

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

6

O.A.NO./ 306/91  
T.A.NO.

DATE OF DECISION 10.5.1999

Shri A.H.Pillai Petitioner (s)

Mr. K.K.Shah Advocate for the petitioner(s)

VERSUS

Union of India & Ors Respondent (s)

Mr.N.S.Shevde Advocate for the Respondent(s)

CORAM

THE HON'BLE MR. V.RADHAKRISHNAN : MEMBER [A]

THE HON'BLE MR A.S.SANGHAVI : MEMBER [J]

JUDGMENT

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 it needs to be circulated to other Benches of the Tribunal ? ✓

Shri A.H.Pillai,  
Address for service of notice:-  
Shri K.K.Shah, Advocate,  
3, Achalyatan Society, Div.II,  
B/H Memnagar Fire Station,  
Navrangpura,  
Ahmedabad.

Applicant

Advocate Mr.K.K.Shah

Versus

1. Union of India, Through :  
General Manager,  
W.Rly., Churchgate,  
Bombay.
2. DRM[E], BRC, Divl. Office,  
Baroda Division, Pratapnagar,  
Baroda.
3. Sr. DOS BRC, Divl. Office,  
Baroda division, Pratapnagar,  
Baroda.
4. DOS BRC, Divl Office,  
Baroda division, Pratapnagar,  
Baroda.

Respondents

Advocate Mr.N.S.Shevde

**J U D G M E N T**  
**IN**  
**O.A.NO.306 OF 1991**

Dt. 10.5.1999



⑥

PER Hon'ble Mr.A.S.Sanghavi : MEMBER [ J ]

This application under the provisions of section 19 of the Administrative Tribunals Act is moved by the applicant seeking to quash and set aside the orders passed by the disciplinary authority at Annexure A/2, A/3, and A/4 imposing a penalty of compulsory retirement on the applicant. The applicant has also prayed for reinstatement with all consequential benefits.

2 The applicant in September, 1988 was working as ASM, Champaner Road Junction Station and was served with a charge-sheet on dated 11.10.88 imputing that he was careless and negligent in working and that he had used un-parliamentary and abusive language while talking to ATNL on duty. It was also alleged that he was not attending the group telephone for making I/T/I N D Down goods train through. When the ATNL had called him and asked him to contact "B" cabin, he replied that the "B: cabin was unnecessarily giving trouble and then started abusing the ATNL and using un-parliamentary language. Thus DAR inquiry was proceeded with and statement of the applicant and that of two other witnesses were recorded by the inquiry officer on dated 8.3.89 and 15.4.89. The inquiry officer had thereafter given a finding on dated 18.4.89 stating that the charges levelled against the applicant could not be proved due to lack of accurate evidence and in-complete charges. The DOS BRC, thereafter issued an order as at annexure A/8 that the charges levelled against the applicant were dropped without prejudice to further DAR action in future. Subsequently the applicant was served with another charge sheet on dated 3.7.89 with the same accusation levelled against him

in the first charge sheet on dated 11.10.88. The inquiry on the basis of the second charge-sheet was there after proceeded with and as a result of the inquiry officer's report, the disciplinary authority passed the order of compulsory retirement with immediate effect from railway service on dated 25.6.90. The applicant then appealed to the Sr.DOS, BRC who rejected the appeal vide his order dated 5.4.90. Against that order, a revision was preferred by the applicant but the same was also summarily rejected by the revisional authority.

3. Being aggrieved by the said orders of the Inquiry officer as well as the appellate authority and the revisional authority, the applicant has preferred this O. A. before us. He has challenged the correctness and legality of the impugned orders passed by the respective authorities.

4. Mr.Shah, the learned counsel appearing for the applicant has assailed the whole proceedings on three main grounds. According to him, the order passed of the dropping of the charges without assigning any reason, prohibited the respondents from giving second charge sheet to the applicant and from proceeding with the inquiry on the basis of the second charge sheet against the applicant. The second inquiry conducted was therefore clearly bad in law and as such no penalty could have been imposed on the applicant by the respondents. The second contention of Mr.,Shah is regarding disproportionate nature of the penalty imposed on the applicant and according to Mr.Shah the only charge held to have been proved against applicant is that he had used un-parliamentary and abusive language while talking to his ATNL. He has submitted that even assuming for the sake of argument that this charge

was proved, then also the penalty imposed of compulsory retirement from the service on the applicant defies all norms of imposition of penalty and is clearly disproportionate with the nature of charges levelled against him. It is very harsh and disproportionate and therefore, requires interference by this court. The third limb of the submission on the part of Mr. Shah is regarding the evidence adduced against the applicant during the inquiry. According to him, there is absolutely no evidence against the applicant to show that he had used unparliamentary or abusive language and thereby had committed any misconduct.

5. Mr. Shevde, the learned counsel appearing for the respondents on the other hand has supported the inquiry officer's order and the punishment levelled against the applicant. He has submitted the original file of inquiry for our perusal and has also submitted that considering the indisciplinary attitude of the applicant while talking with his superior, the punishment levelled against him cannot be said to be disproportionate or a harsh one. However, he has not been able to explain why the second charge sheet was given to the applicant and how on the second charge sheet the adverse findings were given on the basis of the same evidence recorded by the earlier inquiry officer.

6. We have carefully gone through the evidence recorded by the inquiry officer as well as the documents produced by both the sides. It is quite obvious from the nature of the inquiry conducted and the manner in which the second charge sheet was given to the applicant, even after the



findings of the inquiry officer that there was no evidence proving the charges against the applicant that the applicant has been victimized by his superior officers. It is pertinent to note that first charge sheet, given to the applicant contained the allegation that while he was working as ASM at CPN on 17.9.88, he failed to attend the group telephone in time due to which I/BRC up goods was detained out side signal of up home signal even though ATNL had intimated him through control phones and that he behaved rudely and used un-parliamentary language on control phone with ATNL on duty and he also abused and talked vulgar words.

7. Now after this charge -sheet was given to the applicant, inquiry was conducted against him and witnesses were examined by the inquiry officer. The inquiry officer has given a finding on all these charges levelled against the applicant on dated 18.4.89 holding that all the three charges levelled against the applicant were not proved. So far as the first charge of the I/BRC up goods train was concerned, he held him not responsible and as regards the second charge of using un-parliamentary language on control phone while talking to ATNL, he held that the same was not proved due to lack of accurate evidence and in-complete charges. As regards the third charge of reporting false sick on duty and leaving the head quarter without permission, he held him not responsible.

8. After these findings were given by the inquiry officer on dated 18.4.89, it appears that instead of passing any order regarding

acceptance or non acceptance of these findings, the disciplinary authority passed an order on dated 27.4.89, stating that the charges levelled against the applicant vide the office memo SF 51 even No. quoted above, are dropped without prejudice to further DAR action in future. No reasons are given by the disciplinary authority for dropping these charges against the applicant. Since, no reasons were given and also since the disciplinary authority had already received the findings of the inquiry officer, it was not open to the disciplinary authority to give a fresh charge sheet on the same charges to the applicant. Hence, it is quite obvious that the second charge sheet given to the applicant and the inquiry conducted thereafter as well as the punishment awarded to the applicant on the basis of that inquiry are vitiated on this ground alone. The whole second inquiry proceedings are therefore required to be quashed as bad in law ab initio.

9. Apart from the fact that the second inquiry conducted pursuant to the second charge sheet given to the applicant was illegal and baseless, the conduct of the inquiry officer in arriving at a conclusion different than that he had arrived earlier on the same evidence suggests that some pressure had been brought on the inquiry officer to give adverse findings against the applicant. Ordinarily, we do not enter into the re-appraisal of the evidence adduced at the inquiry but considering the nature of this case, we have gone through the evidence recorded by the inquiry officer and to our utter dismay and surprise, we have found that the inquiry officer has held the charge of applicant using unparliamentary and abusive language been proved without there being

any evidence on record. It is alleged against the applicant that he had talked with ATNL on telephone and while talking he got excited and used un-parliamentary and abusive language. The ATNL Mr. Iyer has not stated a single word, which would be considered to be un-parliamentary or abusive, before the inquiry officer and has merely stated that he had used un-parliamentary language. Surprisingly though the incident has taken place on telephone, two witnesses examined have gone to the extent of saying that they heard the applicant using un-parliamentary language while talking with the ATNL. The inquiry officer has placed reliance on the version of these witnesses and has held the applicant guilty of misconduct while talking to his superiors. It is quite obvious that the inquiry officer himself has misconducted while giving his findings regarding the applicant having been guilty of using un-parliamentary and abusive language. No reasons are given by the inquiry officer how he came to the conclusion regarding the applicant using un-parliamentary and abusive language when no words of un-parliamentary language were spoken by the witnesses and recorded by the inquiry officer. The inquiry officer has merely believed or assumed that the applicant must have used the un-parliamentary words while talking to ATNL. Such assumption cannot take place of the proof. The findings of the inquiry officer are, therefore, not based on the evidence on record, but are based merely on conjectures<sup>and</sup> assumption and, therefore, also same cannot be sustained. Another significant aspect is that the inquiry officer has ignored the embellishments and contradictions in the evidence of these two witnesses and has given his findings on assumptions that whatever evidence was given before him was correct. He has even not



cared to consider the fact that one of the witnesses had stated that conversation took place in southern language. It is therefore, quite obvious that the findings of inquiry officer are perverse and false cannot be allowed to be sustained.

If the inquiry officer was guilty of giving perverse and false findings, the appellate authority who have heard the appeal was equally guilty of not applying his mind to the evidence on record and disposing of the appeal in haste. The appeal is disposed of by Mr. R.K. Tandon, Sr. DOS BRC, on dated 27.8.90, with following lines :-

" I have gone through the case and appeal of the employee in detail. There is no reason for an employee to indulge in using abusive and un-parliamentary language with the control staff when there is no provocation warranting any quarrel or a diff. The employee should have kept his cool, even if he was working over time and behaved himself. He is, therefore, responsible for misconduct and mis-behaviour. "


No reasons are given by the appellate authority for his conclusion that the employees had used abusive and un-parliamentary language. His order leaves no room for doubt that he had not even seen file of the inquiry and had merely believed what the inquiry officer had stated in the report. Similar is the conduct of the revisional authority also. He also has not taken trouble to see the file and go through the evidence recorded by the inquiry officer. None of them has cared to consider whether there is any evidence of applicant using un-parliamentary or abusive language while talking to his superior. They have merely


surmised that that must be so. It is quite obvious that they were careless in disposing of the appeal and revision and this has resulted into a gross in-justice to the applicant and the applicant without any sufficient reasons has been asked to retire compulsorily from the service. We find that this is a fit case in which our interference is required as the punishment inflicted on the applicant is not only harsh and dis-proportionate but findings are also based on no evidence.

10. The O.A. therefore, deserves to be allowed and the findings of the disciplinary authority as well as the order of punishment passed against the applicant by the disciplinary authority and confirmed by the appellate authority as well as the revisional authority requires to be quashed and set aside.. Hence in the circumstances, we pass the following order,'

### ORDER

The O.A. is allowed and the order of the disciplinary authority dated 25.6.90, awarding the penalty of compulsory retirement with immediate effect to the applicant is hereby quashed and set aside and the respondents are directed to reinstate the applicant in service with all consequential service benefits including the seniority from the date of the impugned order. The respondents are also directed to pay the costs quantified at Rs. 500/- to the applicant.

  
[ A.S.SANBGHAVI ]  
MEMBER [ J ]

  
[ V.RADHAKRISHNAN ]  
MEMBER [ A ]

CPB  
CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A.NO./ 306/91

T.A.NO.

DATE OF DECISION 10.5.1999

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Union of India & Ors Respondent (s)

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THE HON'BLE

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THE HON'BLE

MR A.S.SANGHAVI : MEMBER [J]



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Advocate                      Mr.K.K.Shah

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J U D G M E N T  
IN  
O.A.NO.306 OF 1991

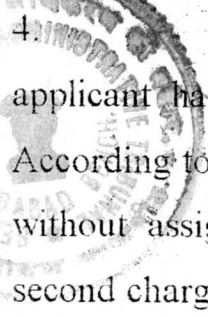
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If the inquiry officer was guilty of giving perverse and false findings, the appellate authority who have heard the appeal was equally guilty of not applying his mind to the evidence on record and disposing of the appeal in haste. The appeal is disposed of by Mr. R.K. Tandon, Sr. DOS BRC, on dated 27.8.90, with following lines :-

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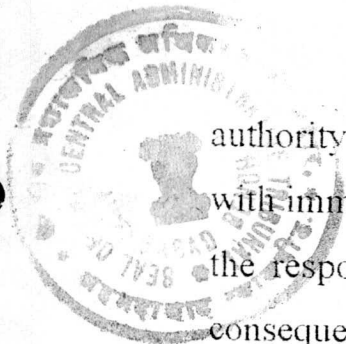
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surmised that that must be so. It is quite obvious that they were care less in disposing of the appeal and revision and this has resulted into a gross in-justice to the applicant and the applicant without any sufficient reasons has been asked to retire compulsorily from the service. We find that this is a fit case in which our interference is required as the punishment inflicted on the applicant is not only harsh and dis-proportionate but findings are also based on no evidence.

10. The O.A. therefore, deserves to be allowed and the findings of the disciplinary authority as well as the order of punishment passed against the applicant by the disciplinary authority and confirmed by the appellate authority as well as the revisional authority requires to be quashed and set aside.. Hence in the circumstances, we pass the following order.'

### ORDER

The O.A. is allowed and the order of the disciplinary authority dated 25.6.90, awarding the penalty of compulsory retirement with immediate effect to the applicant is hereby quashed and set aside and the respondents are directed to reinstate the applicant in service with all consequential service benefits including the seniority from the date of the impugned order. The respondents are also directed to pay the costs quantified at Rs. 500/- to the applicant.

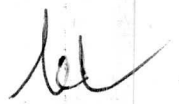




Reviewed by:  
sd/-  
[ A.S.SANBGHAVI ]  
MEMBER [ J ]

sd/-  
[ V.RADHAKRISHNAN ]  
MEMBER [ A ]

Section Officer (J)  
88N  
Ahmedabad Bench

16

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
16.11.99		<p>Two weeks time is granted for removing the office objection. Adjourned to 20.12.99.</p> <p> (V. Radhakrishnan) Member (A)</p> <p>nkk</p>
20.12.99	<p>Reg no - MA/743/99. Given 23/12/99</p>	<p><u>M.A./S.T./576/99</u></p> <p>Time requested for in this MA <del>is</del> already <del>been</del> expired. Hence MA may be given regular number and disposed of as infructuous.</p> <p> (A.S. Sanghavi) Member (J)</p> <p> (V. Radhakrishnan) Member (A)</p> <p>nkk</p>





(1)

Sr.No. 13/2000

Dated: 16/2/2000

Submitted: Hon'ble Vice Chairman &

~~Hon'ble Mr. V. Radhakrishnan, Member (A)~~

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 28/1/2000 in CA/  
Spl.C.A. No. SCA/9436 of 1999 passed by the  
~~Supreme Court/~~ High Court against the Judgment/ ~~Oral~~ Order  
passed by this Tribunal in OA/306/91 is placed for perusal  
please.

*[Signature]*  
16/2

*[Signature]*  
S.O.(J) 17.2.2000

*[Signature]*  
D.R.(J)

Hon'ble Vice Chairman *[Signature]*  
18/2/2000

~~Hon'ble Mr. V. Radhakrishnan, Member (A)~~

Hon'ble Mr. P.C. Kannan, Member (J) *[Signature]*

Hon'ble Mr. A.S. Sanghvi, Member (J) *[Signature]*  
18/2/2000

PROF DR W A - I  
JTION, DISPOSAL AND

# BAD BENCH OF THE TR

[illegible]

(13)

1978

(2)

Decree Despatch  
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

29-1-

Special Civil Application No 9436 of 1999



1. UNION OF INDIA & ORS.  
Vs  
1. AH PILLAT

Petitioners

Respondent

(17)

To

1. UNION OF INDIA

THROUGH GENERAL MANAGER,  
HQ OFFICE, WESTERN RAILWAY  
CHURCH GATE, MUMBAI-400 020

2.

