

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 67/96.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet OA-67/96.....Pg. 1.....to 9.....
2. Judgment/Order dtd. 01/01/99.....Pg. 1.....to 5 allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....67/96.....Pg. 1.....to 10.....
5. E.P/M.P.....NIL.....Pg.....to.....
6. R.A/C.P.....NIL.....Pg.....to.....
7. W.S.....Pg. 1.....to 6.....
8. Rejoinder.....Pg. 1.....to 3.....
9. Reply.....NIL.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

N

(2)

BA. 67/96

CA/TA/CP/RA/ MP/ No.

OFFICE NOTE

DATE

C R E H

27-6-96

Notice duly served on Respondent No. 3.

Bar

28.6.96

Mr B.K.Talukdar for the applicant
Mr S.Ali, Sr.C.G.S.C for the respondent

Mr Ali requests for time to submit
written statement. Allowed.

List on 24.7.96 for written statement
and further orders.

10.7.96

Notice duly served
on receipt No. 1

ba
Member

pg

Ben

24.7.96

Applicant in person.

Mr. S.Ali, Sr. C.G.S.C. for the
respondents prays for adjournment to submit the
written statement. Adjourned.

List on 14.8.96 for written statement
and further order.

w/ statement has not
been filed
23/7

ba
Member

trd

trd 24/7

w/ statement has not
been filed

14-8-96

Learned counsel Mr.B.K.Talukdar
alongwith the applicant are present.
Learned Sr.C.G.S.C. Mr.S.Ali seeks
further time for filing written state-
ment. List for written statement and
further order on 16-9-96.

23/8

ba
Member

lm

lm 1/8

16.9.96

Mr. R.G.Roy applicant present in person.
None for the respondents.

Written statement has not been submitted.

List for written statement and further orders
on 7.10.1996.

62
Member

Statement has not been filed
11/10

trd
16/9

7.10.96

The applicant is present in person.
Mr S. Ali, learned Sr. C.G.S.C. for the
respondents, seeks further time to file written
statement.

List for written statement and
further orders on 14.11.96.

62
Member

*Notice duly served on
Respondents No. 3 -
Statement has not been
filed*

13/10

nkm
11/10

14.11.96

~~Learned counsel~~ Mr R.C. Roy in
person. Learned Sr. C.G.S.C. Mr S. Ali for
the respondents seeks further time to file
written statement.

List for written statement and further
orders on 4.12.96.

62
Member

*Notice duly served on
op No. 3
Statement has not been filed*

11/12

nkm
19/11

4.12.96

Learned Sr. C.G.S.C. Mr S. Ali-
for the respondents. Written statement
has not been submitted. Mr Ali seeks
time for submission of the same.

List for written statement and
further orders on 3.1.1997.

Statement has not been filed

1/97

62

OFFICE NOTE

DATE

ORDER

3.1.97

The applicant, R.C. Roy, in person. Learne Sr. C.G.S.C. Mr S. Ali for the respondents again seeks time for filing written statement.

List for written statement and further orders on 24.1.97.

ba
Member

Date: - 20.1.97

Received an application dated above from the applicant for extension some months time till 20 his mother expired on 19.1.97 or 20/1/97.

nkm

10.2.97

Let this case be listed on 14.2.1997.

JB
Vice Chairman

28.1.97

nkm

D/S filed by the Respond. No. 1, 2, 3, 4 & 5. List on 7.2.97

14.2.97

Written statement has been filed. Fixed it for hearing on 21.2.1997.

JB
Vice-Chairman

28/1

trd
18/2

6-2-96

1/ Notice duly served on Respond No-1 & 3.
2/ w/s filed by the Respond. No-1 to 5. ut. page - 11 to 16.

6.2

Notice duly served on AP No. 1 & 3. w/ statement - as per law
trd
18/2

OFFICE NOTE

DATE

ORDER

20.2.97

21-2-97

It is reported that learned counsel Mr. B.K. Talikdar is indisposed. Mr. Rakesh Roy prays for two weeks time. Prayer is allowed. However, if the applicant counsel is unable to attend the Court, the applicant may make alternative arrangement on 28-2-97.

1) Received a letter from the learned counsel for the applicant. He prays that the case be adjourned for one month due to his illness at Bangalore.

lm

List for hearing on 28-2-97.

Vice-Chairman

28.2.97

Adjourned to 14.3.1997. for hearing

2) Written statement has been submitted on behalf of the respondents.

pg

Vice-Chairman

3) Memo of appearance has not been filed.

W - 11/3

14-3-97

Let this case be listed for hearing on 9-5-97.

M/20/2

13-3-97

1) Notice duly served on R. No. 123.

trd.

2) W/s filed on behalf of the R. No. 1 to 5 at page-11 to 16.

9.5.97

Mr M.Chanda, learned counsel submits that he has been recently engaged in this case and prays for short adjournment. Prayer allowed.

