

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/493/1992

Date of Decision : 09/2/2000

Shri. N.A. Panchal : **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. P.C. Kannan : 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 N.A.Panchal,
Retired Depot Store Keeper (C)
Bhuj residing at
A-17, Sadashiv Society,
Nr.Ambica Vidaylaya,
Virat Nagar Road, Odhav,
Ahmedabad.

: Applicant

(Advocate: Mr.K.K.Shah)

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Engineer(Construction)
Western Railway,
2nd Floor,Ahmedabad
Railway Station Building.
Ahmedabad.
3. Deputy Chief Engineer (C)
Western Railway, Bhuj
4. Deputy Chief Engineer
North (C),
Western Railway,
Ahmedabad.

: Respondents

Advocate: Mr.N.S.Shevde

JUDGMENT
O.A. No. 493 of 1992

Dt:09/2/2000

PER : HON'BLE MR. V. RADHAKRISHNAN : MEMBER (A)

Heard Mr. K.K. Shah for the applicant and Mr. N.S. Shevde, for
the respondents.

2. The applicant was issued a charge sheet dated 15.1.88, Annexure-A. The applicant claims that the charge sheet is incomplete and he could not get proper opportunity to defend the same and the charge sheet issued by the incompetent person without authority is to be declared as null and void. The impugned orders issued by the respondent No. 3 and 4 are improper and not in accordance with the Railway servants (D & A) rules, 1968, and are violative of principles of natural justice and also arbitrary, discriminatory and against the law of equity and fair play.

3. Accordingly, the applicant in this O.A. has approached the Tribunal praying for the following reliefs :-

"A The impugned orders at Annexures A, A1, A2 may kindly be quash and set aside and the amount of pension and retirement dues may kindly be directed to the respondents to pay with interest of 24% by holding the action of the respondents as illegal, null and void, and grant all the consequential benefits.

B. This application may kindly be allowed with cost.

C. Any other order or direction as may be deem fit may kindly be passed in the interest of justice".


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4. The respondents have filed reply and resisted the claim of the applicant. They have initially made preliminary objection that the applicant had raised similar issues in OA/511/86 which has already been decided by this Tribunal on 15.4.91. A review application filed by the applicant was also rejected, hence the respondents feel that the application is hit by res-judicata and stated that the Tribunal in the judgement, OA/511/86 has observed as under :-

However this deemed date of 30.9.1987 will not have any effect on the authority which initiated the DAR action against subsequently to 30.9.87.

5. They have also stated that the Tribunal held that an amount of Rs. 79,142.27 would withhold by the respondents from the gratuity of the applicant's pensionary benefits till the final disposal of the appeal. The respondents have also pointed out that the applicant has not submitted any appeal in the first instance, but later on submitted an appeal on 28.6.91, which was rejected. The appellate authority/disciplinary authority withheld an amount of Rs. 79,142.27 which is equal to the loss sustained by the respondents.

6. The respondents have stated that the charge sheet is issued correctly in prescribed form by the Deputy Chief Engineer ©, Bhuj, who




is a Junior Admn. Scale Officer and he is competent to issue the charge sheet. An inquiry was conducted by the respondents and on completion of the inquiry, the applicant made a statement that "I am satisfied with the conduct of the inquiry and no more evidence or witnesses are to be produced." The disciplinary authority after considering the inquiry report imposed the penalty, for recovery of Rs. 79,142.27. A late appeal filed by the applicant was also considered and rejected. So far as the question of name of the witnesses of charge sheet is concerned, they have stated that the name of the witnesses was to be given during the proceedings, if necessary. All the documents were given to the applicant along with the charge sheet. They have stated that the penalty of recovery imposed is covered under rule 6 of DA rules, hence the recovery is according to the rules, which reads as under:-

"Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway administration by negligence or breach of orders."

