gr. III(1) was informed of the proposal to hold an inquiry against her under Rule 14 of CCS(CCA) Rules, 1965 vide this Office Memo. No.RLJ-19(50)-Vig/90 dt. 30.7.91 & 11.11.91 and Memo. No. RLJ-19(50)-Vig/90-96 Vol.IV dt. 28.2.96 along with which a Statement each of (i) Articles of Charge, (ii) Imputations of Misconduct or Misbehaviour in support of the Charges, (iii) & (iv) A list, each of the document by which and of witnesses by whom, the articles of charges were proposed to be sustained, were also forwarded to her.

2. AND WHEREAS an inquiry in the case of Smt. Nibedita Sarmah was conducted by Dr. C.N. Saikia, Scientist E.II, who was appointed to inquire into the articles of charge vide this office Order No. RLJ-19(50)-Vig/90-96 Vol.IV dated 28.2.96. The Inquiring Authority submitted his findings vide his report dated 2.4.96, a copy of which was forwarded to her vide letter No.RLJ-19(50)-Vig/90-96 Vol.IV dated 4.4.96.

3. AND WHEREAS on careful consideration of the report of the Inquiry Officer, other records of the case and the representation dt. 16.4.96 of Smt. Sarmah, the undersigned has agreed with the Inquiry Officer in respect of the charges with findings of the Inquiry Officer in respect of the articles of charges No.I, II and IV and holds that these charges also stand proved due to the reasons that the CO was given all reasonable opportunities to defend her case and her failure to produce documentary evidences of submission of her applications for leave with MC with proper acknowledgement in support of her claim.

4. NOW, THEREFORE, after considering the records of Inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Smt. Nibedita Sarmah is not a fit person to be retained in Council (CSIR) Service and hence ends of justice require that the penalty of removal from service which shall not be a disqualification

Amil C. Ghosh

contd....2..

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for future employment under Rule-11(viii) of CCS(CCA) Rules, 1965. The penalty of removal from service under the above stated rules is accordingly hereby imposed on Smt. Nibedita Sarmah with immediate effect.

5. A copy of this order may be added to Confidential service Records of Smt. Nibedita Sarmah.

Anil C. Ghosh
(Dr. Anil C. Ghosh)
Director

REGISTERED A/D

To

Smt. Nibedita Sarmah
C/o Shri Ramesh Sarmah
5th Bylane, Zoo Narangi Road
Guwahati, Assam.

Copy to:

1. All Heads of Division/Section of RRL, Jorhat
2. Finance & Accounts Officer, RRL, Jorhat
3. Section Officer (G)
4. Section Officer (E)
5. Personal file
6. All Notice Boards
7. PS to Director

Anil C. Ghosh

(Dr. Anil C. Ghosh)

Anil C. Ghosh
for 26/4/96
(S. Dokhita)

dc

*seen
23/4/96*
REGISTERED A/D

Baree
23/4/96

23/4/96