3) Memo of appearance not yet filed.

List on 13.6.97 for hearing.

6/11 - 13.3

Vice-Chairman

16.6.97

Adjourned. List on 20.6.97.

pg

16.6.97

Adjourned. List on 20.6.97.

Vice-Chairman

By order

By order

20.6.97

The applicant, appearing in person, has filed a rejoinder with an application. Office to place the application with rejoinder on 27.6.97.


Vice-Chairman

19.6.97

An application in O.A 67/96 submitted by Shri R.C. Roy to appear in person ^{nkm} at Flag 'A'.

F 21/6

F 19/6/97.

27.6.97

Hearing concluded. However records are not available today.

List it on 4.7.1997.

24-6-97

Rejoinder filed by the applicant ^{Member} at page-17 to ^{ord 9}

Vice-Chairman

4-7-97

On the prayer of counsel for the parties case is adjourned for hearing till 11-7-97.


Vice-Chairman

W/S and rejoinder ^{lm} by me filed.

6.8.97

There is no representation on behalf of the applicant. The applicant is also not found on call. The case stands dismissed for default. Mr S. Ali, learned Sr. C.G.S.C., is present on behalf of the respondents.


Vice-Chairman

2/8/97

Copy of the order has been sent to the D/Sec. for issuing the same to the applicant as well as Sr. C.G.S.C.

nkm
7/8

Issued under
S No 2719 W 2720
8.13.8.97

19-9-97

BY ORDER

On 4-7-97 the case was fixed on 11-7-97. However, on that date the case was not listed and the office suo moto fixed it on 6-7-97. Registry to explain and report why the case was listed on 6-8-97 without approval of this Tribunal. The Report must be reached within a week.

In view of the order passed in Misc. Petition No. 258/97 the Original Application No. 67/96 is restored. List it on 23-1-98 for hearing.

ba
Member

LB
Vice-Chairman

LM.

ms
24/9

~~*ms*~~

Please comply the above direction within a week.

ms
24/9/97

26.9.97

Deputy Registrar

Ref:- Court Order dtd. 19.9.97

Sir,

This is regarding asking for explanation as to why the case was listed on 6.8.97 instead of listing 6.7.97 i.e.

In this connection I beg to mention here that the Single Bench matter of the Hon'ble Vice Chairman are not taken 7.7.97. It was asked to placed the cases from 4.8.97 to 14.8.97 i.e. during the leave period Hon'ble Member(A). Accordingly, it was originally fixed on 6.8.97 without

writing any order in the view that there was an intimation to the Principal Bench to deputise Administrative Member during the leave period of the Hon'ble Member(A) and which was not happen.

Accordingly as per the given provisional date it came on 6.8.97.

In view of the above for taking of written permission may kindly be excused.

Boro
26/9


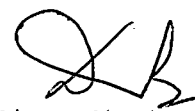
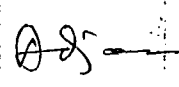
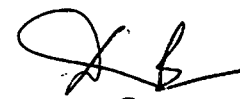
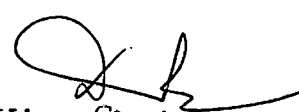
ms
26/9
SOL

26/9/97
DR

8.12.97

Notice duly served on respondent No. 2.

Ld. Registrar
for regd. placed at

Notes of the Registry	Date	Order of the Tribunal
<p>W/S and Repair order has been filed.</p> <p>211</p>	<p>23.1.98</p>	<p>There is no representation. Adjourned to 3.4.98 for hearing.</p> <p> Vice-Chairman</p>
<p>W/S and Repair order has been filed.</p> <p>14</p>	<p>pg 312</p> <p>3.4.98</p>	<p>Mr S. Ali, learned Sr. C.G.S.C. is indisposed and mention has been made for adjournment. The learned counsel for the other side has no objection. List is on 29.5.98.</p> <p> Vice-Chairman</p>
<p>W/S and Repair order has been filed.</p> <p>619</p>	<p>nkm 619</p> <p>29.5.98</p>	<p> 5-6-98.</p>
<p>W/S and Repair order has been filed.</p> <p>116</p>	<p>5.6.98</p>	<p>Hearing concluded. Judgment reserved.</p> <p> Vice-Chairman</p>
<p>10.2.99</p> <p>Copies of the Judgment have been sent to the D/Sec. for issuing the same to the parties through Regd. Mail A.D.</p> <p>188 and vide Despatch No. 483 to 488 dt. 11-2-99</p> <p>26-3-99</p>	<p>pg</p> <p>1-1-99</p> <p>lm</p>	<p>Heard counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is allowed.</p> <p> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 67 of 1996.

DATE OF DECISION... 1-1-1999.....