7. The applicant has filed rejoinder. He denied that he did not submit an appeal in 1989. He stated that he had filed an appeal dated 28.6.91 . He also denied that he had been given full opportunity to conduct the defence. He stated that he has never given opportunity to

produce any defence witnesses. He also stated that the earlier O.A. was filed to release retiral benefits, while the present O.A. was filed for quashing the charge sheet. He also stated that he was carrying out the work under pressure and without requisite staff. He also stated that he was also not given copy of the inquiry report, under which, he could have submitted the defence. Mr. K.K. Shah, learned advocate for the applicant during the arguments pointed out that the charge sheet issued is very vague and not specific. He also pointed out that no documents had been enclosed along with the charge sheet for proving the charges. So far as the inquiry is concerned, the applicant was given the impression that the preliminary inquiry was going on and without notice to the applicant, respondents made it as a final inquiry. He also pointed out that the names of the witnesses to be examined by the prosecution had not been given in the charge sheet. He also mentioned that no presenting authority was appointed by the respondents. The applicant was also not given opportunity to produce witnesses for the defence. The inquiry was held behind his back and hence the proceedings were vitiated as principles of natural justice not followed. He also contended that the applicant was not given a copy of the inquiry report. So far as the orders of the appellate authority is concerned, he pointed out that the orders of the appellate authority is lack application of mind as he had not examined



various points raised by the applicant. He also pointed out that as per the orders of the Tribunal in OA/511/86, the applicant was due to retire on 30.9.87 and issued a charge sheet on 15.1.88 can not be sustained without necessary sanction of the president.

8. Mr. Shevde, learned counsel for the respondents disputed the contentions of the Mr. Shah. He pointed out that the applicant was charge sheeted and the applicant has given in writing that he had received all the documents along with the charge sheet. So far as the contention of Mr. Shah is concerned, that the charge sheet was issued after the retirement of the applicant, Mr. Shevde stated that at the time of issuing the charge sheet, the applicant was in service. Only by the judgement of the Tribunal dated 15.4.91, he was deemed to retire on 30.9.87. Accordingly, the charge sheet issued is quite legal and in order. So far as the question of examination of the prosecution witnesses is concerned, he stated that the applicant had admitted his guilty and hence there was no need to prove the guilt through witnesses. The inquiry was held according to the procedures. So far as the defence witnesses is concerned, the applicant has given in writing that he does not have any defence witnesses to be examined. The applicant had committed misconduct by giving clear receipts. He filed the claims for

discrepancies beyond time limit and hence they become time barred. In the inquiry report, conclusion was that the applicant was guilty and hence disciplinary authority passed orders to recover the losses incurred by the respondents from the gratuity and other benefits of the applicant, which is quite in order. Mr. K.K. Shah disputed the contention of Mr. Shevde and stated that the applicant was working single handedly and under pressure. He could not have, in the absence of proper facilities like weigh bridge carry out check of each and every receipt. He also pointed out that the respondents have not produced clear receipts submitted by the applicant.

9. We have heard learned advocate for both the parties and gone through the documents. So far as the preliminary contention of the respondents that the application is hit by the constructive resjudicata Mr. Shah pointed out that the O.A/511/86 filed by the applicant for releasing his retiral benefits and the present O.A. which is filed against the charge sheet issued to him and against the penalty for recovery from his pensionary benefits. He also pointed out that the penalty was imposed on the applicant on 15.1.88, but the earlier O.A. was filed in 1986. We are inclined to agree with him. Hence, the contention of the respondents that the O.A. is stated by the constructive resjudicata is not tenable.

10. So far as the contention of Mr. Shah that the charge sheet is vague and incomplete, reference is invited to charge sheet, Annexure-A. The applicant claims that documents were not supplied to him, at the time of inquiry. In so far as the question of examination of witness in the inquiry is concerned, no names were mentioned, but it was stated "as found necessary during the proceedings". It is needless to state that it is necessary to show the names of prosecution witnesses in the charge sheet. It is also relevant to point out ~~that~~ during the course of inquiry, no prosecution witnesses were examined as admitted by the respondents themselves. Moreover, there was no Presenting Officer to represent the case for the prosecution. The contention of the respondents that the applicant has admitted the guilt, hence, it was not necessary for them to examine the prosecution witnesses to prove the guilty is not correct. The respondents have not filed any document to show that the applicant unconditionally accepted the liability and agreed for the recovery. The applicant's reply ^{clearly}/shows that he had not unconditionally accepted liability. He had also indicated that there were no facilities for re-weighment at his end and hence there was no alternative for him than to accept the material and report the shortage immediately thereafter.