DIVISIONAL RAIL MANAGER  
DIVISIONAL OFFICE  
PRATAPNAGAR, WESTERN RAILWAY  
VADODARA-390 004

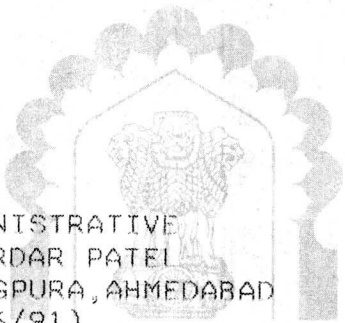
3.

SR. D.O.S. BRC, DIVL, OFFICE  
BARODA DIVISION,  
PRATAPNAGAR,  
BARODA

4.

DOS, BRC DIVL OFFICE  
  
BARODA DIVISION  
PRATAPNAGAR,  
BARODA

5. THE CENTAL ADMINISTRATIVE  
TRIBUNAL, NR. SARDAR PATEL  
STADIUM, NAVRANGPURA, AHMEDABAD  
(REF:O.A.NO. 306/91)



Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 29/11/1999 praying to grant the prayers and etc....

And Whereas Upon hearing  
MRS SIDDHI D TALATI for the Petitioner no. 1-4  
MR KK SHAH for the Respondent no. 1  
Court passed the following order :-

CORAM : B.C.PATEL & D.H. WAGHELA, JJ.  
DATE : 18.1.2000

This matter was called out in the first as well as second sittings, but learned advocate for the appellant was not present on both the occasions. Hence this matter stands dismissed for non-prosecution.

Learned advocate Mr. Shah was present for the respondent.

dictated  
7/12  
H. B. Son  
927464  
1522w

3

Witness CHUNILAL KARSANDAS THAKKAR, Esquire Acting Chief Justice at Ahmedabad  
aforesaid this 18th day of Jan, 2000.

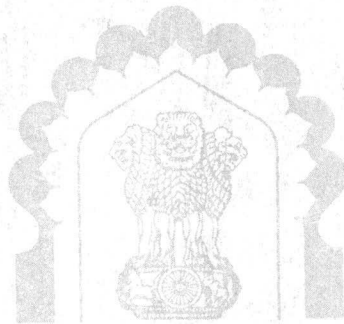
By the Court

For Deputy Registrar

This day of Jan 2000

18

Note : This writ should be returned  
duly certified within 2 weeks.  
( 659) 270120



सत्यमेव जयते

THE HIGH COURT  
OF GUJARAT



CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

22/206/91

of 19

Transfer Application No.

Old Writ. Pet. No. ....

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated: 07/06/99

Countersigned.

22/7-9-99

12/12-99

Section Officer/Court Officer.

Signature of the Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CAUSE TITLE

CA/306/91

NAME OF THE PARTIES

A. H. Pillai

VERSUS

GOVT 802

SR NO.	DESCRIPTION OF DOCUMENTS	PAGE
	<u>CA -</u>	<u>32 -</u>
	<u>cc. Statement</u>	<u>33 - 43</u>
	<u>Rejoinder</u>	<u>44 - 52</u>
	<u>Reps</u>	<u>53 - 55</u>
	<u>MA/142/92</u>	<u>56 - 63</u>
	<u>Reps</u>	<u>64 - 65</u>
	<u>Judgment dt 10/5/99 (10 pages)</u>	
	<u>MA/747/81</u>	<u>66 to 68</u>
	<u>SEAMO 9436/99 Jim Hile Guy</u>	<u>3 pages</u>
	<u>18/1/2000 Inno No 286/14/2/2000</u>	

75-90

A. put together  
Important witnesses not examined  
Documents are not furnished.

June 7 2nd classed illegible. No name  
Author's: 1, 2, 3

1st day school - 11.10.89  
 enquiry held. p. 32. 27/7/89 enquiry  
 completed.

3/7/88 2nd day sheet

Appel AL P-2)

Point raised by me apt. in answer

Slower

Particulars not given in chapter  
Hence upon & here depend  
it -

So report is not available  
Guidance is not available

Name of Lys known as in they  
 is an animal.  
 Defina Animal is purchased

Shah Nirmal / DOS not complete to superintendent.  
B.A. no 1576/90.

2) B.A. and 1576/90

3) enquiry report to fill in the gaps of evidence

4) Non specific ~~the~~ order

non-specific and  
point raised by me after we

37) Amended addy as  
3rd witness.

3d witness.  
No record of record  
Call 3d witness ~~indifferent~~  
I rely on his evidence.  
Honest of Jyr or Jm

Murphy's review  
means change in the script  
Why were the changes?

After so many years it cannot  
be submitted back to the author.

If evidence was then taken  
more of the changes. but with the board

Cont. which avoids the removal  
in the no pain  
is paid.

Shard

11/1/90 added to the  
7/3/90 list of given in

to witness  
the board

had changed. was issued with full particulars.

Simon E.O. has submitted to the  
Defendant charged for the  
make the it involved

Def is expected to appear

ME

P. 30 of the 15th of  
Evidence disclosed

Q. 30 of the 15th of  
the T.O. reasons for changing  
the T.O. communication  
is no evidence. for now can  
full in the gaps.  
Q. 32 of the 20.4.90  
2.0. cannot explain.



CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

306

of

1991

Miscellaneous Petition No:

of

Shri

A H Pillai

Petitioner(s)

Versus.

UOI Son

Respondent(s).

This application has been submitted to the Tribunal by Shri Mun K K Shuk

Under Section 19 of the Administrative Tribunal Act, 1985. It has scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O.(J) :

D.R.(J) :

KNP/30891/ \*\*\*\*\*

1. v. not filed. (files to be sent with out stamp.)  
20/1/91  
KBSaw  
29/1/91  
Hankum  
29/1/91

Advocate concerned has remove office objection to day. Advance copy not served. we may issue notice & fixed for admission.

20/1/91  
S.O.(J)  
D.R.(J)

KBSaw  
20/1/91

Hankum  
20/1/91

## CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT(S)

Aft Pailani

RESPONDENT(S)

Wadhwa

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO  
RESULT OF EXAMINATION.

1. Is the application competent ? *yes*
2. (A) Is the application in the prescribed form ? *yes*
- (B) Is the application in paper book form ? *yes*
- (C) Have prescribed number complete sets of the application been filed ? *yes*
3. Is the application in time ? *yes*  
If not by how many days is it beyond time ?  
Has sufficient cause for not making the application in time stated ?
4. Has the document of authorisation/ Vakalat Nama been filed ? *not filed*
5. Is the application accompanied by D.D./I.P.O. for Rs. 50/-? Number of D.D./I.P.O. to be recorded. *yes*
6. Has the copy/copies of the order(s) against which the application is made, been filed ? *yes*
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? *yes*
- (b) Have the documents referred to in (a) above duly attested and numbered accordingly ? *yes*
- (c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents has been filed and has the paging been done properly ? *yes*

...2..

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT  
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?
11. Are the application/duplicate copy/appare copies signed.?
12. Are extra copies of the application with annexures filed.?
  - (a) Identical with the Original.
  - (b) Defective.
  - (c) Wanting in AnnexuresNo. \_\_\_\_\_ Page Nos. \_\_\_\_\_ ?
- (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the respondents been filed?
14. Are the given addressed, the registered addressed ?
15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application?
16. Are the transations certified to be true or supported by an affidavit affirming that they are true?
17. Are the facts for the cases mentioned under item No.6 of the application?
  - (a) Concise ?
  - (b) Under Distinct heads ?
  - (c) Numbered consecutively ?
  - (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons.?

yes

no

yes

yes

no

yes

yes

yes

yes

yes

Checked  
26/2/52

sl no 289/91  
21/6/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. NO. 306 OF 1991

A.H. Pillai ... Applicant.

V/s.

Union of India & Others. ... Respondent.

I N D E X

Sr. No.	Annexure No.	Particulars	Page No.
1.	-	Memo of application	1-11
2.	'A'	First charge sheet dated 11.10.88	12-15
3.	'A-1'	Second charge sheet dated 3.7.89	16-19A
4.	'A-2'	Penalty order dt. 25.6.90 of DOS BRC.	20-21
5.	'A-3'	Order dt. 27.8.90 of the appellate authority vis. Sr. DOS BRC.	22
6.	'A-4'	Order dt. 31.12.90 of the Reviewing Authority i.e. D.R.M. (E) BRC.	23
7.	'A-5'	Enquiry Officer's letter No. E/318/3/3/96 dt. 5.4.90.	24-25
8.	'A-6'	Appeal dt. 5.7.90 of the applicant to the Sr. D.O.S. W.Rly. BRC.	26
9.	'A-7'	Revision application dated 13.10.90 of the applicant to D.R.M. (E) BRC.	27-31
10.	'A-8'	DOS BRC letter dt. 27.4.89	32

*Demanded draft*  
No.  
O.A. 113/259323  
21/6/91

*21.3.91  
Sundar  
Ravi*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. No. 206 of 1991

A.H. Pillai ..... Applicant

V/s.

Union of India & Others ..... Respondent.

Details of Application:

1. Particulars of applicant:

Shri A.H. Pillai  
Ex. Station Master, Godhra  
Railway Qtr.No.385-A  
Godi Yard, Godhra.

Address for service of notices:

Shri Kiran K. Shah,  
Advocate  
3, Achalyatan Society, Div.II  
B/H Memnagar Fire Station  
Navrangpura, Ahmedabad - 380 009.

2. Particulars of the Respondent:

- (1) Union of India Notice to be served through  
General Manager, W.Rly.  
Churchgate, Bombay.
- (2) DRM(E)BRC, Divl.Office, Baroda Dvn.,  
Pratap Nagar, Baroda.
- (3) Sr. DOS BRC, Divl.Office, Baroda Dvn.,  
Pratap Nagar, Baroda.
- (4) DOS BRC, Divl.Office, Baroda Dvn.,  
Pratap Nagar, Baroda.

3. Particulars of order against which application  
is made :

- (1) First charge sheet dt.28.12.88 Annexure-A
- (2) Second chargesheet dt.3.7.89 Annexure-A1
- (3) Penalty order dt.25.6.90 of DOS BRC Annex-A2
- (4) Order dt.27.8.90 of the Appellate  
Authority Sr.DOS BRC Annexure-A3
- (5) Order dt.31.12.90 of Reviewing  
Authority DRM(E)BRC Annexure-A4

Subject in brief:

The applicant entered the Railway Service as Office Clerk in August 1975 and was promoted to the post of ASM in February 1980. In September 1988 the applicant was working as ASM Champaner Road Jn. Station and he was served a chargesheet dated 11.10.88 bearing no.E/308/3/3/82 on the charge of careless and negligent working and the statement of imputations were incorporated as Article I, Article II & Article III of the charge sheet. This DAR enquiry was proceeded with and statement of the applicant and that of two other witnesses were recorded by the enquiry officer on 8.3.89 and 15.4.89. But it appears that no charge could be established and as such the enquiry was dropped. This charge sheet dated 11.10.88 is already marked Annexure-A.

But on 3.7.89 another chargesheet bearing no. B/308/3/3/96 was served on the applicant on the same charges as were leveled against him under Article I, II & III of chargesheet dt. 11.10.88. This is clear from the language of the two charge sheets which in substance is the same except a change of a few words here and there. But the date of incident and nature of charge leveled against the applicant in the second charge sheet happen to be the same. The copy of charge sheet dated 3.7.89 is already marked Annexure-A1. The enquiry on the basis of this charge sheet was proceeded with and as a result of the Enquiry Officers Report, being accepted by the Disciplinary Authority, the applicant was compulsorily retired with immediate effect from Railway Service by the impugned order dated 25.6.90 of DOS BRC. This is marked as Annexure-A2.

The enquiry report was submitted by the Enquiry Officer vide his no.E/308/3/3/96 dated 5.4.90 to the DOS BRC. This letter of 5.4.90 is annexed herewith and marked Annexure-A5. The impugned order dated <sup>25.6.90</sup>~~26.5.90~~ was a result of this enquiry report.

The applicant submitted his appeal against the impugned order dated 25.6.90 (Annexure-A2) to the Sr. Divisional ~~Sup~~ Operating Supdt. W.Rly., Baroda Dn. Baroda which is Annexed hereby and marked Annexure-A6. But the same was rejected by the Sr. DOS BRC vide order dated 27.8.90 (Annexure-A3) without making a properly worded speaking order and just confirmed the penalty imposed on the applicant by the disciplinary authority.

Against the order of Sr. DOS BRC, the applicant submitted Revision application dt. 13.10.90 under DAR 1968 Rules No.25 to the Divisional Railway Manager, Baroda Divn., Baroda and a copy of this petition is annexed hereby ~~by~~ and marked Annexure A-7. But the DRM(E)BRC also set aside the revision petition vide his order dated 31.12.90 (Annexure-A4) and confirmed the penalty of compulsory retirement with immediate effect from the Railway Service. To complete the so called formality the DRM granted a personal hearing to the applicant with his defence ~~xxxxxx~~ assistant but rejected the petition observing as under :

"..... The statement of imputation clearly indicates abusing ATNL and using unparliamentary language" Thus even the DRM BRC has not passed any speaking order as such and has rejected the revision petition. This contention gets support from the judgement passed by the Karnataka High Court in W.P. 4843 of 1978, decided

on 17th January, 1980 in the case of S. Doraiswamy Versus Union of India reported in 1980 S.L.J. 385. The order passed by the DRM BRC resembles an order passed mechanically without discussion of evidence on record and does not appear to be a speaking order. As such the applicant has come to the Hon'ble Tribunal against his order of compulsory retirement to get justice.

4. 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 Tribunal.

5. Limitation:

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

6. Facts of the case:

The applicant submits that he is a citizen of India and is enshrined by the provisions of the constitution of India. The facts of the case are given below :

(1) That the applicant was first appointed in the Railway Service in August 1975 as Office Clerk and in view of his good work he was promoted as Asstt. Station Master in February, 1980. Thereafter the applicant has undergone several transfers and has worked in this capacity of ASM at TUWA, Chhota Udaipur, Godhra, and Champaner Road Station between 1980 to 1988.

(2) That the applicant while working at Champaner Road Station as a ASM was served with a charge sheet dated 11.10.88 for alleged careless and negligent working



for alleged misconduct and misbehaviour with ANTL on phone on 17.9.88.

(3) That the chargesheet at 11.10.88 was proceeded with and 3 witness were examined by the Inquiry Officer. But subsequently the charges could not be proved as such and the result was that the charge was dropped without prejudice to future action.

(4) That the applicant was served with Second chargesheet dated 03.7.89 on the very same charges and same incidents with only a minor shifting on the construction of sentences of the draft. This becomes clear if the languages of both the charge sheet are tallied.

(5) That on the basis of enquiry officer's report, prepared on the basis of new chargesheet dated 3.7.89, the applicant was 'compulsorily retired' with immediate effect vide DOS BRC, order dated 25.6.90.

As such the applicant is before the Hon'ble Tribunal.

#### G R O U N D S

(1) There is an ambiguous and vague charge. The language of the chargesheet and alleged charge of misconduct and misbehaviour

of what and with whom and on what basis and under what circumstances has not been described and therefore such a vague charge sheet requires to be quashed and set aside and the consequent action and order on the same also deserves to be quashed and set aside.

