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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM NO. 4  
(SEE RULE 24)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH:

1. Original Application No. 283/06
2. Misc Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(S) Arum Kumar Mazumdar

Respondant(S) U.O.I Form

Advocate for the Applicant(S) M. Chandra, S. Nait  
G. K. Chakrabarti, Ms. L. Datta

Advocate for the Respondant(S) S. Case, G. B. Bhatia

Notes of the Registry	Date	Order of the Tribunal
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The application is in form  
is filed, C.F. for Rs. 50/-  
deposited was IPC/BD  
No. 286932620  
Dated 1.11.06

Arum  
Dy. Registrar

Steps not taken

MS  
14/11/06

Arum

Notice & Order Sent to  
D/Section for issuing to  
R-1 to 4 by reg. A/D  
Post. D/No-1193 to 1196  
27/11/06. Dt= 1/12/06.

Notice duly Served

on R-4.

21/12/06

Notice duly Served  
on R. No-4, others respondents  
awaited. 21/12/06.

15.11.06. The applicant is aggrieved by the  
order dated 20.10.2005 (Annexure XIV)  
imposing the penalty of "removal from  
service". The applicant was served with a  
memorandum of charges dated 18.08.03,  
wherein it was alleged that the applicant  
remained unauthorisedly absent from  
29.08.2000 to 30.06.03 for 1037 days  
violating sub Rule 23 of Rule 3 of CCS  
(Conduct) Rules 1964. The contention of  
the applicant is that the applicant  
submitted a leave application informing  
that he was attacked by typhoid fever from  
13.09.2000 and he had proceeded to the  
CMC, Vellore.

Application is admitted. Issue notice  
on the respondents. Post the matter on  
4.1.07.

          
Vice-Chairman

19.1.07.

At the request of learned counsel for the ~~app~~ respondents. four weeks time is granted to file written statement. Post the matter on 23.2.07.

lm

Vice-Chairman

23.2.07.

At the request of learned counsel for the respondents six weeks time is granted to file written statement. Let it be done. Post the matter on 23.3.07.

lm

Vice-Chairman

23.3.2007

No written statement filed. Further time is sought. post on 26.4.07.

Member

Vice-Chairman

bb

26.4.07

Mr. G. Baishya, learned Sr. C. G. S.C. for the respondents has sought for time to file written statement as he has not received the vetted written statement. Four weeks' time is granted to file written statement. Post the matter on 30.5.07.

Member(A)

Member(J)

lm

30.5.2007

Reply statement has been filed. Copy of the same has been served upon the learned counsel for the Applicant.

Post on 26.06.2007. In the meantime Applicant may file rejoinder, if any.

Vice-Chairman

Notice duly served on

A-1

24/1/07.

No Wls has been filed.

22-2-07.

No Wls has been filed.

22-3-07.

No Wls has been filed.

25-4-07.

No Wls has been filed.

29-5-07.

1.6.07

Wls submitted by the Respondents. page 1 to 21. Copy served.

No rejoinder filed.

22-6-07.

/bb/


25.6.07.

Counsel for the applicant wanted time to file rejoinder. Post the matter on 12.7.07.

  
Vice-Chairman

lm

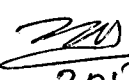
Rejoinder not filed.

  
11.7.07.

12.7.07. Counsel for the applicant also has sought for time to file rejoinder. Let it be done. Post the matter on 31.7.07

  
Vice-Chairman

Rejoinder not filed

  
30.7.07.

31.7.2007

Post the matter on 17.08.2007. In the meantime Applicant is at liberty to file rejoinder.

  
Vice-Chairman


/bb/

14.9.07.

At the request of learned counsel for the applicant, three weeks further time is granted to file rejoinder. Post the matter on 11.10.07. 07.11.07


  
Vice-Chairman

Rejoinder not filed.


  
6.11.07.

lm

13.11.07

Rejoinder filed by the Applicant. Copy served.  


Wks and rejoinder filed by the parties.

  
29.11.07.

/bb/

07.11.2007

Mr.S.Nath, learned counsel for the Applicant has filed rejoinder after serving a copy thereof upon Mr.G.Baishya, learned Sr.C.G.S.C. who seeks three weeks time to obtain instruction on it. Allowed.

Call this matter on 30.11.2007.

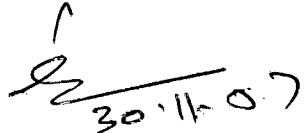
  
Member (A)



30.11.2007


Mr.M.Chanda, learned counsel for the Applicant and Mr.G.Baishya, learned Sr. C.G.S.C. for the Respondents is present.

Pleadings are complete in this matter. Accordingly, call this matter for hearing on 07.01.2008.

  
30.11.07  
(Khushiram)  
Member (A)

/bb/

Rejoinder ~~not~~  
filed,

  
4.1.08

07.01.2008

On the request made by Mr.M.Chanda, learned counsel appearing for the Applicant, the case stands adjourned to be taken up on 30.01.2008. Mr.G.Baishya, learned Sr. Standing counsel for the Union of India enters his appearance by filing appearance memo today.


  
(Khushiram)  
Member (A)

  
(M.R.Mohanty)  
Vice-Chairman

/bb/

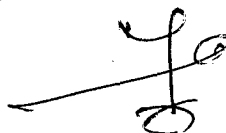
31.01.2008

the case is ready  
for hearing.

  
12.2.08

On the prayer of Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents call this matter on 13.02.2008.

  
(Khushiram)  
Member (A)

  
(M.R.Mohanty)  
Vice-Chairman

Lm

13.02.2008

On the prayer of Mrs. U.Dutta learned counsel appearing for the Applicant, this matter stands adjourned and to be taken up on 17.03.2008. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India, undertakes to file appearance memo in this case.

Call this matter on 17.03.2008.

The case is ready for hearing.

14.3.08

(Khushiram)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

Ln

17.03.2008

Heard Mr M. Chanda, learned Counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, in part.

Call this matter on 26.03.2008.

The case is ready for hearing.

25.3.08

(Khushiram)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

nkm

26.03.2008

Call this matter on 14.05.2008 for hearing.

The case is ready for hearing.

13.5.08

(M.R. Mohanty)  
Vice-Chairman

lm

14.05.2008 Heard Mr M. Chanda, learned Counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India. Hearing concluded. Orders reserved.

Respected Sir,  
Remind

30/5/08

nkm

(Khushiram)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

22.05.2008

Judgment pronounced in open Court.

Kept in separate sheets. Application is disposed of. No costs.

(Khushiram)  
Member(A)

(M.R. Mohanty)  
Vice-Chairman

lm

13.5.08

Copy of the order  
sent to the office.  
for issuing the  
same to the parties  
alongwith the copy to  
the address for the  
parties.

18/1/09  
Sd/-

2828 to  
2832 d, 17.6.08

Kh

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

O.A. No.283 of 2006

DATE OF DECISION:

Mr.Arun Kumar Mazumdar

.....Applicant/

Mr.M.Chanda

..... Advocate for the  
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr.G.Baishya, Sr.C.G.S.C.

..... Advocate for the  
Respondents

**CORAM**

**THE HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN**

**THE HON'BLE MR.KHUSHI RAM, ADMINISTRATIVE MEMBER**

1. Whether reporters of local newspapers may be allowed to see the Judgment? ✓  
Yes/No
2. Whether to be referred to the Reporter or not? ✓  
Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman/Member 

9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.283 of 2006

Date of Order: This the ...22...nd Day of May, 2008

HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN  
HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Shri Arun Kumar Mazumdar  
S/O Late Sunil Mazumdar  
Vill-Khoirabari  
P.O.Barpetta Road  
Dist-Barpetta, Assam

Applicant

By Advocate Mr.,M.Chanda, Mrs. S.Nath,  
Mr.G.N.Chakraborty, Mrs. U.Dutta.

-AND-

1. The Union of India,  
Represented by the Secretary to the  
Government of India  
Ministry of Defence, South Block,  
New Delhi-110001
- 2 The General Manager,  
Canteen Stores Department,  
Ministry of Defence  
"ADELPHI", 119, M.K.Road,  
Mumbai-400020
- 3 The Joint General Manager-II  
Canteen Stores Department  
Ministry of Defence  
"ADELPHI" 119, M.K. Road,  
Mumbai-400020
4. The Area Manager,  
Canteen Stores Department,  
Narangi Depot  
Narangi, Assam

Respondents

By Advocate Mr.G.Baishya, Sr.C.G.S.C.

**ORDER**

**KHUSHIRAM:MEMBER(A)**

The Applicant was initially appointed as LDC in the Canteen Stores Department and posted at CSD Depot, at Dimapur on 15.07.1994. The Applicant was undergoing treatment at Guwahati and, therefore, he



submitted an application before the authority for his transfer and he was transferred to CSD Depot Narangi on medical ground on 18.03.1999. The Applicant remained absent unauthorisedly from 29.8.2000 to 30.06.2003. For his unauthorized absence, the Applicant was charge sheeted on 18.08.2003. After completion of Departmental proceedings, he was removed from service vide order dated 20.10.2005. On 02.12.2005 the Applicant preferred an appeal (against the order of penalty) and the same was rejected by the Appellate Authority vide order dated 04.05.2006. Aggrieved by the said decision of the Appellate Authority, the Applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking mainly the following reliefs:

"8.1 That the Hon'ble Tribunal be pleased to quash and set aside the impugned order of penalty issue under No.3/A-3/Legal/Disc.F.8335/1137 dated 20.10.2005 (Annexure-XIV) and the appellate order bearing No.3/A-3/legal/Disc.F-8335/326 dated 04.05.2006 (Annexure-XVI).

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in service with all consequential service benefits and exonerate him from the charge alleged."

2. In this Original Application, the Applicant alleged that he was not provided with sufficient opportunity to defend himself in the Inquiry; that he was not given any intimation by the department, during the period of his absence, though the Department was aware of the fact that he(Applicant) was undergoing treatment and was unable to resume his duties on account of his sickness. He also alleged that a list of documents, on which he relied for his defence was placed in the enquiry but such documents were not supplied. However, on verification of the enquiry records, it was found that the Applicant submitted documents, with the list of documents and that the




documents submitted are largely pertaining to the prescription by the Medical authorities consulted during the period of his absence.

3. The Respondents, by filing their written statement stating that unauthorized absence from 29.08.2000 to 30.06.2003 (for 1037 days) in the name of prolonged medical treatment can not be taken as a ground for remaining absent unauthorisedly. He did not inform the department about the reason for absence despite issuance of periodical reminders to him for the above period. It has also been stated that the Area Manager, CSD Depot, Narangi had intimated (vide his letter No.NBD/EST/PN-8835/1520 dated 25.11.2003) the Applicant, regarding the appointment of IO/PO and the said notice was sent to the Applicant at his residential address (as he was absent from duty) which was returned to Narangi Depot undelivered by the Postal Authorities with remarks "Refused return to sender" on 09.12.2003. It is stated that "if the document sent by registered post, Acknowledgement due, is not accepted by the addressee and is returned (by the post office) to the sender for further action, can be taken, as if the document has been served and due notice has been given to the employee concerned. The allegation by the Applicant that the appointment of IO/PO was never communicated to him is false and misleading to this Hon'ble Tribunal. The Applicant was not sanctioned leave prior to his absence and he has not approached the authorities for sanction of his leave during the period of his absence. The Inquiry Officer has proved the charges on the following grounds:

a) The Applicant was absent for the period from 29.8.2000 to 30.6.2003.

b) He was not admitted in hospital as an in patient at any time during the period.

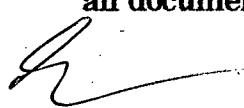
c) He has also absented himself from duty before and after the period in question.



- d) The certificates submitted by the Applicant were only medical prescriptions for the treatment he had availed during the period.

4. The Respondents have also stated that the medical certificate should have been produced by the Applicant even on a later date, which has not been done; that the Applicant had merely intimated the department, for the first time, on 31.5.2003 i.e. after a gap of more than 2 ½ years of remaining absent from duty. The respondents have also stated that before imposing the penalty of removal from service, all facts have been carefully considered by the Disciplinary Authority; after which the penalty order was issued. The Respondents also relied upon the Supreme Court Judgment rendered in the case of Maan Singh , Vs. Union of India & Ors , (Civil appeal No.2531 of 2001) decided on 18.2.2003. In that case the petitioner had "remained unauthorisedly absent from duty for more than 2 years continuously without any intimation to the department or submissions of any medical papers in support of his illness. The disciplinary authority held that absence of the appellant from duty was unauthorized and willful and these facts were fully established in the enquiry (that he had absented himself unauthorisedly on 21 different occasions from the date of his enlistment in the department on 10.7.1978; that in spite of several punishment for lapse of absence on the said 21 occasions he did not improve himself which indicated that he was a habitual absentee and did not take any lesson from the previous punishments awarded to him. Bearing these facts in mind the disciplinary authority dismissed the appellant from service."

5. In the instant case the regular hearing was conducted at "one go" on 16.2.2005 at CSD Depot Narangi; wherein the charges (after going through all documents and all the evidences) were proved. The orders of appointment



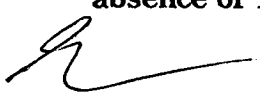


of IO/PO were sent to the applicant's residence as he was absent from duty, which was returned to them undelivered by the Postal Authorities with remarks "Refused, return to sender" on 09.12.2003. Therefore, it can not be said that the intimation regarding action being taken against him was not sent to the Applicant. He did not attend the inquiry on 29.03.2004 and 19.10.2004, though he was served with due notice. The appellate authority also upheld the order of the disciplinary authority.

6. Mr.M.Chanda learned counsel appearing for the Applicant tried to make out the case that the Applicant has not been given notice and sufficient opportunity to defend the case. He also argued that the applicant has submitted prescriptions from different Doctors but the same was not accepted by the Enquiry Officer. He also stated that punishment for the unauthorized absence is extremely harsh and the Applicant must be reinstated in service.

7. On the contrary of Mr.G.Baishya, learned Sr.Standing Counsel appearing for the Union of India stated that there was no flaw of law in the departmental/ enquiry proceedings and the decision of removal from service in similar cases has been upheld by the Apex Court, in the case of Maan Singh,Vs. Union of India reported in 2003 (3) ATJ 190 . In the instant case the Applicant was served with notice; which he refused to receive was proved by Annexure R.3, submitted with the written statement by the Respondents.

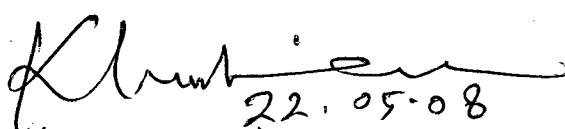
8. We have carefully considered the materials and records perused ~~the~~ placed before us and have considered the arguments of the learned counsels appearing for both the parties. Based on the arguments and the records we are of the considered opinion that the unauthorized absence of the Applicant was proved beyond doubt. It is also proved that the Applicant refused to receive the notice sent through postal authorities. During his unauthorized absence of 1037 days, the Applicant was not admitted to any hospital. He did

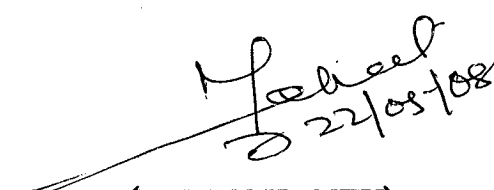


not seek any permission to remain absent from duty. In the aforesaid circumstances the punishment awarded by the disciplinary authority, i.e removal from service was also upheld by the appellate authority based on facts and evidence is absolutely justified.

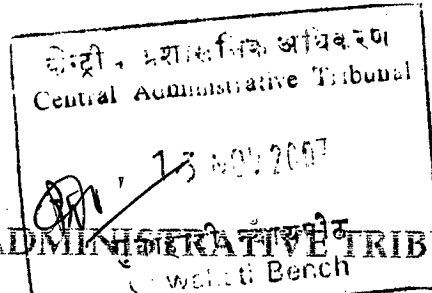
9. We have found no reasons to interfere with the punishment (as confirmed in Appeal) imposed on the Applicant.

10. This case, being devoid of any merit, is, hereby, dismissed. No costs.

  
22.05.08  
(KHUSHIRAM)  
ADMINISTRATIVE MEMBER

  
22/05/08  
(M.R. MOHANTY)  
VICE-CHAIRMAN

LM



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

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

O. A. No. 283 /2006

Shri Arun Kumar Mazumdar

-Vs-

Union of India and Others

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 15.07.1994- Applicant was initially appointed as LDC in the Canteen Stores Department and posted at CSD Depot, Dimapur. (Annexure-I)
- 10.08.1999- Applicant was confirmed in the post of LDC w.e.f. 30.06.96 vide order dated 10.08.1999. (Annexure- II)
- Feb' 1999- Applicant unfortunately fell ill and he underwent treatment at AIIMS, New Delhi on 17.02.99.
- 03.11.2000- Applicant submitted a leave application informing that he was attacked by typhoid fever from 13.09.2000 and he had proceeded to the CMC, Vellore for his better treatment. (Annexure- III & IV)
- 17.06.2003- Respondent No. 4 vide his letter dated 17.06.03 acknowledged receipt of one of the application dated 31.05.03 pertaining to his absence on medical ground and further directed the applicant to report for duty by 10.07.03. (Annexure- V)
- 18.08.2003- Applicant joined his duty on 01.07.2003. While working as such as LDC (O), the applicant was served with a memorandum of charge sheet dated 18.08.03, wherein it was alleged that the applicant remained unauthorisedly absent from 29.08.2000 to 30.06.03 for 1037 days violating Sub Rule 23 of Rule 3 of CCS (Conduct) Rules 1964. (Annexure- VI)
- 28.10.2004- Inquiry officer directed the applicant to appear before the enquiry officer on 10.11.04. Accordingly applicant attended the enquiry on 10.11.04. (Annexure- VII)
- 31.12.2004- Applicant was directed to appear before the inquiry officer on 18.01.05 at CSD Depot, Narangi. (Annexure- VIII)

Arun Kumar Mazumdar

- 16  
2
- 25.02.2005- Presenting officer submitted his brief dated 25.2.05. (Annexure- X)
- 24.03.2005- Applicant submitted his representation denying therein the charges once again. (Annexure- XI)
- 27.06.2005- Inquiry report dated 01.04.05 submitted by the enquiry officer was forwarded to the applicant vide letter dated 27.06.05. Applicant then submitted his representation rebutting the findings of the inquiry officer. (Annexure- XII & XIII)
- 20.10.2005- Respondent No. 3 imposed major penalty of removal from service with immediate effect to the applicant. (Annexure- XIV)
- 01.12.2005- Applicant preferred an appeal before the respondent No. 2 against the order of penalty. (Annexure- XV)
- 04.05.2006- Appellate authority rejected appeal of the applicant vide impugned appellate order dated 04.05.06 and upheld the penalty inflicted vide order dated 20.10.05. (Annexure- XVI)

Hence this application before this Hon'ble Tribunal.