Sri Rakesh Chandra Roy

(PETITIONER(S))

Applicant appeared in person.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri S.Ali, Sr.C.G.S.C

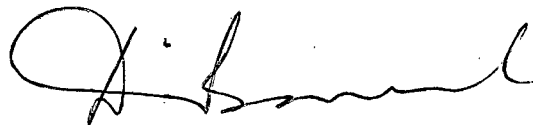
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 67 of 1996.

Date of Order: This the 1stth Day of January, 1999.

Justice Shri D.N. Baruah, Vice Chairman.

Sri Rakesh Chandra Roy,
Senior Auditor,
Office of the Accountant General (Audit)
Meghalaya, Assam etc., Guwahati . . . Applicant

Applicant appeared in person.

- Versus -

1. Union of India,
represented by Secretary,
Finance Department, Govt. of India,
New Delhi.
2. The Comptroller and Auditor General of India,
New Delhi.
3. The Accountant General (Audit)
Meghalaya, Assam etc.,
Shillong.
4. The Deputy Accountant General (I.C)
(Audit), Bhangagarh, Guwahati-5.
5. The Senior Audit Officer (Establishment)
Office of the Accountant General (Audit),
Bhangagarh, Guwahati-5. . . . Respondents

By Advocate Sri S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

In this application the applicant has challenged the Annexure-1 order dated 16.11.1994 contained in File No. CASS-II/A.O/G-1/Confidential/93-94 etc. and also prayed for an order to set aside and quash the said order and allow the applicant all consequential benefits. The applicant also seeks other reliefs. Facts are :-

The applicant entered in the service in the office of the Accountant General, Assam Meghalaya in the year 1969 as Lower Division Clerk. He was promoted to Upper Division Clerk in 1976 and then to Senior Auditor in the year 1984 and since then he has been working, as such.

Bz

According to him he was working sincerely, honestly, deligently and to the full satisfaction of the authority. The 4th respondent by his order dated 16.11.1994 did not grant casual leave to the applicant on 6.9.1994 and treated the date as 'dies non'. Being aggrieved the applicant submitted representation to the Accountant General, Shillong against the aforesaid order dated 16.11.1994 issued by the Assistant Audit Officer. Till the date of filing of the application the representation was not disposed of. The applicant seeks relief on the ground that the Annexure-1 impugned order was illegal and not maintainable in law on the face of it. The order was without any basis. The casual leave was applied for due to urgent domestic matters and that is, "he had to remain near the bed side of his 85 years old mother." The applicant further says that the order was passed with a malicious intention out of grudge. Besides, the applicant states that the respondent No.4 and 5 had no power to take away legal and fundamental rights of the applicant and that too in violation of the principle of natural justice. Hence the present application.

2. In due course the respondents have filed joint written statement. In para 3 of the written statement the respondents have stated that "on a surprise visit by the Deputy Accountant General, Guwahati on 6.9.1994 found the applicant absent, he was asked to explain about his absence on that day vide memo dated 8.9.1994 and this was repeated by yet another memo dated 24.10.1994. However, the applicant did not respond to those Memos." On 7.11.1994 the applicant submitted an application seeking casual leave for 6.9.1994 as the same was not sanctioned and his unauthorised absence on 6.9.1994 was treated as 'dies non'. According to the respondents absence of officials from duty without proper permission or while on duty in office,



they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non i.e. they will neither count as service nor be construed as break in service. However, this will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices. Therefore, the D.A.G (I/C) Guwahati being the leave sanctioning authority of the applicant was duty bound to take action. In the written statement they have stated that the representation submitted before the Principal Accountant General(Audit) was disposed of by order dated 30.8.1995 and it was communicated to the applicant by a letter dated 15.9.1995. The contention of the respondents is that none of the grounds mentioned by the applicant is tenable and therefore the application is liable to be dismissed.

3. I heard both sides. The applicant appearing in person submitted before me that under the facts and circumstances of the case declaring 6.9.94 by the authority as dies non was arbitrary and contrary to the provisions of rule. In the present facts and circumstances of the case the authority ought not to have marked the particular day as dies non for his absence without proper permission.

4. In Swamy's Compilation of CCS CCA Rules 23rd Edition 1997 at page 18 it has been mentioned when a day can be marked dies non and its effect. In the said rule it is mentioned that absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive




of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices. According to the instructions referred to above the day can be marked as dies non by the leave sanctioning authority only under 3 circumstances, i.e., (i) when the official remains absent from duty without prior information, (ii) when on duty in office, the official leaves the office without proper permission; and (iii) the official remains in office, but refuses to perform duty assigned to him.