(2) For the very alleged fact and circumstances once the chargesheet has been cancelled, and charge have been dropped as per letter dt. 27.4.89 as annexed herewith marked Annexure-A8, it is not open for the DOS, BRC, to initiate the disciplinary proceeds on the very subject matter without assigning any reasons for the same and issuing the second charge sheet is not in confirmity with the law laid down in.

(3) The impugned order imposing the penalty of compulsory retiring together with the inquiry report is bad in law as per the law laid down by the Hon'ble Supreme Court in the case of Union of India V/s. H.C. Goyal AIR/1964 SC 364, 1964(4) SCR 718 and adopted and followed and confirmed in the case of Union of India V/s. S. Bhashyan as well as in the case of Union of India V/s. Mohmed Ramzan Khan (1991)1/SCC 588.

The enquiry report and its finding are bias as much as without having the clear evidence have concluded and handed over the report to Dis. Authority for necessary action.

In his report his findings stated about the quarrel between the defendant and ATNL on duty, but without examining the ATNL or submitting his name in the list of witnesses, how the quarrel occurred, can be proved. The witnesses, statement can be of a secondary evidence after the prime evidence of ATNL and can be used to corroborate the alleged charge and cannot be used to create the evidence. In his finding in para (a), (b) & (d) are without direct evidence. There is nothing on the record either supplied with the chargesheet or during the course of inquiry from ATNL of having a quarrel by the applicant with ATNL or any mis-behaviour. Merely on the vague statement and finding para (b) it can not be said that the applicant had abused or used un-parliamentary language. Nowhere it is found from the report of discussing the evidence and coming to any final conclusion. The final conclusion has not at all being drawn by the enquiry officer and such vague findings without conclusion amount to a defective and hence report and the order passed on such a report require to be quashed and set aside.

(5) The appellate authority failed to perform its duty and obligation as per Rly. Servant (D&A) Rules 1968 Rule 22 and the

order of Appointing authority and the Reviewing authority is not in consistence with the Statutory Rules and the order are also not speaking ones.

(6) The reviewing Authority just to fulfill the technical lapses gave personal hearing with Defence Assistant to the applicant but have not referred in his order any of the point raised in the revision application or in personal hearing and states that the statement of imputation clearly indicates "abusing ATNL and using unparliamentary language" and no evidence has been appraised by him, nor he has stated any reason for his agreeing with the earlier order and therefore, the order issued by the Reviewing Authority as well as the order of Appointing Authority and Disceplinary Authority require to be quashed and set aside.

(7) The D.O.S. is not empowered to issue chargesheet or major penalty of compulsory retirement and only the head of the department i.e. General Manager can issue the charge sheet for major penalty to the applicant as per the powers provided under the rules - Rly. Servants (D & A) Rules 1968.

The charge sheet issued by the authority below in rank to the appointing authority is

violative of article 311(1) of the constitution of India and therefore the same requires to be quashed and set aside.

(8) After the issuance of the first chargesheet was relief upon by the disciplinary authority and was not supplied to the alleged delinquent employee. No reasons have been given for the same and to cover up the lapses and to victimise the applicant the service record was replaced by the fabricated document and the original of the same was not made available, nor was brought on record during the enquiry. This aspect has been stated by the applicant in the statement of 19.3.90 while replying the query.

The document produced and the record of DAR action on the earlier chargesheet was never relied in the list of documents by the disciplinary authority. The documents which are not relied in the chargesheet can not be relied upon in the inquiry without giving the copies of the same to the applicant in advance atleast 3 days before of the commencement of the inquiry. The impugned orders are therefore against the principle of natural justice, arbitrary and discriminatory and therefore require to be quashed and set aside.

(9) The names of only two witnesses were given in the chargesheet while during the enquiry three witnesses have been examined which is contradictory and against the Railway Servants (D&A) Rules 1968.



(10) Keeping in view the remaining period of about 20 years of service ahead and looking to the past record the penalty awarded by the respondent is too harsh and disproportionate, even assuming that the alleged charges are correctly proved, though it is not admitted by the applicant.

(11) Though there is no charge of violating the Railway Servants conduct rules, the subject matter of the chargesheet and the alleged charge of misconduct cannot be said as such and unbecoming of a Railway Servant. As regards the first chargesheet the applicant was kept in suspension but the same was revoked and the charges were dropped, allowed to perform duty and now again by awarding the penalty of compulsory retirement amounts to the non-application of mind and can be with only intention to throw the applicant out of employment with ulterior motive.

7. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

8. Matters not previously filed or pending with any other Court :

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

9. Relief(s) sought :

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s) :-

(1) The Hon'ble Tribunal may be pleased to quash and set aside the orders Annexures A-2, A-3 & A-4 by holding them as illegal and direct the respondent to reinstate the applicant with all consequential benefits.

(2) That the Hon'ble Tribunal may be pleased to allow the application with costs.

(3) That the Hon'ble Tribunal may be pleased to pass such order or direction as deemed fit in the interest of justice.

10. Interim order, if any prayed for :

(1) Pending admission and final disposal the Hon'ble Tribunal may be pleased to direct the respondents to suspend the further implementation and operation of the impugned orders and allow the applicant to perform duties.

(2) That the Hon'ble Tribunal may be pleased to pass such order or direction as deemed fit in the interest of justice.

11. Particulars of Bank Draft/Postal Order in respect of the Application Fee :

1) Name of the Bank on which drawn : State Bank of India, Ahmedabad

2) Demand Draft No. : OT/A/113 759373  
dated 25th May, 1991.


: 11 :

I, A.H. Pillai, aged 39 years ~~working~~  
Ex. Station Master, Godhra resident of Railway  
Quarter No. 385-A, Godi Yard, Godhra do hereby  
verify that the contents of paras 1 to 10 are  
true to my personal knowledge and also legal  
advice and that I have not suppressed any material  
fact.

Date : 20/6/91

Place: Ahmedabad.

*Isabhabde bene  
Shah  
Chakras  
Adv.*

  
( Signature of Applicant )

Filed by Mr. *K. K. Shah*  
Learned Advocate for *Pensioners*  
with second set & *3* copies  
copies copy served/not served to  
other side  
*21/6/91* By Registrar C.A.T.(J)  
Ahmad Bench

Annexure-A

12

W. R.

## STANDARD FORM OF CHARGE SHEET

SF-5

Name of Rly. Admn. DRM-OfficeNo. E/308/3/3/82Place of Issue BRCDated 11-10-1988

## MEMORANDUM

The undersigned propose (s) to hold an inquiry against Shri A. M. Pillai ASM-CPU under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each articles of charge enclosed (Annexure II). A list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV) Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

Shri A. M. Pillai ASM-CPU is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact \_\_\_\_\_ immediately on receipt of this Memorandum.

Shri A. M. Pillai ASM-CPU is further informed that he may if he so desires take the assistance of any other Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule 9 (13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the event of an oral inquiry being held. For this purpose he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant (s) or Railway Trade Union Official (s), Shri A. M. Pillai ASM-CPU should obtain and undertake from the nominee (s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any, in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

by  
8/11/88

13/10



Shri A. M. Pillai ASM-CPN is hereby directed to submit to the undersigned a written statement of his defence which should reach, the undersigned within ten days of receipt of this Memorandum, if he does not reanised to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect document and also-

- (a) to state whether he wishes to be heard in person; and
- (b) to furnish the names and addresses of the witness if any; whom he wishes to call in support of his defence.

Shri A. M. Pillai ASM-CPN is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.

Shri A. M. Pillai ASM-CPN is further informed that if he does not submit his written statement of defence within the period specified in Para 4 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provision of Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 or the orders/directions issued in pursuance of the said rule, the inquiring authority ex-parte.

The attention of Shri A. M. Pillai ASM-CPN is invited to Rule 20 of the Railway Services (Conduct) Rules 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect 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 within these proceedings, it will be presumed that Shri A. M. Pillai ASM-CPN 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 the Railway services (Conduct) Rules, 1966.

The receipt of this Memorandum may be acknowledged.

Encls.

ONE

Signature

To,

Shri

A. M. Pillai

Designation

ASM -

Place

CPN

Copy to Shri

Mr. GDA

for information.

(Name and Designation of the lending authority)

Strike out whichever is not applicable.

To be deleted if copies are given/not given with the Memorandum as the case may be.

Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

Shri V. N. Singh

Name and Designation of  
Competent Authority

DOS - BRC



Memorandum of Charge Sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.

Statement of Articles of charge framed against Shri A.M. Pillai, AGM-CPN  
(Name and Designation of Railway Servant)

Careless and negligent working.

ARTICLE 'I'

That the said Shri A.M. Pillai, AGM-CPN RA  
while functioning as \_\_\_\_\_ during the period \_\_\_\_\_

(here enter definite and distinct article of charge)

Careless and negligent working.

ARTICLE 'II'

That during the aforesaid period and while functioning in the aforesaid office,  
the said Shri A.M. Pillai, AGM-CPN  
(here enter definite and distinct article of charge)

ARTICLE 'III'

That during the aforesaid period and while functioning in the aforesaid office,  
the said Shri A.M. Pillai, AGM-CPN  
(here enter definite and distinct article of charge)

15

ST-11  
K R Meena  
2/28/68  
MS

ANNEXURE 'II'

Statement of imputations or misbehaviour in support of the articles of charge against Shri A. M. Pillai, ASM - CPN  
(Name & Designation of the Railway Servant)

ARTICLE 'I' While you working as ASM at CPN on 17-9-68 you failed to attend the Group Phone in time, due to which I/BRC Up Goods detained at outside signal of UP Home Signal even though ATN was intimated you through Control Phone.

ARTICLE 'II' Further You behaved rudely and used unparliamentary language on Control Phone with ATN on duty who also abused and talked in vulgar words.

ARTICLE 'III' You malignity by reporting false sick on duty and left the Headquarter without permission. This has ~~witnessed~~ by Dy. TL and PCR PRN.  
(witnessed)

You are therefore held responsible for misbehaviour and misconduct and negligent working.

ANNEXURE 'III'

List of documents by which the articles of framed against Shri A. M. Pillai  
ASM - CPN are proposed to be sustained :-  
(Name and Designation of Railway Servant)

A copy of Note of AOS (G) BRC regarding Misbehaviour of Shri Pillai ASM CPN on 17-9-68.

ANNEXURE 'IV'

List of witnesses by whom the articles of charge framed against Shri A. M. Pillai, ASM - CPN  
(Name and Designation of the Railway Servant) are proposed to be sustained.

(1) Shri Ramvilas, Dy. TML BRC

(2) Shri Toogre, PCR. PRN.

Trilokya  
Shukla  
BRC

आरोप पत्र का चार्ज शीट  
STANDARD FORM OF CHARGE SHEET

[रेल कर्मचारी (अनुशासन और अपील) नियम 1968 का नियम 9]  
[Rule 9 of the Railway Servants (Discipline and Appeal) (Rules 1968)]

रेल प्रशासन का नाम Name of Rly. Admn. DRM. office

संख्या No. E/308/3/3196

जारी करने का स्थान Place of issue. BRC

तारीख Dated. 7-6-89  
03/7/89

ज्ञापन MEMORANDUM

निम्नहस्ताक्षरकर्ता रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 के अधीन श्री..... के विरुद्ध जांच करने की प्रस्तावना करते हैं। अशुचि या कदाचार के अभ्यारोपों का सार, जिनके संबंध में जांच करने की प्रस्तावना है, आरोप के अनुच्छेदों के विवरण (अनुबन्ध-I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के समर्थन में अशुचि या कदाचार के अभ्यारोपों का विवरण संलग्न है (अनुबन्ध-II)। जिन दस्तावेजों से और जिन साक्षियों द्वारा आरोप के अनुच्छेदों की पुष्टि की जाने की प्रस्तावना है, उनकी भी एक सूची संलग्न है (अनुबन्ध-III और IV) दस्तावेजों की सूची में उल्लिखित दस्तावेजों की प्रतियां अनुबन्ध III के रूप में संलग्न हैं।

The undersigned propose (s) to hold an inquiry against Shri. A. H. Pillai, ASM-CPN under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or mis-behaviour 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 the imputations 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 (Annexures III & IV). \*Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

2. \*\*श्री..... को सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के 10 दिनों के भीतर कार्यालय समय में किसी भी समय दस्तावेज सूची (अनुबन्ध-III) में वर्णित दस्तावेजों का निरीक्षण कर सकता है और उनके उद्धरण से सकता है। इस प्रयोजन के लिए, इस ज्ञापन की प्राप्ति के बाद उसे तत्काल..... से संपर्क स्थापित करना चाहिए।

\*\*Shri. A. H. Pillai, ASM-CPN is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact..... immediately on receipt of this memorandum.

3. श्री..... को आगे यह भी सूचित किया जाता है कि यदि वह चाहे तो दस्तावेजों का निरीक्षण करने तथा मौखिक जांच की स्थिति में जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता के लिए किसी अन्य रेल कर्मचारी / रेलवे ट्रेड यूनियन के किसी पदाधिकारी (जो रेल कर्मचारी (अनुशासन और अपील नियम 1968 के नियम 9 (13) और यथा स्थिति उनके नीचे नोट 1 और / अथवा नोट 2 की अपेक्षाओं को पूरा करते हैं) की सहायता ले सकता है। इस प्रयोजन के लिए, अधिमान्यता क्रम में उसे एक या अधिक व्यक्तियों का नाम निर्देशन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारियों) या रेलवे ट्रेड यूनियन के पदाधिकारी (पदाधिकारियों) का नाम निर्देशन करने से पहले श्री..... द्वारा नामित व्यक्ति (व्यक्तियों) से वचन ले लेना चाहिए कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसकी सहायता करने के लिए तैयार है। वचनपत्र में ऐसे अन्य मामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाना चाहिए, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका है और नाम निर्देशिनी द्वारा दिया गया वचनपत्र नामांकन पत्र के साथ निम्नहस्ताक्षरकर्ता को भेजा जाना चाहिए।

Shri. A. H. Pillai, ASM-CPN is further informed that he may, if he so desires take the assistance of any other Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule 9 (13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the event of an oral inquiry being held. For this purpose he should nominate one or more persons in order of preference. Before nominating the assisting railway servant (s) or Railway Trade Union Official (s), Shri. A. H. Pillai, ASM-CPN should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases (s) if any, in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.



श्री..... को एतद्वारा निर्देश दिया जाता है कि यदि उसे अपना प्रतिवाद तैयार करने के लिए किसी दस्तावेज का निरीक्षण करना अपेक्षित न हो तो इस आपन प्राप्त के दस दिन के भीतर और यदि वह दस्तावेजों का निरीक्षण पूरा करना चाहे तो दस्तावेजों का निरीक्षण पूरा होने के बाद 10 दिन के भीतर निम्नहस्ताक्षर कर्ता के पास अपने प्रतिवाद का लिखित कथन प्रस्तुत करें और यह भी—

Shri..... **A. M. Pillai, ASM - CPN** ..... is hereby directed to submit to the undersigned a written statement of his defence which should reach the undersigned within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect any document and also—

(क) बतायें कि क्या वह स्वयं पेश होकर कुछ कहना चाहता है, और

(a) to state whether he wishes to be heard in person; and

(ख) उन साक्षियों के, यदि कोई हों, नाम और पते बतायें, जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है।

(b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence.

5. श्री..... को सूचित किया जाता है कि आरोप के केवल उन अनुच्छेदों के बारे में जांच की जायेगी जो स्वीकार नहीं किए गए हैं। इसलिए उसे चाहिए कि आरोप के प्रत्येक अनुच्छेद को या विनिर्दिष्ट रूप से स्वीकार या अस्वीकार करें।

Shri..... **A. M. Pillai** ..... is 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.