#### P R A Y E R S

##### Relief (s) sought for:

1. That the Hon'ble Tribunal be pleased to quash and set aside the impugned order of penalty issued under No. 3/A-3/Legal/Disc. F-8335/1137 dated 20.10.2005 (Annexure-XIV) and the appellate order bearing No. 3/A-3/Legal/Disc. F-8335/326 dated 04.05.2006 (Annexure- XVI).
2. That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in service with all consequential service benefits and exonerate him from the charge alleged.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

##### Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

*Arun Kumar Mayurder*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 283/2006

Shri Arun Kumar Mazumdar. : Applicant.

-Versus-

Union of India and Ors. : Respondents.

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Filed By:

*Anta*  
Advocate.

Date: - 13.11.06

Arun Kumar Mazumdar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 283 /2006

BETWEEN:

1. Shri Arun Kumar Mazumdar.

S/o- Late Sunil Mazumdar.

Vill- Khoirabari.

P.O. Barpeta Road.

Dist.- Barpeta, Assam.

-----Applicant.

-AND-

1. The Union of India,  
Represented by Secretary to the  
Government of India,  
Ministry of Defence, South Block,  
New Delhi- 110001.
2. The General Manager,  
Canteen Stores Department,  
Ministry of Defence,  
"ADELPHI", 119, M.K. Road,  
Mumbai-400020.
3. The Joint General Manager-II,  
Canteen Stores Department,  
Ministry of Defence,  
"ADELPHI", 119, M.K. Road,  
Mumbai-400020.
4. The Area Manager,  
Canteen Stores Department,  
Narangi Depot,  
Narangi, Assam.

..... Respondents.

*Arun Kumar Mazumdar*

1  
8  
Filed by the applicant  
through Mr. A. K. Baruah, Advocate  
on 18.11.06.

### DETAILS OF THE APPLICATION

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

This application is made against the impugned order No. 3/A-3/Legal/Disc. F-8335/1137 dated 20.10.2005 (Annexure- XIV) imposing the penalty of "removal from service" on the applicant and the impugned Appellate order No. 3/A-3/Legal/Disc.F-8335/326 dated 04.05.2006 (Annexure-XVI) rejecting the appeal of the applicant and upholding the order of penalty.

2. Jurisdiction of the Tribunal:

The applicants declare that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicants further declare that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

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

4.2 That the applicant was initially appointed as LDC w.e.f 01.07.1994 in the canteen stores department and posted at CSD Depot, Dimapur vide appointment order No. 3/Pers/A-1/CL-3443/4325 dated 15.07.1994. Subsequently he was confirmed in his post w.e.f 30.06.1996 vide order No. 3/AGM(P)/1109 (GP 'C' & 'D')/3904 dated 10.08.1999, and posted at CSD Depot, Narangi.

(Copy of the order dated 15.07.1994 and dated 10.08.1999 are annexed hereto as Annexure-I and II respectively).

*Am Kumar Meher*

- 4.3 That while working as such, the applicant unfortunately got ill with some physical ailments of serious nature and underwent treatment at Guwahati. Finding no response to the treatment, the applicant eventually proceeded to All India Institute of Medical Science (AIIMS), New Delhi on 17.02.1999 for better treatment of his ailments. Accordingly he submitted his application for leave prior to his leaving for Delhi. Even thereafter, the applicant had prolonged illness about which he kept informed to his controlling authorities over phones and messages. Eventually he was attacked by typhoid fever from 13.09.2000, and had to proceed to the CMC, Vellore for his better treatment. Accordingly he submitted his leave application dated 03.11.2000 praying for extension of his leave.

(Copy of leave application dated February '99 and dated 03.11.2000 are annexed hereto as Annexure-III and IV respectively).

- 4.4 That when the applicant had been suffering from protracted illness, struggling for life and was running from place to place for better medical treatments and recovery of his illness, the respondents said to have sent several letters and telegrams to the applicant at his home address asking him to report for duties. Since the applicant was out of station for undergoing treatment, he did not receive most of those letters and telegrams, excepting one or two. The applicant however communicated over phone and sent letters to the respondents from time to time informing about his critical condition and praying for his leave of absence.
- 4.5 That thereafter, the respondent No. 4 vide his letter No. NCD/EST/PN-8335/349 dated 17.06.2003 acknowledged the receipt of one of the applications of the applicant on 31.05.2003 pertaining to his absence on medical ground and further directed the applicant to report for duty by 10.07.2003, failing which his case would be referred to the head office, Mumbai for initiating disciplinary action.

Anur Kumar Majumdar



(Copy of letter dated 17.06.2003 is annexed hereto as Annexure-V).

- 4.6 That the applicant complied with the direction stated above and joined his duties on 01.07.2003. It is pertinent to mention here at this stage is that after 01.07.2003, the applicant attended his office regularly till the date he was removed from service. While working as such as LDC (O), the applicant was served with a memorandum of charges bearing reference No. 3/A-3/Legal/PN-8335 (33)/1347 dated 18.08.2003, wherein it was alleged that the applicant remained unauthorisedly absent from duty continuously from 29.08.2000 to 30.06.2003 for 1037 days violating sub rule 23 of rule 3 of CCS (Conduct) Rules, 1964. Under the said memorandum it was proposed to hold an inquiry against the applicant under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the applicant was directed to submit his written statement of defence within 10 days of receipt of the memorandum.

(Copy of memorandum dated 18.08.2003 is annexed hereto as Annexure-VI).

- 4.7 That the applicant begs to state that due to reasons beyond his control, he could not submit his written statement of defence as directed. However, the respondents appointed Sri K. Ramaswamy, Asstt. General Manager (Base) as the enquiry officer vide letter No. 3/A-3/Legal/PN-8335(33)/1848 dated 10.11.2003 for holding the proposed inquiry against the applicant on the alleged charges. Shri S.M. Dongre, Asstt. Manager was also appointed as the Presenting officer of the case. Shri K. Ramaswamy, enquiry officer, vide his letter No. BBD/AGM/INQ/PN-8335/1328 dated 28.10.2004 directed the applicant to appear before the enquiry officer on 10.11.2004. Accordingly, the applicant attended the enquiry on 10.11.2004 when the letters and telegrams sent by the respondents to the applicant during his absence were shown to the

*Annexure Memorandum*

applicant and the copies of the same were got authenticated and signed by the applicant.

(Copy of letter dated 28.10.2004 is annexed hereto as Annexure-VII).

4.8 That subsequently, Shri K.V. Raghuthaman, Manager, CSD Depot, Misamari was appointed as the Enquiry officer vide order No. 3/A-3/Legal/Disc-F-8335/1523 dated 29.11.2004 in place of Shri K. Ramaswamy. It is relevant to mention here that the appointments of E.O or P.O were never communicated to the applicant in any occasion. Shri K.V. Raghuthaman vide his letter No. MMD/MGR-0112/KVR/1350 dated 31.12.2004 directed the applicant to appear before the enquiry officer on 18.01.2005 at CSD Depot, Narangi and to attend the first hearing of the proposed inquiry. Accordingly the applicant attended the preliminary hearing held on 18.01.2005 where he denied the charges labeled against him and also submitted a list of documents which he proposes to rely on for his defence and the same were received by the E.O. Thereafter, the date of next hearing was fixed on 16.02.2005.

(Copy of letter dated 31.12.2004 and list of defence documents submitted by the applicant are annexed hereto as Annexure VIII and IX respectively).

4.9 That thereafter, the applicant received a copy of the presenting officers brief dated 25.02.2005 regarding the charges against the applicant and the applicant submitted through proper channel a representation dated 24.03.2005 to the enquiry officer against the said brief of the P.O, denying therein the charges once again.

(Copy of the P.O's brief dated 25.02.2005 and representation-dated 24.03.2005 are annexed hereto as Annexure-X and XI respectively).

*Arun Kumar Moger*

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4.10 That the second and final hearing was subsequently held on 16.02.2005 at CSD Depot, Narengi where the applicant also participated and cooperated in the proceeding of the inquiry. The hearing was conducted in a very hasty manner in "one-go" on 16.02.2005 where examination of witnesses and verification of documents were done on piecemeal and selective basis without giving adequate and reasonable opportunity to the applicant of being heard. The inquiry was then declared closed.

4.11 That thereafter, a copy of the inquiry report dated 01.04.2005 submitted by the enquiry officer was forwarded to the applicant vide letter No. 3/A-3/Legal/Disc-F-8335/700 dated 27.06.2005.

(Copy of the letter dated 27.06.2005 along with inquiry report is annexed hereto as Annexure-XII).

4.12 That the applicant then submitted his representation through proper channel rebutting the findings in the inquiry report. In his representation, the applicant agitated the findings of the enquiry officer and reiterated that his absence from duty was not deliberate but it was under compelling circumstances due to his protracted illness, and further explained that since he had to go to Chennai, Vellore, Hyderabad, Kolkata and Guwahati for his medical treatment and struggling for his life, he could not submit his leave applications and also could not reply to those letters which he received. He also reiterated that regarding his illness and absence he had kept the authorities informed over telephone and by letters for time to time against which he had enclosed the copies of relevant receipts etc. and further explained that being in an extreme state of mental anxieties and tension for his illness, he could not collect the medical certificates from attending doctors and as such he had produced the copies of all the prescriptions as proof of his treatments, which the enquiry officer has also annexed to his inquiry report as part of records. As such the applicant denied the charge that his absence from duty was unauthorized, or

Anur Kumar Majumdar

habitual but it was only under compelling circumstances, which were beyond his control.

(Copy of representation annexed hereto as Annexure-XIII).

- 4.13 That thereafter, acting on the inquiry report aforesaid, the impugned order bearing number No. 3/A-3/Legal/Disc. F-8335/1137 dated 20.10.2005 was issued by the respondent No. 3 whereby the major penalty of "Removal from service with immediate effect" has been imposed upon the applicant, without paying any consideration of his representation whatsoever. Accordingly, the applicant's service was discontinued w.e.f 01.11.2005.

(Copy of impugned order dated 20.10.2005 is annexed hereto as Annexure-XIV).

- 4.14 That the applicant preferred an appeal before the respondent No. 2 (Appellate Authority) on 01.12.2005 against the order of penalty wherein he had narrated the circumstances which led to his absence and rebutted the findings of the enquiry officer and also pointed out the infirmities in the conduct of the inquiry. The applicant therefore prayed for quashing of the impugned order of penalty dated 20.10.2005 and for exonerating him of the charges alleged against him.

(Copy of the appeal-dated 01.12.2005 is annexed hereto as Annexure-XV).

- 4.15 That to his utter misfortune and surprise, the applicant received the impugned appellate order No. 3/A-3/Legal/Disc. F-8335/326 dated 04.05.2006 whereby the appellate authority has rejected the appeal preferred by the applicant and has upheld the penalty inflicted under order dated 20.10.2005.

*Ann Kumar Meher*

(Copy of impugned appellate order dated 04.05.2006 is annexed hereto as Annexure-XVI).

- 4.16 That the applicant most respectfully begs to submit that his absence from duty which was the lone charge against him, was under compelling circumstances only, due to his protracted illness when he was struggling for his life and running from place to place for his medical treatment. As such he was mentally unfit to attend to his departmental formalities for leave which was inadvertent, but even in spite of that, he kept his authorities informed about his illness and his inability to attend his duties from time to time over telephone and through letters sent by registered post/speed post etc. and eventually submitted the relevant prescriptions and reports etc. in support of his treatment at Guwahati, Chennai, Hyderabad and Calcutta which have been taken as part of records of inquiry by the inquiry officer also. As such, the penalty has been imposed upon the applicant without taking into consideration the facts and situation of the case and the penalty is against the principles of natural justice.
- 4.17 That the applicant most respectfully begs to submit that the enquiry officer conducted the regular hearing on 16.02.2005 only in "one-go" and completed the exercise so hastily that the applicant was not given adequate and reasonable opportunity of being heard and even the documents demanded by the applicant were not supplied to him for his proper defence. The Enquiry officer in his brief report has not discussed about the intimations given by the applicant from time to time and has arbitrarily ignored the medical prescriptions etc. submitted by the applicant and has held the charge as proved, most mechanically and arbitrarily. It is specifically submitted that neither listed documents nor listed witnesses were examined as required under the law.

*Anur Kumar Majumdar*

The Disciplinary authority lost sight of the legal flaws in the inquiry and also failed to appreciate the facts and circumstances of the case. The Disciplinary authority has acted most mechanically on the inquiry report and has passed the order of penalty and that too without discussing the findings of the enquiry officer in his order.

The appellate authority also did not exercise his authority with prudence and failed to appreciate the facts and circumstances of the case and the manner in which the inquiry was conducted and passed the appellate order without any application of mind whatsoever and rejected the appeal of the applicant ignoring the provisions of CCS (CCA) Rules, 1965 and inflicting a penalty disproportionate to the offence alleged.

As such both the impugned orders dated 20.10.2005 and dated 04.05.2006 issued by the disciplinary authority and the appellate authority respectively are liable to be set aside and quashed.

4.18 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the applicant's alleged absence from duty was not deliberate and was under compelling circumstances due to his protected illness.
- 5.2 For that, the applicant was struggling for his life during the period of his absence and was running from place to place for his medical treatment for his survival. He had to move to Guwahati, Chennai, Hyderabad and Calcutta for treatment which he kept his authorities informed over phone and through letters sent by registered post and speed post and eventually submitted the relevant prescriptions etc. also pertaining to his treatments.
- 5.3 For that, the applicant rejoined his duties on 01.07.2003, the inquiry was held on 16.02.2005 i.e after about 17 months and the penalty was imposed on 20.10.2005 i.e more than 2 years 4 months after the alleged offence was committed. Such a delay is against the procedure established by law and

*Arjun Kumar Moger*

not in accordance with the time frame prescribed under CCS (CCA) rules. 1965.

- 5.4 For that, the inquiry was conducted in one day only i.e on 16.02.2005 in a hasty manner with a pre-set mind. The applicant was not provided the reasonable opportunity of being heard and was not supplied with the documents which he demanded. This is against the principles of natural justice and the findings of the enquiry officer is biased and not based on facts.
- 5.5 For that the disciplinary authority and the appellate authority failed to appreciate the facts and situation in the case and acted most mechanically and without any application of mind and passed the order of penalty and the appellate order ignoring the representation and appeal of the applicant.
- 5.6 For that, the Disciplinary Authority has not taken any action on the representation of the applicant at all and the appellate authority has rejected the appeal in an arbitrary manner and without assigning any reason.
- 5.7 For that, both the Disciplinary Authority and the Appellate authority lost sight of the legal infirmities in the inquiry and acted on the enquiry report on a biased manner and issued the impugned order of penalty and the appellate order which is violative of the principles of natural justice and opposed to the procedure established by law.
- 5.8 For that, by imposing the penalty of "removal from service", the respondents have deprived the applicant his bread and butter, thereby denying his right to life which hits the provision of Article 21 of the Constitution of India and as such both the order of penalty and the appellate order are liable to be quashed and set aside.

*Anur Kumar Nigamdar*

5.9 For that the CCS (CCA) Rules 1965 do not provide for such a major penalty for absence from duty and the penalty imposed is disproportionate to the offence alleged.

5.10 For that neither listed documents nor listed witnesses were examined before the enquiry proceeding as required under the law and on that score alone, the order of penalty and appellate order are liable to be set aside and quashed.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

*Arum Kumar Majumdar*



- 8.1 That the Hon'ble Tribunal be pleased to quash and set aside the impugned order of penalty issued under No. 3/A-3/Legal/Disc. F-8335/1137 dated 20.10.2005 (Annexure-XIV) and the appellate order bearing No. 3/A-3/Legal/Disc. F-8335/326 dated 04.05.2006 (Annexure- XVI).
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in service with all consequential service benefits and exonerate him from the charge alleged.
- 8.3 Costs of the application.
- 8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for

During pendency of the application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

10. ....

11. Particulars of the I.P.O

- |      |               |   |               |
|------|---------------|---|---------------|
| i)   | LP.O No.      | : | 28 G 932620   |
| ii)  | Date of issue | : | 10. 11. 2006  |
| iii) | Issued from   | : | G. P. O , Ghy |
| iv)  | Payable at    | : | G. P. O , Ghy |

12. List of enclosures:  
As given in the index.

*Arjun Kumar Mayender*

### VERIFICATION

I Shri Arun Kumar Mazumdar, S/o- Late Sunil Mazumdar, aged about 37 years, resident of Vill- Khoirabari, P.O. Barpeta Road, District- Barpeta, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 13<sup>th</sup> day of November 2006.

*Arun Kumar Mazumdar*

ANNEXURE-I

GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEN STORES DEPARTMENT  
ADELPHI 119, M.K. ROAD  
BOMBAY - 400 026

Ref. No. : 3/Pers/A-1/CL-3445/1325

Date : 16th June '94

A P P O I N T M E N T

Reference our letter No 3/Pers/A-1/1098(XRD)/CL-3445/3530

2. Shri/Smt/Kum Arun Kumar Kuzumder

dt. 16th June '94.

has been taken on the regular rolls of this department

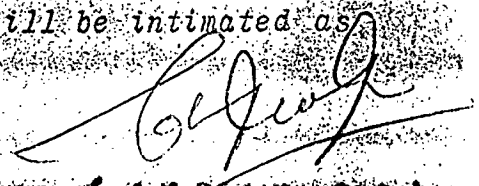
w.e.f. 1st July '94 and stands posted to CSD Depot,

Dinapur Head Office

Branch as LDG. His/Her date of Birth is

1-7-1959. PN No. will be intimated as

and when allotted.



( U.V. BHANU RAO )  
MANAGER (P)

To, HO ACCOUNTS BRANCH (PAY ROLL)

cc : The Manager, CSD Depot, Dinapur

cc : Shri/Smt/Kum Arun Kumar Kuzumder (Through Proper

cc : 3/A-2/A-7/B-1/B-5/B-7. Channel)

*Attested  
Mitra  
Advocate*

- 15 -

ANNEXURE-II  
32

GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEEN STORES DEPARTMENT  
'ADELHI', 119, MK ROAD  
MUMBAI - 400 020.