5. From the conditions mentioned above, it is clear that an official can be marked as dies non even if he performs duty for a part of the day in case he leaves office without proper permission or when he refuses to perform duties while remaining in office. But a day on which an official comes late and works throughout the day during office hours will not be marked as dies non. It is accordingly clarified that treating the day as dies non for coming late is not contemplated in the rules. The existing instructions provide for deducting half-a-day's casual leave when a Government Servant comes late without sufficient justification and the competent authority, which not considering it as a fit case for initiating disciplinary action, is also not prepared to condone the late coming. The matter has been examined and it has been decided that if an official who has no casual leave to his credit, comes late without sufficient justification and the administrative authority, concerned is not prepared to condone the late coming but does not at the same time propose to take disciplinary action, it may inform the

Rz

official that he will be treated as on unauthorised absence for the day on which he has come late, and leave it to the official himself either to face the consequences of such unauthorised absence or to apply for earned leave or any other kind of leave due and admissible for the entire day, the same may be sanctioned by the competent authority. In the present case the applicant could not attend office on 6.9.94 and on 7.11.94 he submitted an application seeking casual leave on the ground that he could not attend on that day as he was compelled to remain near the bed side of his 85 years old mother. This position has not been specifically controverted by the respondents. The respondents marked 6.9.94 as dies non however without looking to the facts and circumstances under which he could not attend the office and there was also no attempt to see whether any casual leave was available to his credit. Considering the entire facts and circumstances of the case it is the opinion of the authority that the authority unreasonably declared 6.9.94 as dies non. Actually the authority ought to have treated 6.9.94 as casual leave if he had any casual leave to his credit and if he is entitled to any ^{other} leave. Therefore, I hold that the action of the respondents in treating 6.9.94 as dies non can not sustain in law and accordingly we set aside that action and direct the respondents to grant him any kind of leave/casual leave which he is entitled to and to his credit.

6. Application is allowed. No order as to costs.


(D.N. BARUAH)
VICE CHAIRMAN

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI - 5.

Case No. O.A. 67 of 1996.

An application under Section 19 of the
Central Administrative Tribunal Act,
1985.

Sri Rakesh Chandra Roy.

.... Applicant.

- Versus -

Union of India & Ors.

.... Respondents.

I N D E X

Sl. No.	Annexures	Particulars	Pages
1.	Application	1 - 7.
2.	Annexure - 1	.. Order dtd. 16.11.94.	8
3.	Annexure - 2	.. Representation dtd. 3.7.95.	9
4.	Annexure - 3	.. Hon'ble Tribunal's Order dtd. 23.2.96.	10
<u>G.O/S - R. 1 - 5</u>			<u>11 -</u>

For the use in Tribunal's Office :-

Date of filing :-

Received copy

Sr. Secy

12/4/96

*Filed by
B.K. Talukdar
Advocate
11-6-91*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI

An application under section 19
of the Central Administrative
Tribunal Act, 1985.

O.A. NO. X OF 1996.

Sri Rakesh Chandra Roy,
Sr. Auditor,
Office of the Accountant General (Audit),
Meghalaya, Assam etc., Guwahati.

.... Applicant.

- Versus -

- 1) Union of India
Represented by Secretary,
Finance Deptt., Govt. of India,
New Delhi.
- 2) The Comptroller and Auditor General
of India, New Delhi.
- 3) The Accountant General (Audit),
Meghalaya and Assam etc.,
Shillong.
- 4) The Deputy Accountant General (I.C)
(Audit), Bhangagarh, Guwahati - 5.

5) The Sr. Audit Officer,
Establishment,
Office of the Accountant General
(Audit), Bhangagarh,
Guwahati - 5.

.... Respondents.

Details of Application :

1. Particulars of the order against which the application is made -

The application is directed against the order dated 16.11.94 passed by the Deputy Accountant General (Audit) (I.C.), Assam, Guwahati communicated to the applicant on 31.1.95 (Annexure - 1) and to set aside the order treating 6.9.94 as 'dies non'.

2. Jurisdiction of the Tribunal :-

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation :-

The application further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case :-

(i) That the applicant is a Citizen of India

and as such he is entitled to all the rights and protections guaranteed by the Constitution of India. He belongs to Schedule Caste Namasudra Community.

(ii) That the applicant entered into the services as a Lower Division Clerk in the office of the Accountant General (Assam), Meghalaya in the year 1969. Even since his entry into the services, he has been working with due delegeance and to the full satisfaction of the authority. The applicant was promoted as Upper Division Clerk in the year 1976. Thereafter, the authority being satisfied with performance of the work of the applicant. The authority promoted the applicant as Senior Auditor in the year 1984. Since then, the applicant has been working sincerely, honestly, deligently and to the full satisfaction of the authority.

(iii) That the Respondent No. 4 his order dated 16.11.94 did not grant casual leave to the applicant on 6.9.94 and treated that date as 'dies non'.

The applicant has to maintain family of 6(six) members including his 85 years old widow mother, school going children and his sick wife. While passing the impugned order, the Respondent No. 4 did not consider at all the economic hardship of the applicant. The applicant had to mortgage his wife's Jewelleries for meeting the expenditure.