6. श्री..... को आगे सूचित किया जाता है कि पैरा 4 में विनिर्दिष्ट अवधि के भीतर यदि वह अपने प्रतिवाद का लिखित कथन प्रस्तुत नहीं करता है या जांच प्राधिकारी के सामने व्यक्तिगत रूप से हाजिर नहीं होता या रेल कर्मचारी (अनुशासन और अपील) नियम 1966 के नियम 9 के उपबंधों या उक्त नियम के अनुसरण में जारी आदेशों / निर्देशों का अनुपालन करने में अन्याय विफल रहता है या इनकार करता है तो जांच प्राधिकारी एक पक्षीय रूप से जांच कर सकता है।

Shri..... **A. M. Pillai** ..... is further informed that if he does not submit his written statement of defence within the period specified in Para 4 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provision of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. श्री..... का ध्यान रेल सेवा (आचरण) नियम, 1966 के नियम 20 की ओर दिलाया जाता है जिसके अधीन कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से संबंधित मामलों के संबंध में अपने हितों को आगे बढ़ाने के लिए किसी वरिष्ठ प्राधिकारी पर कोई राजनीतिक या अन्य प्रभाव न तो डालेगा अथवा न ही डालने का प्रयत्न करेगा। यदि इन कार्यवाहियों से संबंधित किसी मामले में उसकी ओर से किसी अन्य व्यक्ति से कोई अभ्यावेदन प्राप्त होता है तो वह उपधारणा की जायेगी कि श्री..... को उस अभ्यावेदन की जानकारी है और वह उसके कहने पर दिया गया है और उसके विरुद्ध रेल सेवा (आचरण) नियम 1966 के नियम 20 का अतिक्रमण करने के लिए कार्रवाई की जायेगी।

The attention of Shri..... **A. M. Pillai** ..... is invited to Rule 20 of the Railway Services (Conduct) Rules 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect 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 within these proceedings, it will be presumed that Shri..... **A. M. Pillai** ..... 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 the Railway Services (Conduct) Rules, 1966.

8. इस आपन की पावती दें।

The receipt of this Memorandum may be acknowledged.

संलग्न Encls.

सेवा में To

श्री Shri..... **A. M. Pillai** .....

पदनाम Designation..... **ASM** .....

स्थान Place..... **CPN** .....

प्रतिलिपि श्री Copy to Shri..... **SS - CPN** ..... को सूचनायें प्रेषित for information.

(उधारदाता प्राधिकारी का नाम और पदनाम Name and designation of the lending authority)

\* जो लागू न हो, उसे काट दें।

Strike out whichever is not applicable.

\* यदि आपन के साथ प्रतियाँ दी जाती हैं / नहीं दी जाती, तो यथास्थिति इसे काट दिया जायेगा।

To be deleted if copies are given/not given with the Memorandum as the case may be.

\*\* प्राधिकारी का नाम (इसमें यह विधिवत होगा कि जब कभी जांच प्राधिकारी द्वारा अनुशासन प्राधिकारी या किसी प्राधिकारी को आरोप पत्र जारी करने के लिए कोई मामला निर्दिष्ट किया जाता है तो उस प्राधिकारी को उस प्राधिकारी का उल्लेख करना चाहिए जिसकी अभिरक्षा में सूचीगत दस्तावेज हैं या जो दस्तावेजों के निरीक्षण की व्यवस्था करेगा ताकि इस प्राधिकारी का प्रारूप आपन में उल्लेख किया जाये)।

Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

रेल कर्मचारी (प्रशासन और अपील) नियम 1968 के नियम 9 के प्रचीन आरोप-पत्र का हारन।  
Memorandum of Charge Sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1963

श्री..... (रेल कर्मचारी का नाम और पदनाम) के विरुद्ध लगाए गए आरोप के अनुच्छेद का विवरण :--  
Statement of Articles of charge framed against Shri..... A. N. Pillai, Asst. CPN  
(Name and Designation of Railway Servant)

## अनुच्छेद ARTICLE 'I'

उक्त श्री..... अवधि के दौरान के रूप में कार्य करते हुए

(यहां पर निश्चित और सुस्पष्ट आरोप का अनुच्छेद दर्ज करें)  
That the said Shri..... A. N. Pillai, Asst.  
while functioning as SS-CPN during the period.....

(here enter definite and distinct article of charge)

( Misconduct and misbehaviour. )

## अनुच्छेद ARTICLE 'II'

of documents, as per

उपर्युक्त अवधि के दौरान और उक्त कार्यालय में कार्य करते हुए, उक्त श्री.....

(यहां पर निश्चित और सुस्पष्ट आरोप का अनुच्छेद दर्ज करें)  
That during the aforesaid period and while functioning in the aforesaid office, the said Shri..... A. N. Pillai  
Asst. CPN  
(here enter definite and distinct article of charge)

## अनुच्छेद ARTICLE 'III'

उपर्युक्त अवधि के दौरान और पूर्वोक्त कार्यालय में कार्य करते हुए, उक्त श्री.....

(यहां पर निश्चित और सुस्पष्ट आरोप का अनुच्छेद दर्ज करें)  
That during the aforesaid period and while functioning in the aforesaid office the said Shri..... A. N. Pillai  
Asst. CPN  
(here enter definite and distinct article of charge)



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अनुबंध ANNEXURE 'II'

..... (रेल कर्मचारी का नाम और पदनाम) के विरुद्ध लगाए गये  
आरोप के अनुच्छेदों के समर्थन में प्रस्ताव या दुर्भावधार के वाद्यों का विवरण ।

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Shri.....  
(Name & designation of the Railway Servant)

ASM - CPN

A.H. Pillai

अनुच्छेद ARTICLE 'I'

On 17.9.88 while you were, on duty as ASM at CPN the Switchman of 'B' Cabin complained to the ATNL on duty Shri S.N. Iyer that you were not attending the group telephone for making I/T/I ND Down Goods train through. When the ATNL called you on control phone and asked you to contact 'B' cabin you replied that 'B' cabin was unnecessarily giving trouble. The ATNL advised you not to quarrel with the staff. You immediately started abusing the ATNL using un-parliamentary language and challenged the administration to take up with you for any detention. In this fashion you misbehaved on the control phone for 45" adversely effecting the work of the ATNL. Dy.TNL (I) Shri Ramvilas Souner and PCR Shri Taqui were present in the ATNL's section and listened to your abusing the ATNL on control phone.

अनुच्छेद ARTICLE 'II'

अनुच्छेद ARTICLE 'III'

You are, therefore, considered responsible for misconduct and misbehaviour.

प्राप्त हुआ है या नहीं  
है और

अनुबंध ANNEXURE 'III'

प्रस्तावों की सूची, जिनके द्वारा ..... (रेल कर्मचारी का नाम और पदनाम) के विरुद्ध लगाये गए आरोपों के अनुच्छेदों को लगाए जाने का प्रस्ताव है ।

List of documents by which the articles of charge framed against Shri.....  
are proposed to be sustained :-

A.H. Pillai, ASM - CPN

Extract of remarks in BRC-GDA/ANND-GDA control Chart of 8 to 16 hrs. shift of 17.9.88.

अनुबंध ANNEXURE 'IV'

वाक्तावियों की सूची, जिनके द्वारा ..... (रेल कर्मचारी का नाम और पदनाम) के विरुद्ध लगाये गए आरोपों के अनुच्छेदों को लगाए जाने का प्रस्ताव है ।

List of witnesses by whom the articles of charge framed against Shri.....  
(Name and Designation of the Railway Servant) are proposed to be sustained.

A.H. Pillai, ASM - CPN

- (1) Shri Ramvilas Souner Dy.TNL (I) BRC
- (2) Shri Taqui PCR - BRC

①

Excerpt taken from Central chert  
of ARCA/ASMA/ADA of 8/10/6  
in shift of 17-9-88.

On 17-9-88 while you were on  
duty as ASM at CAH the switchman  
of B1 cabin complained to the ATTL on  
duty that you were not  
attending the group telephone for making  
J/T/E up down goods train through.  
When the ATTL called you on control  
phone and asked you to contact  
B1 cabin, you replied that B1 cabin  
was unnecessarily giving trouble the ATTL  
advised you not to quarrel with the  
staff. you immediately started abusing  
the ATTL using unparliamentary language  
and challenged the administration  
to take up with you for any detention.  
In this fashion you misbehaved on the  
control phone for hrs adversely eff  
fecting the work of the ATTL. By  
THE (1) Shri Ramvilas sonner and BIL  
Shri Tadi were present in the ATTL  
section and listened to your  
~~abuse~~ abusing the ATTL on control  
phone.

- T -

Truly  
yours  
Shri  
son



Annexure A 2

G 219 F/R-2

Notice of Imposition of a penalty (N. I. P.) Under 6 of The Railway Servants  
(Discipline and Appeal) Rules, 1968

20

No. E/308/ 3/3/96

Office DRM/BRC

To,

Dated 25-6-1990

Shri A.H. Pillai,  
ASM/GDA.

(Through SS/GDA )

1. You are hereby informed that the following penalty has been awarded to you :-

" Compulsory Retirement" with immediate effect. This has  
ref. to this office SF/5 of even no. dated 3-7-89 and  
findings of E.O. dated 5.4.90 and your representation  
dtd. 28-3-1990 <sup>vide</sup> (your letter dated 10-5-90). "

Speaking orders : On reverse side.

Designation DOS-BRC

Signature

P. S. Sandhu  
(P. S. Sandhu)

2. You are required to acknowledge receipt of this Notice on the form subjoined.

C/- OS/ET, OS/P-Bill, OS/Settlement, Sr.DAO.

C/- SS-GDA.

(a) You will be relieved of your duties on \_\_\_\_\_

(b) Settlement of your dues will be made at \_\_\_\_\_

(c) Under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968. an  
appeal against these orders lies to Sr. DOS/BRC provided :-

(i) The appeal is preferred within forty-five days of the date of receipt of this  
notice, and

(ii) The appeal contains no disrespectful or improper language.

Acknowledgement

To \_\_\_\_\_

I hereby acknowledge receipt of N. I. P. Notice No. \_\_\_\_\_

Dated \_\_\_\_\_ conveying the orders of imposition of penalty of \_\_\_\_\_  
\_\_\_\_\_ on me.

Station/Place \_\_\_\_\_

Signature or left hand thumb impression of employee \_\_\_\_\_

Name and Father's Name  
(In Block letters)

with Designation & Station

Dated \_\_\_\_\_ 19

21

21

Speaking Orders

"I have carefully gone through the entire case. The enquiry report and the brief of employee dt. 28-3-90. I agree with the findings of Enquiry Officer that Shri Pillai had used unparliamentary language as given in findings at para(b) of FINDINGS. Use of unparliamentary and abusive language is borne out by statements of Shri Sounar, Dy.TNL in reply to Q.No.2 (dt. 19.3.90) and Shri Taqui, PCR in reply to Q.No.2 (dt. 22-3-90). From statement of Shri Iyer in reply to Q.No.1 (dt.22-3-90) it is evident that as a responsible section Controller concerned about undue train detention (on) his informing the employee that he may have to answer for it (the detention) the employee may have felt provoked. In any case from the enquiry report it is evident that unparliamentary and abusive language tantamounting to gross misconduct and misbehaviour unbecoming of a Railway Servant in violation of Railway Service Conduct Rules was indulged in by Shri Pillai. As ASM he has public interaction too and this evidence of misbehaviour and misconduct causes utmost concern and such behaviour cannot be tolerated -

Penalty imposed, "Compulsory retirement".

P. S. Sandhu  
(P. S. Sandhu)  
DOS-BRC

Pillai  
Subes  
Sen



BY RPAD

Annexure A3

22

No: E/308/3/3/96

Western Railway

BY RPAD

Divisional Office,  
Vadodara,

Date: 27.8.90.

To:

✓ Shri A.H.Pillai, ASM GDA.  
Qr.No.385/A, GL yard,  
GODHRA.

Sub:- DAR action against you.  
Ref:- Your appeal dt.05.07.1990.

..

Undersigned has considered your appeal cited above against the penalty of "Compulsory Retirement" with immediate effect imposed by DOS BRC vide NIP dt.25.6.1990 and has observed as under :-

" I have gone through the case and the appeal of the employee in detail. There is no reason for an employee to indulge in using abusive and unparliamentary language with the control staff when there is no provocation warranting any quarrel or a diff. The employee should have kept his cool, even if he was working overtime and behaved himself. He is, therefore, responsible for misconduct and misbehaviour.

In view of the above, the punishment awarded by DOS appears to be adequate and does not warrant any dilution." Please acknowledge.

(R.K.Landen)  
Sr.DOS BRC

c/- OS ET SS GDA

*Indu*  
*Sub*  
*Sr*



Annexure A4

23

No. E/808/3/3/96

Western Railway

By Regd. Post A.D.

Divisional Office,  
Vadodara,  
Date: 31.12.90.

✓ To: Shri A.H. Pillai,  
Ex. ASST. GDA,  
Railway Qr. No. 385-A,  
Godi yard,  
GODHRA.

Sub:- DAR action against you.

Ref:- Your revision application dt. 13.10.90.

Undersigned has considered your revision application cited above against the penalty of 'compulsory retirement' with immediate effect imposed by DOS DRC vide NIP dt. 25.6.90 & has observed as under :-

" A personal hearing was granted to Shri Pillai with his defence assistant. During the interview, the additional information supplied related to the conversation between Shri Pillai & the ATNL being conducted in South Indian language, which could not have been understood by the witnesses cited during the enquiry proceedings. The second point mentioned related to the harshness of the punishment.

I have gone through the revision petition. It does not contain any additional information regarding the innocence of Shri Pillai. The statement of imputation clearly indicates "abusing ATNL and using unparliamentary language". This has been established in the course of the enquiry by evidence of witnesses who heard Shri Pillai speak on loudspeaking control telephone to the ATNL. Therefore, the charge as enumerated in the articles of charge has been clearly established.

In view of the factual position described above, the revision petition is set aside and the punishment awarded stands".

Please acknowledge.

( Govind Ballabh )  
DRM DRC

c/- SS GDA OS ET

Recd on  
8/1/91  
d

Indray  
Gullee  
Bhar

Western Railway

Annexure A5

Divisional Office,  
Vadodera.  
Date : 5.4.90

No.E 308/3/3/96

To,  
DOs BRC

Sub:- Major DAR action against ASM-CPN now  
Working at GDA Shri A. H. Pillai.

Ref:- SF-5 issued by DOs-BRC vide even no.  
dated 3.7.89 and acknowledged by the  
employee on 3.7.89 and your letter of  
even no. dated 11.1.90.

Vide SF-7 issued under your even no dated 28.8.89  
I was nominated as E.O. to enquire into the charges  
levelled against the above named employee. The DAR  
enquiry was conducted on 19.3.90 and 22.3.90 at PRTM  
during which the defendant was assisted by ASM -GDA  
Shri N. B. Ramen. Though the defendant had assured  
that he could submit his summary of defence within  
10 days from 22.3.90 the same has not been received  
so far even after a lapse of 14 days. Therefore the  
findings have been drawn up today and submitted as  
under.

During the enquiry the following evidences were  
recorded.

- (1) Shri A.H.Pillai, ASM-CPN now working at GDA -  
Defendant.
- (2) Shri Ramvilas Souner DY-TNL BRC - Administrative  
Witness.
- (3) Shri S.N.Iyer DY.TNL BRC - Administrative Witness.
- (4) Shri S. M.Taqui PCR-BRC - Administrative Witness.