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11. It is well settled that the burden of proving the case of prosecution rests with them only through documents/witnesses. Hence, it is clear that principles of natural justice are not followed in this case. Further, it is also noticed that an impression was given to the applicant that the inquiry being held was in the nature of the preliminary inquiry and a regular inquiry will be held later and all of a sudden, the applicant was punished, with the notice of imposing penalty. Further, the applicant was not allowed to produce any defence witnesses on his behalf, which is a serious lapse in the proceedings. It is also seen that the respondents have not given any proof that the inquiry report was submitted to the applicant even at the stage of imposing penalty. This was a handicap of the applicant in filing his appeal. It is also seen that the order of the appellate authority as at Annexure A/2 is very brief and he has not examined all the points raised by the applicant. It is necessary for the appellate authority to dispose of and give his decision in each and every points raised by the applicant in the appeal, which was not done.

12. On going through the final proceedings, it has been noted by the executive engineer and inquiry officer that " In this connection, it is pointed out that there was heavy consignment. It was not possible to

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verify the weight immediately. (154 plates were received) The plates were sorted out and theoretical weight arrived at (due to lack of weighing facility of such items) Shri Panchal's reply (A-6 on CP 46) may please be perused.

Under the circumstances, Shri Panchal had no alternative except to book delivery under clear signature, as he could have assessed the weight only after sorting the plates size wise.

It is therefore opined that Shri Panchal is not directly responsible for losses towards short receipts."

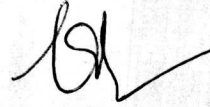
13. There is no comment by the disciplinary authority on this, as to why, this could not be accepted. Keeping in view, the above observations, we are of the view that the principles of the natural justice are not followed in holding an inquiry and consequently the proceedings were therefore vitiated. Normally in such cases, we would remand the case back to the disciplinary authority to hold a inquiry a fresh, but in the particular case, keeping in view, the facts that the applicant has retired in 1987, no useful purpose will be served by remanding back the case to disciplinary authority to hold a fresh enquiry. We therefore, quash and set aside the orders of the disciplinary authority and appellate

:12:

authority, Annexure A/1 and Annexure A/2. The respondents are directed to release the amount of Rs. 79,142.27 withheld from the retiral benefits of the applicant within 12 weeks from the date of receipt of a copy of this order. No costs.



(P.C. Kannan)
Member (J)



(V. Radhakrishnan)
Member (A)

Pt

OA/TA/RA/CP/MA/PT 493 of 1992

APPLICANT (S)

Union of Quing 8038

RESPONDENT (s)

I N D E X S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
1.	OA With Ann.	1 to 55
2.	Reply	56 to 59
3.	Rejoinder.	60 to 66
	Judgement dt. 9/2/2000.	1 to 12
	1c' part	1 to 16

Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Deal. Hand.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

OA/493/92

of

1992

Miscellaneous Petition No:

of

Shri

N. A. Panchal

Petitioner(s)

Versus.

V. O. J. & Co.

Respondent(s).

This application has been submitted to the Tribunal by

Shri

K. K. Shah

Under Section 19 of the Administrative Tribunal Act, 1985. It has been 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 Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J):

D.R. (J):

KNP24492.

19. X 92

only letter issued on 21-10-92
Submittable

K.T.O

Submitted

Kindly see orders overleaf.

The objections have been completed
with. The matter, if approved, will be
handed over to the official concerned
for fixation of date.

30/11/92 80(5) as per order 1.12.92

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT(S)

Shri. N. A. Pandhral.

RESPONDENT(S)

V. O. I. 2uPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ?
2. (A) Is the application in the prescribed form ?
(B) Is the application in paper book form ?
(C) Have prescribed number complete sets of the application been filed ?
3. Is the application in time ?
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 Namabeen filed ?
5. Is the application accompanied by D.D./I.P.D. for Rs. 50/- ? Number of D.D./I.P.D. to be recorded.
6. Has the copy/copies of the order(s) against which the application is made, been filed.?
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ?
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?
(c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents has been filed and has the paging been done properly ?

yes

yes

yes

yes

yes

yes

DD 191880

yes

yes

yes

copy copies

yes

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/copies signed. ?
12. Are extra copies of the application with annexures filed ?
 - (a) Identical with the Original.
 - (b) Defective.
 - (c) Wanting in Annexures
- No. _____ 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 translations certified to be true or supported by an affidavit affirming that they are true ?
17. Are the facts for the cases mentioned under item No6 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 ?