Ref.No. 3/AGM(P)/1109(Gp 'C'&'D')/3904

Date: 10 Aug '99

CONFIRMATION OF NEW APPOINTEES

The recommendations of the 84th Departmental Promotion Committee which met on 15th and 16th July '99 have been duly approved by the Competent Authority. Accordingly, undermentioned newly appointed employees have been confirmed in their respective posts from the dates shown against each :-

Sr. No.	P.No.	Name	Desgn.	Stn. of posting	Dt. on which confirmed
---------	-------	------	--------	-----------------	------------------------

GROUP 'C' :

1.	8335	Shri Arun K Muzumdar	LDC(O)	Narangal	30/06/96
2.	8336	Shri Milan K Basumatary	LDC(O)	Misamari	01/07/96
3.	8350	Shri Soni K A	LDC(O)	Cochin	26/07/96
4.	8351	Shri Sailen Kumar Giri	LDC(O)	Calcutta	31/07/96
5.	8354	Smt D Radha	LDC(O)	Delhi	07/08/96
6.	8359	Shri Parvesh Kumar	LDC(O)	Ambala	17/08/96
7.	8362	Shri Anil R Vilhekar	LDC(O)	HO (P&A)	07/09/96
8.	8363	Smt Jayashree Hazarika	LDC(O)	Calcutta	11/09/96
9.	8364	Shri Vimal Mattoo	LDC(O)	B D Bari	18/09/96
10.	8365	Miss Rita Bakshi	LDC(O)	RTD B D Bari	18/09/96
11.	8366	Shri Naresh Paul	LDC(O)	Jaipur	18/09/96
12.	8367	Shri Mahesh Kumar	LDC(D)	Delhi	19/09/96
13.	8374	Shri Ved Prakash Gupta	LDC(O)	Delhi	24/10/96
14.	8377	Miss Sucharita Luthra	LDC(O)	RTD B D Bari	14/11/96
15.	8379	Shri Jagdish Kumar	LDC(O)	Leh	29/11/96
16.	8381	Shri Sundar Das	LDC(O)	Masimpur	28/12/96
17.	8392	Shri Ravi Kumar	LDC(O)	Pathankot	15/10/97
18.	8393	Shri Tanaji K Varadkar	LDC(O)	HO (P&A)	15/10/97
19.	8394	Smt Kale Anupama D	LDC(O)	Khadki	19/10/97
20.	8395	Miss Sharda V Tamse	LDC(O)	HO (P&A)	19/10/97
21.	8396	Shri Hakim Yusuf Ismail	LDC(O)	Khadki	19/10/97
22.	8399	Shri Shyam R Wagh	LDC(O)	Mumbai Base	19/10/97
23.	8400	Shri Somnath K Wamane	LDC(O)	HO (F&A)	19/10/97

Contd.....2

Attested  
Author  
Advocate



To

The Manager  
ESO Dept  
Dimapur

6106 38

Sub:- Medical Treatment

Respected Sir,

Reference your letter No-1037 A-4  
Dimapur 2842 Dated-28th January 99  
This is to inform you that I have got  
the medical treatment from Guwahati  
But till date I have not cure

So, I am going to All India Medical  
Science Institute in Delhi on 17th Feb-99.  
After returning Delhi I will report my  
duty as soon as possible.

Hence my leave will be considered  
and under your sympathetic consideration

Yours faithfully-

From Mr. Mayunder,  
ESO Dept, Dimapur  
h. o. c (o).

Attested  
Author  
Advocate

Estt  
M 5/19  
CP  
2/2

Dismissed  
on 23/2 1/2

Original letter



The Manager  
of the  
Hotel

Sub: Physics 5th - 10th

Sir,  
I am most respectfully to state  
that I have been suffering from  
Typhoid fever since 12th Sep' 2000  
and again I am affected by strong  
fever and stomach problems. Therefore  
I am not in a position to join in my  
duties and Doctor also advise me to take  
a better treatment so I have decided  
to go to E.M.C. for better treatment.  
Therefore you may kindly be informed  
my leave for my better treatment and  
there abiding.

Gauss faithfully  
 to sum. May 1860  
 PN - 8 235  
 Linc. Mass. 1860

1. Dora  
 what is his  
 leave balance  
 7/11  
 30  
 affected  
 Dora  
 Advocate  
 on  
 vor



ANNEXURE-VI

Govt. of India  
Ministry of Defence  
Canteen Stores Department  
Narangi Depot

Tel No. 0361-2644926  
0361-2640769 (R)  
MIL - 6943  
MIL - 6944 (R)

Ref. No. NGD/EST/PN-8335/349

Date: 17<sup>th</sup> Jun'2003

To,  
PN-8335,  
Shri Arun Mazumdar,  
Vill & Post - Kharabari,  
Via - Borpeta Road,  
Dist - Borpeta (ASSAM)

Regd AD

Sub:- Absence from Duty

Reference your letter No. Nil dated Nil received by this office on 31/05/2003 vide which you have intimated us after a lapse of more than 2 1/2 years the reason of your absence from Aug'2000 on medical ground.

2. As you are already aware of the rule that absenting from duty without any official information is a serious offence as per CCS (conduct) rule.
3. Further in you above application you have simply informed that you will be reporting for duty within a short period without specifying a definite date.
4. In view of above you are directed to report for duty by 10 July'2003 failing which your case will be referred to our Head Office, Mumbai for initiating disciplinary action.
5. Please acknowledge receipt.

( S.K. Gupta )  
Area Manager

CC: The AGM (Legal),  
CSD HO Mumbai :-

CC: The AGM (Adm),  
CSD HO Mumbai :-

N.O.O.  
CC: PN-8243, Shri A. Karmakar,  
CSD Depot, Narangi :-

CC: Police Station,  
Borpeta Road :-

CC: G/F

ABSENCE:1

For information. This has reference your copy of our letter No. NGD/EST/PN-8335/305 dt. 10/06/03.

This has ref. your copy of Sec-3 (Legal) letter No. 3/A-3(Legal)/Disc-F-8335/289 dt. 17/02/02 addressed to us.

Being neighbourer you are advised to visit the residence of Shri Arun Mazumdar officially and collect the information of his health and where about and Lodge FIR at Borpeta Police Station by 25<sup>th</sup> Jun'2003 and hand over letter to him.

FIR may please be Lodged and where about of Shri Arun Mazumdar be intimated to this office.



MT  
24/25/03

no stopped

original letter verified by me  
At  
Muzumdar  
Advocate

CONFIDENTIAL

भारत सरकार Govt. of India  
कैंटीन स्टोर्स विभाग  
**CANTEEN STORES DEPARTMENT**  
'ADELPHI', 119 Maharshi Karve Road, Mumbai 400 020.

Ref No. : 3/A-3/Legal/PN- 8335/( 33 ) 11347

Date : 18 Aug 2003

MEMORANDUM

CONFIDENTIAL

The undersigned proposes to hold an inquiry against P.N. 8335 Shri Arun Mazumdar, LDC(O), CSD Depot, Narangi under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputation of misconduct or misbehaviour in support of each article of charge, is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri Arun Mazumdar, LDC(O), is directed to submit within 10 days of receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. Shri Arun Mazumdar, LDC(O) is further informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri Arun Mazumdar, LDC(O) is further advised to nominate a Government servant whom he would like to act as his defence assistant during the inquiry if it becomes necessary in terms of para 3 above within 20 days of receipt of this memorandum. Guide-lines in respect of nomination of a defence assistant are attached.

5. Shri Arun Mazumdar, LDC(O) is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiry authority or otherwise, fails or refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules 1965, or the orders/directions issued in pursuance of the said rule, the inquiry authority may hold the inquiry against him ex-parte.

6. Attention of Shri Arun Mazumdar, LDC(O) is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Arun Mazumdar, LDC(O) is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of C.C.S. (Conduct) Rules 1964.

The receipt of the Memorandum shall be acknowledged.

Encl: a/a

To :  
PN-8335

Brij D.P. Singh



ANNEXURE - I

Statement of article of charges framed against PN-8335 Shri Arun Mazumdar, LDC(O), CSD Depot Narangi.

Article - I

That the said PN-8335 Shri Arun Mazumdar, LDC(O), CSD Depot Narangi is found habitually irregular and erratic in attendance and has remained unauthorisedly absent from duty continuously from 29.8.2000 to 30.6.2003 for 1037 days without prior sanction/intimation. He has disobeyed the lawful orders to rejoin the duty within stipulated period.

PN-8335 Shri Arun Mazumdar, LDC(O), by his above act failed to maintain devotion to duty and exhibited conduct unbecoming of Government Servant, thereby violating Sub rule 23 of rule 3 of CCS (Conduct) Rules 1964.

ANNEXURE -II

Statement of imputation of misconduct in respect of the Article of charge framed against framed against PN-8335 Shri Arun Mazumdar, LDC(O), CSD Depot Narangi.

Article - I

PN-8335 Shri Arun Mazumdar, LDC(O), CSD Depot Narangi remained unauthorisedly absent for 1037 days and not reported for duty till date as intimated by Depot Managers vide letter No. NGD/EST/PN-8335/470 dt.1.7.03. Narangi Depot had issued following/telex/telegram directly to the individual to report for duty and explain the reason for his unauthorised absence, which is as follows: -

- i. Letter No. NGD/EST/PN-8335/1580 dt.30.11.2000.
- ii. Letter No. NGD/EST/PN-8335/1083 dt.11.4.2001.
- iii. Telegram No. NGD/EST/PN-8335/1052 dt.5.6.2001
- iv. Telegram No. NGD/EST/PN-8335/2038 dt.12.9.2001.
- v. Telegram No. NGD/EST/PN-8335/0112 dt.30.04.2002.
- vi. Letter No. NGD/EST/PN-8335/299 dt.14.6.2002.
- vii. Letter No. NGD/EST/PN-8335/0087 dt.17.4.2003.
- viii. Letter No. NGD/EST/PN-8335/349 dt.17.6.2003.

- ix. RM(E) had also issued letter No.RME/14/EST/2658 dt.11.1.2002 to individual to report for duty.

However, none of the letters has been acknowledged by the said PN-8335 Shri Arun Mazumdar, LDC(O), except letters dt.17.4.2003 & 17.6.2003 & forwarded application dt.3.11.2000 advancing a reason of suffering from Typhoid fever & one more application dt NIL, pleading that he is suffering from Liver, Neurological & Gastro problem but no proof of medical certificate was forwarded by him.

Depot Manager has published a notice in Local newspaper "The Assam Tribune" on 19.4.2003, to report for duty as no intimation <sup>was</sup> received from Shri Arun Mazumdar, LDC(O).

Thus the said PN-8335 Shri Arun Mazumdar, LDC(O), by his above act did not maintain devotion to duty and exhibited conduct unbecoming of a Government servant violating Rule 3 of CCS (Conduct) Rules 1964.

#### ANNEXURE-III

List of documents by which the article of charge framed against PN-8335 Shri Arun Mazumdar, LDC(O), CSD Depot Narangi are proposed to be sustained.

#### Article - I

- a. Letter No.NGD/EST/PN-8335/1580 dt.30.11.2000.
- b. Letter No.NGD/EST/PN-8335/1083 dt.11.4.2001
- c. Telegram No.NGD/EST/PN-8335/1502 dt.05.6.2001.
- d. Telegram No.NGD/EST/PN-8335/2038 dt.12.9.2001.
- e. Telegram No.NGD/EST/PN-8335/0112 dt.30.04.2002.
- f. Letter No.NGD/EST/PN-8335/299 dt.14.6.2002.
- g. Letter No.NGD/EST/PN-8335/0087 dt.17.4.2003.
- h. Letter No.NGD/EST/PN-8335/349 dt.17.6.2003.
- i. Letter No.RME/14/EST/2658 dt.11.1.2002.
- j. Letter dt.3.11.2000 of Shri Arun Mazumdar.
- k. Letter dt Nil of Shri Arun Mazumdar.

#### ANNEXURE IV

List of witness by whom the article of charge framed against PN-8335, Shri Arun Mazumdar, LDC(O), CSD Depot Narangi is proposed to be sustained.

#### ARTICLE-I

1. The Depot Manager, CSD Depot Narangi.

GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEEN STORES DEPARTMENT  
(BASE DEPOT)

T/31, EX-ORDNANCE DEPOT COMPLEX, SIGNAL HILL AVENUE, SEWR  
MUMBAI - 400 033 Email : bbd@csdindia.com; dgmbase@sify.com

Ref. No. : BBD/AGM/INQ/PN-8335/1229

Date: 28 Oct 2004

To,  
✓ Shri Arun Kumar Mazumdar,  
CSD Depot,  
Narangi, Guwahati.

**CONFIDENTIAL**

INQUIRY IN RESPECT OF PN-8335  
SHRI ARUN MAZUMDAR, LDC (O), CSD DEPOT, NARANGI

1. You had acknowledged the receipt of my letter No. BBD/INQ/PN-8335/1142 dt. 22.09.2004.
2. You had expressed your inability to appear before Inquiry Officer at Base Depot, Mumbai on 19.10.04 under the circumstances explained by you in your letter dt. 11.10.04 and you had assured that you would be present after 15 days. Your request is considered genuine.
3. In view of the above you are advised to be present with you/Defence Counsel if any, at 1000 hrs on 10 Nov. 2004 in Asst Gen Manager (Base) cabin of CSD Base Depot, Mumbai. Please note that this is the last and final opportunity being given to you failing which ex-parte decision will be taken.
4. You have already been informed by the Area Manager, CSD Depot Narangi of the next hearing fixed on 10 Nov. 2004 vide his letter no. NGD/EST/PN-8335/1263 dt. 16.10.2004.
5. The receipt of this letter may be acknowledged.

(K RAMASAMY)  
Asst Gen Manager (Base)  
Inquiry Officer

CC:

Shri S.M. Dongre  
Asst. Manager,  
(Presiding Officer)  
CSD Depot, Narangi  
RM (E)  
AGM (Legal)  
Area Manager,  
CSD Depot, Narangi

You are requested to present the case at 1000 hrs on  
10 Nov. 2004 at Base Depot, Mumbai.

For information please.  
For information please.  
For information

You are requested to please hand over a copy of this  
letter to its addressee under his return.

*Shri S.M. Dongre  
Advocate*

*24/11*

Govt. of India  
Ministry of Defence  
Canteen Stores Department  
Missamari Depot

Ref No: MMD/ MGR-0112/KVR/1350  
To

**CONFIDENTIAL**

Date: 31 Dec '04.

Shri Arun Mazumdar  
P.No-8335, LDC(O)  
CSD Depot Narangi

(REGD A/D)

Sub: Inquiry in to charges framed against P.No-8335

Shri Arun Mazumdar, CSD Depot Narangi vide Memorandum  
No-3/A-3/Legal/PN-8335(33)1347 dt 18.8.2003

Sir,

I have been appointed vide Order No. 3/A-3/Legal/Dis-F-8335/1523 dated 29th Nov '04 of Jt General Manager, CSD as the Inquiry Officer to enquire into the charges framed against you vide Office Memorandum No. 3/A-3/Legal/PN-8335 (33)1347 dt 18.8.2003.

2. In this connection, it is proposed to hold hearing of the case on 10th Jan '05 at CSD Depot Narangi at 1400 hrs. You are, therefore requested to attend the above hearing, failing which the proceedings will be held ex-parte. It is also clarified that the purpose of the hearing is to fix the schedule for the inspection of documents, submission of list of additional documents/witnesses required for your defence. You may also note that examination of witnesses will not be taken up during the above hearing.

3. Subject to the provisions of Rule 14(8) of CCS (CCA) Rules 1965 you are entitled to have the services of a defence assistant to present the case on your behalf. In case you have already decided upon a defence assistant, you may intimate his particulars and willingness in writing to enable me to write to his controlling officer.

Yours sincerely

*K.V. Reghuthaman*  
(K.V. REGHUTHAMAN)  
INQUIRY OFFICER

Copies to:-

1. P. No-1849, Shri S M Dongre,  
Asst. Manager, Presenting Officer: with a request to attend the hearing with all the listed documents and copies of the statements of listed witnesses if any.
2. Area Manager  
CSD Depot Narangi: With a request to relieve the Charge Officer and Presenting Officer for attending the hearing of the case. It is also requested to make suitable arrangement for conducting enquiry. A copy of the letter may be handed over to Shri Arun Mazumdar, LDC(O), CSD Depot Narangi.

4. AGM(Legal)
5. HC Mumbai
6. S.P. (East)
7. CSD Narangi

For information please.

*Submitted  
10/12/04  
Arunali*

To,  
K.V. PEGHUTHAMAN  
AREA MANAGER  
MISSAMARI (INQUIRY OFFICER)

Sir,

The following documents may be taken on behalf of me:

Sl.No.	Details of Documents	Relevance
01.	Doctors Prescription dt. 08-05-01	I was getting treatment.
02.	----- do ----- dt. 20-06-2000	----- do -----
03.	Medical Report dt. 18-11-2000	----- do -----
04.	Doctors Prescription dt. 16-08-01	----- do -----
05.	----- do ----- dt. 26-09-01	----- do -----
06.	----- do ----- dt. 17-10-01	----- do -----
07.	Doctors Prescription dt. 06-05-02	I was getting treatment.
08.	----- do ----- dt. 12-08-02	----- do -----
09.	----- do ----- dt. 29-11-02	----- do -----
10.	----- do ----- dt. 30-12-02	----- do -----
11.	----- do ----- dt. Nil	----- do -----
12.	----- do ----- dt. 06-11-01	----- do -----
13.	Doctors fitness certificate dt. 07-07-03	To prove my fitness.

Attested  
Advocate

Yours faithfully

(A)  
18/01/08  
(Shri. Arun Mazumdar)  
PBI-8335, LDC (O)  
CSD, Barangi

Neeraj

Neeraj

12

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ANNEXURE - X 4v

Presenting officer's Brief

Sub: Inquiry in respect of PN- 8335 Shri Arun Mazumder, LDC (O)  
CSD Depot, Narangi

PN-8335 Shri Arun Kumar Mazumder has been appointed as LDC (O) on 01-07-1994 at CSD Depot, Dimapur.

While going through his personnel file, it is observed that he is habitually absentee from his duty at Dimapur Depot & also at Narangi. In this connection, several letters have been issued to him. He had been transferred to Narangi depot on medical ground for his better treatment.

He had reported duty at Narangi on 18-03-99. After some period, he remained unauthorise absence w.e.f. 29-08-2000 to 30-06-2003 for 1037 days, the case of unauthorise absence was sent to H.O. Mumbai for disciplinary action but his further period was also remained unauthorise absence from 01-07-2003 to 21-07-2003, he reported for duty on 22-07-2003 and again he deliberately and willfully remained unauthorise absence w.e.f. 23-08-03 to 31-09-2004.

It has been observed that during his absence he has never submitted periodically Doctor's medical Certificate or never admitted in any hospital as an in-patient. There are only Doctor's Prescription issued to him by the doctor's.

He has reported for duty after a long time i.e. on 01-10-2004.

In view of the above fact, it is proved that Mr. Arun Kumar Mazumder is habitually and willfully remained unauthorise absence. He had willfully remained unauthorise absence for the maximum period during his entire service.