I. ARTICLES OF CHARGES :

' On 17.9.88 while you were, on duty as ASM at CPN the  
Switchman of 'B' Cabin complained to the ATNL on duty  
Shri S.N.Iyer that you were not attending the group  
telephone for making I/T/IND Down goods train through.  
When the ATNL called you on control phone and asked you  
to contact 'B' Cabin you replied that 'B' Cabin was un-  
necessarily giving trouble. The ATNL advised you not to  
quarrel with the staff. You immediately started abusing  
the ATNL using un-parliamentary language and challenged  
the administration to take up with you for any detention.  
In this fashion you misbehaved on the control phone for  
45" adversely affecting the work of the ATNL.DY.TNL(I)  
Shri Ramvilas Souner and PCR Shri Taqui were present in  
the ATNL's section and listened to your abusing the  
ATNL on control phone.'

II. FINDINGS :

- (a) It is established beyond doubt that there was a quarrel between the defendant and ATNL on duty Shri S.N.Iyer (Ans to Q.No.2, 5 and 6 of S/ment No.1; Ans to Q.No.1, 2, & 10 of S/ment No.2, Ans to Q.No.1, 3 of S/ment No.3, Ans to Q.No.1, 2 & 4 of S/ment No.4 )
- (b) The defendant had used objectionable and abusive language on Control phone while speaking to the ATNL on duty Shri S.N. Iyer which was heard in person by Shri Ramvilas S. DY.TNL(I) on duty and Shri S.M. Tequi PCR on duty who had duly recognised that the party on the other end of the phone was the defendant Shri A. H. Pillai either by recognising his voice or by confirming the same from ATNL on duty Shri S. N. Iyer ( Ans to Q.No1, 2, 3, 4 & 8 of S/ment No.2, Ans to Q.No.1 of S/ment No.3, Ans to Q.No.2 and 4 of S/ment No.4 )
- (c) The defendant has admitted that he was provoked by the ATNL on duty Shri S. N. Iyer (Ans to Q.No.5 & 6 of S/ment No.1 )
- (d) On 17.9.88 the defendant was not in proper mood of working which resulted in the Switchman on duty at CPN 'B' Cabin complained to the ATNL that the defendant was not attending the phone. ( Ans to Q.No.1 of S/ment No.2, Ans to Q.No.1, 3, 4 & 11 of S/ment No.3).

The 4 evidences recorded in 9 sheets, the BRC-GDA/ANND - GDA section control charts of 17-9-88 for the three shifts namely 00 to 08, 08 to 16 and 16 to 24 hours and DAR case No. E 308/3/3/96 containing pages serially numbered from 1 to 16 A are enclosed herewith for further necessary action please.

~~Encls~~ : As above.

*Chakrapany*

( P. Chakrapany )

E.O. & ADS (PL) BRC

5.4.90

*For copy  
Subly  
sch*

Annexure A6 -  
05.07.1990.

26

From:-

A.H.Pillai,  
ASM,  
GDA.

To

The Senior Divisional Operating Superintendent,  
Western Railway,  
Vadodara Division,  
Vadodara.

Through proper channel.

Sub:- APPEAL AGAINST NIP NO.  
E/308/3/3/96 OF 25.6.90.

Respected Sir,

With reference to the above NIP I beg to submit  
as under:-

1. I was continuously put to 12 hours' duty  
instead of 8 hours from 8-9-88 and on  
17.9.88 I was unwell. Yet I performed my duties in  
the interest of the administration and thereafter  
fell ill.

2. The incident took place after 15.00 hours  
i.e. after my rostered hours of 7 to 15 hours  
and during my overtime hours which I was unwell  
but due to circumstances I was compelled to  
continue.

3. In train working there are differences  
between control and line staff. Under the unhealthy  
condition and underrest there might have been  
illfeeling to ATNL for which I am very sorry and  
it was not my intention to abuse or humiliate ATNL  
who is our respected colleague but due to the  
circumstances quoted above incident might have  
taken place for which I am very sorry.

As a guardian of ours your kind honour will  
consider my working conditions and will be kind  
enough to take this issue lightly as neither  
I had done any unsafe <sup>work</sup> nor any loss to the railways.

I, therefore appeal to consider the  
circumstances quoted above and consider the appeal  
humanitarianly and I assure of my best services.

With regards,

Yours faithfully,

  
(A.H.PILLAI.)

*Vidya  
Shukla  
Sefor*



Annexure A 7

FROM: A.H. PILLAI  
ASM/GDA  
Rly. Qrt. 385-A Godi Yard.  
Godhara.

Dated. 13-10-90

To.  
The Divisional Railway Manager,  
Western Railway,  
Vadodara Division,  
Vadodara.

Sub: Revision application under DAR 1968  
Rule-25.

Ref: 1) Railway Board letter No.E(D&A)84 RG 6.44  
of 2.12.86.  
2) Appellate order No.E/308/3/3/96 of 27.8.90  
Recd. on 29.8.90.  
3) Penalty order NIP of even No.dt.25.6.90 with  
speaking order overleaf.  
4) Findings of E.O. dt.5.4.90.  
5) Written briefs dt.28.3.90  
6) Appeal dt.5.7.90.

---

Respected Sir,

HISTORY IN BRIEF

1.0 On a charge of misconduct & Misbehaviour in as  
much as abusing & using un-parliamentary language,  
the chargesheeted employee(I) is awarded the penalty of  
'Compulsory Retirement' by the DOS/BRC, the disciplinary  
authority vide ref. 3 above.

The appeal was preferred under Rule-18 of the DAR.  
The appellate authority however observed that 'the  
penalty awarded was adequate & does not warrant any  
dilution'. Vide reference 2 above.

2.0 I submit the revision application under rule-25 &  
in terms of Rly.Board circular quoted at reference one  
above based on following grounds & reasons among  
many other reasons -

2.1 The appellate authority while considering & deciding  
the appeal has not applied to its mind fully in  
terms of the DAR Rule-22(2) (a), (b) & (c) as under -

2.2 Compliance of the procedure laid down under the Rule

It is submitted that there are serious procedural  
lapses from the stage of issue of chargesheet,  
inquiry, findings of E.O. speaking order & NIP of  
the competent authority & the appellate orders as  
discussed here in after.

2.3 The chargesheet para-2 is incomplete in as much as  
it does not show as to who should be conferred for  
perusal of original list of documents in total  
violation of the DAR Rule I.

2.4 The delinquent employee is deprived of legitimate  
opportunity of perusal of listed documents vide  
Annex.III of the prefer the defence accordingly.  
It violates the Rule-9.

2.5 The extract given is not a verified true copy & not  
signed by anyone to ~~authenticate~~ authenticate the same.



- 2.6 Annexure I, II, III & IV of the S.F.5 are not signed by the competent authority who issued the same.
- 2.7 For the same charge earlier the chargesheet was issued & after inquiry it was cancelled without prejudice to rectify the error & to fill in the apparent ~~BAG~~ to prove the charge. This is illegal & bad in eyes of Law.
- 2.8 The E.O. while conducting inquiry FIRST recorded the full statement of the delinquent official on 19.3.90 statement No.1 examining closely without commencing & completing the examination & cross examinations of Adm. witnesses which were recorded on 19.3.90 & 20.3.90 statement No.2,3 & 4. This is the serious lacuna, lapse which warrants the entire inquiry to be scrapped being fully violative of the DAR Rule 9(11) (19), (20), (21) & (22). It be scrapped & declared null & void.
- 2.9 The S.F.5 Annexure IV shows only 2 Administrative witnesses. S/Shri Ramvilas Sainar Dy. TNL & Shri Taqui The PCR. The E.O. in total violation of the Rule 18 note called for any additional witness Shri Iyer w/o intimating the charged employee & without giving time for the study of his statement for fair deal to cross examination him (minimum 3 days to study).
- 2.10 I was deprived of opportunity to produce defence witnesses & or defence documents in tota.
- 2.11 Findings E.O. drew findings in total disregard to the brief of the defence dt.28.3.90.
- 2.11 The finding Para 2 regarding the Adm. witness No.3 Shri Iyer. It is submitted that he is not the listed Adm. witness in terms of Annex.IV of the S.F.5 his statement therefore does not constitute the evidence before E.O. as he was extraneously called without knowledge & intimation for the delinquent employee. His version be set a side being illegal violative of Rule 18 Note of the DAR 1968.
- 2.13 E.O. is unaware of the main charge vide Annexure I(One) which is misconduct & misbehaviour which does not find any place in the finding at page I article of charges this is violative of Rule 9(25) (a)(b)(c)(d).
- 2.14 E.O. narrated Annex.II only & in the findings at page2 he was not concluded specifically in clear terms whether the charges are substantiated or otherwise.
- 2.15 Findings are incomplete, violative of fundamentals of the DAR procedure & are therefore required to be ~~also~~ declared null & void & set a side.
- 2.16 It is not based on assessment of evidence adduced during the course of inquiry & that of the defence there is no discussion of the evidence adduced ~~excerise~~ that answers of questions are referred to there in. Findings are automatically illegal & become a nullity.
- 2.17 The NIP & speaking order : The disciplinary authority has agreed with findings in the speaking order. The findings contain not a word regarding the charge of misconduct/misbehaviour as has been cleverly interpolated by the disciplinary authority of his own using the word ~~to~~ amounts for (Equal to). This is all to gether unconcerned extraneous phase illegally incorporated in the speaking order to over come ~~and~~ conceal the lapse of the findings. The speaking order

also deals with the conduct rules in general which is a booklet. Nothing specific of the rule violated is prescribed in the speaking order at all which handicaps the charged employee in preferring a sound & complete appeal against the order.

- 2.18 The speaking order also contain nothing but references off nos. etc.
- 2.19 The alleged term misconduct not enlisted in the conduct rule or elsewhere which should have been otherwise quoted is not applicable in the given case because no railway servants conduct rule of DAR Rule defines or entire the term misconduct. In absence of it as per Supreme Court Judgement in case of the A.W. Kalra V/S the Project & Equipments Corporation (A.I.R. 1984 S.C. 1961).
- 2.20 The speaking orders are based on incomplete - findings not drawn on evidence adduced during the course of inquiring which ~~taxxxxxxxxside&xxdaxxxxxxnull&xxixd~~ is conducted with serious procedural lapses are therefore to be set a side & declared null & void.
- 2.21 In the given case Annexure I & II there is no charge of violation of the conduct rule 3 etc. of which speaking order speaks additionally unwarrantedly & on exteranious material which is not an evidence on record or even the charge speaking orders are therefore null & void on this account.
- 2.22 There is no evidence worth a none shake of which the witnesses talk about before E.O. muchless on the proceedings therefore findings & the speaking order with NIP be set a side being nor based on evidence on record.
- 2.23 Before issued of the NIP the disciplinary authority has failed fully in as much as it did not send me the inquiry report(finding)providing me an opportunity of representing on is within a specified time. This mendatory legal obligation is not complied which renders the NIP null & void.
- 3.0 MISCONDUCT : In the conduct rules it is not specifically mentioned that violation of the conduct rule 3 would tentamount to misconduct. This is settled in by the Supreme Court of India mentioned in para 2-19 above is discussed fully have for deep consideration during the process of the revision application.
- 3.1 Railway servant conduct rule (3)(1)states as under '3) general -
  - 1) Every servant at all times.
  - 2) Maintain absoulte integrity.
  - 3) Maintain devotion to duty.
  - 4) Do nothing which is unbecoming of a Govt. servant.

Rule 3(1)specified in form of behaviour but does not specify that its violasion will constitute misconduct.what is not misconduct under the rules, cannot form the basis of the disciplinary action.

The Lordship of Supreme Court of India in A.L. Kalre, Ver~~g~~u the Project & Equipment Corporation (P.E.C.) (A.I.R. 1984 S.C. 1961) have held while declaring with the conduct rules of P.E.C employees that -

// 4 //

'Rule 4 bears the heading general (Rule 4 of P.E.C. employee conduct disciplinary & appeal rules it is exactly the same to the provisions of rule 3 of Rly. service conduct rules) rule 5 bears the heading 'misconduct'. The Draftsman of the 1975 rules made a clear distinction about what would constitute misconduct. A general expectation of certain decent behaviour in respect of employees keeping in view corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in rule-5 any attempt to teleseph rule 4 into rule 5 must be looked upon with apprehension because Rule 4 is vague & of a general nature & what is unbecoming of public servant may vary with individuals & expose employee to vagaries of subjective evaluation. What in a given context would constitute misconduct, unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences it is deligatory on the employee to specify & if necessary define it with precision & accuracy so that the ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate this point in view of the recent decision of this court in 'Glaxo Laboratory Ltd. V/S Presiding Officer Labour Court Meerut' where this court held that everything required to be prescribed has to be prescribed with precision & no argument can be entertained that some thing not prescribed can yet be taken into account as verifying what is prescribed. In short, it cannot be taken into account as varaying. In short it can not be left to the vagaries of management to say ex. post facto that some acts of omission or commission now where found to be enumerated in relevant standing order is none the less a misconduct not strictly falling within enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Rule-4 stayed as 'General' specified norms of behaviour but does not specify that anything its violation will constitute misconduct. In Rule-5 it is now where stated that anything violative of rule-4 would peruse a misconduct in any of the sub-clauses of rule-5 which specified misconduct. It would therefore appear that even if the facts alleged in in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in rule-5 & no penalty can be imposed for such conduct. It may as well be mentioned that rule-25 which prescribed penalties specifically provides that any of the penalties there in mentioned can be imposed on an employee for misconduct committed by him. Rule-4 does not specify & misconduct repeat, rule-4 of P.E.C. employees conduct disciplinary & appeal rules it is exactly the same to the provisions of rule-3 of Rly. Service conduct rules.

- 3.2 The above Supreme Court Judgement have been followed by Division bench of Orissa High Court Judgement Dr. Smt. Sushila Misra V/S Union of India & others (AIR 1984 S.C. 505). 1984 (1) SCC 443
- 3.3. Based on the above Judgements of the Supreme Court which becomes a Law for the republic of India with given case it does not tantamounts to misconduct under rule-3(1) & therefore the penalty awarded vide NIP & the appellate order needs to be revised & set aside.



// 5 //

- 4.1 I am unfortunate not to get a personal hearing in terms of S.F.5 Para 4(a), or at the appeal stage. I therefore request for a personal hearing in the matter alongwith my defence Assistant G.M. Thaker Retired Station Supdtt. residing in Baroda only at 134, Sardarnagar Nizampura Baroda-2. His willing note is enclosed.
- 5.1 I have neither abused nor used any ~~x~~ unparliamentary language as alleged except a hot discussion from either side such discussion are not uncommon in operating performance being on Telephone only. The period of this quarrel is exaggerated for 45 minutes is also for form facts. It can be seen from the ex.A.B.C. that nothing was disturbed, the was not detention. No complain from 'B' cabinman on duty etc. This will Prove my ~~xx~~ innocence further -
- 6.0 The appellate authority also has ~~avoided~~ giving definate orders but only has observed. the observations are not the orders. Its orders as it is are perhaps not communicated to me as required under the Rules. This render the orders illegal & bad in eyes of Law.
- 7.0 The penalty imposed is to harsh. It would deprive me of Pensionary benefits for want of required qualified services. This would bring my ~~family~~ family on road & breadless which is neither ~~intended~~ intended by the disciplinary authority nor by the appeallate authority.
- 8.0 Submitted for sympathetic consideration please.

Yours faithfully,

Encl : As above.

*True Copy  
Jubilee  
Don*



प रे./W. R. -

जी 29 बी G 29 B

संख्या/No. 2/308/313/82 दिनांक/Dated 27.4.19.89  
 प्रेषक/From: D.A.R. B.R.C. सेवा में/To: S.D. M. M. Pillai  
 (...through SS-CRN) S.D. M. CRN  
 विषय/Sub: D.A.R.  
 संदर्भ/Ref: This office memo: S.F. S. of  
 even no. dated 11.10.88

The charges levelled against  
 you while this office memo  
 S.F. S. of even no. quoted above  
 are hereby dropped without  
 prejudice to further D.A.R.  
 action in future. Further  
 please acknowledge.