KNP30192.

Ans
18/1/82

F. Dagny & A. J. incognito
4/9 not legible

yes

no

yes

yes

yes

yes

no

yes

0734/316/92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. NO. 493 OF 1992.

Shri N.A. Panchal

....Applicant

v/s

Union of India & Ors.

.....Respondents.

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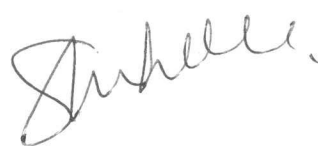
Date of Filing 28/8/92

Ahmedabad

D.D. No.

67191134
19/880/

27/7/92



Kiran k. Shah, Advocate.

Recovery

0454/316/92

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. NO. 493 OF 1992

Shri N.A.Panchal

...Applicant

v/s

Union of India

...Respondents.

Details of Application

Details of Applicant

Shri N.A.Panchal
Retiered Depot Store Keeper(c)Bhuj,
residing at
A-17,Sadashiv Society,Nr.Ambica Vidyalaya,
Virat nagar Road,Odhav,Ahmedabad.

Details of Respondents.

- 1.Union of India,notice to be served through,
The Genral Manager,
Western Railway,
Churchgate,Bombay.
- 2.The Chief Engineer,(Construction),
Western Railway,2nd floor,
Ahmedabad Rly.Stn.Building,
Ahmedabad.
- 3.Deputy Chief Engineer,(c),
Western Railway,Bhuj.
- 4.Deputy Chief Engineer,North(c),
Western Railway,Ahmedabad.

1. Order under Challenge.

A. The Charge Sheet Dt.15/1/88 issued by the respondent no.3,copy of the same is annexed hereby as Annexure A.

B. Order dt.29/9/89 issued by the respondent no.3 imposing the penalty of recovering the Rs. 79,142.27 paise.Annexure-A1..

C. Order dt. 29/8/91 issued by the respondent no.4 a copy of the same is annexed hereby as Annexure-A2.

Subject in Brief:

The above charge sheet is issued after the Dt. of retiermentand was issued with the close mind and the language is also self explanatory that the issue was predetermind.

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The charge sheet was incomplete and therefore the applicant could not get proper opportunity to give the defence to the same.

The charge sheet is issued by the incompetent person and without authority and the same is to be declared null and void.

The impugned orders issued by the respondent no. 3 and 4 are also improper and not in accordance with the Railway Servants (D&A) 1968.

The orders are also violative of the principles of natural justice and also arbitrary, discriminatory and against the law of equity and fair play.

The orders are required to be quashed and set aside and the amount withheld by the respondents is required to be paid with interest of 24% by granting the prayers and allowing the application.

2. Jurisdiction:

The applicant declares that the subject matter of this application is within the jurisdiction of this Honourable Tribunal.

3. Limitation:

The applicant declares that the application is filed within the prescribed period of limitation as per Section 21 of the A.T. Act, 1985.

4. Facts of the Case:

A. The applicant is a retired DSK who was working under the respondents. The applicant submits that due to his cataract problem in both the eyes and kidney trouble he seeks voluntary retirement in the year 1987. The

3 @

respondents accepted the same and due to reasons best known to them the applicant was not allowed to retierd.

Being aggrieved with the same the applicant preferred the O.A. No511/87, the same was resulted in favour of the applicant and therefore the applicant is to be considered as retiered from the year 1987. A copy of the same is annexed hereby as Annexure A3.

Since the applicant was not paid the amount of retierment dues he preferred the review application but the same was rejected on the grounds that it is a different matter and not the ground for review. A copy of the same is annexed hereby as Annexure A-4.