As per memorandum No.3/A-3/Legal/PN-8335/ (33)/ 1347 dt.18<sup>th</sup> Aug'2003, article of charges framed against PN-8335 Shri Arun Mazumder, LDC (O) is proved that he has habitually irregular and erratic in attendance and remained unauthorisedly absent from duty w.e.f. 29-08-2000 to 30-06-2003 for 1037 days without prior sanction/ intimation.

*Attended*  
*M. S. Advani*  
Date: 25 Feb'05  
Place: Narangi Depot

  
(Presenting officer)  
( S. M. Dongre )

To

The Inquiry officer

Shri B.V. Raghunathan Area Manager  
CSD, Depot, Missamari.

Ref: Inquiry report dated 25/02/05 in respect of inquiry of P.N. 8335 Sri Arun

Mazumdar, L.D.C (O) CSD Depot Narangi.

Sir,

I beg to state that I have received a copy of the Presenting officer's brief dated 25/02/05 with regard to the enquiry into the charges set out in the Memorandum of charges dated 18/08/03. That Sir, on perusal of the report as aforesaid I wish to bring the following lines to your kind notice for due consideration.

That sir, vide the aforesaid enquiry report the charges levelled against me vide the Memorandum of charges are said to be proved and I am hold to be unauthorisedly absent for 1037 days without prior sanction of leave. That Sir, in this connection I would like to state that the finding as it seems to be based on the fact that I had submitted periodical medical prescription and not the medical certificate in support of my illness.

That Sir, I would like to submitted before you that I had submitted the original medical prescriptions of Doctor at Vellore, Hyderabad, kolkata and Guwahati which reflects clearly that during the relevant time I had been suffering from severe Gastro-intestinal ailment and I had little hope of survival. Though I was not admitted to any hospital I was under complete supervision of the Doctors, I was not even in a condition to move without any help. Due to the prolonged illness I was undergoing extreme mental turmoil as well and could not take medical certificate from each of the hospitals and Doctors and neither the same was ever required be the office. The prescriptions produced by me in original hardly leave any doubt regarding the fact of

Attested  
M. K. Advocate



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my ailment. That Sir, I therefore pray that I may not be hold guilty of the charges set out in the Memorandum of charges dated 18/08/03 on technical grounds.

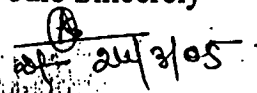
That Sir, as you also acknowledge that I had informed the office from time to time regarding the fact of my undergoing treatment and at that point of time I hardly had any time to wait for the sanction of my leave. Therefore, the days of my absence from duty were neither deliberate nor willful. But the circumstances compelled me to approach various Doctors at different places where modern and better treatment facilities are available with the hope to get cured and there is no negligence on my part to inform the office regarding the state of affairs.

That sir, during the course of enquiry at Mumbai on 10/11/04 and on two successive occasions that is 18/01/05, 16/02/05 at Naringi I had explained the reasons for my absence from duty to your complete satisfaction and had reiterated that the absence from duty was beyond my control. The absence from duty was unintentional and not deliberate. There is no negligence on my part to hold me guilty of the charges.

That sir, under the facts and circumstances I would fervently request you to consider the above and on such consideration pass necessary orders modifying/ reconsidering the enquiry report dated 25/02/05. Since I have already incurred a huge financial loss and underwent severe mental turmoil during this period. I therefore pray that the days of my absence may be regularised/ sanctioned by your goodself since things were beyond my control.

Dated: 24/03/05  
Place: Guwahati

Yours Sincerely

  
(Arun Mazumdar)  
L.D.C. (O), CSD Depot  
Narangi



— 28 —

GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEEN STORES DEPARTMENT  
"ADELPHI", 119, M. K. ROAD, -  
MUMBAI - 400 020

①  
ANNEXURE - XII

Ref No.: 3/A-3/Legal/Disc-F-8335/700

Date: 27 June '05.

To,  
✓ PN-8335,  
Shri Arun Mazumdar,  
LDC(O),  
CSD Depot,  
Narangi.

(Through Depot Manager)  
(Regd A/D)

SUB: Inquiry Report.

1. I am directed to forward you an Inquiry report received from Shri K.V.Raghuthaman (IO), Manager, Misamari Depot vide covering letter No. MMD/00112-KVR/350 dt. 1.4.05 in respect of memorandum No. 3/A-3/Legal/PN-8335(33)/1347 dt. 18.8.03 in accordance herewith Govt of India instruction No. 7 (A) of Rule 15 of CCS (CC&A) Rules 1965.

2. If you desire to make any representation or submission on above mentioned inquiry report you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter, If no reply is received within the stipulated period, it will be presumed that you have nothing to say and further action will be taken as per rule.

(A.K.Varma )

Asst. General Manager (Legal)  
For Disciplinary Authority

Encl : a/a.

CC : The Manager,  
CSD Depot,  
Narangi.

CC : The Manager,  
CSD Depot,  
Misamari.

: You are requested to handover the inquiry report to PN-8335 Shri Arun Mazumdar, LDC(O) against his signature under intimation to us.

: For information & necessary action please.

— 29 —  
Govt. of India  
Ministry of Defence  
Canteen Stores Department  
Misamari Depot

Tel: M: 03714-253535 Extn. 8355  
CM: 03714-253534, 253575  
E-mail: mmd@csdindia.com

P.O. Misamari  
Misamari Cantt.  
Assam-784 506

~~CONFIDENTIAL~~  
**CONFIDENTIAL**

Ref.No: MMD/0112-KVR/380

Date: 01<sup>st</sup> April '05.

**Brig MC Ashok Kumar**  
**JI General Manager - I**  
**Disciplinary Authority**  
**HO, CSD Mumbai**

**Sub : INQUIRY REPORT ON CHARGES LEVELLED**  
**AGAINST PN - 8335 SHRI ARUN MAZUMDAR LDC**  
**OF CSD DEPOT NARANGI**

1. **Introduction** : Undersigned was ordered to carry out an inquiry in the disciplinary case against PN-8335, Shri Arun Mazumdar, LDC of CSD Depot Narangi vide your office letter No-3/A-3/Legal/DISC-F-8335/1523 dated 29<sup>th</sup> November 2004. Charge sheet was issued to the individual vide Memorandum No-3/A-3/Legal/PN 8335/(33)/1347 dated 18<sup>th</sup> August 2003. 0086 Shri K. Ramaswamy was originally appointed as the inquiry officer vide your office letter No-3/A-3/Legal/PN 8335(33)/ 1848 dated 10<sup>th</sup> November 2003 and later on changed to undersigned's name vide letter No-3/A-3/Legal/DISC/F/8335/1523 dated 29<sup>th</sup> November 2004. PN-1859 Shri SM Dongre Asst. Manager CSD Depot Narangi was appointed as presenting officer vide order dated 10<sup>th</sup> November 2003.
2. **Broad Statement of case under inquiry** : Charge leveled is that PN-8335 Shri Arun Mazumdar found habitually irregular and erratic in attendance and has remained unauthorisedly absent from duty continuously from 29<sup>th</sup> August 2000 to 30<sup>th</sup> June 2003 for 1037 days and also disobeyed lawful orders to rejoin the duty within stipulated period. By the above act charged officer violated sub rule 23 of rules of CCS (conduct) rules 1964.
3. **Statement of Imputation** : PN-8335, Shri Arun Mazumdar, LDC(O), CSD Depot Narangi remained unauthorisedly absent for 1037 days and not reported for duty till date as intimated by Depot Managers vide letter No-NGD/EST/PN-8335/470 dated 01<sup>st</sup> July 2003. Narangi Depot had issued following telex/telegram directly to the individual to report for duty and explain the reason for his unauthorised absence, which is as follows :-
  - a) Letter No. NGD/EST/PN-8335/1530 dated 30-11-2000.
  - b) Letter No. NGD/EST/PN-8335/1038 dated 11-04-2001.
  - c) Telegram No. NGD/EST/PN-8335/1502 dated 05-06-2001.
  - d) Telegram No. NGD/EST/PN-8335/2038 dated 12-02-2001.
  - e) Telegram No. NGD/EST/PN-8335/0112 dated 30-04-2002.
  - f) Letter No. NGD/EST/PN-8335/279 dated 14-06-2002.

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Contd.2

- g) Letter No. NGD/EST/PN-8335/0067 dated 17-04-2003.  
h) Letter No. NGD/EST/PN-8335/349 dated 17-06-2003.  
i) RM(E) had also issued letter No. RME/14/EST/2658 dated 11<sup>th</sup> Jan'02 to individual to report for duty.

However, none of the letters has been acknowledged by the said PN-8335 Shri Arun Mazumdar, LDC(O), except letters dated 17<sup>th</sup> April'2003 & 17<sup>th</sup> June'2003 & forwarded application dated 03<sup>rd</sup> November 2000 advancing a reason of suffering from Typhoid fever & one more application dated Nil, pleading that he is suffering from Liver, Neurological & Gastro problem but no proof of medical certificate was forwarded by him.

Depot Manager has published a notice in Local newspaper "The Assam Tribune" on 19<sup>th</sup> April 2003, to report for duty as no intimation was received from Shri Arun Mazumdar, LDC(O).

Thus the said PN-8335 Shri Arun Mazumdar, LDC(O), by his above act did not maintain devotion to duty and exhibited conduct unbecoming of a Government Servant violating Rule 3 of CCS (Conduct) Rules 1964.

4. Conduct of Inquiry : Notice for holding preliminary enquiry was issued to all concerned vide letter No - MMD/MGR-0112/KVR.1350 dated 31<sup>st</sup> Dec' 2004 and accordingly the same was held at Narangi depot on 18<sup>th</sup> Jan'2005 in the presence of presiding officer and charged officer. Time and venue for the regular hearing was conveyed to all concerned on the day of Preliminary hearing and accordingly the same was held at CSD Depot Narangi on 16<sup>th</sup> February 2005. Presenting Officer, Charged Officer and State witness was present.
5. Preliminary hearing: During the Preliminary hearing held on 18<sup>th</sup> Jan 2005 at Narangi, Charged Officer has expressed his faith in me as Inquiry Officer and has admitted receipt of charge sheet and understanding it's content. Charges levelled against him was not admitted and as such enquired in to. Charged Officer was informed that he is permitted to have a defence assistant during the course of enquiry to which he replied that he will self defend the case. He was given chance to verify all the document listed at Annexure III, Article I of the charge sheet. It was conveyed that since he has verified all those documents and signed the same on 10<sup>th</sup> Nov'2004 at CSD Base depot before the earlier Inquiry Officer, re-verification is not required and he is satisfied with the authenticity of documents. Charged Officer has also submitted a list of documents in his defence vide letter dated 18<sup>th</sup> Jan'05. (Enclosed at Appx "B"). The same were permitted and verified and satisfied by the Presenting Officer.

The following documents were taken on charge on the day of preliminary hearing and are attached as exhibit marked as under.

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Contd-3.

**STATE DOCUMENTS**

Sl. No	Details of Documents	Marked as	Reference in Annexure III of Charge Sheet
01	Narangal Depot Letter	SE-1	NGD/EST/PN-8335/1530 dt. 30-11-2000
02	Narangal Depot Letter	SE-2	NGD/EST/PN-8335/1083 dt. 11-04-2001
03	Narangal Depot Letter	SE-3	NGD/EST/PN-8335/1502 dt. 05-06-2001
04	Narangal Depot Letter	SE-4	NGD/EST/PN-8335/2038 dt. 12-09-2001
05	Narangal Depot Letter	SE-5	NGD/EST/PN-8335/0112 dt. 30-04-2002
06	Narangal Depot Letter	SE-6	NGD/EST/PN-8335/299 dt. 14-06-2002
07	Narangal Depot Letter	SE-7	NGD/EST/PN-8335/0087 dt. 17-04-2003
08	Narangal Depot Letter	SE-8	NGD/EST/PN-8335/349 dt. 17-06-2003
09	RM(E) Letter	SE-9	RME/14/EST/2658 dt. 11-01-2002
10	Arun Mazumdar letter	SE-10	Dated 03-11-2000
11	Arun Mazumdar letter	SE-11	Dated Nil

**DEFENSE DOCUMENTS**

Sl. No	Details of Documents	Marked as	Remarks
01	Doctors Prescription dt. 08-05-2001	DE-1	Reason for absence
02	Doctors Prescription dt. 20-06-2000	DE-2	Reason for absence
03	Medical Report dated 18-11-2000	DE-3	Reason for absence
04	Doctors Prescription dt. 16-08-2001	DE-4	Reason for absence
05	Doctors Prescription dt. 26-09-2001	DE-5	Reason for absence
06	Doctors Prescription dt. 17-10-2001	DE-6	Reason for absence
07	Doctors Prescription dt. 06-05-2002	DE-7	Reason for absence
08	Doctors Prescription dt. 12-08-2002	DE-8	Reason for absence
09	Doctors Prescription dt. 29-11-2002	DE-9	Reason for absence
10	Doctors Prescription dt. 30-12-2002	DE-10	Reason for absence
11	Doctors Prescription dt. Nil	DE-11	Reason for absence
12	Doctors Prescription dt. 06-11-2001	DE-12	Reason for absence
13	Doctors fitness certificate dated 07-07-2003	DE-13	TO PROVE FITNESS

All the above has been recorded in daily order sheet No-4 dated 18<sup>th</sup> Jan'05.

6. **Regular Hearing** : As informed to all concerned on the day of Preliminary hearing, Regular hearing was conducted on 16<sup>th</sup> Feb'05 at CSD Depot Narangi. Shri S.K. Gupta, Depot Manager, Narangi, state witness was examined by the Presenting Officer. During the examination it was deposed by state witness against question put forth by presenting officer that Sri Arun Mazumdar was not on sanctioned leave immediately before to his absence and has not approached him for sanction of his leave during the period of his absence. It was informed by Shri S.K. Gupta that 08 letter/telegram on different date were sent to Shri Arun Mazumdar intimating him his unauthorised absence and asking him to join duty. As the Presenting Officer concluded his examination in chief, Shri Arun Mazumdar was asked by undersigned wheather he would like to cross examine the witness to which he replied that he doesn't want to cross examine the witness and he agree with his deposition. Charged Officer was asked by I O wheather he has any thing else to convey. He has conveyed that he was ill during the period of absence and informed the same to depts vide his letter dated Nil and another letter dated 03<sup>rd</sup> November 2000.

Later Presenting Officer cross examined the Charged Officer. During the cross examination it was admitted by Charged Officer that he was absent from duty from 29-08-2000 to 30-06-2003 and also absented himself before and after the said period and the absence was due to his illness. To a specific question by the Presenting Officer that Charged Officer was any time admitted in any hospital during the period, it was informed by Charge Officer that he was not admitted. Another important point brought out by Presenting Officer is that Medical Certificate produced by Charged Officer is not continuous and are only prescription by doctors at different date and different places to which Charged Officer conveyed that those were all the certificate he is having for treatment availed. Charged Officer and Presenting Officer was asked to file written brief by the prescribed date.

Undersigned asked Charged Officer wheather he had reasonable opportunity to defends his case, to which he replied in affirmative.

All the above has been recorded and signed by all concerned in daily order sheet No-5 dated 16<sup>th</sup> Feb'2005.

7. **Appreciation of documentary evidence** : In the present case individual remained absent from 29<sup>th</sup> August 2000 to 30<sup>th</sup> June 2003. CSD depot Narangi/RM(E) had on the following dates asked the individual to report back for duty vide letter/ Telegram.

DATE	MARKED AS
30-11-2000	SE1
11-04-2001	SE2
05-06-2001	SE3
12-09-2001	SE4
11-01-2002	SE9
30-04-2002	SE5
14-06-2002	SE6
17-04-2003	SE7
17-06-2003	SE8

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Verification of the documents and deposition of witness brings out that none of the above letter were replied by the Charged Officer nor he joined for duty. Vide his letter dated 3<sup>rd</sup> Nov'2000 he has merely intimated CSD depot Narangl that to avail further treatment for his ailment, he is planning to go to CMC Vellore and his leave may be extended with out specifying any period. Perusal of prescription issued by CMC Vellore (D E-3) indicates that he has been given medicine for 3(three) months only and further documents from this hospital has not been provided. Other prescription/ documents submitted on behalf of defence are dated as under and they are only medicine prescriptions, which indicate that he has not been admitted as an in patient during the period in any of these hospitals.

<u>Date of Prescription</u>	<u>Marked as</u>
20-06-2000	DE-2
18-11-2000	DE-3
08-05-2001	DE-1
16-08-2001.1	DE-4
26-09-2001.1	DE-5
17-10-2001.1	DE-6
06-11-2001.1	DE-12
06-05-2002.1	DE-7
12-08-2002.1	DE-8
29-11-2002.1	DE-9
30-12-2002.1	DE-10
NIL	DE-11

During the cross examination by Presenting Officer the following was agreed by Charged Officer (DOS-5).

- He was absent during the period 29-08-2000 to 30-06-2003.
- He was not admitted as an in patient at any time during the period.
- He has also absented himself from duty before and after to the period in question.
- The certificate of medical prescriptions were only the treatment he had availed during the period.

8. **Appreciation of Oral evidence** : It was conveyed by state witness during the examination that Charged Officer has not approached him for sanction of leave during the period absence. The same was agreed to by Charged Officer. Charged Officer himself was offered as a witness and conveyed that since he was ill, he couldn't join for duty.

9. **Analysis of evidence** : On analysis of documentary and oral evidence and written brief submitted by defence and state side, the following is revealed.

- Shri Arun Mazumdar was absent from 29<sup>th</sup> Aug 2000 to 30<sup>th</sup> June 2003.
- Shri Arun Mazumdar did not inform the department about his reason for absence or availed sanction for extension of his leave despite issuance of periodical reminders to him for the above period. Mere information was given to department for the first time on 31<sup>st</sup> May'2003, after a gap of more than 2 ½ years (SE-8).

CONFIDENTIAL

Contd.4.

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- c) Since the Charged Officer was not an in patient in any of the hospital during the period in question and had availed only Medicine treatment from different doctors, he had no sufficient cause for not obtaining prior sanction of department for his absence.
- d) He was in the habit of absenting from duty before to and after the period of absence being enquired in to.

10. Findings : In view of the above facts, charged sheet issued vide statement of article-I under memorandum 3/A3-Legal/PN-8335 (33)/1848 dated 10<sup>th</sup> Nov'03 to PN-8335 Shri Arun Mazumdar, LDC of CSD Depot Narangi is proved.

I am enclosing the following documents for your perusal and further necessary action please.

- a) 3 copies of the enquiry report.
- b) 3 copies exhibits and documents produced on behalf of DA and CO as per appx A to this letter including originals.
- c) 3 copies of written brief filed by Charged Officer and Presenting Officer.
- d) 3 copies of daily order sheet from Daily Order Sheet 1 to Daily Order Sheet 7 and 2 application received from Charged Officer.
- e) Correspondence File received from earlier Inquiry Officer vide BBD/AGM/INQ/PN-8335/1552 dated 06<sup>th</sup> Dec'04 with 48 enclosures.
- f) Correspondence file initiated by undersigned under reference MMD/MGR-0112/KVR with 15 enclosures.