See and  
 27/4/89  
 D.A.R. B.R.C.

Cl- B.R.S. & T, SS-CRN.

WRP MX (CC)

Tulay  
 Jhalu  
 Sd/-



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.306 OF 1991

A.H.Pillai..... ... Applicants

V/s

Union of India & Ors... ... Respondents

WRITTEN STATEMENT.

The respondents humbly beg to file written statement to the application as under:-

1. Contents of paras 1 & 2 need no reply.
2. Regarding para 3 it is stated that the applicant has challenged two different charge-sheets in this application as shown in para under reply. The applicant cannot challenge two different charge-sheets in one application.

As regards the service particulars of the applicant, the respondents rely on the service sheet of the applicant. It is stated that the applicant was served with a charge-sheet vide No.E/308/3/3/82, dated 11.10.88(SF No.5) for major penalty for the charges stated in the said

Smr R  
Saw  
28/11/81  
1810  
29/11/

charge-sheet(Annexure A with the application).

It is submitted that the charges levelled against the applicant vide the aforesaid Memorandum dated 11.10.88 were dropped by the disciplinary authority without prejudice to further DAR action in future vide letter No.E/308/3/3/82, dated 27.4.89. A copy of the said letter issued by the Divisional Operating Superintendent, Baroda, to the applicant is produced herewith as Annexure R/1.

Ann.R/1

It is stated that the applicant was then served with a charge-sheet vide No.E/308/3/3/96, dated 3.7.89 for the charges mentioned therein vide Annexure A/1 with the application. ~~It is denied that~~ It is denied that the two charge-sheets issued to the applicant were in substance the same except a change of few words here and there. It is not disputed that the date of incident is the same in both the charge-sheets. It is submitted that the first charge-sheet issued to the applicant was required to be cancelled and withdrawn and the fresh charge-sheet was issued for the charges stated therein on the basis of material relied upon by the department. It is not disputed that inquiry officer was appointed to inquire into the charges levelled against the applicant in Annexure A/1 dated 3.7.89. It is not disputed that the disciplinary authority viz., Divisional Operating Superintendent, Baroda, awarded

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punishment of compulsory retirement vide NIP dated 25.6.90 (Annexure A/2 with the application). It is submitted that the Enquiry Officer gave his findings vide letter dated 5.4.90 (Annexure A/5 with the application).

The appeal dated 5.7.90 ~~refer~~ preferred by the applicant on 5.7.90 has been decided by Senior Divisional Operating Superintendent, Baroda and his decision dated 27-8-90 rejecting his appeal is produced by the applicant at Annexure A/3 with the application. It is denied that the appeal was rejected by the appellate authority without making a properly worded speaking order. The order discloses reasons for rejecting the appeal.

The application for revision/review filed by the applicant on 13.10.90 has been considered by the Divisional Railway Manager, Baroda and his decision confirming the order of punishment has been communicated to the applicant vide letter dated 31.12.90 (Annexure A/4 with the application). It is denied that to complete the so-called formality the DRM granted personal hearing to the applicant with his defence assistant but rejected the petition as alleged. The said letter dated 31.12.90 gives reasons for the conclusion arrived at by the DRM, Baroda. It is denied that DRM, Baroda, has not passed any speaking order as such while rejecting a revision petition. It is denied



that the aforesaid contention of the applicant gets support from the judgement passed by the Karnataka High Court in W.P.4843 of 1978 decided on 17.1.80 in the case of S.Doraiswamy V/s Union of India reported in 1980 SLJ 385. It is denied that the order passed by the DRM, Baroda resembles an order passed mechanically and does not appear to be a speaking order.

3. ~~Contents~~ Contents of paras 4 & 5 need no reply.

4. Regarding para 6(1), the respondents rely on the service record of the applicant. It is not disputed that in the year 1988 when the applicant was served with a charge-sheet dated 11.10.88 he was serving as Assistant Station Master at Chapaner Road Station.

5. Regarding para 6(2), the respondents rely on the charge-sheet dated 11.10.88 at Annexure A with the application. The charges stated therein were levelled against the applicant.

6. Contents of para 6(3) are not fully true and are not admitted. It is not disputed that the Enquiry Officer proceeded with the inquiry and recorded statement of some witnesses. It is submitted that the said charge-sheet was subsequently dropped and was withdrawn without prejudice to further disciplinary action in future vide letter dated 27.4.89 as the said charge-sheet was effective

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defective. It is submitted that the disciplinary authority has full jurisdiction to drop a charge-sheet without prejudice to further disciplinary action in future at any time during the pendency of the departmental inquiry.

7. Contents of para 6(4) are not fully true and are not admitted. It is not disputed that the applicant was served with a fresh charge-sheet vide No.E/308/3/3/96, dated 3.7.89 stating inter alia that on 17.9.88 while the applicant was on duty as Assistant Station Master at Chapaner Road Station the switchman of B Cabin complained to the Assistant Train Controller (ATNL) on duty Shri S.N.Iyer that the applicant was not attending the group telephone for making I/T/I ND Down Goods Train through, that when the ATNL called the applicant on control phone and asked him to contact B Cabin he replied that B Cabin was unnecessarily giving troubles, that the ATNL advised the applicant not to quarrel with the staff, that the applicant immediately started abusing ATNL using unparliamentary language and challenged the administration to take up with him for any detention, that in this fashion the applicant misbehaved on the control phone for 45 minutes adversely affecting the work of ATNL in the presence of Deputy TNL(I) and PCR in the ATNL's Section and listened to applicant's ~~abusing~~ abusing the ATNL on control phone. The respondents rely on the said charge-sheet for the contents thereof.



8. Regarding para 6(5), it is submitted that the Enquiry Officer submitted his findings to the disciplinary authority vide letter dated 5.4.90 holding that the charges levelled against the applicant were established. The said findings were considered by the disciplinary authority, which were accepted by him and punishment of compulsory retirement with immediate effect was awarded by him to the applicant vide NIP dated 25.6.90. The disciplinary authority also passed a speaking order which is shown on the reverse of NIP.

9. None of the grounds for challenge taken by the applicant exists.

(1) Contents of ground (1) are not true and are denied. It is denied that the charge is ambiguous and vague. It is denied that the language of the charge-sheet does not state or describe the misconduct and misbehaviour and as ~~such~~ such it is required to be quashed and set aside and the consequent action and order on the same also deserves to be quashed and set aside as alleged. It is submitted that the charge levelled against the applicant vide charge-sheet dated 3.7.89 is quite clear and precise. The said charge-sheet is not liable to be quashed and set aside on the ground ~~that~~ of vagueness and ambiguity as alleged.

(2) Contents of ground(2) are not true and are denied. It is denied that after the issue of letter dated 27.4.89 ~~ix~~ dropping the charge-sheet, it is not open for the DOS, Baroda, to initiate the disciplinary proceedings on the very subject matter without assigning any reasons for the same and issuing the second charge-sheet is not in ~~for~~ conformity with the law laid down as alleged. It is submitted that the charge-sheet dated 11.10.88 was dropped without prejudice to further disciplinary action in future. The fresh charge-sheet issued on 3.7.89 was therefore legal and valid. It is submitted that no reasons are required to be assigned for issuing fresh charge-sheet. As stated herein above, the first charge-sheet was defective and not complete in all respects and as such was dropped. The fresh charge-sheet issued on 3.7.89 is different one and has been issued stating full and correct particulars of the Articles of Charges, etc.

(3) Contents of ground(3) are not true and are not admitted. It is denied that the impugned order imposing penalty of compulsory retirement together with the inquiry report is bad in law as per the judgements of the Hon'ble Supreme Court in the case of (i) Union of India V/s H.C.Goyal reported in AIR 1964 SC 364, 1964(4) SCR 718 and (ii) Union of India

V/s E.Bhashyan & (iii) Union of India V/s Mohmed Ramzankhan reported in 1991(1) SCC 588. It is submitted that as stated in the NIP itself the applicant submitted his representation dated 28.3.90 vide his letter dated 10.5.90, which was taken into consideration by the disciplinary authority. In fact the findings of the inquiry officer dated 5.4.90 were supplied to the applicant vide letter dated 24.4.90, giving an opportunity to make a representation or submission if he so desires, in writing to the disciplinary authority within fifteen days of the receipt of the letter. A copy of the said letter is produced herewith as Annexure R/2. The applicant in his letter dated 10.5.90 also refers to the letter dated 24.4.90. Since the applicant has been given an opportunity to make a representation against the findings of the inquiry officer there is no violation of rules of natural justice or any other rule. The said representation has been taken into consideration by the disciplinary authority before passing the impugned order of punishment. In view of the said fact the judgements referred to by the applicant do not apply to the facts of the case.

Ann.R/2

It is denied that the inquiry report and its findings are bias on the ground that the inquiry



officer in his report has given his conclusions without any clear evidence as alleged. It is submitted that the allegation of bias is baseless and without any substance. The inquiry officer has given his findings on the basis of evidence recorded by him during the inquiry. The allegations regarding occurrence of quarrel or otherwise are not admitted. It is denied that without examining the ATNL or without submitting his name in the list of witnesses the quarrel which had occurred between the two persons cannot be proved. It is denied that the statement of the witness is of a secondary evidence and can be used to corroborated the alleged charge and cannot be used to create the evidence as alleged. It is denied that the statement of any witness was obtained to create an evidence. It is denied that the findings of the inquiry officer in para (a), (b) & (d) are without any direct evidence on record. It is denied that there is no material on record to prove that any quarrel had taken place between the applicant and ATNL or the applicant had misbehaved in any manner as alleged. It is denied that the findings in para (b) is a vague statement and it cannot be said that the applicant had abused or used unparliamentary language. It is denied that the final conclusion has not been drawn by the inquiry officer and hence the findings are vague, without conclusion and amount to a defective one and hence



the report and the order passed on such a report are required to be quashed and set aside as alleged. It is submitted that the inquiry officer after appreciating the evidence recorded by him has held that the charge levelled against the applicant has been established beyond doubt. The said findings as well as the order passed by the disciplinary authority are legal and proper.

(5) Contents of ground (5) are not true and are denied. It is denied that the appellate authority failed to perform its duty and obligation as per rule 22 of the Railway Servants (D & A) Rules, 1968. It is denied that the orders of the appointing authority & the reviewing authority are not ~~in~~ consistant with the statutory rules and the said orders are not speaking orders. It is submitted that the appellate authority applied its mind to the facts and the ~~xxx~~ circumstances of the case and after examining the entire record of the inquiry passed a speaking order rejecting the appeal. It is submitted that the disciplinary authority as well as the reviewing authority also applied their minds to the facts of the case and passed their respective orders giving reasons for their conclusions. The orders passed by all the three departmental authorities are speaking orders which disclose application of mind to the present case by each authority.

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(6) Contents of ground (6) are not true and are denied. It is denied that the reviewing authority just to fulfill the technical lapses gave personal hearing with defence assistant to the applicant.~~xxx~~ It is denied that the reviewing authority has not considered any of the points raised by the applicant in Revision Application or during personal hearing. It is denied that no evidence has been appraised by him and has not stated any reasons for his agreeing with the order of the lower authority and as such the orders issued by all the three authorities are required to be quashed and set aside. It is submitted that the order of the reviewing authority discloses application of mind. No detailed reasons are required to be given by the reviewing authority on each and every point as alleged by the applicant. The reviewing authority has gone through the revision petition and also considered the submissions made by the applicant and his defence assistant during personal hearing. The personal hearing was given to the applicant to enable him to make his submissions in person also although it was not obligatory on the reviewing authority to do so under the rules.

(7) Contents of ground (7) are not true and are denied. It is denied that DOS, Baroda, is not

empowered to issue charge-sheet for major penalty of compulsory retirement but only the Head of the Department i.e. General Manager can issue the charge-sheet for major penalty to the applicant as per Railway Servants (D & A) Rules, 1968 as alleged.

It is denied that the charge-sheet has been issued by the <sup>authorily</sup> below the rank of appointing authority of the applicant and as such it is violative of Article 311(1) of Constitution of India as alleged.

It is submitted that DOS, Baroda, is the competent authority to initiate departmental proceedings against the applicant and has full jurisdiction to impose penalty of compulsory retirement on the applicant. There is no violation of ~~Article~~ Article 311(1) of Constitution of India.

(8) Contents of ground (8) are not true and are not admitted. The sub-para 1 of the ground is vague and is not understood. The order dropping the first charge-sheet has been served on the applicant vide Annexure A/8 with the application.

It is denied that to cover up the lapses and to victimise the applicant the service record of the applicant was replaced by the fabricated document and the original of the same was not made available to the applicant and was not brought on record during the inquiry. The respondents are unable to understand the document referred to by the applicant in the absence of any specific details



of the document.

It is submitted that the earlier charge-sheet was dropped as the same was defective and the document relied upon ~~was~~ in this charge-sheet dated 3.7.89 was not supplied to the applicant along with the first charge-sheet. It is submitted that the copy of the document relied upon in the charge-sheet dated 3.7.89 has been supplied to the applicant. The applicant was given an opportunity to defend himself during the inquiry. It is denied that the impugned orders are, therefore, against the principles of natural justice, arbitrary and discriminatory. No document which was not mentioned in the charge-sheet was relied upon by the respondents and there is no violation of any rules or natural justice.

(9) Contents of ground(9) are not true and are denied. It is not disputed that the charge-sheet dated 3.7.89 ~~gives~~ gives the names of two witnesses viz., Shri Ramvilas Souner and S.M.Taqui but that does not mean that no other witness can be examined during the inquiry. Shri S.N.Iyer is the ATNL who was abused by the applicant using unparliamentary language. The charge-sheet clearly refers to him in Articles of Charges. Shri S.N.Iyer has been crossed ~~off~~ examined by the applicant during the inquiry. ~~If the applicant~~ It is submitted that the disciplinary authority had issued a letter dated 11.1.90 in reference to the



charge-sheet dated 3.7.89 stating that the names of three persons including Shri S.N.Iyer should be read in the list of witnesses. A copy of the said letter dated 11.1.90 is produced herewith as

Annexure R/3.

Ann.R/3

(10) Regarding ground (10), it is submitted that this Hon'ble Tribunal has no jurisdiction to interfere with the quantum of punishment. The disciplinary authority has full jurisdiction to impose any of the penalties under the rules. The penalty imposed is not disproportionate or harsh but is commensurate with the gravity of misconduct.

(11) Contents of ground (11) are not true and are denied. The allegation of misconduct is unambiguous and clear. It is not disputed that the applicant was placed under suspension after the incident but the said suspension was later on revoked. The revocation of suspension does not mean that the penalty of compulsory retirement cannot be imposed on the applicant, particularly when the first charge-sheet was dropped. It is denied that after dropping the charge-sheet and revocation of suspension allowing the applicant to perform duty the penalty of compulsory retirement awarded discloses non-application of mind and has been issued only with an intention to throw the applicant out of employment with

ulterior motive as alleged. A penalty of compulsory retirement has been awarded by the disciplinary authority after applying his mind to the facts of the case.

10. Contents of paras 7 & 8 need no reply.

11. The applicant is not entitled to any of the reliefs claimed in para 9 of the application.

12. The applicant is not entitled to any interim order as prayed for in para 10 of the application.

13. Contents of para 11 need no reply.

In view of what is stated above, the application may be dismissed with costs.

VERIFICATION.

I, Vidhu Kashyap, age about 33 years, son of Shri B.B.Kashyap, working as Senior Divisional Personnel Officer, Western Railway, Baroda and residing at Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 13 .11.1991

Filed 28/11/91

Vidhu Kashyap  
Senior Divisional Personnel  
Officer, Western Railway,  
Baroda.