(iv) That the applicant submitted a representation to the Accountant General, Shillong, Assam

against

4.

against the aforesaid order dated 16.11.94 issued by the Assistant Audit Officer, Class - II, Guwahati on 3.7.1995.

A typed copy of the said representation dated 3.7.95 is annexed hereto and marked as Annexure - 2.

(iv) That the applicant begs to state that nothing has been heard till this date about the fate of the representations (Annexure - 2) of the applicant.

5. Grounds for relief with legal provisions :-

(a) For that the impugned orders are prima-facie illegal and not maintainable under the law.

(b) For that the impugned order which is conjecture and surmises and without any substance, the same is bad in law and liable to be set aside. The applicant was on C.L. on 6.9.94 due to urgent domestic matter, that is, he had to remain near the bed side of his 85 years old widow mother.

(c) For that the malicious intention of the Respondent Nos. 4 and 5 is writ large from the facts borne by the Respondent No. 4 against the loyal and sincere officer like the applicant and out of grudge and sheer malice, the respondent No. 4 passed the

contd... p 5.

When did he apply 2

5.

impugned orders to avenge their grudge against the applicant though they are not authorised to pass the same,

(d) For that the Respondent Nos. 4 and 5 have got no power to take away legal and the fundamental rights of the applicant violating the principles of natural justice.

(e) For that the Respondent Nos. 4 and 5 cannot keep the representation of the applicant pending deliberately in order to cause harm to the applicant.

(f) For that before passing, the impugned order the applicant was not given opportunities being heard which is mandatorily required. Thus the impugned order is not sustainable. Malafide is writ large on the face of it.

(g) For that in any view of the matter, the impugned orders are liable to be quashed.

6. Details of remedies exhausted :-

The applicant declares that he has exhausted the departmental remedies available to him and there is other alternative and efficacious remedy open to the applicant.

contd... p 6.

6.

7. Matter not previously filed or pending with any other Court :-

(i) The applicant preferred previously O.A. 18/94 before this Hon'ble Tribunal which was disposed of on withdrawal on 23.2.96 (Annexure - 3).

(ii) The applicant further declares that the matter regarding which the application has been made, is not pending before any other court of law or any other Bench of the Hon'ble Tribunal, but one representation is pending before the authority.

8. Reliefs Sought :-

Under the facts and circumstances, the applicant prays that this application be admitted and the records of the case called for and after hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs :-

(i) To set aside and quash the impugned order dated 16.11.94 (Annexure - 1) and to allow all the consequential benefits.

(ii) Cost of the application.

(iii) Any other relief or reliefs to which the applicant is entitled to as this Hon'ble Tribunal may deem fit and proper.

9. Interim Order prayed for :-

Pending disposal of the case, the applicant

prays

7.

prays that the impugned order dated 16.11.94 (Annexure - 1) may kindly be stayed since the balance of convenience lies in favour of the applicant and otherwise he will suffer irreparable loss and injury in as much as the applicant's 85 years old widow mother and his sick wife left un-attended.

10. Application filed through Advocate.

11. Particulars of the I.P.O. :-

- (i) I.P.O. No. : 09,345724
(ii) Date : 11/4/96.
(iii) Payable at Guwahati.

12. List of enclosures :-

As stated in the index.

V E R I F I C A T I O N

I, Sri Rakesh Chandra Roy, Son of Late Tarani Roy, presently working as Sr. Auditor in the office of the Accountant General, Assam etc., Guwahati, aged about 51 years, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 4, 6 to 9, 11, 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 facts.

And I sign this verification on this the
the 11 th day of April/1996.

Rakesh Chandra Roy
SIGNATURE. 11/4/96

8.

ANNEXURE - 1.

Extract of D.A.G.(IC)'s Order dated 16.11.94 contained at page 11 of File No. CASS -II/A.0/G-1/Confidential/93-94 etc.

"The senior Auditor Shri Rakesh Roy's wish to take casual leave on 6.5.94 on issue of Memo (dtd. 7.9.94 and dtd. 28.9.94) and that the on 7.11.94 cannot be regularised. His absence from duty on 6.9.94 may be treated as dies non".

Sd/- Biplab Dhar.

AAO I/C. CASS - II.

31/1/95

Att-std.
Bhull
A. D. Sankh
11-4-96

To

The Accountant General
(Audit), Shillong,
Assam, Meghalaya etc.

Ref :- Order of the Deputy Accountant General (IC)
dated 16.11.94 contained at page 41^N of file
No. CASS/AO/6/11/Confidential/93-94/etc.
received on 31.1.95.

Sub :- Appeal/Representation.

Sir,

In inviting a reference quoted above, most
respectfully I beg to state that I ~~applied~~^{applied} for CL on
6.9.94 for my inability to attend my duty on that date
for reasons beyond my control. But the authority was
pleased to treat on 6.9.94 as 'dies non'.