*Aravind*  
(K.V. REGHUTHAMAN)  
INQUIRY OFFICER

CONFIDENTIAL

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~~CONFIDENTIAL~~  
**CONFIDENTIAL**  
**DEFENSE DOCUMENTS**

(8)  
**APPENDIX "A"**

Sl. No	Details of Documents	Marked as	Remarks
01	Doctors Prescription dt. 08-05-2001	DE-1	Reason for absence
02	Doctors Prescription dt. 20-06-2000	DE-2	Reason for absence
03	Medical Report dated 18-11-2000	DE-3	Reason for absence
04	Doctors Prescription dt. 16-08-2001	DE-4	Reason for absence
05	Doctors Prescription dt. 26-09-2001	DE-5	Reason for absence
06	Doctors Prescription dt. 17-10-2001	DE-6	Reason for absence
07	Doctors Prescription dt. 06-05-2002	DE-7	Reason for absence
08	Doctors Prescription dt. 12-08-2002	DE-8	Reason for absence
09	Doctors Prescription dt. 29-11-2002	DE-9	Reason for absence
10	Doctors Prescription dt. 30-12-2002	DE-10	Reason for absence
11	Doctors Prescription dt. Nil	DE-11	Reason for absence
12	Doctors Prescription dt. 06-11-2001	DE-12	Reason for absence
13	Doctors fitness certificate dated 07-07-2003	DE-13	TO PROVE FITNESS

**STATE EXHIBITS**

Sl. No	Details of Documents	Marked as	Reference in Annexure III of Charge Sheet
01	Narangji Depot Letter	SE-1	NGD/EST/PN-8335/1530 dt. 30-11-2000
02	Narangji Depot Letter	SE-2	NGD/EST/PN-8335/1083 dt. 11-04-2001
03	Narangji Depot Letter	SE-3	NGD/EST/PN-8335/1502 dt. 05-06-2001
04	Narangji Depot Letter	SE-4	NGD/EST/PN-8335/2038 dt. 12-09-2001
05	Narangji Depot Letter	SE-5	NGD/EST/PN-8335/0112 dt. 30-04-2002
06	Narangji Depot Letter	SE-6	NGD/EST/PN-8335/299 dt. 14-06-2002
07	Narangji Depot Letter	SE-7	NGD/EST/PN-8335/0087 dt. 17-04-2003
08	Narangji Depot Letter	SE-8	NGD/EST/PN-8335/349 dt. 17-06-2003
09	RM(E) Letter	SE-9	RME/14/EST/2658 dt. 11-01-2002
10	Arun Mazumdar letter	SE-10	Dated 03-11-2000
11	Arun Mazumdar letter	SE-11	Dated Nil

~~CONFIDENTIAL~~  
**CONFIDENTIAL**



To

**The Assistant General Manager (Legal)**  
**CSD HO Mumbai**

(Through proper channel)

**Ref: Office memo No.3/A-3/Legal/Disc-F-8335/700 dated 27-6-05.**

Sir,

I have received the office memo dated 27-6-05 as referred above on 5<sup>th</sup> July'2005, I have gone through it and understood the contents thereof and in this connection I would like to bring the following to your kind attention for consideration.

That Sir, as regards what has been stated vide paragraph -6 of the enquiry report dated 01-04-05 enclosed along with the office memo under reference, I would like to state that I had intimated the Depot Manager several times over telephone and also by telegram, Speedpost, Register letters and by ordinary post regarding my persisting illness. I was not in a position to collect all the medical certificates for applying leave from time to time from the doctors of Chennai, Vellore, Hyderabad, Kolkata and Guwahati where I was sent for treatment for my prolonged illness. It is also mention here that I was not aware of Medical certificate which are needed for applying leave so I produced all the medical prescription in original. At that time I was mentally disturbed whether I will survive or not., I received some letters from the competent authority to rejoin my duties. But I could not join in time due to bed-ridden. After survival from illness I joined my duties. I have enclosed the receipt of telegram, register letter, speedpost with this letter which are available with me. Now, it is very trouble some and expensive for me to collect the medical certificate from the Doctor's of Chennai, Vellore, Hyderabad, Kolkata for sanctioning my leave. I would further submit that I would like to avail the opportunity to prove my absence beyond doubt if your office considered the production of medical certificates the basis / only proof to decide my case.

Contd...2/-

*Attested  
M. S. S.  
Advocate*

*31/07/05*

-2-

That Sir, as regards what has been stated vide paragraph -7 of the report I would like to state that I could not acknowledge the receipt of all the intimations as during that period most often I was out of station for my treatment which has already been conveyed to you. I would further like to submit that the report of the enquiry officer caught me by surprise, as much as , I do not find any convincing reason to disbelieve the medical prescription issued by the competent doctors of various reputed institutions. What appears to be more painful to me is that the enquiry officer has not assigned any reason for disbelieving the medical prescription and has decided the case accordingly.

Sir, with regard to paragraph-9 of the enquiry report I would submit the statement that I did not inform the Department the reasons for my absence from duty and it was only 31-05-03 I had inform the department about the reasons for my absence is hereby denied by me as false. Since I kept on informing the depot manager regarding the state of affaire and intimated over telephone as well as by the letters that for my deteriorating health condition I was not able to attend office .Relevant postal receipt were furnished before the enquiry officer during the course of enquiry.( I enclosed the photocopies of those postal receipt for your kind perusal). Therefore I was not habitual absence, the days of absence were beyond my control due to my illness though I was not admitted to hospital but I was under constant medical supervision during that period and my health condition was so bad that I did not even had the capacity to walk without any help. Under the facts and circumstances it is not a case of habitual absenteeism and may be decided accordingly.

Date:

Yours Sincerely



Arun Mazumdar  
LDC( O),  
CSD DEPOT  
NARANGI.

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GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEEN STORES DEPARTMENT  
"ADELPHI", 119, M. K. ROAD,  
MUMBAI - 400 020

6  
ANNEXURE - XIV

Ref. No. 3/A-3/Legal/Disc.F-8335/1137

Date: 20 Oct' 2005.

CONFIDENTIAL

ORDER

WHEREAS, disciplinary proceedings were initiated against PN-8335 Shri Arun Mazumdar, LDC (O), CSD Depot, Narangi under Rule 14 of CCS (CC&A) Rules 1965 vide Memorandum No. 3/A-3/Legal/PN-8335/(33)/1347 dated 18.8.03 for remaining absent from duty w.e.f. 29.8.2000 to 18.8.2003 for 1037 days.

2. AND WHEREAS, an inquiry was ordered and conducted by PN-0112 Shri K.V.Raghuthaman, Area Manager, CSD Depot Misamari and inquiry report was submitted by him vide his letter No. MMD/0112-KVR/300 dt. 1.4.2005. The Inquiry Officer in his report has proved the charges against the said PN-8335 Shri Arun Mazumdar, LDC (O).

3. AND WHEREAS, the said inquiry report was sent to PN-8335 Shri Arun Mazumdar, LDC (O) vide our letter No. 3/A-3/Legal/Disc-F-8335/700 dated 27.6.05. He has submitted his representation dated 1.8.05 on inquiry report has denied the charges levelled against him.

4. AND WHEREAS, the undersigned has considered the inquiry report dated 1.4.2005 submitted by the inquiry officer and his findings thereto in its entirety and other relevant evidences available on record and having gone through the representation of PN-8335 Shri Arun Mazumdar, LDC (S) in reply to the Inquiry Report, the undersigned agrees with the findings of the inquiry officer.

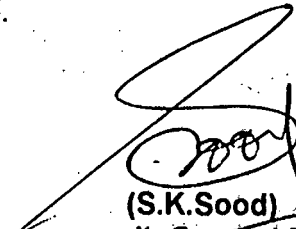
5. NOW THEREFORE, the undersigned in exercise of the powers conferred vide Rule 15 (4) of the CCS (CC&A) Rules 1965, as amended and any other enabling rules and provisions, imposes on the said PN-8335 Shri Arun Mazumdar, LDC (O), CSD Depot, Narangi, the penalty of :-

"Removal from service with immediate effect".

*Attested  
with  
Advocate*

AND WHEREAS, PN-8335 Shri Arun Mazumdar, LDC (O), CSD Depot, Narangi, is hereby given an opportunity for submission of appeal, if any, on the penalty mentioned above, he may prefer appeal to Appellate Authority within a period of forty-five days from the date the copy of the order appealed is delivered to the applicant under Rule 23 of CCS (CC&A) Rules 1965. In case, no appeal is preferred within stipulated time, it will be presumed that he has nothing to state on the penalty imposed and under Rule 25 of CCS (CC&A) Rules 1965, the appeal, if received later will be treated as time barred.

7. The receipt of this order is to be acknowledged.

  
(S.K.Sood)  
Jt. General Manager-II  
Disciplinary Authority

To  
PN-8335  
Shri Arun Mazumdar, LDC (O)  
CSD Depot,  
Narangi.

(Through Area Manager, CSD Depot Narangi)

BEFORE THE HON'BLE CHAIRMAN,  
BOARD OF ADMINISTRATION & GENERAL MANAGER,  
GOVERNMENT OF INDIA,  
MINISTRY OF DEFENCE,  
CANTEEN STORES DEPARTMENT,  
"ADELPHI" 119 MAHARISHI KARVE ROAD, P.O. BOX. 11060  
MUMBAI-400020

(Through Area Manager CSD Depot, Narangi, Assam)

Dated Guwahati  
The 1st December, 2005

IN THE MATTER OF :

An Appeal against "Order"/Ref. No. -3/A-3/  
Legal/DISC F-8335/1137 dtd. 20th October, 2005  
passed by the Jt. General Manager II (S.K. Sood),  
Disciplinary Authority, GOVERNMENT OF IN-  
DIA, MINISTRY OF DEFENCE, CANTEEN  
STORES DEPARTMENT, ADELPHI, 119 M.K.  
ROAD, MUMBAI-400020 imposing penalty of  
"Removal from service with immediate effect"

:- AND :-

IN THE MATTER OF

Shri Arun Kumar Majumdar, LDC (O), CSD  
Depot, Narangi, Assam

.....Appellant

The APPEAL of the humble appellant abovenamed.

MOST RESPECTFULLY SHEWETH

1. That your humble Appellant abovenamed is a permanent employee working as LDC (O), under administrative control of the Manager, CSD Depot, Narangi, Assam and as such, he is entitled to all the provisions laid down in the CSS (CCA) Rules, 1965 read with Article 311 of the constitution of India.

2. That, your humble appellant is a bonafide citizen of India and as such, he is entitled to all the rights and privileges guaranteed by the constitution of India.

That, in fact your humble Appellant was initially appointed as LDC on 1st July 1994 at Dimapur, Nagaland and subsequently thereafter he was transferred to Narangi Depot on 18.03.1999 solely on Medical ground and he has been continuously rendering his services in this esteemed Defence Organisation till date.

Canteen Stores Department  
5 DEC 2005  
Narangi Depot, Guwahati

Attested  
by  
Advocate

1. That, ever since his entry in service as aforesaid until the date of his removal from service on 02.11.2005, your humble Appellant had, all along been rendering his services in the esteemed Defence Organisation, most diligently and to the full satisfaction of all concerned and there had never ever arisen at any material point of time during this period of his unblemished past service career, such an occasion where upon he was asked to explain for any lapses on his part in the discharge of the duties assigned to him by the Authorities concerned.
5. That, The humble Appellant had to remain absent from duty continuously for 1037 days w.e.f. 29.08.2000 to 30.06.2003 under impelling and compelling circumstances i.e. constant running from Pillar to post for Medical Treatment scattering several parts of India namely, Appolo Hospital Chennai, C.M.C. Vellore, AIIMS at Delhi, Hyderabad, Kolkata, Guwahati and Barpeta Road, Assam etc. and the Medical Certificate therefrom are yet to be procured except Hospital/Doctors prescriptions which were since produced in original at the time of inquiry and as such, his absence from duty during the above said period was neither deliberate nor willful.
6. That, however your humble Appellant tried his level best to keep his superiors in the office informed about his continuous Medical treatment as and when it was possible for him inspite of the fact that he was reeling under very great mental depression, leading to temporary loss of mental equilibrium while struggling for life and death.
7. That, the humble appellant rejoined his duty on 1st July, 2003 and thereafter he continued his service till 2nd November, 2005.
8. That, as ill luck would have it, your humble Appellant received the memorandum of chargesheet issued to him by Jt. General Manager (Brig. D.P. Singh) in the name of Disciplinary Authority proposing to hold an Inquiry against him under rule 14 of the CCS (CCA) Rules, 1965 whereby he was charged with unauthorised absence from duty continuously w.e.f. 29.08.2000 to 30.06.2003 for 1037 days without prior sanction/ intimation and by this act he failed to maintain devotion to duty and exhibited conduct unbecoming of a Govt. Servant thereby violating sub rule 23 of rule CCS (conduct) Rules, 1964.
9. That, for the first time Sri K. Ramaswamy, AGM (Base) was stated to have been originally appointed as the inquiry officer vide Office letter No. 3/A dated 11/11/2003 (33/1848.dtd. 10th November, 2003) and the copy thereof was duly applied to the humble Appellant as required under the relevant rules.

10. That, subsequently thereafter, for the 2nd time, Sri K.V. Reghuthaman was found to have been appointed as the Inquiry Officer vide letter No. 3/A-3/Legal/DISC/F/8335/1523 dt. 29.11.2004 and the copy thereof too was not supplied to the humble Appellant as required under rule 14(2) of CCS (CCA) Rules 1965.
11. That, it is very pertinent to put on record that Shri S.M. Dongre has been named as the Presenting Officer of the instant Inquiry to represent the Disciplinary authority but there is no any indication, whatsoever anywhere during the inquiry about his formal appointment to do so and the copy thereof was never supplied to the humble appellant as required under the rule 14(5) (C).
12. That, from the facts stated hereinabove it is cleared that the process of enquiry in the begining took more than 1 year and 3 months from the date of issue of the chargesheet to the humble appellant on 18.08.2003, up to date of appointment of the 2nd Inquiry Officer on 29th November, 2004.
13. That, the preliminary Inquiry was conducted by the inquiry officer on 18th january, 2005 at Narangi Depot and the allged solitary charge of unauthorised absence for 1037 days w.e.f. 29.08.2000 to 18.08.2003 was entirely denied by the humble appellant during the Inquiry.
14. That, the regular hearing was conducted at "One Go" on 16.02.2005 at CSD Depot Narangi wherein the business of examination/cross examination/reexamination of the state witness and also inspection/ verification/authentication of Documents/ Additional Documents was haphazardly carried out and thus, put and end to the Inquiry drama without declaring it as closed.
15. That, your humble appellant was struck by surprised to received the ORDER/Ref. No. /A-3/Legal/Disc.-F-8335/1137 dt.20.10.2005 passed by the Jt. General Manager II (S.K. Sood) Disciplinary Authority imposing upon him the penalty of 'Removal of Service with immediate effect'
16. That, being highly aggrieved by and dissatisfied with the order Ref. No. 3/A-3/Legal/Disc.F-8335/1137 dt. 20.10.2005 (hereinafter referred to as the Impugned order) your humble Appellant prefers this appeal on the following grounds, amongst addressed :
  - i) For that the impugned order dt. 20.10.2005 is bad in procedural law as well as in fact and is liable to be quashed and set aside.
  - ii) For that the procedure prescribed in the rules has not been duly complied with an such non compliance has resulted in violation of the provisions under (Article 311 of the constitution of Indian Leading to the failure of Natural Justice.

iii) For that the Disciplinary authority committed a mistake in issuing vital orders/Documents under the name and Designation of several Disciplinary authorities namely (a) Memorandum of chargesheet by Brig. D.P. Singh (Disciplinary Authority) (b) Inquiry report by Brig. M.C. Ashok Kumar, Jt. General Manager -I (Disciplinary Authority) and (c) Removal order by (S.K. Sood) Jt. General Manager-II (Disciplinary Authority)

iv) For that the (Disciplinary Authority) committed a grave mistake in not supplying a copy of the appointment and later of the Inquiry Officer to the humble Appellant and thereby violated the provision under rule 14 (2) of CCS (CCA) Rules, 1965

v) For that the Disciplinary Authority has committed another great mistake in not formally appointing a presenting officer with a copy thereof being supplied to the humble Appellant and thereby violated the provisions under rule 14 (5) (C) Ibid.

vi) For that the Disciplinary Authority has erred in not completing the instant Departmental Inquiry within the time frame laid down in the CCS (CCA) Rule leading to failure of Natural Justice.

vii) For that Disciplinary Authority whichever it may be has erred in not assessing that the Impugned Order dt. 20.10.2005 is violative of the provision of the CCS (CCA) Rules as well as standing order/instructions issued thereunder by the Govt. of India from time to time in respect of the procedure to be adopted by the Disciplinary Authority before, during and after the Departmental Inquiry.

viii) For that Disciplinary authority has failed to appreciate that the major penalty of removal imposed upon the humble appellant is not commensurate with the gravity of the offence committed.

ix) For that Disciplinary authority has failed to assess whether the unauthorised absence falls within the types of cases which may merit action for imposing major penalties, i.e.

1. Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Govt. Servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law e.g :-

a) Possession of disproportionate assets ;

b) Obtaining or attempting to obtain illegal gratification ;



c) Misappropriation of Govt. Property, money or stores ;

d) Obtaining or attempting to obtain any valuable things or pecuniary advantage without consideration or for a consideration which is not adequate.

2. Falsification of Govt. Records

3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

4. Misuse of official position or power for personal gain

5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the official secrets Act.

6. <sup>F use</sup> claims on the Govt. like T.A. claims, reimbursement claims etc.  
(ANNEXURE below rule 14 GI (3))

x) For that, the Disciplinary Authority has committed an irreparable mistake in not quoting the specific provisions of CCS (CCA) Rule while passing the Impugned order dt. 20.10.2005 imposing major Penalty of removal of service on the humble Appellant and as such, It is liable to be quashed and set aside.

xi) For that, the Final Report of the Inquiry officer dt. 1st April, 2005 on the DEpartment proceeding conducted at "One Go" on 18.02.2005, is not only highly irregular and unfair, but also arbitrary and illegal and as such, it can in no way, be a basis for arriving at a conclusion/decesion to imposed a grave penalty of removal of the humble appellant from service.

xii) For that, the Jt. General Manager II, Disciplinary Authority, while passing the impugned order dt. 20th October, 2005, has failed to see whether the relevent provisions of the prescribed procedure have been duly adhered to and if not, whether such non - adherence has resulted in any legal flaw leading to mis carriage of Justice.

xiii) For that, Impugned Order dt. 20.10.2005 is not based on the decesion reached according to procedure established by law and is a result of caprice, whim or fancy or reached on ground of policy or expediency.

xiv) For that, Impugned Order dt. 20.10.2005 is not self contained, speaking and reasoned order.