B. The applicant submits that while he was working at Bhuj as DSK he had complained to the respondents about the shortage of staff and the pressure of work. The applicant submits that there was no weigh Bridge at the place the applicant was working and the goods recieved by him was difficult to weigh but since no head was paid to the letters of the applicant the respondents after retierment of the applicant has tried to victimise the applicant by issuing charge sheet and also to thresh on the responsibility of others who were defaulters on the head of the applicant by knowing that he is retiering.

C. The applicant submits that he will rely upon the letters and documents which will clearly speaks for itself that there was not any negligence on the part of him which resulted to the Railway loss. The other documents will also makes it clear about his serious illhealth.

The idea to issue the charge sheet of major penalty was with clear intention to victimise and harrase him.

D. The applicant could not give the reply to the charge

4 (3)

sheet since it was incomplete as well as the documents relied by the respondents were not furnished with the charge sheet. over and above he was suffering by the cattract and kidney trouble. The authority with an intention to held the guilty the applicant and as it was pre determined without waiting for the reply or considering the request of the applicant appointed the inquiry officer. A copy of the same is annexed hereby as Annexure A5.

E. Subsequently the applicant on 27/12/88 informed the respondent and the enquiry officer to keep presant the two deffence wittnesses in the inquiry. A copy of the same is annexed hereby as Annexure A6 but the same were not kept ready and were not examined in the enquiry.

F. The applicant submits that in the charge sheet no names of wittnesses were given and the documents relied by the enquiry officer were to be coroborated by the statements of them as a presanting wittneses and the inquiry was proceeded without compliance of the rule 9 of the Rly. Servants (D&A) 1968.

G. The applicant submits that the perliminary inquiry was treated as DAR inquiry and the applicant was not given oppertunity to keep his deffence counsel nor was presant on that day and he was taken in confidence that nothing is going to decided adverse to him. The disciplinary authority acted with indiscipline by not observing the rules properly. The principles of natural justice was violated.

H. The statment recorded in the inquiry was also not signed by the enquiry officer and without providing the copies of documents in advance with the chargesheet just on the prelimnary inquiry the respondent held him guilty. The penalty order was also served with the inquiry report and findings.

S 6

I. Being aggrieved with the order of penalty the applicant appealed to the Chief Engineer, respondent no.2 on 18/11/89 by registered post A.D. A copy of the same is annexed hereby as Annexure A7.

I. The Executive Engineer vide his letter dt. 2/5/91 informed that his office is not aware of such appeal. A copy of the same is annexed hereby as Annexure A8.

J. The applicant then after sent the appeal in addition to his earlier one on 28/6/91. A copy of the same is annexed hereby as Annexure A9.

K. The respondent no.4 decided the same and issued the order on 29/8/91. Being aggrieved with the same the applicant is approaching this Honourable Tribunal with this application.

5. Ground for challenge;

A. The action of the respondents of issuing chargesheet after retirement is without any authority and the respondent cannot do so in absence of the rules. The charge sheet is suffered by delay and laches and after the service contract is over the respondents cannot issued the chargesheet.

B. The action of the respondent no.3 of issuing the charge sheet after acceptance of the voluntary retirement is illegal unjust and improper.

C. The language of the charge sheet is predetermined and the chargesheet was issued with the close mind and hence the same was requires to be held illegal.

D. The charge sheet was also ambiguous and incomplete and the same charge sheet will not give the clear idea to understand the charges so atleast the applicant can prepare proper defence. In absence of list of witnesses and without giving the documents relied in the same

6 (8)

together with the same it will be difficult for the applicant to prepare th defence.

E. The allegation of Railway loss is not due to the negligence of the applicant but is attributed on certain other factors and also on part of some other person. without disclosing the material to the applicant or furnishing any accounts of the same it cannot be said that the loss is due to the applicant only and the sole responsibility cannot be thrust on the applicant. The subject matter is not forming a misconduct on the part of the applicant. The charges are also vague ambiguous and not clear.

F. The order of the respondent no. 3 is without complying the rule 9 of the DAR rules. The inquiry was not held as per rule 9 and therefore the same requires to be vitiated.