Reply/Rejoinder/written submissions  
Filed by Mr. N.S. Shinde  
learned advocate for petitioner/  
Respondent with second set.  
Copy served/not served & other side

Di. 28/Nov/91  
By Registrar C.A.T. (U)  
A'nd Bench

Filed by Mr. ....  
Learned Advocate for Petitioners  
with second set & ..... spares  
copies copy served/not served to  
other side

Di. / / By Registrar C.A.T. (U)  
A'nd Bench

प. रे. / W., R.

जी 29 बी G 29 B

संख्या / No. E/308/3/3/82 दिनांक / Dated 24-4-1989  
 प्रेषक / From DOS-BRC सेवा में / To Shri A.M. Pillai  
(Through SS-CPN) AIM-CPN

विषय / Sub : DAR.

संदर्भ / Ref : This office memo. ST. S of  
even no. dtd. 11.10.88.

The charges levelled against  
 you vide this office memo.  
 ST. S of even no. quoted above  
 are hereby dropped without  
 prejudice to further DAR  
 action in ~~future~~ future.  
 Please acknowledge.

for  
27/4/89  
DOS-BRC

Cl-OS ET, SS-CPN.

ANN - R/2

(24)

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No. 4300/3/3/96.

Western Railway

To,

Divisional Office,  
Baroda-4.

Shri A. H. Pillai ASM-CPN.

Dtd: 24-4-90.

(The Secy JS-CRDA ) Now at CRDA.

Sub: DAR action against you.

Ref: This office SF-5 of even No. E/308/3/3/96  
dated 3-7-89.

The report (findings) dated 5-4-90 of the Inquiry Office is enclosed. The disciplinary authority will take suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter.

Please acknowledge.

Enclosure report (findings) in 2 pages.

Signature P. S. Sandhu

Name and Designation [P. S. Sandhu]

Divl. Optg. Supd. JS-CRDA Baroda. Division  
मंडल पर्यवेक्षण जयदीप कपिल एच.एस. वडोदरा मंडल

Please deliver the enclosed letter & findings to employee & send his ack. to this office.



ANN-R/3



Western Railway

Divisional Office,  
Baroda -4.

Date: 11.1.1990

No: E/308/3/3/96

To,

Shri A. H. Pillai,  
ASM-CPN  
(Through SS-CPN) /

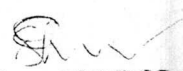
C/- CTNL-BRC & EO & ACS(G)ERC.

Sub: DAR action against Shri A. H. Pillai  
ASM-CPN.

Ref: SF-5 issued by DOS-BRC under even No.  
Dated. 3.7.89.  
.....

Please read the list of witness as under:-

- 1) Shri S. M. Iyar ATNL-BRC.
- 2) " Ramvilas Sauner Dy.TNL(I)BRC.
- 3) " S. M. Taqui PCR-BRC.

  
for DOS-BRC.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A.No. 306 OF 1991

A.H. Pillai. .... Applicant

V/s.

Union of India & Ors. .... Respondent

REJOINDER TO WRITTEN STATEMENT.

I, A.H.Pillai, do hereby, by way of this rejoinder file replies to the averments of denials by respondents in their written reply and reserves to himself the right of putting such other arguments at the time of hearing of the application as may be necessary.

Para 1 of W.S. This requires no comments.

Para 2 of W.S. Respondent's averment of challenging two charge sheets in one application is not admitted. The applicant has himself asserted that the first chargesheet dated 11.10.88, though proceeded with to certain extent, was ultimately dropped for reasons best known to the respondents, so there arises no question of challenging the first charge sheet.

Respondent's denial in saying that the substance of the subject matter of charge of the two charge sheets viz., that of 11.10.88 and 3.7.89 is not the same is not admitted. The date of incident which has been made the basis of the two chargesheets is one and of some date i.e. 17.9.88. Nature of charge is the same though language has been changed in the second charge sheet.

Recd CN  
WBS  
Adv. f. f. f.  
9.3.83

Shri K. K. Shah  
CR  
9-3



Respondent's version regarding cancellation of first chargesheet on the basis of its being defective one, is just an afterthought used as a face-saving device. His assertion that the first chargesheet was required to be cancelled and withdrawn and the fresh charge sheet was issued for the charges stated therein on the basis of material relied upon by the department goes to show that the department had to withdraw the first chargesheet because they had no ~~department~~ material on which they could have relied. This is common knowledge that the department, after issuing a chargesheet will never like to cancel the same suo moto because this will show their weakness and prejudiced and biased attitude towards the so called delinquent.

Respondent's assertion that the appellate authority rejected the applicant's appeal with a speaking order is not admitted. The appellate authority has mainly dwelt upon the findings as reported in the enquiry report and has not given due consideration to the circumstances attending on the case. Rule 22(2) of the Railway Servants (D&A) Rules 1968 lays down certain guidelines which the appellate authority has to take into consideration and highlight how far the prescribed procedure has been followed in conducting the enquiry and then pass his reasoned order. But in the instant case this has not been done. The



ultimate result of the finding by enquiry officer has only been taken into consideration and the appellate authority issued the order confirming the penalty.

Similar thing has happened with regard to the reviewing authority. His decision does not say anything regarding points raised by the applicant in his review petition. But on the other hand his decision is deeply influenced by bias and ~~other~~ prejudice which is reflected in the following sentence:- "The statement of imputation clearly indicates abusing ATNL and using unparliamentary language". The above remark shows that even the reviewing authority did not try to evaluate the evidence in the right perspective and consider the grounds as submitted by the applicant in his review petition. On the other hand the reviewing authority has mainly based his conclusion on the 'statement of imputation' and what has been stated in statement of imputation has been taken for granted by him. Whereas the chargesheet dated 3.7.89 itself is defective and is vitiated as it is issued with a closed mind, with pre-determined bias. It is well settled principle of law that if the chargesheet contains an allegation of commission of the offence it is taken that the disciplinary authority had started with a bias and has prejudiced the case. In this legal position such a charge sheet can be considered only bad in law.



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Para 3 of W.S. It does not require any comments.

Para 4 of W.S. It requires no comment being a simple statement of fact.

Para 5 of W.S. It also requires no comment as being a statement of facts regarding issue of chargesheet dated 11.10.88.

Para 6 of W.S. Respondent has come out with the assertion that the charge sheet dated 11.10.88 was dropped because it was found defective. Thus there is clear admission of defects in the chargesheet. But the position is not like this. The chargesheet was proceeded with and it was dropped at a later stage because it could not have been proceeded with as per procedure prescribed by disciplinary and appeal rules. Further it is said that the chargesheet dated 11.10.88 was dropped because it could not have been proceeded to its logical conclusion, the Respondent will not accept this version in that case because he will be exposed to his weakness.

Para 7 of W.S. Respondent's assertion as contained in the para regarding the different nature of the second chargesheet is not admitted. If the subject matter of the two chargesheet is compared, it will be abundantly clear that the main theme of the two chargesheets is the same. The words ofcourse, as changed and all the charges as contained in Articles I, II and III of the chargesheet dated 11.10.88 have here been combined in one para.



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Language used differently in the second chargesheet dated 3.7.89 from that of 11.10.88 is not going to change the main theme of the two chargesheets.

Respondent's story of narrating the events as described in the chargesheet itself is not trust-worthy as this amounts to one-sided so called evidence. Persons who have been named in the chargesheet as witness are all witnesses of the ATNL only. The applicant was far away on duty. So when the so-called witnesses are said to be present in the office of ATNL at the time of alleged conversation between the applicant and the ATNL, it means that these are their men working with or under ATNL and in that capacity how their independence can be judged.

Para 8 of W.S. Respondent's averments are not admitted. Respondent mentions that the presence of speaking order by the disciplinary, appellate and reviewing authority, but the real position is somewhat different. Actually speaking all the authorities have just confirmed in a mechanical way the finding of the enquiry officer and consequent confirmation of the penalty imposed by the disciplinary authority on the applicant.

Para 9(1) of W.S. Respondent's averment is not admitted.

Para 9(2) of W.S. Respondent's averment is not admitted.

The respondents cannot issue a second chargesheet on the same charge when the earlier one was proceeded with to certain extent and was dropped.

Para 9(3) of W.S. Respondent's denial that the inquiry



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report is bad in law is not admitted. All other denials also as contained in the para, are also not admitted.

Para 9(5) of W.S. Respondent's denials are not admitted. As regards orders passed by three departmental authorities, these are not speaking ones and in fact the appellate authority and the reviewing authority have just depended on the enquiry report and gave their ruling.

Para 9(6) of W.S. Not a single denial of the respondent is admitted. The reviewing authority, being final one, has to do full justice to the petition of the applicant. The respondent while maintaining that the reviewing authority is not required to give reasons on each and every point, as raised by the applicant, is perhaps basing his observation on the Railway Board circular No. E(D&A) 80 RG 6-59 of 1.8.83. In this respect it is stated that these orders have been re-examined in the light of practice in other civil departments and Railway Board's circular No. E(D&A) 84 RG 6-44 dated ~~1.8.83~~ 8.1.85 lays down provision that a revision application made after exhausting the avenue of appeal should be dealt with in the same manner as if it were an appeal under the said rules provided the application for revision is otherwise in order. Thus, as pointed out earlier, the reviewing authority has placed full reliance on the 'statement of imputation' and passed orders. Thus this does not become a speaking order in law in view of so many judgments of Hon'ble

Supreme Court and various High Courts<sup>on</sup> the subject of speaking order and its necessity.

Para 9(7) of W.S. Respondent's averments are not admitted. In this connection Railway Board's circular No. E(D & A) 80 RG 6-25 dated 20.1.86 lays down the guideline. In the note appended to this circular as cited above it is clearly laid down that the penalty of compulsory retirement, removal or dismissal from service shall be imposed only by the appointing authority or an authority of equivalent rank or a higher authority. The respondent has not produced any relevant rule under which the D.O.S. Baroda is the competent authority in the applicant's case to impose penalty. Major penalties should in no case be imposed on any employee by any authority lower in rank than the authority by which the said employee is appointed. Power to remove, retire compulsorily cannot be delegated to authority lower than the appointing authority. Mohit Mohan Sur V/s. Union of India and Ors. 1991(3) SLJ(CAT) 345. Similarly the charge sheet is to be also issued by the competent authority. As such respondent's averments are not admitted.

Para 9(8) of W.S. Respondent's averments are not admitted.

Para 9(9) of W.S. Respondent's denials are not admitted. Copy of letter dated 11.1.90 was not supplied to the applicant.

Para 9(10) of W.S. Respondent's averment is not



admitted. The Tribunal can always see if the disciplinary enquiry conducted in respect of a Govt. employee is proper and the punishment also is in proportion of the offence or is harsh.

Para 9(11) of W.S. Respondent's averment that revocation of suspension does not mean that the penalty of compulsory retirement cannot be imposed on the applicant, particularly when the first chargesheet was dropped.

Here the stress on wordings is important. The version shows that the penalty of compulsory retirement had two clear basis, e.g.,

- (a) Suspension of the applicant had to be revoked in a previous case and
- (b) First charge sheet was dropped.

These things go to show that there was clear cut bias and prejudice against the applicant in the minds of the officers and they were in hunt of some opportunity to bring the applicant to book and throw him out of employment. So the alleged incidence of 17.9.88, which was originally given in the first chargesheet dated 11.10.88 and the same had to be dropped, was given a colourful version by collecting the so-called evidence and the concerned authorities i.e disciplinary appellate and reviewing got this point to throw the applicant out of job. Even presuming there had been some sort of alleged incidence on 17.9.88, such harsh punishment is not called for. Evidently this was the result of the bias and prejudice which had been created



due to the revocation of suspension and ultimate dropping of the chargesheet in the first case.

Para 10 of W.S. It needs no comments.

Para 11 of W.S. Respondent's averment is not admitted.

Applicant's application is very much with merits and deserves to be allowed with cost.

Para 12 of W.S. Respondent's averment is not admitted.

The applicant deserves grant of interim relief as prayed ~~for~~ by him in his application.

Para 13 of W.S. It needs no comments.

In view of the above replies to the written statement of the Respondent and the grounds urged in the original application, applicant's application deserves to be allowed with cost.

VERIFICATION

I, A.H. ~~Pillai~~, aged 39 years, Ex-Station Master, Godhra, resident of Railway Quarter No. 385-<sup>A</sup> Godi Yard, Godhra, do hereby verify that the contents of paras ~~xxix~~ given above are true to my personal knowledge and I have not suppressed any material fact.

Ahmedabad.

Date: 8-1-1993.

*[Signature]*  
*[Signature]*

Reply/Rejoinder/written submissions  
Filed by Mr. K. K. Shah  
learned advocate for Petitioner  
Respondent with second set.  
Copy served *[Signature]* *[Signature]*

Di. 9/3-93  
Dy. Registrar C.A.T. 9/3  
A'bad. Bench  
*[Signature]*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.306 OF 1991

A.H.Pillai.....

... Applicant

V/s

Union of India & Ors.....

... Respondents

REPLY ON BEHALF OF  
RESPONDENTS TO THE  
APPLICANT'S REJOINDER

... The respondents humbly beg to file this reply  
to the applicant's rejoinder dated .1.1993 as under:-

1. The averments made by the applicant in his rejoinder which are not supported by any official documents are hereby denied.
2. Contents of para 1 of the rejoinder need no reply.
3. Regarding para 2 of the rejoinder, it is submitted that due to defect in the charge-sheet dated 11.10.88, the same was dropped without prejudice to issue fresh charge-sheet and the applicant was served with fresh charge-sheet vide No.E/308/3/3/96, dated 3.7.89 as per the Discipline & Appeal Rules. There is no violation of any rules.

4x The Appellate Authority has carefully applied his mind to the points raised by the applicant in his appeal and after going through the record of the case has decided the appeal giving reasons in the form of a speaking order.

The Reviewing Authority considered the review petition of the applicant and after applying his mind to the points raised by the applicant and after going through the record has passed a speaking order deciding the review petition. The orders passed by the departmental authorities are legal and proper.

4. Contents of paras 3 to 5 need no reply.

5. Regarding paras 6 & 7 of the rejoinder, it is submitted that fresh charge-sheet dated 3.7.89 was issued after dropping the first charge-sheet dated 11.10.88 without prejudice. The documents relied upon along with list of witnesses were supplied to the applicant. The applicant was given reasonable opportunity to defend his case and cross-examine the witnesses. There is no violation of any Disciplinary Rules.

6. Contents of para 8 of the rejoinder are not true and are denied. It is denied that the authorities have just confirmed in a mechanical way the findings of the Enquiry Office and consequent confirmation of penalty imposed by the Disciplinary Authority. As stated herein above, the authorities have applied



their mind while imposing penalty on the applicant and while deciding the appeal/revision.

7. Regarding paras 9(1) to 9(5) of the rejoinder need no specific reply as the same are mere denials to averments in reply. The applicant was advised about dropping of the charge-sheet without prejudice to issue fresh charge-sheet vide letter No.E/308/3/3/82, dated 27.4.89 and hence there is no violation of any Disciplinary Rules. The decision of the authorities are based on the proceedings of enquiry.
8. Regarding para 9(6), it is submitted that the averments in reply are correct. The order passed by the Reviewing Authority is a speaking order and discloses application.
9. Regarding para 9(7), it is submitted that the Divisional Operating Superintendent is the appointing authority of the applicant and has full jurisdiction to impose the penalty awarded by him to the applicant.
10. Regarding paras 9(8) & 9(9), it is submitted that copy of letter dated 11.1.90 has been delivered to the applicant.
11. Regarding para 9(10), it is submitted that the Disciplinary Authority has full jurisdiction to award any of the penalties which is found adequate by him in the facts and circumstances of the case having regard to the gravity of charges levelled against the delinquent employee.