- xv) For that, the Impugned Order dtd. 20.10.2005 is product of Administrative bias.
- xvi) For that, the Impugned Order dt. 20.10.2005 is product of colourable exercise of power.
- xvii) For that, since the impugned order dt. 20.10.2005 does not conform to the legal requirements, it is liable to be held invalid, if challenged in a court of competent jurisdiction.
- xviii) For that, the punishment is not commensurate with the gravity of the offence.
- xiv) For that, the punishment is far in excess and brutal with calamitous consequences while the humble Appellant belongs to the poorer section of the Society.
17. That this humble APPEAL is filed within the prescribed time limit (Excluding Bandhs, Holidays, etc.) as the Impugned Order dt. 20.10.2005 was received by the humble Appellant on 2nd November, 2005.
18. That, this humble APPEAL is preferred bonafide for the ends of justice.
19. That your humble Appellant shall be subjected to suffer from excruciating hardships financially and other wise and would be deprived of his service benefits due and admissible to him as per rules if this APPEAL is not admitted and the Impugned Order dt. 20.10.2005 is not quashed and set aside.

In the premises and circumstances stated above, it is most humbly prayed that YOUR HONOUR would be graciously pleased to :

- a) Admit this Appeal.
- b) Call for the records and after examination of the records and after hearing the parties if your honour deem it fit and proper, further be pleased to squash and set aside the impugned order Ref. No. 3/A-3/Legal/Disc.-8335/1137 dt. 20.10.2005 and acquit your humble Appellant from the solitary alleged charge and grant other relief or reliefs on such terms and conditions as may be due and admissible to him as per rules for which act of your kindness, your humble Appellant shall ever Pray.

Humble Appellant



(Arun Kumar Mazumdar)

L.D.C.(O)

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Copy to :

Jt. General Manager-I (S.K. Sood)  
Disciplinary Authority, Govt. of India  
Ministry of Defence  
Canteen Stores Department  
"Vardhni", 119, M.K. Road, Mumbai - 400020

For favour of information and necessary action with reference to his order Ref. No./  
3A-3/Legal/Disc.F-8335/1137 dt. 20.10.2005

*Attested  
Advocate*

Humble Appellant

  
21/12/05  
(Arun Kumar Mazumdar)  
L.D.C.(O)  
CSD Depot, Narangi  
PN- 8335

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ANNEXURE - XVI

16

GOVERNMENT OF INDIA  
MINISTRY OF DEFENCE  
CANTEEN STORES DEPARTMENT  
"ADELPHI", 119, M. K. ROAD,  
MUMBAI - 400 020

Ref. No. 3/A-3/Legal/Disc-F-8335/326

Date: 15 May 2006

CONFIDENTIAL

APPELLATE ORDER

WHEREAS, disciplinary proceedings under Rule 14 of CCS (CC&A) Rules 1965 was initiated against PN-8335 Shri Arun Mazumdar, LDC (O), CSD Depot, Narangi vide Memorandum No. 3/A-3/Legal/PN-8335/(33)/1347 dated 18.8.03 for unauthorised absence.

2. AND WHEREAS, the aforesaid Memorandum was received and acknowledged by PN-8335 Shri Arun Mazumdar, LDC (O) on 27.9.03 as per postal acknowledgement due card and as confirmed by Area Manager, Narangi vide his letter No. NGD/EST/PN-8335/1277 dated 14.10.03.

3. AND WHEREAS, PN-8335 Shri Arun Mazumdar, LDC (O) had denied the charges vide his letter dated 18.10.03, an inquiry was ordered. PN-0086 Shri K. Ramaswamy, Area Manager, CSD Depot Ramgarh was appointed as Inquiry Officer vide order No. 3/A-3/Legal/PN-8335/(33)/1848 dt. 10.11.03. Due to ill health of Shri K. Ramaswamy and his subsequent transfer to Mumbai Base Depot as AGM (Base), PN-0112 Shri K.V. Reghuthaman, Area Manager, CSD Depot Missamari was appointed as Inquiry Officer vide order no. 3/A-3/Legal/Disc-F-8335/1523 dated 29.11.2004. Shri K.V. Reghuthaman, Area Manager, CSD Depot Missamari, submitted the inquiry report vide his letter No. MMD/0112-KVR/300 dtd. 1.4.05, in which the charges were proved.

4. AND WHEREAS, the Inquiry Report was sent to PN-8335 Shri Arun Mazumdar, LDC (O), vide letter No. 3/A-3/Legal/Disc-F-8335/700 dt. 27.6.05. PN-8335 Shri Arun Mazumdar, LDC (O), in his reply to the findings of the Inquiry officer, vide his letter dt. 1.8.05, once again denied the charges framed against him.

5. AND WHEREAS, the Disciplinary Authority after careful consideration of Inquiry Report dated 1.4.05 and documentary evidences available on records having satisfied that misconduct was committed by the individual had imposed the penalty of

"Removal from service with immediate effect".

vide order No. 3/A-3/Legal/Disc-F-8335/1137 dt. 20.10.05.

*Affected  
with  
private*

6. AND WHEREAS, said penalty order dtd. 20.10.05 was handed over to PN-8335 Shri Arun Mazumdar, LDC (O) on 2.11.05 as confirmed by Area Manager, Narangi Depot vide his letter No. NGD/EST/PN-8335/1242 dt. 7.11.05.

7. AND WHEREAS, the said PN-8335 Shri Arun Mazumdar, LDC (O) has submitted an appeal dtd. 1.12.05 to Appellate Authority denied the charges in the penalty order on the following grounds :-

That, the humble Appellant had to remain absent from duty continuously for 1037 days w.e.f. 29.8.2000 to 30.6.2003 under impelling and compelling circumstances i.e. constant running from Pillar to post for Medical Treatment scattering several parts of India namely, Appolo Hospital Chennai, C.M.C. Vellore, AIIMS at Delhi, Hyderabad, Kolkata, Guwahati and Barpeta Road, Assam etc and the Medical Certificate therefrom are yet to be procured except Hospital/Doctors prescriptions which were since produced in original at the time of inquiry and as such, his absence from duty during the above said period was neither deliberate nor willful. That, however your humble Appellant tried his level best to keep his Authorities in the office informed about his continuous Medical treatment as and when it was possible for him inspite of the fact that he was reeling under very great mental depression. Leading to temporary loss of mental equi-poise while struggling for life and death. That, for the first time Sri K. Ramaswamy, AGM (Base) was stated to have been originally appointed as the inquiry officer vide Office letter No. 3/A-3/Legal/PN-8335 (33)/1848 dtd. 10<sup>th</sup> November, 2003 and the copy thereof was not supplied to the humble Appellant as required under the relevant rules. That, subsequently thereafter, for the 2<sup>nd</sup> time, Sri K.V.Reghuthaman was found to have been appointed as the Inquiry Officer vide letter No. 3/A-3/Legal/DISC/F/8335/1523 dtd. 29.11.04 and the copy thereof too was not supplied to the humble Appellant as required under rule 14 (2) of CCS (CCA) Rules 1985. That, from the facts stated hereinabove it is clear that the process of enquiry in the beginning took more than 1 year and 3 months from the date of issue of chargesheet to the humble appellant on 18.8.03, upto date of appointment of the 2<sup>nd</sup> Inquiry Officer on 29<sup>th</sup> November, 2004. That, the regular hearing was conducted at "One Go" on 16.2.05 at CSD Depot Narangi wherein the business of examination / cross examination / reexamination of the state witness and also inspection / verification / authentication of Documents / Additional Documents was haphazardly carried out and thus, put an end to the Inquiry drama without declaring it as closed. That, your humble appellant was struck by surprise to receive the ORDER/Ref. No. /A-3/Legal/Disc-F-8335/1137 dt. 20.10.05 passed by the Jt. General Manager II (S.K.Sood) Disciplinary Authority imposing upon him the penalty of 'Removal of Service with immediate effect'.

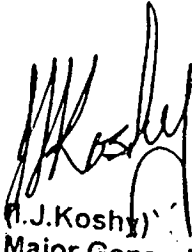
8. The medical certificate towards illness should have been produced by DE, even at a later date which he has not done. Moreover, as per the Supreme Court ruling in case No. 2531 of 2001 it has been clearly stated that prolonged medical treatment cannot be taken as ground for unauthorised absence. The above individual was absent from duty from 29.8.2000 to 30.6.2003. He did not inform the department about the reason despite issuance of periodical

reminders to him for the above period. Mere information was given to the department for the first time on 31.5.03 after a gap of more than 2 ½ years after remaining absent from duty. PN-0086 Shri K. Ramaswamy the then Area Manager, CSD Depot Ramgarh was appointed as Inquiry Officer and PN-1859 Shri S.M.Dongre, Asst Manager, CSD Depot Narangi, was appointed as Presenting Officer vide order No. 3/A-3/Legal/PN-8335/(33)/1848 and 3/A-3/Legal/PN-8335/(33)/1847 both dated 10.11.03 respectively. As per Narangi Depot letter No. NGD/EST/PN-8335/1520 dtd. 25.11.03 the orders of appointment of IO / PO was sent to PN-8335 Shri Arun Mazumdar, LDC (O) at his address as he was absent from duty. Area Manager, Narangi Depot again stated vide his letter No. NGD/EST/PN-8335/2008 dt. 24.12.03 that original envelope alongwith the copy of the order despatched to Shri Arun Mazumdar to his home address for his acknowledgement has been returned to them undelivered by the postal authorities with remarks "Refused, return to sender" on 9.12.03, so was put on the envelope. Moreover, as per Govt of India's instruction under Rule 30 of CCS (CC&A) Rules 1965 "if the document sent by Regd post, Acknowledgement due, is not accepted by the addressee and is returned by the post office to the sender" further action can be taken, as if the document has been served and due notice has been given to the employees concerned. PN-0112 Shri K.V.Regghuthaman, Area Manager, Misamari Depot was appointed as Inquiry Officer in the place of PN-0086 Shri K.Ramaswamy, AGM (Base), Base Depot as per order No. 3/A-3/Legal/Disc-F-8335/1523 dtd. 29.11.04, due to transfer of Shri K. Ramaswamy from Ramgarh Depot to Base Depot and also due to his ill health and copy of the above order was endorsed to Shri Arun Mazumdar. Moreover, Shri K.V.Regghuthaman, Inquiry Officer vide his letter No. MMD/MGR-0112/KVR/1350 dtd. 31.12.04 had advised PN-8335, Shri Arun Mazumdar to be present for the hearing scheduled to be held on 18.1.2005, which was attended by him. The memorandum No. 3/A-3/Legal/PN-8335/(33)/1347 dated 18.8.03 was issued against PN-8335 Shri Arun Mazumdar, but as he was absent from duty from 23.8.03 the memorandum was despatched to his home address as per Narangi Depot letter No. NGD/EST/PN-8335/1194 dated 24.9.03 and vide their letter No. NGD/EST/PN-8335/1286 dtd. 11.10.04 Shri Arun Mazumdar, has reported for duty on 1.10.04 hence the inquiry could not be held. Moreover, Shri Arun Mazumdar did not attend the inquiry on following dates : 29.03.2004 & 19.10.2004. In view of this, the inquiry took 1 year and 3 months, which was ultimately completed on 16.02.2005 by Shri K.V.Regghuthaman. As per Inquiry Officer's report regular hearing was conducted on 16.2.05 at CSD Depot Narangi. Shri Arun Mazumdar was not on sanctioned leave prior to his absence and has not approached him for sanction of his leave during the period of his absence the inquiry office has proved the charges on the following grounds : -

1. He was absent for the period from 29.8.2000 to 30.6.2003.
2. He was not admitted in Hospital as an in patient at any time during the period.
3. He has also absented himself from duty before and after the period in question.

The certificates submitted by the DE were only medical prescriptions for the treatment he had availed during the period. After careful consideration of inquiry report the Disciplinary Authority has rightly awarded a penalty of "Removal from service with immediate effect to the individual."

NOW THEREFORE, the undersigned as Appellate Authority in exercise of the powers conferred vide Rule 27(3) of the CCS (CC&A) Rules 1965, has decided to reject the appeal dtd. 1.12.05 submitted by PN-8335 Shri Arun Mazumdar, LDC (O), CSD Depot, Narangi, and uphold the order dtd. 20.10.2005 of Disciplinary Authority.

  
P.J. Koshy  
Major General  
General Manager  
Appellate Authority

To  
PN-8335  
Shri Arun Mazumdar, LDC (O)  
CSD Depot,  
Narangi.

(Through Area Manager, CSD Depot Narangi)

*Attested  
By  
Advocate*

31 MAY 2007

गुवाहाटी बेंच

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. NO.283 OF 2006

Sri Arun Kr. Mazumdar

...Applicant

-Versus-

Union of India & Ors.

....Respondents

The written statement filed on  
behalf of the Respondents above  
named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraph 1 of the instant application the Respondents have no comment.

2. That with regard to the statement made in paragraphs 2 and 3 of the instant application the Respondents have no comment.

3. That with regard to the statement made in paragraphs 4.1 and 4.2 of the instant application the Respondents have no comment.

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Moghe Grantham Hain  
31 Case  
30.5.07



4. That with regard to the statement made in paragraph 4.3 of the instant application the Respondents beg to state that the medical certificate towards illness should have been produced by the applicant, even at a later date, which was not done. Moreover, as per the Supreme Court ruling in case No. 2531 of 2001, it has been clearly stated that prolonged medical treatment cannot be taken as a ground for unauthorised absence.

5. That with regard to the statement made in paragraph 4.4 of the instant application the Respondents beg to state that Shri Arun Mazumdar was absent from duty from 29.8.2000 to 30.6.2003. He did not inform the department about the reason despite issuance of periodical reminders to him for the above period. Mere information was given to the department for the first time on 31.05.2003 after a gap of more than 2 1/2 years after remaining absent from duty.

6. That with regard to the statement made in paragraph 4.5 of the instant application the Respondents have no comment.

7. That with regard to the statement made in paragraph 4.6 of the instant application the Respondents beg to state that the charges framed against PN-8335 Shri Arun Mazumdar, LDC (D), was for unauthorised absence.

ce of 1037 days from 29.08.2000 to 30.06.2003, hence the applicant attended the office regularly from 01.07.2003 till removal from service has no relevance.

8. That with regard to the statement made in paragraph 4.8 of the instant application the Respondents beg to state that Shri K. Ramaswamy, the then Area Manager, CSD Depot Ramgarh was appointed as Inquiry Officer and PN-1859 Shri SM Dongre, Asstt. Manager, CSD Depot, Narengi was appointed as Presenting Officer vide order No. 3/A-3/Legal/PN-8335/(33)/1848 and 3/A-3/Legal/PN-8335/(33)/1847 both dated 10.11.03. The Area Manager, CSD Depot, Narengi has intimated vide his letter No. NBD/EST/PN-8835/1520 dated 25.11.03, the orders of appointment of ID/PO was sent to Shri Mazumdar at his residence address as he was absent from duty which was returned to Narengi Depot undelivered by the Postal Authorities with remarks "Refused return to sender" on 9.12.03. As per Govt. of India's instruction under Rule 30 of CCS (CD&A) Rules 1965 placed as "if the document sent by registered post, Acknowledgement due, is not accepted by the addressee and is returned by the post office to the sender", further action can be taken, as if the document has been served and due notice has been given to the employees concerned.

A copy of the instruction under Rule 30 of CCS (CD&A) Rules 1965 is annexed herewith as Annexure - R-1.

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9. That with regard to the statement made in paragraph 4.8 of the instant application the Respondents beg to state that Shri Reghuthaman, Area Manager, CSD Depot, Misamari was appointed as Inquiry Officer in place of Shri Ramaswamy, AGM (Base), Base Depot, Mumbai as per order No.3/A-3/Legal/Disc-F-8335/1523 dated 29.11.04. Hence the statement of the applicant that the appointment of IO/PO were never communicated to him is false and misleading to this Hon'ble Tribunal.

10. That with regard to the statement made in paragraph 4.9 of the instant application the Respondents have no comment.

11. That with regard to the statement made in paragraph 4.10 of the instant application the Respondents beg to state that as per the inquiry officers report, regular hearing was conducted on 16.02.05 at CSD Depot, Narengi, Shri S.K. Gupta, Area Manager, CSD Depot, Narengi state witness was examined by the Presenting Officer. During the examination it was deposed by state witness, that Shri Mazumdar was not on sanctioned leave prior to his absence and has not approached him for sanction of his leave during the period of his absence. The Inquiry Officer has proved the charges on the following grounds:

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- a) He was absent for the period from 29.8.2000  
to 30.6.03.
- b) He was not admitted in hospital as an in  
patient at any time during the period.
- c) He has also absented himself from duty before  
and after the period in question.
- d) The certificates submitted by the applicant  
were only medical prescriptions for the  
treatment he had availed during the period.

12. That with regard to the statement made in paragraph 4.11 of the instant application the Respondents have no comment.

13. That with regard to the statement made in paragraph 4.12 of the instant application the Respondents beg to state that the medical certificate towards illness should have been produced by the applicant even after a later date which has not been done. The applicant has merely intimated the department for the first time on 31.5.2003 after a gap of more than 2 1/2 years after remaining absent from duty. Hence the claim of the individual is false and misleading as it lacked merits.

14. That with regard to the statement made in paragraph 4.13 of the instant application the Respond-

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dents beg to state that after careful consideration of inquiry report, the Disciplinary Authority has rightly awarded a penalty of "Removal from service with immediate effect" to the applicant.

15. That with regard to the statement made in paragraph 4.14 of the instant application the Respondents beg to state that the Inquiry Officer has rightly proved the charges and after examining all documents/evidences the disciplinary authority had come to the conclusion to impose the penalty. Before imposing the penalty, all facts have been carefully considered by the Disciplinary Authority, after which the penalty order was issued, which is in order. Shri Mazumdar had remained unauthorised absent for 1037 days w.e.f. 29.8.2000 to 30.6.2003 and after denying the charges by the applicant the IO/PO was appointed and the Inquiry Officer had proved the charges. In view of the long absenteeism and as per the orders of Supreme Court the penalty of removal from service with immediate effect was rightly awarded.