G. The enquiry officer has not understood the difference of the preliminary inquiry and disciplinary inquiry and the statement in the preliminary inquiry is considered for the entire inquiry and the applicant has been held guilty on the basis of the same. the said statement is also not signed by the inquiry officer nor by any witnesses and hence cannot be considered as valid one for the purpose of the DAR case and to impose the penalty.

H. The documents relied in the charge sheet were not supplied to the applicant with the chargesheet and it is a major lapses to enable the applicant to defend his case.

I. The Disiplinary authority without waiting for the applicants deffence appointed the enquiry officer is against the rules.

J. The deffence witnesses asked by the applicants were

7 (4)

not kept ready nor were allowed in the inquiry and it is violative of principles of natural justice and equity.

K. The action of the respondents by furnishing the inquiry officers report with the penalty is against the law laid down by the Honourable Gujrat High Court in the case of Ninama as well as the law laid down by the Honourable Supreme Court in the case of Mohd. Ramzan Khan case.

L. The appeal was to be decided by the respondent no.2 and the same is decided by the respondent no.4 who is junior to the appellate authority and therefore the same is requires to be quash and set aside and the order of respondent no.3 also on the doctrine of merger requires to be held illegal.

M. The impugned orders of both the authority are without complying and observing the Railway Servants D.&A. rules and the same are also violative of Art.14 & 16 & 311(2) of the constitution of India.

N. The penalty imposed is not define under rule 6 and the same cannot be imposed.

6. Reliefs Sought.

A. The impugned orders at Annexure A, A1, A2 may kindly be quash and set aside and the amount of pension and retirement dues may kindly be directed to the respondents to pay with interest of 24% by holding the action of the respondents as illegal, null and void, and grant all the consequential benefits.

B. This application may kindly be allowed with cost.

C. Any other order or direction as may be deem fit may kindly be passed in the interest of justice.

7. Interim relief:

A. The amount withheld by the respondents is the amount of pension and gratuity and is the only source to pull on his past life in the illhealth condition and looking to the facts of the case entire of part thereof as deem fit by this honourable Tribunal on a condition or without condition may be directed to the respondents to pay to the applicant.

B. Be please to call for the DAR proceedings .

C. Any other reliefs as may be deem fit in the interest of justice may kindly be passed.

8. Details of remedies exhausted.

The applicant declares that he has availed the remedy inform to him and available under the rules.

9. Matter is not pending with any other Court or Tribunal.

The applicant states that he has not filed the subject matter before any other court except the present one and no such case is pending.

10 Details of Demand Draft. OTIA1134.

Demand draft no.

Date

State Bank of India, Navrangpura Branch.

11. List of enclosures:

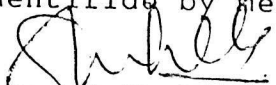
As per Index.

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VERIFICATION

I, Shri N.A. Panchal aged 62 years residing at sadashivnagar, Odhav Ahmedabad, retired DSK Bhuj do hereby, states that what is stated in para 1 to 11 except para 5 is true to the best of my knowledge and the same is correct and what is stated in para is on advise of my advocate and the same is accepted by me as correct. I further declares that I have not suppressed any material fact.

Identified by me


Kiran K. Shah, Advocate.



N.A. Panchal.

ANNEXURE A 10

WESTERN RAILWAY

STANDARD FORM OF CHARGE SHEET

Standard Form No. 5

(Rule 9 of the Railway Servants (Discipline and Appeal Rules, 1968).

Office of the
Dy. Chief Engineer
(Const.), Western
Railway, Bhuj.

No. E/DAR/308/1 (NAP - 9).

Dtd: 15/1/88.

M E M O R A N D U M

The undersigned propose(s) to hold an inquiry against Shri N.A.Panchal, DSK(C)BVJ. under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputation 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 mis-behaviours in support of each article of charge are proposed to be sustained are also enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

2. Shri N.A.Panchal, DSK(C)BVJ 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 II) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact Chief Clerk (SP) of this office immediately on receipt of this memorandum.

3. Shri N.A.Panchal, DSK(C)BVJ 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 there under 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 N.A.Panchal, DSK(C)BVJ 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 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.

4. Shri N.A.Panchal, DSK(C)BVJ 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 documents and also -

.....2.