That sir, on that date, I had leave at my credit.

That sir, I am a poor employee of your office
and some how have been maintaining my self and family
members with utmost financial stringencies.

I, therefore, humbly pray that your honour would
be kind enough to grant me casual leave/earned leave on
that day (6.9.94) and for which act of kindness I as in
duty bound shall ever pray.

Yours faithfully,

Dated

3.7.95

Sd/- Rakesh Chandra Roy,
Sr. Auditor.

Attested
by
11-6-96

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI - 5.

(O.A. 18/96.)

Rakesh Ch. Roy Applicant.
 - Vs -
 Union of India & Ors. ... Respondents.

P R E S E N T

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (ADMN).

For the Applicant Mr. B.K. Talukdar.
 For the Respondents Mr. S. Ali, Sr. C.G.S.C.

23.2.96 Learned counsel Mr. B.K. Talukdar for
 the applicant.

Learned Sr. C.G.S.C., Mr. S. Ali for
 the respondents.

Counsel for the applicant desires to
 withdraw the application with a request to
~~show~~ allow the applicant to file fresh
 application. Submission considered. Prayer
 allowed. The applicant/is disposed of on
 withdrawal. The applicant is at liberty to
 submit fresh application and to raise all
 contentions that have been raised in the
 present application if he is so advised.

Sd/- MEMBER (ADMN)

Certified to be true copy.

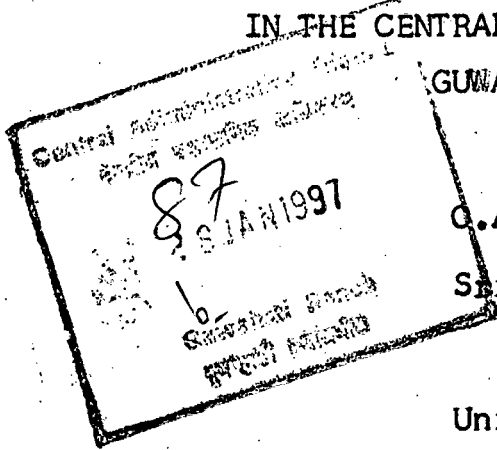
Sd/- Illegible.

8.3.96

Court Officer,
 Central Administrative Tribunal,
 Guwahati Bench, Guwahati - 5.

Handwritten signature
 Admt

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



C.A. No. 67 of 1996

Sri Rakesh Chandra Roy

-versus-

Union of India & Ors.

-And-

In the matter of :

Written Statement submitted by the
Respondent Nos. 1,2,3,4 and 5.

WRITTEN STATEMENT

The humble respondents submit the written statement as follows :

1. That with regard to statement made in paragraph 1,2,3 of the application the respondents have no comments.
2. That with regard to the statement made in paragraphs 4.1 and 4.2 of the application the respondents have no comments as the same being matter of records.
3. That with regard to the statement made in paragraphs 4.3, 4.4 and 4.5 of the application the respondents beg to state that the applicant was found absent on a surprise visit by the Deputy Accountant General (I-C), Guwahati on 6.9.94. He was asked to explain his absence on that day vide Memo dated 8.9.94 followed by another Memo dated 24.10.94

Contd... P/2

Received
Copy
14/12/97

Filed by:

Chandrabala
C.A. No. 67 of 1996
Dr. Chandrabala, Standing Counsel
Central Administrative Tribunal
Guwahati Bench

but the applicant did not respond to the aforesaid Memo. On 7.11.94 the applicant submitted an application seeking Casual Leave for 6.9.94. The Casual Leave as aforesaid was not sanctioned and his unauthorised absence on 6.9.96 was treated as dies non. In this connection a reference is invited to Government of India Instruction No. 6 below Rule 11 of the CCS(CCA) Rules incorporated in Swamy's Manual on Disciplinary Proceedings for Central Government Servants (Copy enclosed) which inter-alia provided that absence of officials from duty without proper permission or while on duty in office, they have left the office without proper permission or while in the office, They refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies-non i.e. they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices. Thus the D.A.G. (I-C) Guwahati being the leave sanctioning authority of the applicant was duty bound to take action as aforesaid. Thereafter, the applicant preferred an appeal to the Principal Accountant General (Audit), Assam etc., Shillong vide application dated 3.7.95 (referred to at sub para (iv) and (v) and para 4 of his affidavit). The same was duly considered and rejected by the Principal Accountant General (Audit) vide order dated 30.8.1995 and the same was communicated

to the applicant vide letter No. ESTT/Audit/PC/RCR/893 dated 15.9.95 (copy enclosed). Thus the contention of the applicant that he has not heard anything in his representat dated 03.07.95 is no correct.