A copy of the Supreme Court Judgment dtd. 18.2.2003 is annexed herewith as Annexure-R-2

16. That with regard to the statement made in paragraph 4.15 of the instant application the Respondents have no comment.

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17. That with regard to the statement made in paragraph 4.16 of the instant application the Respondents beg to state that Sri Arun Mazumdar was absent from duty from 29.8.2000 to 30.6.2003. He did not inform the department about the above period. Mere information was given to the department for 'the first time on 31.05.2003' after a gap of more than 2 1/2 years after remaining absent from duty. The Inquiry Officer has rightly proved the charges and after examining all documents/evidences the disciplinary authority has come to the conclusion to impose the penalty. Before imposing the penalty, all facts have been carefully considered by the Disciplinary Authority, after which the penalty order was issued, which is in order. Shri Mazumdar had remained unauthorisedly absent for 1037 days w.e.f. 29.8.2000 to 30.6.2003 and after denying the charges by the applicant the IP/PO was appointed and the Inquiry Officer had proved the charges. In view of the long absentee and as per the orders of Supreme Court, the penalty of removal from service with immediate effect was rightly awarded.

18. That with regard to the statement made in paragraph 4.17 of the instant application the Respondents beg to state that the regular hearing was conducted at "One Go" on 16.02.2005 at CSD Depot Narengi wherein the business of examination/cross examination/

re-examination of the state witness and also inspection/ verification/authentication of documents/additional documents was carried out carefully.

After careful consideration of the Inquiry Report only, imposed the penalty, by the Disciplinary Authority.

The Appellate Authority in exercise of the powers conferred vide Rule 27(3) of CCS (CCA) Rules 1965, has decided to reject the appeal dated 01.12.2005 submitted by the applicant and uphold the order dated 20.10.2005 of the Disciplinary Authority.

The Inquiry Officer has rightly proved the charges and after examining all the documents/evidence, the disciplinary authority had come to the conclusion to impose the penalty. Thus the claim of the applicant is baseless and fault.

19. That with regard to the statement made in paragraph 4.13 of the instant application the Respondents have no comment.

20. That with regard to the statement made in paragraph 5.1 of the instant application the Respondents beg to state that the applicant was absent from duty continuously for 1037 days without intimation. The applicant has merely intimated to the department for the first time on 31.5.2003 after a gap of more than 2 1/2 years after remaining absent from duty.

21. That with regard to the statement made in paragraph 5.2 of the instant application the Respondents beg to state that the applicant was absent from duty from 29.8.2000 to 30.6.2003. He did not inform the reason despite issuance of periodical reminders to him for the above period. Mere information was given to the department for the first time on 31.5.2003 after a gap of more than 2 1/2 years after remaining absent from duty.

22. That with regard to the statement made in paragraph 5.3 and 5.4 of the instant application the Respondents beg to state that the Memorandum No. 3/A-3/Legal/PN-8335/(33)/1347 dated 18.8.03 was issued against the applicant, but due to absenteeism from duty w.e.f from 23.8.03, the memorandum was dispatched to his home address which was acknowledged by the applicant on 27.9.03. The orders of appointment of IO/PO was sent to the applicant's residence as he was absent from duty, which was returned to them undelivered by the Postal Authorities with remarks "Refused return to sender" on 9.12.03 hence the inquiry could not be held. As per Govt. of India's instruction under Rule 30 of CCS (CC&A) Rules 1965 placed as "if the document sent by registered post, Acknowledgement due, is not accepted by the addressee and is returned by the post office to the sender", further action can be taken, as if the document



has been served and due notice has been given to the employees concerned. The applicant did not attend the inquiry on 29.03.04 and 19.10.2004. Hence, the allegation of the applicant is absolutely false and misleading this Hon'ble CAT. the charge of the infirmity in the inquiry is baseless.

A copy of the postal receipt dtd. 9.12.03 with remarks "Refused returned the sender" is annexed herewith as Annexure -R-3.

23. That with regard to the statement made in paragraph 5.5, 5.6 and 5.7 of the instant application the Respondents beg to state that the regular hearing was conducted at "One Go" on 16.02.2005 at CSD Depot Narengi wherein the business of examination/cross examination/ re-examination of the state witness and also inspection/ verification/authentication of documents/ additional documents was carried out carefully.

The appeal made by the applicant was carefully considered and found that it was devoid of any merit and hence rejected.

After careful consideration of the Inquiry Report only, imposed the penalty, by the Disciplinary Authority. The Appellate Authority in exercise of the powers conferred vide Rule 27(3) of CCS (CC&) Rules 1965, has decided to reject the appeal dated 01.12.2005 submitted by the applicant and uphold the order dated 20.10.2005 of the Disciplinary Authority.

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The Inquiry Officer has rightly proved the charges and after examining all the documents/evidence, the disciplinary authority had come to the conclusion impose the penalty. Thus the claim of the applicant is baseless and fault.

24. That with regard to the statement made in paragraph 5.8 and 5.9 of the instant application the Respondents beg to state that the applicant is trying to seek shelter of Article 21 which is not applicable in the instant case. The applicant is found to be deliberately absenting himself from duty without intimating the department and he even refused to accept letters issued by the department. The claim of the applicant is devoid of any merit and hence rejected.

25. That with regard to the statement made in paragraph 5.9 of the instant application the Respondents beg to state that in the penalty order on Rule 15(4) of CCS (CCA) Rules 1965 has been quoted under which the major punishment can be given.

26. That with regard to the statement made in paragraph 5.10 of the instant application the Respondents beg to state that the applicant was given reasonable opportunity to defence during the inquiry proceedings to which he said during the inquiry that he got

reasonable opportunities. Thus the claim of the applicant is false and baseless. The Respondents further beg to state that the grounds set forth in this instant application are not good grounds and also not tenable in the eye of law and as such the instant application is liable to be dismissed.

27. That with regard to the statement made in paragraph 6 and 7 of the instant application the Respondents have no comment.

28. That with regard to the statement made in paragraph 8.1, 8.2 and 8.3 of the instant application the Respondents beg to state that the inquiry officer has rightly proved the charges and after examining all documents/evidences the disciplinary authority and the appellate authority have come to the conclusion to impose the penalty. The applicant was absent from duty from 29.8.2000 to 30.6.2003. He did not inform the department about the reason despite issuance of periodical reminders to him for the above period. The applicant has been given several opportunity to improve upon. Hence, the respondents humbly submit that the OA is devoid of merits and liable to be dismissed.

29. That with regard to the statement made in paragraph 9 of the instant application the Respondents beg to state that the respondents beg to state that the

instant application is illegal and illfounded and therefore the applicant is not entitled to get any interim relief.

30. That the respondents submit that the discussion of above noted facts and circumstances the instant application has no merit and as such is liable to be dismissed.

14

VERIFICATION

I, T. G. R. NAIR S/o. P. Gopinathan Nair  
 aged about 52 years, R/o Narangi  
 District Kamrup and competent officer of the  
 answering respondents, do hereby verify that the state-  
 ment made in paras 1 to 7, 9 to 14, 16 to 21, 23 to 30 are true  
 to my knowledge and those made in paras 8, 15, 22  
 being matters of record are true to my information  
 derived therefrom which I believe to be true and the  
 rests are my humble submission before this Hon'ble  
 Tribunal.

And I sign this verification on this 25th day  
 of May 2007 at Guwahati.

hman  
 Signature

- (1) the President has power to review any order under the CCS (CCA) Rules, 1965, including an order of exoneration, and
- (2) the aforesaid power of review is in the nature of revisionary power and not in the nature of reviewing one's own order.

The matter has been examined in consultation with the Ministry of Law who have observed that the judgment of the Delhi High Court would indicate that the President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, Rule 29 of the CCS (CCA) Rules, 1965, has been amended to make it clear that the power available under that rule is the power of revision and a new rule, Rule 29-A, has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted that while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965, exercise the power of revision under that rule, the power of review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction of Rule 29-A, the heading of Part-VIII of the CCS (CCA) Rules, 1965, has also been appropriately changed as "Revision and Review".

[ G.I., M.H.A., O.M. No. 11012/1/80-Est. (A), dated the 3rd September, 1981. ]

## PART - IX

### MISCELLANEOUS

#### 30. Service of orders, notices, etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

#### GOVERNMENT OF INDIA'S INSTRUCTION

Service of orders at residence of subordinate staff not to be made by Gazetted Officers.—It has come to the notice of the Director-General that in certain cases Gazetted Officers have gone to the residence of subordinate staff with a view to serve orders, notices, etc., which the officials were trying to avoid for one reason or the other. The Director-General considers that the practice of deputing Gazetted Officers to serve such notices/orders on subordinate staff at the latter's residence is highly objectionable, besides being embarrassing to the Gazetted Officers concerned.

This question has since been considered that wherever an officer is satisfied that a subordinate is wilfully evading the acknowledgement of a

document, he should record all the facts within his knowledge which lead him to this conclusion on the file, and having done so, the document should be sent to the official concerned by Registered Post, Acknowledgement Due at the last known address of the employee. If the document sent by Registered Post, Acknowledgement Due, is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned.

It may also be impressed on all the employees that if any one fails to turn up to accept a document intended for him, when required to do so, he is liable to be treated as absent from duty without leave and will suffer all the consequences of such absence.

In a rare case where it may be absolutely necessary to depute an official for delivering a document at the residence of an employee, a Gazetted Officer should, in no case, be deputed for this purpose, and an official, not higher in rank than Inspector of Post Offices/Town Inspector/Phones Inspector, etc., be deputed for this purpose, if necessary.

[ D.G., P. & T. Letter No. 101/1/65-SPA, August, 1965. ]

#### 31. Power to relax time-limit and to condone delay

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

#### 32. Supply of copy of Commission's advice

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order.

#### GOVERNMENT OF INDIA'S INSTRUCTION

Copy of advice by UPSC to be given to Government servant.—Rule 32 lays down *inter alia* that a copy of the advice given by the Union Public Service Commission should be furnished to the Government servant concerned. It has been decided, in consultation with the Commission, that henceforth the Commission should furnish two spare copies along with the original advice letter in each case.

[ G.I., M.H.A., O.M. No. F. 23/19/60-Est. (B), dated the 29th December, 1964. ]

#### 33. Transitory Provisions

On and from the commencement of these rules, and until the publication of the Schedules under these rules, the Schedules to the

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Answer - R-2  
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attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief, if he could not understand the content of column Nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was automatic, cannot be accepted.

13. The High Court in passing the impugned order took support of the judgment of this Court in *Regional Manager, Bank of Baroda vs. Presiding Officer, Central Government Industrial Tribunal and another* [(1999) 2 SCC 247]. The very judgment specifically stated, thus:-

"We make it clear that this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future."

14. It is unfortunate that the High Court treated the said judgment as a precedent despite this Court's saying that it will not be treated as a precedent in future, while confining the said judgment to the peculiar facts and circumstances of the case.

15. In view of what is stated above and taking note of the facts and circumstances of the case, we are not inclined to accept the argument of the learned counsel for the respondent that this Court may not disturb the impugned order exercising jurisdiction under Article 136 of the Constitution of India.

16. In our considered view, the impugned judgment and order of the High Court cannot be sustained. Hence, the appeal is allowed. The impugned judgment is set aside and the order passed by the Tribunal is restored. No costs.

# SUPREME COURT OF INDIA

Civil Appeal No. 2531 of 2001.

With

Civil Appeal Nos. 2884/2001, 2860/2001, 3268/2001, 3269/2001, 3270/2001, 3271/2001, 5057/2000, 3273/2001, 4343/2000, 2602/2000, 3274/2001, 3272/2001, 2861/2001, 3275/2001, 2946/2001, 2915/2001,

SLP (C) Nos. 13896/2002 and 12/2003

Decided on 18. 2. 2003.

Maan Singh

Appellant

Versus

Union of India & Ors.

Respondents

For the Appearing Parties : Mr. H.L. Aggarwal, Sr. Advocate, Mr. C.N. Sree Kumar, Ms. M. L. Shujjatha, Ms. Deepa S. Monappan, Mr. K.C. Kaushik, Ms. Sunita Sharma, Mr. R.S. Rana, Mr. J.K. Bhatia, Mr. R.N. Poddar, Mr. H.V.P. Sharma, Mr. Shiv Sagar Tiwari, Ms. Chitra Markandaya, Ms. Meera Agarwal, Mr. T.S. Munjral, Ms. Kanwaljit Kochhar, Mr. R.S. Suri, Mr. R.K. Talwar, Mr. Yash Pal Dhingra, Mr. Vipin Gogia, Ms. Jaspreet Gogia, Mr. L.N. Gupta, Ms. Promila, Mr. Nidesh Gupta, Mr. Naveen Singh, Mr. Rajeev Sharma, Ms. Naresh Bakshi, Mr. P.N. Puri, Mr.

January  
 Gogoi  
 P.N.

R.D. Upadhyay, Mr. D.S. Mahra, Mr. A.P. Mohanty, Mr. Neeraj Kumar Jain, Mr. Bharat Singh, Mr. Sanjay Singh, Mr. Ugra Shankar Prasad and Mr. Mukul Gupta, Advocates.

PRESENT

The Hon'ble Mr. Justice B.P. Jeevaiah  
The Hon'ble Mr. Justice G.P. Mahajan

- (A) Delhi Police Act, 1978—Section 21—Absence From Duty—Dismissal—Charge of unauthorised and wilful absence from duty against the appellant—Charge proved in enquiry—He had already absented himself unauthorisedly on 21 different occasions from the date of his enlistment—Dismissed from service—Tribunal and High Court confirmed the punishment—Whether subsequent regularisation of unauthorised absence from duty by granting leave without pay for the purpose of maintaining correct record of service can have the effect of invalidating termination—Held no.
- (B) Punjab Police Manual, (Rules) 1934, Vol. II—Rule 16.2(1)—Absence From Duty—Dismissal—When charge against the delinquent is of habitual absence for long period on several occasions unauthorisedly—No infirmity in the order of dismissal passed by the disciplinary authority.

## Cases referred:

1. State of Punjab & Ors. v. Bakshish Singh, 1998(8) SCC 222.
2. State of Madhya Pradesh v. Harihar Gopal, 1969 SLR 274.
3. Tito Francisco Pereira v. Administrator of Goa Daman and Diu & Ors., 1978 All India Service Law Journal 615
4. G. Papaiah v. Assistant Director, Medical Services, Secunderabad, AIR 1976 Andhra Pradesh 75.
5. Bhursinh Hamsinh Rajput v. State of Gujarat & Anr., 1982(1) All India Service Law Journal 697.
6. Satya Pal Yadav v. Union of India & Ors., 1998 (71) Delhi Law Times 68.
7. State of Punjab v. Chanan Singh, 1988(3) All India Service Law Journal 216.
8. Union of India & Ors. v. Giriraj Sharma, 1994 Supp. (3) SCC 755.
9. G. Rajendra v. M/s. Vikrant Typres Ltd. & Anr., JT 2002 (Supp. 1) SC 438.
10. Virendra Kumar v. The Chief of the Army Staff, AIR 1986 SC 1060.
11. Jai Shanker v. State of Rajasthan, AIR 1966 SCC 492.
12. Union of India & Ors. v. Ram Phal, 1996(7) SCC 545
13. Major Singh v. State of Punjab & Ors., JT 2000(9) SC 571.
14. State of Punjab & Ors. v. Ram Singh Ex-Constable, 1992(4) SCC 54.

## JUDGMENT

Rajendra Babu, J. — Civil Appeal No. 2531/2001

The appellant in this appeal was serving as a Constable in Delhi Police. A departmental enquiry was initiated against the appellant by an order made on 11-11-1991 under Section 21 of the Delhi Police Act, 1978. The allegation against him is that while he was posted at Police Station Chanakya Puri, New Delhi he proceeded to avail medical rest for three days on 31-1-1990; that he was to report back on 2-2-1990 when he again extended his leave till 9-2-1990; that again he further sought seven days medical leave; that he was due to report back on duty on 16-2-1990,

but he did not resume his duty nor sent any information nor submitted application for further medical leave and thus he was marked absent; that thereafter, a notice was sent to his native place through the Superintendent of Police, Ghaziabad, U.P., to the effect that he remained absent from duty; that though he received that notice on 23.4.1990, he did not respond to the same nor did he send any information nor resumed duty; that in these circumstances, a departmental enquiry was initiated; that an inspector was authorised to conduct the enquiry and he got served the copies of the summary of allegations, list of witnesses with the gist of evidence and documents at his residence; that Enquiry Officer tried his best to secure the presence of the appellant to participate in the proceedings but in vain; that after obtaining orders from the competent authority to conduct the proceedings of the departmental enquiry ex parte, he proceeded further; that the Enquiry Officer completed the enquiry proceedings and submitted his findings with the conclusion that the charge of unauthorised and wilful absence from duty was established; that a copy of the findings of the Enquiry Officer was sent to the residence of the appellant with the directions to represent his case against the findings of the Enquiry Officer within a period of 15 days from 5.1.1992 and he submitted his response on 10.2.1992; that he was informed that if he wishes to be heard in person, he may do so on 28.2.1992; that though he received the said communication on 26.2.1992, he did not appear before the disciplinary authority before passing of final order in the departmental enquiry; it was noticed that he remained unauthorisedly absent from duty for more than 2 years continuously without any intimation to the department or submissions of any medical papers in support of his illness; the disciplinary authority held that absence of the appellant from duty was unauthorised and wilful and these facts were fully established in the enquiry; that he had absented himself unauthorisedly on 21 different occasions from the date of his enlistment in the department on 10.7.1978; that in spite of several punishments for lapse of absence on the said 21 occasions, he did not improve himself; that this indicated that he was a habitual absentee and did not take any lesson from the previous punishments awarded to him; bearing these facts in mind, the disciplinary authority dismissed the appellant from service by an order made on 13.3.1992. The appellant filed an appeal against the said order of dismissal to the Additional Commissioner of Police, New Delhi range but the same was rejected by an order made on 18.9.1992. Thereafter, the appellant filed an Original Application No. 99/93 on the file of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), which also stood dismissed. The appellant thereafter filed a writ petition in the High Court challenging the order of the Tribunal dismissing his application. The High Court having dismissed the said writ petition, the appellant has come up in this appeal by special leave.

2. Firstly, it was urged before the Tribunal that the appellant had been appointed by the Commandant of Police who is equivalent in rank to Deputy Commissioner of Police, whereas the impugned order of dismissal had been passed by an Additional Deputy Commissioner of Police and, therefore, the said order was not passed by a competent authority. This contention was rejected by the Tribunal by holding that the Additional Commissioner of Police is not subordinate to Deputy Commissioner of Police and that they are equivalent in rank and there is division of work among the two and, as such, the Additional Deputy Commissioner of Police was not subordinate to the Deputy Commissioner of Police. The second ground urged the Tribunal was that the period of absence having been treated as 'leave without pay' could not be treated as a ground for dismissal. After noticing various periods for which the appellant was absent, the disciplinary authority held as follows:-

"Keeping in view position, explained above, I am inclined to pass order that

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the retention of such incorrigible type of person in the disciplined force is not allowed as it affects the discipline of the force and instigates other members of the force to be in disciplined. I, J.K. Sharma, Additional Dy. Commissioner of Police, N. Delhi Distt., therefore, order that the defaulter Constable Maan Singh No. 728/ND is hereby dismissed from the force with immediate effect."