12. Regarding para 9(11), it is submitted that the averments made in the rejoinder are without any substance. It is denied that in view of revocation of suspension, the penalty of compulsory retirement cannot be imposed on the applicant when the first charge-sheet was dropped. It is submitted that revocation of suspension is to be considered by the ~~app~~ competent authority in the facts and circumstances of the case and it has no connection with the ultimate order of penalty that might be passed by the Disciplinary Authority. It is denied that there was clear-cut bias and prejudice against the applicant in the minds of the Officers and they were in hunt of some opportunity to bring the applicant to book and throw him out of employment as alleged. The authorities has no bias against the applicant. It is denied that the alleged incident of 17.9.88 which was originally given in the first charge-sheet dated 11.10.88 which was subsequently dropped was given a colourfull version by collecting the so-called evidence as alleged. It is denied that the punishment of compulsory retirement awarded to the applicant was harsh and not commensurate with the gravity of offence/misconduct mentioned in the charge-sheet. It is denied that the said penalty was the result of bias and prejudice created due to revocation of suspension and ultimate dropping of charge-sheet in the first case.

12. Contents of paras 10 to 13 need no reply.

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## VERIFICATION

I, ~~James Earl~~ C.K.N. Nair, age about 46 years, working as

~~Section~~ Divisional Personnel Officer, Western Railway, Baroda and residing at Baroda do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true.

I have not suppressed any material facts.

Earoda

Dated: 14.6.1996

Filed 18 6 96

Unani  
Kashmiri  
Ado for Papp

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

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O.A./T.A./M.A./R.A./C.A./ No. MA/142/97 H OA/306/91

A. H. Pillai

APPLICANT (S)

Mr. K. K. Shah

COUNSEL

VERSUS

U.O. & ors.

RESPONDENT (S)

COUNSEL

DATE

OFFICE ORDER

ORDER

11/2/97

① : Stay.

② : Copy served on the other side.

: Submitted:

: On scrutiny, MA is found to be in order. It is approved.

: MA will be placed before the Hon. Bench for orders.

: Per chit of C.O. 11/2/97

: 11/2/97

S.O. (J)

DR (J)  
5/12/97

102  
17/3/97



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

M.A.No. 142 OF 1997

in

O.A.No. 306 OF 1991

Shri A.H. Pillai.

.... Applicant

V/s.

Union of India & Ors.

.... Respondents

Application for stay against the vacation of quarters.

The applicant hereby seeking interim relief against the vacation of quarter by notice dated 29.1.97.

A copy of the same is annexed hereto and marked as

Ann. MA.

Annexure MA. The similar notice was issued on 29.5.95 to the same the applicant's advocate had already replied on 9.11.95, which was received by them on 10.11.1995.

A copy of the same is annexed hereto and marked as

Ann. MA-1.

Annexure - MA-I.

2. The applicant hereby submits that the applicant while working as ASM Chapener in Baroda Division was charge-sheeted for carelessness and negligence in working vide charge sheet dated 11.10.88. After holding the enquiry the charges were not proved, hence the said enquiry under charge sheet was dropped vide order dated 27.4.1989.

3. Again the respondents have issued on the very subject and on the same incident a charge sheet dated 3.7.89 and again held an enquiry, against same prosecution witness and without any direct evidence and without any

justification for dropping the earlier charges and enquiry holding again the same enquiry which is illegal as per the judgment of this Hon'ble Tribunal reported in 1987(2)SLJ page 47. After the said enquiry the Disciplinary Authority compulsorily retired the applicant. The applicant has rendered only 15 years of service and therefore, he is not qualified for pensionary benefits. The applicant is without any employment and neither he is receiving any pension. The case of the applicant is covered with the decision of this Hon'ble Tribunal as well as of the Hon'ble Supreme Court. During the pendency of the aforesaid case the applicant is still occupying the said quarter since he is not having any source of income nor any other alternative accomodation.

4. The similar issues was before the Patna Bench of the Tribunal in the case of B.N.Singh V/s. Union of India reported in 1988(8) ATC page 722 where the Hon'ble Tribunal has held in para 31 that;

"Even the standing orders direct that if the dismissal or removal of a government servant is questioned, the order to vacate the quarter need not be issued. In several cases, where public servants are removed or dismissed from service, when those orders are challenged before the appellate authority or before the Tribunal, they are being allowed to retain the quarters until the appeals are disposed of by the appellate authority and until the applications are disposed of by the Tribunal. Unless such an order is made, applicants would

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be exposed to great hardship. It would also be difficult to secure allotment of quarters even if their appeals are allowed. In the circumstances, the respondents are directed to allow the petitioners to retain their quarters, of course, subject to payment of such rent as was paid by them before their dismissal from service."

Similar orders were also passed by this Hon'ble Tribunal in O.A.No. 268/91. A copy of the said order is annexed hereto and marked as Annexure MA-2.

Ann. MA-2.

5. It is also pertinent to note that the respondents has not initiated any proceedings under the Public Premises Eviction Act, 1971 and despite knowing the fact that the order of compulsory retirement is under challenge, it is not just and proper when the matter is ready for final hearing to ask the possession of the quarter. In the facts and circumstances of the case following reliefs may kindly be granted, in the interest of justice.

6. The applicant, therefore, prays that;

(A) This Hon'ble Tribunal may be pleased to grant the stay against the vacation of quarter on the alleged ground of compulsory retirement which is the basic challenge before this Hon'ble Tribunal.

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- (B) This application may kindly be allowed by staying the operation of the eviction notice dated 29.1.97 in the facts and circumstances of the case.
- (C) Any other order or direction as may be deemed just and proper in the interest of justice may kindly be passed.

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

I, A.H. Pillai, the applicant, do hereby verify that what is stated hereinabove is true to the best of my knowledge, information and belief except the legal issues which is on advise of my advocate and I accept the same to be true. I have not suppressed any material fact.

Ahmedabad.

For Dt: 5-2-1997.

  
Signature of the Applicant.

Identified by me:



(K.K. Shah)

Advocate for the Applicant.



दिनांक : २०/११/९७

प्रतिलिपि. दे. सु. क. . P. P. F. . . . .

Wm. S. S. S.

KIRAN K. SHAH

Advocate

3, Achala Yash Society II,  
B/H. Memnagar Fire Station,  
Navrangpura, Ahmedabad-9.

Re: OA 306/91

Arin ma

6/11/95

Tele: 496667

Date 8/11/95

(Through Paper Channel)  
Ref SS-GDA

To  
The Divisional Railway Manager,  
Western Railway,  
Pondicherry,  
BARODA.

Re: Your letter no ET/58/3/274, dt. 28/9/95  
for vacancy quarter, received by me dated  
on 28/10/95

Sub: Pending of Court case, to protect the quarter.  
OA 306/91

Dear Sir,

My client Shri A.H. Pillai is compulsory  
Refused from service the orders are already  
challenged by OA 306/91. Since the Honble  
tribunal has found the Permanent Case  
it is settled and pending final hearing  
Since Eviction notice is served on my  
client it is inform to you that in view  
of order passed on OA 260/91 & reported  
decision in D.N. Singh Vs. Unmurti-Lal  
1988 (8) ATC 724 kindly kept on abeyance  
or drop the proceedings -  
Thanking you truly

Recd 1000 10.11.95

Shri

Ch. K. C. Shetty

Advocate for

A.H. Pillai

Truly  
yours



Smt. Sakinabibi Usmanmiya  
C/o J.K. Ved, Ry. Quarters No. 328/A  
GL Yard Colony, PO Godhra-389001.  
PANCHENHALS.

Mr. Y.V. Shah

VS.

1. Union of India through  
General Manager, W.Rly.,  
Churchgate, Bombay-400 001.
2. Divisional Rly. Manager,  
W.Rly., Baroda Dn., Rly. Yard,  
Pratapnagar, Vadodara-390 004.
3. Medical Superintendent, Rly. Hospital,  
W.Rly., Rly Yard,  
Pratapnagar,  
PO Vadodara-390 004.

Mr. N.S. Shevde

..Applicant

..Advocate

..Respondents

..Advocate

20.08.91

Present: Mr. Y.V. Shah, learned counsel for the applicant.  
Mr. N.S. Shevde, learned counsel for the respondents.

Heard Mr. Y.V. Shah, learned counsel for the applicant and  
Mr. N.S. Shevde, who enters appearance for all the respondents.

Pending admission.

Respondents to file reply on merits strictly within four weeks  
with a advance copy to respondents counsel. The respondents counsel  
shall have two weeks time to file rejoinder if any with advance copy  
to applicants' counsel.

Matter should be listed for admission on which date it may be  
finally disposed of. Office should list the matter for this purpose  
on 7.10.1991.

With regard to prayer for interim relief, Mr. N.S. Shevde, learned  
counsel for the respondents submits that after retirement, an employee  
has no right to continue to occupy the government accommodation made  
available to him while in service. As the retirement itself is in  
question, we feel that the status quo with regard to applicant's  
occupation of the quarters should not be disturbed up to 7.10.1991,  
the date of hearing. We accordingly direct the respondents to maintain  
the status -quo.

Sd/-  
(B. Senthana Krishnan)  
Member (J)

Sd/-  
(M.M. Singh)  
Member (A)

Prepared by: 26/08/91  
Checked by:

TRUE COPY  
V. 26/08/91

RECEIVED  
Section - (A)

Central Administrative Tribunal  
Established at Patna

*[Handwritten signature]*

*[Handwritten signature]*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

M. A. NO. 142 OF 1997

IN

O. A. NO. 306 OF 1991

A.H.Pillai.....

.... Applicant

V/s

Union of India & Ors.....

.... Respondents

REPLY ON BEHALF OF  
RESPONDENTS TO THE  
M.A.142/97.

Tendered in  
27/2/97

The respondents humbly beg to file this reply to applicant's application for interim relief as under:-

1. Contents of para 1 of the application are not true and are not admitted. It is denied that the applicant's advocate had earlier replied to notice dated 29.5.95. No such reply is received by the respondents and no such reply is available on the concerned file of the applicant. The applicant has ~~not~~ produced a xerox copy of letter 9.11.95 at Annexure MA/1

Amulay  
Full  
Petition  
27/2/97



purporting to have been received by someone on 10.11.95. It is submitted that no such letter is received by the respondents. It is submitted that whenever any letter is acknowledged by the respondent railway administration it would bear rubber stamp of the ~~concerned~~ Divisional Office and the signature of the concerned staff receiving the said letter. Hence the said reply dated 9.11.95 is also not admitted.

2. Regarding para 1 & 3, the respondents rely on the proceedings of O.A.No.306/91. The said application is pending for hearing and disposal. The respondents have already filed written statement to the said O.A. NO.306/91. The applicant has not rendered minimum qualifying service for pension purposes and hence he is not entitled for pension. The Disciplinary Authority and the Appellate Authority have passed the orders after applying mind to the facts and circumstances of the case and after finding that the applicant is guilty of charges levelled against him. It is not disputed that the applicant is allotted a railway quarter and is still in occupation of the said quarter. When the applicant has been compulsorily retired by the respondents, he has no right to occupy railway quarter and has to vacate the same. The averments of the applicant that he is occupying the said quarter that he has not having any source of income or any other alternative accommodation,

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are without any merit. An employee has no right to occupy quarter for such reasons.

3. Regarding para 4 of the application, the respondents rely on the ratio of the judgement of the Patana Bench of the Tribunal in the case of Shri B.N. Singh V/s Union of India reported in 1988(8) ATC 722. The said matter is decided in the facts and circumstances prevailing in that case. The said judgement is not applicable to the facts of the present case. In the said case, it appears, that the employee had preferred an appeal against the order of Disciplinary Authority and the same was pending. In the present case appeal of the applicant is decided long back.

The facts of the O.A.NO.268/91 were totally different from the present case and hence order dated 20.8.91 passed by the Hon'ble Tribunal in O.A.NO.268/91( Annexure MA/2) is not applicable to the facts of the present case. The said case related to correction in date of birth.

4. Regarding para 5, it is submitted that the occupation of the applicant of the railway quarter became unauthorised after stipulated period from the date of compulsory retirement and hence the applicant was required to be evicted from railway quarter. The respondents have issued notice dated 29.1.97(Annexure MA) requesting the applicant to vacate the quarter and

informing him that failing compliance action would be taken against him under the Public Premises Eviction Act, 1971. The applicant has not vacated the quarter within a period of 15 days. More than six years have passed from the compulsory retirement of the applicant and no steps were taken by him for moving the matter for early hearing.

5. The applicant is not entitled to any of the reliefs claimed in para 6 of the application.


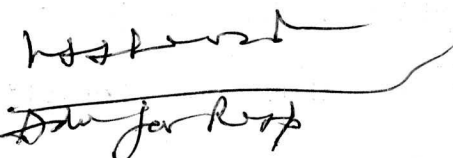
In view of what is stated above, the application may be dismissed with costs.

VERIFICATION

I, M. L. Sureshwar, age about 57 years, working as Divisional Personnel Officer in Western Railway, Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 26.2.1997

  
26/2/87  
  
Divisional Personnel Officer

MA/SH/576/PP

20/11/99

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CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

O.A./T.A./R.A./M.A./C.P./ NO.

MA/747/98 1st OA/306/91

Mr./Mrs.

UOI & Co.  
(Applicant)

Mr./Mrs.

N.S. Shende  
(Counsel)

Vs.

Mr./Mrs.

A.H. Pillai  
(Respondent)

Mr./Mrs.

(Counsel)

DATE

OFFICE ORDER

ORDER

07/10/98

Extension  
of  
Time

Submitted  
at scrutiny  
appl. not  
found in order.

1. copy of  
the Judgment  
not sent with  
Appl.

2. Index sheet  
is required.

Not to be  
placed along  
with the Appl.

1/2 07/10/98

Sgt  
D.R.  
07/10/98

20/10/99

DA (J)

Resubmitted  
Ok but comply  
all fees as appears  
in the order  
for 1000

1/2 20/10/99

Sgt

we may place before  
Board now on

05/11/98

ATM  
01/11/98

20/11/98

Per no given  
as per order  
dt 20-12-98



C-II

MS-87/578/99

MS. Shende 67  
13/9/99  
Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD.

M.A.NO. 747 of 1999.

IN

O.A. 306 OF 1991.

Union of India & Ors.

V/s.

Shri A.H.Pillai

.. Applicant  
(Orig.Respondent)

.. Respondent  
(Orig.Applicant)

M.A. for extension of time

THE applicants herein wants to file an application for extension of time as under :

1. The respondent herein has filed OA 305/91 in this Hon'ble Tribunal challenging disciplinary proceeding and order of compulsory retirement passed by Disciplinary authority which was upheld in appeal and Revision by the Appellate & Revisional Authorities.
2. The original respondents have filed their written statement and requested to dismiss the application for the grounds stated therein.
3. The orig. Appl. was finally decided on 10.5.99 and the Hon'ble Tribunal was pleased to allow the same directed to reinstate the applicant with all consequential benefits including seniority within 3 months & cost of Rs.500/-.
4. The applicants herein have already issued orders for payment of Rs.500/- towards cost.

As far as reinstatement is concerned same is under examination in consultation with HQ office and will likely to take same more time hence the present application for extension of time.

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The applicants here in therefore pray as under :

- i) to grant this application for extension of time and grant extension of at least 3 months from the date of filing application.
- ii) to pass any other order which seems just & proper.


VERIFICATION

I, Mrs. P. Gopinathan working as Divisional Personnel Officer do hereby state on verification that whatever is stated above is true & correct as collected from the record of the case & no facts are suppressed by me.

BARODA.

DATE: 16/9/99.

filed 17.9.99

  
\_\_\_\_\_  
Divisional Personnel Officer,  
Western Railway,  
Baroda.

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