4. That with regard to the statement made in paragraph 4.5 of the application regarding grounds for relief with legal provisions the respondents beg to state that none of the ground is maintainable in law and as such application is liable to be dismissed.

5. That with regard to the statement made in paragraphs 6 and 7 of the application the respondents beg to state that they have no comments on them.

6. That with regard to the statement made in paragraph 8 regarding relief sought for the respondents beg to state that the applicant is not entitled any of the reliefs sought for in this application and hence the application is liable to be dismissed.

7. That with regard to the statement made in paragraph 9 of the application regarding interim relief prayer the respondents beg to state that in view of the facts and circumstances narrated above the applicant is not entitled any interim relief.

8. That with regard to the statement made in paragraphs 10,11 and 12 of the application the respondents have no comments.

MP

9. That the respondents submit that the application is devoid of merit and as such the same is liable to be dismissed.

V E R I F I C A T I O N

I, M. Ray Bhattacharyya, working as Deputy Accountant General (A), Meghalaya, Assam etc., Shillong do hereby declare that the statements made in the Written statement are true to my knowledge derived from the records of the case.

o/o the Pr. A.G
(An)

I sign this verification on this the 22nd day of January 1997 at Shillong.

M. Ray B. / 22/1/97
DEPONENT

(5) Action for unauthorised absence from duty or overstayal of leave.—The following decisions have been taken in consultation with the Department of Personnel and the Ministry of Finance:—

- (i) When a temporary Government servant asks for leave in excess of the limits prescribed and if the circumstances are exceptional, a decision could be taken by the leave sanctioning authority to grant further leave in excess of the limits in consultation with the Ministry of Finance. Such cases should be referred to the Directorate.
- (ii) When a temporary Government servant applies for leave beyond the prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the grounds as exceptional, the leave cannot be granted. In such a case the Government servant should be asked to rejoin duty within a specified date, failing which he would render himself liable for disciplinary action. Disobedience of orders to rejoin duty within the specified period would afford good and sufficient reasons for initiating disciplinary action under C.C.S. (C.C.A.) Rules, 1965. If he rejoins duty by the stipulated date, he may be taken back to service and the period of absence not covered by leave be treated as overstayal of leave and dealt with in accordance with the orders regarding regularisation of overstayal of leave.

If the Government servant does not join duty by the stipulated date it would be open to the disciplinary authority to institute disciplinary proceedings against him. If during the course of disciplinary proceedings he comes for rejoining duty, he should be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularisation of the period of overstayal of leave be left over for consideration till the finalisation of the disciplinary proceedings.

(iii) If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz., that the entire period of absence would be treated as unauthorised, entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso

Certified to be true

Signature of the Accountant General

D/o the Pr. A. G. (A)

Meghalaya, etc.

उप महालेखाकार (प्रशासक)

लख प्रधान महालेखाकार (उ.प.)

जम्मू, मेघालय, आदि. शिलांग-१

to F.R. 17 (1) and thus a break in service. The question whether the break should be condoned or not and treated as *dies non* should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard.

2. It is made clear that a Government servant who remains absent unauthorisedly without proper permission should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed in Rule 32 (2) (a) of the C.C.S. (Leave) Rules, 1972. However, the disciplinary authority should consider the grounds adduced by the Government servant for his unauthorised absence before initiating disciplinary proceedings. If the disciplinary authority is satisfied that the grounds adduced for unauthorised absence are justified, the leave of the kind applied for and due and admissible may be granted to him.

[D.G., P. & T.'s Letter No. 6/28/70-Disc. I (SPB-1), dated the 5th October, 1975.]

3. In the case of a temporary Government servant remaining absent in excess of the limits laid down in Rule 32 (2) (a) of the C.C.S. (Leave) Rules, 1972, disciplinary proceedings under Rule 14 of the C.C.S. (C.C.A.) Rules should be initiated and the case processed in the usual manner.

[Rule 65, P. & T. Manual, Vol. III.]

✓ (6) When a day can be marked *dies non* and its effect.—Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as *dies non*, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices.

[Rule 62, P. & T. Manual, Vol. III.]

(7) No marking of *dies non* for late-coming.—According to Instructions above the day can be marked as *dies non* by the leave sanctioning authority only under three circumstances, viz.,—

- (i) when the official remains absent from duty without prior information;
- (ii) when on duty in office, the official leaves the office without proper permission; and
- (iii) the official remains in office, but refuses to perform duty assigned to him.

From the conditions mentioned above, it is clear that an official can be marked as *dies non* even if he performs duty for a part of the day in case he leaves office without proper permission or when he refuses to

OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (AUDIT) ASSAM ETC.,
BHANGAGARH ::::: GUWAHATI-5

No. Estt/Audit/PC/RCR/893

15 SEP 1995
dt. _____

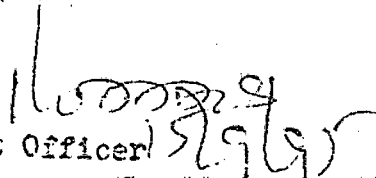
To

Shri Rakesh Ch. Roy, S. A.
CAP-6 Section.