It is thereafter he noticed as follows:-

"The absence period from 17.2.90 to the date of issue of this order be treated as leave without pay....."

It is in these circumstances the Tribunal read the order as a whole and took the view that the disciplinary authority had not condoned his absence by regularising the absence from duty subsequent to the termination of the employment and upheld the order of dismissal.

3. In the writ petition filed against the order of the Tribunal, in the High Court the only ground urged, was that the present case is covered by the decision of this Court in *State of Punjab & Ors. vs. Bakshish Singh*, 1998 (8) SCC 222, wherein this Court held that the period of absence having been regularised as 'leave without pay' would automatically set at naught the order of dismissal. It was also contended that the decision of this Court in *State of Madhya Pradesh vs. Harihar Gopal*, 1969 SLR 274, is deemed to have been overruled. The High Court carefully examined this contention and took the view that the decision in *Harihar Gopal's* case is by a larger Bench and this decision had not been brought to the notice of this Court in *Bakshish Singh's* case and the view taken by the Tribunal being in conformity with view expressed by this Court *Harihar Gopal's* case upheld the order of the Tribunal and dismissed the writ petition.

4. When this appeal came up for consideration before this Court, a Bench of two learned Judges referred this matter to a Bench of three Judges in view of apparent conflict between the decisions of this Court in *Harihar Gopal* and *Bakshish Singh*. It is thus this matter is set down for hearing before us.

5. In *Harihar Gopal's* case this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the Enquiry Officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to delinquent officer and for regularising his absence from duty. This Court's attention was not invited to any rule governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment had the effect of invalidating termination. Thus, this Court concluded that it could not be held that the authority after terminating the employment of delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted.

6. Bakshish Singh's case arose out of a suit filed by Bakshish Singh who was a police constable in Punjab but was dismissed from service on 1.6.1988 after a regular departmental enquiry on the charge of unauthorised absence from duty. This order was challenged on several grounds and the trial court decreed the suit on the basis that the order of dismissal could not have been passed by the defendants inasmuch as they themselves had regularised and treated the period of the plaintiff's absence from duty as the period of leave without pay and they could not legally say that he was guilty of misconduct for unauthorised absence

from duty. Having found that it was not a case of misconduct of the gravest kind, the lower appellate court, while upholding the findings of the trial court, remanded the case back to the disciplinary authority for passing a fresh order of punishment. Second appeal preferred before the High Court was dismissed in limine. In those circumstances, this Court noticed that, once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment. It was further noticed that the finding of the trial court was that proper opportunity of hearing was not given and the signatures of the Bakshish Singh were obtained under duress during departmental proceedings and when that finding remained intact, there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment. It is in these circumstances this Court ultimately passed an order as set out in para 11 of the judgment, which is as under:-

".....it will be noticed that the trial court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his allegation that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had led no evidence in defence. The trial court also recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive but it did not say a word about the finding relating to the opportunity of hearing in the departmental proceedings. Since those findings were not specifically set aside and the lower appellate court was silent about them, the same shall be treated to have been affirmed. In the face of these findings, it was not open to the lower appellate court to remand the case to the punishing authority for passing a fresh order of punishment. The High Court before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent judgment to pass through its scrutiny."

[pp. 226, 227]

Therefore, the appeal in *Bakshish Singh's* case was allowed. It is only in the head note of the report that the question whether an employee could be held guilty of misconduct on the basis of unauthorised absence is set out as decided in the trial court and affirmed by the first Appellate Court and not from the judgment of this Court such a conclusion can be drawn since there is no consideration or discussion at all. Much less any declaration of law is made by this Court on this aspect of the matter. This Court in that case really considered the scope of powers of remand, made the order as set out above and did not, in fact, consider the question whether the view expressed by the first Appellate Court in affirming the order of the trial court was justified or not, but proceeded on the basis that on the conclusion reached by the first Appellate Court whether remand to disciplinary authority is permissible in law and recorded its findings. Therefore, the decision of this Court in *Bakshish Singh's* case is not an authority for the proposition that the order terminating the employment cannot be sustained inasmuch as in the later part of the same order the disciplinary authority also regularised unauthorised absence from duty by granting an employee leave without pay. In our view, thus,

there is no conflict in this regard with the decision in *Harihar Gopal's case*.

7. A number of decisions rendered by different High Courts have been cited before us in *Tito Francisco Pereira vs. Administrator of Goa Daman and Diu & Ors.*, 1976 All India Service Law Journal 614; *G. Papaiahb vs. Assistant Director, Medical Services, Secunderabad*, AIR 1976 Andhra Pradesh 75; *Bhursinh Hamsinh Rajput vs. State of Gujarat & Anr.*, 1982(1) All India Service Law Journal 697; *Satya Pal Yadav vs. Union of India & Ors.*, 1998(71) Delhi Law Times 68; and *State of Punjab vs. Chanan Singh*, 1988(3) All India Service Law Journal 216. These decisions are contrary to *Harihar Gopal's case* and stand overruled.

8. Our attention is also drawn to certain other decisions of this Court in *Union of India & Ors. vs. Giriraj Sharma*, 1994 Supp. (3) SCC 755; *G. Rajendra vs. M/s Vikrant Typres Ltd. & Anr.*, JT 2002 (Supp. 1) SC 438; *Virendra Kumar vs. The Chief of the Army Staff*, AIR 1986 SC 1060; *Jai Shanker vs. State of Rajasthan*, AIR 1966 SCC 492; *Union of India & Ors. vs. Ram Phal* 1996(7) SCC 546, and *Major Singh vs. State of Punjab & Ors.*, JT 2000 (9) SC 571. However, these decisions have no application to the facts of the present case.

9. The instant case fully falls within the ratio of the decision of this Court in *Harihar Gopal's case* and following the said decision, we uphold the view taken by the High Court. Hence, this appeal stands dismissed.

Civil Appeal Nos. 4343/2000, 2912/2001, 2861/2001, 2884/2001, 2860/2001 and Special Leave Petitions (C) Nos. 13896/2002 and 12/2003

10. Facts in these cases are similar to those arising in *Harihar Gopal's case*. However, an additional point is raised on the basis of Rule 16(2) of the Punjab Police Rules.

11. Relying on *State of Punjab & Ors. vs. Ram Singh Ex- Constable*, 1992(4) SCC 54, one of the arguments advanced before us is that it is only in cases where the misconduct is of gravest kind an order of dismissal shall be made. This case was decided in the context of Rule 162(1) of the Punjab Police Manual, 1934, Vol. II. The said Rule reads as follows :-

"Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, in making such an award regard shall be had to the length of service of the offender and his claim to pension."

After analysing the said provision, this Court in *Ram Singh's case* held that Rule 16.2(1) consists of two parts, firstly, dismissal shall be awarded for the gravest acts of misconduct and secondly, cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The second part is referable to a misconduct which, by itself, may not warrant an order of dismissal and may be a ground to take a lenient view of giving an opportunity to reform and even after giving such opportunities, if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.

12. Hence, these appeals and special leave petitions stand dismissed.

Civil Appeal Nos. 3272/2001, 5057/2000, 3271/2001, 3270/2001, 3268/2001

13. These are appeals filed by State of Punjab arising out of certain civil suits. In these cases, though dismissal of each of the respondent is effected on the

basis of habitual unauthorised absence for long periods, the High Court upheld the decision of the court below that the principles of natural justice having been violated such order of dismissal is vitiated.

14. These appeals stand dismissed.

Civil Appeal Nos. 2946/2001, 3269/2001, 3273/2001, 2662/2000

15. These appeals arise out of civil suits decreeing the claim of the respondents that the disciplinary authority should not have terminated their services for unauthorised absence, which claim has been upheld by trial court or first Appellate Court or both and the High Court has not interfered with the same.

16. These appeals are covered by the decisions in *Harihar Gopal's case* and *Ram Singh's case*. Hence, these appeals are allowed and the order of the High Court and decisions of courts below stand set aside restoring that of the disciplinary authority.

Civil Appeal Nos. 3274/2001 and 3275/2001

17. These appeals be delinked and posted separately.

### SUPREME COURT OF INDIA

Civil Appeal No. 2054 of 2000

Decided on 7. 3. 2003.

Union of India & Ors.

Versus

Appellants

B. N. Jha

Respondent

For the Appellants :

Mr. Ranjit Kumar, Sr. Advocate, Mr. S. Wasim A. Qadri and Ms. Sushma Suri, Advocates.

For the Respondent :

Mr. R.P. Sharma and Ms. Prasarathi Prasad, Advocates.

### PRESENT

The Hon'ble Mr. Justice N. Santosh Hegde

The Hon'ble Mr. Justice S. B. Sinha

(A) Border Security Force Act, 1968-- Section 2(1)(f)-- Border Security Force Rules, 1969-- Rules 45B and 46-- Dismissal-- Charge of accepting illegal gratification against the respondent-- Disciplinary authority initiated enquiry on the direction of the higher authority-- Order of dismissal from service issued-- Challenged-- The said higher authority was biased against the respondent-- No material to show that the respondent was supplied with any material as is mandatorily required under rule 45B-- No opportunity given to make a statement on his defence-- Disciplinary authority not applied its mind while preparing record of evidence-- Decision of Single Judge as upheld by the D.B. that there was violation of Rule 45B and 46 of BSF Rules, held, valid.

(B) Border Security Force Rules, 1969-- Rules 45B and 46-- Departmental Enquiry-- It is the disciplinary authority alone who is required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is contemplated or not-- An authority who is higher than the disciplinary authority, in the present case Commandant, in exercise of his power conferred upon him under rule 16 cannot direct the Commandant of a Wing of his own unit to initiate departmental proceedings.

Cases referred :

Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 15.

TEST/PN-8335/1525

PN-8335 LOC (C)

MR. ARUN MAZUMDER

POST-KHETRABARI

BARPETA ROAD

BARPETA (ASSAM)

Inclpt  
Form  
Adv.



f-9

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WGO/ENT/PN-8335/152000

RM No 4058  
25/11/02 To

PN-8335, 200 (Q)  
SHRI ARUN MAZUMDER  
VILL & POST - KHAIRABARI  
VIA - BARPETA ROAD  
DIST - BARPETA (ASSAM)



A  
Min. of Do  
Central Stores De-  
P.O. Sargach  
Guwahati-781027 (Assam)

File in Court on *7/11/07*

Court Officer.

Central Administrative Tribunal

গুৱাহাটী বেঞ্চ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

Filed by the applicant -  
through  
S. Nath  
Advocate  
07.11.2007  
89

In the matter of:

O.A. No. 283/2006

Shri Arun Kumar Mazumdar

-Vs-

Union of India & others.

-And-

In the matter of:

Rejoinder submitted by the applicant  
against the written statement filed by  
the respondents.

The applicant above named most respectfully begs to state as under:-

1. That the applicant categorically denies the statements made in para 4, 5, 13, 17, 20, 21, 24 and 28 of the written statement and begs to state that the applicant being in dire state of his illness, had to proceed to All India Institute of Medical Science (AIIMS), New Delhi on 17.02.1999 in order to save his life. Accordingly he submitted his application for leave prior to his leaving for Delhi. Even thereafter, finding no improvement of his condition, he had to be under continued medical treatment under unavoidable circumstances which he kept informed to the controlling authorities over telephones and messages. Eventually he was attacked by typhoid fever and proceeded to CMC, Vellore for obtaining better treatment. Accordingly he submitted his leave application dated 03.11.2000 praying for extension of leave. The statement made in para 5, 13, 20 and 21 of the written statement that the applicant gave mere information for the first time on 31.05.2003 after a gap of more than 2 ½ years is therefore false, motivated and malicious. Since the applicant had to rush to different places like Chennai, Vellore, Hyderabad, Kolkata, Guwahati etc. for his medical treatment and had been struggling for his life, he could not

13 NOV 2007

गुवाहाटी न्यायपीठ  
Guwahati Bench

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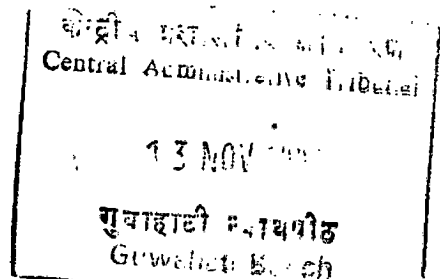
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submit his leave applications and also could not reply to those few letters which he received. But regarding his protracted illness and absence, the applicant kept the authorities informed over phone and by letters from time to time for which he had produced the copies of relevant receipts also. He also submitted copies of prescriptions in support of his treatment which the enquiry officer has also annexed to his inquire report as part of records.

The applicant failed to attend his duties only due to his serious physical inabilities which is evident form the documents submitted by the applicant and his absence form duty in question was beyond his control and was inadvertent which the applicant informed to the authorities from time to time. As such, the absence of the applicant from duty during the period from 29.03.2000 to 30.06.2003 as alleged, cannot be construed/treated as "unauthorised absence" which occurred under compelling circumstances only and the Supreme Court's ruling referred to in para 4 of the written statement is not applicable in the instant case.

As such, the findings of the inquiry officer is biased and not based on facts and the action of the disciplinary authority and the appellate authority leading to the imposition of penalty of dismissal from service upon the applicant is arbitrary, malafide, unfair, illegal and opposed to the principles of natural justice.

2. That with regard to the statements made in para 7, 8, 9 and 22 of the written statement, the applicant begs to state that he joined his duties on 01.07.2003 and since then he had been regularly attending the office till the date he was removed from service. He was not aware of the letter dated 25.11.2003 as stated in para 8. Further, Shri K.V. Raghuthaman was appointed as enquiry officer in place of Shri K. Ramaswamy vide order dated 29.11.2004 only and therefore the statement that it was intimated to the applicant vide letter dated 25.11.2003 is irrelevant. The applicant is also not aware of the letter alleged to have been returned undelivered on 09.12.2003.
3. That the applicant categorically denies the statements made in para 11, 14, 15, 18 and 23 of the written statement and further begs to submit that the enquiry officer conducted the regular hearing on 16.02.2005 in "one go" in such a



hasty manner that the applicant was not given adequate and reasonable opportunity of being heard and even the documents demanded by the applicant were not supplied to him for his proper defence. The listed documents and the listed witnesses were also not examined as required under law. The inquiry officer in his inquiry report did not discuss about the intimations given by the applicant from time to time nor mentioned about circumstantial statements given by the applicant and also ignored the medical prescriptions submitted by the applicant in an arbitrary manner. The inquiry officer only submitted a brief report which was subjective and arbitrary, thereby holding the charges as proved. The disciplinary authority simply acted on the inquiry report most mechanically and the informations given by the applicant about his illness from time to time and the evidences submitted thereof by the applicant in support of his circumstantial condition and inadvertent absence have been totally ignored and lost sight of by the disciplinary authority. The disciplinary authority imposed the major penalty of "Dismissal from service" upon the applicant on erroneous conclusion and without the slightest compassionate consideration on the unfortunate circumstances which led to the inadvertent and compelling absence of the applicant from duty, a fact which was completely beyond his control and which he never intended to.

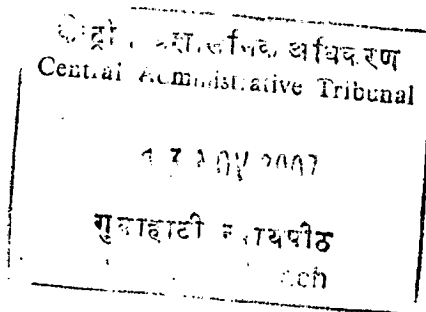
The appellate authority too failed to appreciate the factual situation and simply acted in line with the enquiry officer and the disciplinary authority without applying any judicious mind upheld the impugned penalty imposed upon the applicant.

It is pertinent to mention here that after his alleged absence, the applicant was allowed to join his duties on 01.07.2003 and he attended his duties till the date he was removed from service, with his joining duties on 01.07.2003, it was expected that his earlier absence would be condoned/regularized, more so when he was allowed to work till 20.10.2005 i.e. until he was removed from service. It has been held by the Hon'ble Madhya Pradesh High Court in 2005 that once the petitioner is allowed to join his services, the earlier willful absence, if any, would be deemed to be condoned and the order of removal on the ground of absence from duty without permission was quashed. The ratio of the said decision is applicable in this case as well,

more so, when in the instant case the absence of the applicant was ~~not willful~~ and he was not only allowed to join his duties but was allowed to work for more than two years thereafter, before he was removed from service. As such, his unintentional absence from duty as alleged ought to have been condoned/regularized after he had joined his duties on 01.07.2003 and the penalty of "removal from service" imposed upon the applicant after a lapse of more than two years is arbitrary, unfair, illegal and liable to be set aside and quashed.

4. That the applicant denies the statements made in para 25 and 26 of the written statement and further begs to state that the CCS (CCA) Rules 1965 does not provide for a major penalty to the extent of "dismissal from service" for absence from duty that too for genuine ground of illness and with the due intimation to the authority. It is also reiterated that the inquiry was held in such a hasty manner that the applicant was not given adequate and reasonable opportunity of being heard of and neither the listed documents nor the listed witnesses were examined. As such the inquiry proceedings were vitiated by serious infirmities and on that score alone the inquiry report as well as the order of penalty 20.10.2005 imposing the penalty of "removal from service" on the applicant and the impugned Appellate order dated 04.05.2006 rejecting the appeal of the applicant and upholding the order of penalty are liable to be set aside and quashed.
5. That the applicant categorically denies the statements made in para 29 and 30 of the written statement and begs to submit that this application is based on facts and in accordance with the provisions of law. The application is full of merit and the applicant is entitled to get all the reliefs sought for.
6. That in the facts and circumstances stated above, the applicant humbly submits that he is entitled to the reliefs prayed for, and the Original Application deserves to be allowed with costs.





VERIFICATION

I, Shri Arun Kumar Mazumdar, S/o- Late Sunil Mazumdar, aged about 38 years, resident of Vill- Khoirabari, P.O. Barpeta Road, District- Barpeta, Assam, do hereby verify that the statements made in Paragraph 1 to 6 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 6<sup>th</sup> day of November 2007.

*Arun Kumar Mazumdar*

NOTICE

From: S. N. K. Advocate

To: Mr. G. Barishya  
Sr. C.B.S.C.

Subj: Rejoinder in OA No. 283/86

Sir, find please enclosed herewith a copy of the rejoinder, which is being filed on today. This is for your information and necessary action. Please acknowledge receipt.

Yours Sincerely  
S. N. K. Advocate

Received  
G. Barishya  
7.11.87  
(G. Barishya)