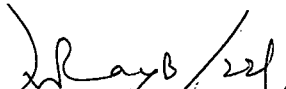
With reference to your application dt. 3.7.95 I am to inform you that your prayer for regularisation of your absence on 6.9.95 by grant of leave instead of treating "dies non" has been turned down by the Principal A.G. (Audit) Assam etc. Shillong.

(Authority :- Pr. A.G. (Audit)'s orders conveyed vide DAG(A)/Con-C/RCR/399 dt. 5.9.95).

Yours faithfully


Sr. Audit Officer

Certified to be true


Accountant General (Admin.)
O/o the Pr. A. G. (Audit)

Assam, Meghalaya, etc. Shillong.

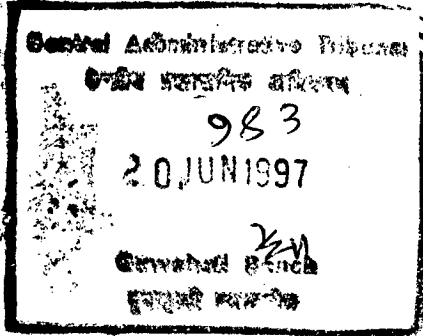
उप महालेखाकार (प्रशासन)
कार्यालय प्रधान महालेखाकार (ले. प्र.)
असम, मेघालय, आदि. शिलांग-१

1158
95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

Case No.O.A. 67 of 1996

Filed by Rakesh Chandra Roy in person.
16-6-1997
35



An application under Section 19 of the Central Administrative Tribunal Act, 1985.

Sri Rakesh Chandra Roy ... Applicant

-versus-

Union of India and others ... Respondents

IN THE MATTER OF :

A Rejoinder submitted by Sri Rakesh Chandra Roy, applicant, against written statement submitted by the Respondent nos. 1, 2, 3, 4 and 5.

The Applicant, above-named;

MOST RESPECTFULLY SHEWETH :

1. That a statement has been received from Union of India on 14-~~3~~-1997. It is seen that the Respondent no. 2 to 5 did not quote their order of authority on the statement for forcefully detaining my one day pay & allowances as 'dies non'.
2. The statement had been made in paragraph 4(iii)

A copy of the rejoinder has already been received by C.S.S.C on 16/6/97
Rajesh

in my application respondent no. 3 and 4 didnot forcefully grant my casual leave which was submitted by me on earlier date on 5-9-94 in my respective section and this day has been forcefully treated as 'dies non' by doing conspiracy and casteism in violation of rules and regulation of Indian Constitution.

3. That the statement has been made in paragraph 4_x(IV) in my application, it is found that Deputy Accountant General (Audit-IC) Guwahati had visited in the respective section on 6-9-94 and he didnot find me in this section because I was absent on that day and I had submitted a casual leave applicaçon on 5.6.94. Respondent No. 3 and 4 did not issue any memo against my name on 8-9-94 and 24-10-94. On 7-11-94 I had received a memo from the Supervisor of the Section and I received it and then and there I submitted another casual leave application which was forcefully not granted by the Respondent No. 3 and 4 by doing conspiracy. It is shown that the scheduled castes, the scheduled tribes (Prevention of Atrocities) Act, 1989, Chapter II (Offences of Atrocities) Paragraph 2(i) at page 6 is mentioned that Respondent 2,3,4 and 5 have given or fabricated false evidence intending hereby cause or knowing it to be likely that they will hereby cause as member of scheduled caste in the state of Assam.

4. That the statements have been made in paragraph 4(v) in my application, it is maintainable in law and justice, Respondent no. 2 to 5 have no right to give any

advice to the Hon'ble Court regarding this matter and they have no right forcefully detaining my one day pay as a 'dies non' without giving allocation of duty, and not mentioning the names of the Divisi~~o~~ns.

5. That in paragraph 8 statements have been made which are maintainable in law and justice according to the above-mentioned Act. In that paragraph it is further found that the Respondent Nos. 2 to 5 have no right to give advices to the Court regarding the relief of one day and the cost of the application.

In paragraph 9 in the application Respondent No. 2 to 5 have no right and there is no rules to advise the Court regarding this matter for interim relief and the cost of the application.

VERIFICATION

I, Shri Rakesh Chandra Roy, son of late Tarani Chandra Roy, resident of Qr. No. DS/58(P) (Rest Camp) Pandu, Guwahati-12 beg to say that the statements made in the above paragraphs are true to the best of my knowledge and belief and are in accordance with the provisions of the Constitution of India.

DATE 16-6-1997.

Rakesh Chandra Roy
APPLICANT