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

5. Shri N.A.Panchal, DSK(C)BVJ 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. Shri N.A.Panchal, DSK(C)BVJ 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 provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1966, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. The attention of Shri N.A.Panchal, DSK(C)BVJ 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 interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri N.A.Panchal, DSK(C)BVJ 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. The receipt of this Memorandum may be acknowledged.

Encl: Annex. I, II, III
& IV & documents
9 enclosed.

Signature _____
Name & Designation of Competent Authority. (N.K.GUPTA)
११ सुपर इंजीनियर (विमान)
५. ई. गुप्त-काठ

By, CHIEF ENGINEER (G)
W. B. B. B. Kutch

To

Shri N.A.Panchal,
DSK(C) (Designation)
Bhuj. (Place, etc.)

Copy to Shri _____ (Name & Designation of the lending authority) for information.

- * 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.

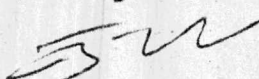
Memorandum of Chargesheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.

Statement of Articles of Charge framed against
Shri N.A. Panchal.

ARTICLE I

That the said Shri N.A. Panchal
while functioning as DSK(C)BVJ.
during the period Jan. '84 to Sept. '86.

While working as DSK(C)BVJ, in 6 cases, the so called claims for short receipt was not accepted by the Commercial Deptt. as in one case the claim was made late hence considered time barred and in rest of the 5 cases, the material was received under the clear signature. The details of such cases is enclosed as Annexure I/A.


Dy. CE (CN) BVJ.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri _____

ARTICLE III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri _____

13


14

ANNEXURE II.

Statement of imputations of misconduct or misbehaviour in support
of the articles of charge framed against Shri NA.Panchal
DSK(C)BVJ.

ARTICLE I

While working as DSK(C)BVJ, Shri Panchal has taken the
delivery of the materials as per details given in Annexure I/A.
Due to negligence of Shri Panchal, the Railway has suffered
a loss to the tune of Rs. 90189.16.


Dy. CE (CN) BVJ.

ARTICLE II

ARTICLE III

Late submission of claim -

(I) Claim No. SD/BVJ/Claim 58 :

INV No. 7 R.R. No. 195624 dt. 5.12.83.

There was short receipt of 17 Nos. M.S. Flat 50x6 mm but you had claimed late on 7.7.84 with the result the claim was not accepted being time barred and Railway has to suffer a loss of Rs. 1111.82. Shri Panchal has been held responsible for late submission of claims.

(II) Claim No. SD/BVJ/Claim 61 :

- (i) INV No. 25 R.R.No. 197023 dt. 15.3.84
- (ii) INV No. 26 R.R.No. 197024 dt. 17.3.84
- (iii) INV No. 28 R.R.No. 197025 dt. 20.3.84
- (iv) INV No. 29 R.R.No. 197026 dt. 21.3.84.

The 50.580 M.T. S.M. Cold twisted deframed bars 10 mm dia despatched by M/s Kaysons Trading Company were received in loose and weight was found only 39.355 M.T. Thus there was short of 11.225 M.T. The above material was received under clear signature on 15.5.84, as such the claim has been refuted by authority and as such Railway has to suffer a loss of Rs. 54901.47. Shri Panchal has been held responsible for the said loss.

(III) Claim No. SD/BVJ/Claim 63 :

INV No. 1 R.R.No. 621674 d t. 4.9.84.

M/s Indian Iron & Steel Co. Ltd., Ahmedabad despatched 3 Bundles = 17.580 M.T. S.M. Rounds twisted 32 MM dia on 4.9.84. It was received by you under the clear signature but shown receipt 17.151 MT only against the said quantity of 17.580 MT.

Though, it was claimed by you on 10.1.85 for short receipt but being taken delivery for full quantity under your clear signature. On 19.9.84, the claim was turned out and Railway has to suffer a loss to the tune of Rs. 2076.87. Shri Panchal is held responsible for the said loss.

(IV) Claim No. SD/BVJ/Claim/65 :

INV No. 1 R.R.No. 501040 dt. 4.9.84.

2800 Nos. sleepers were despatched by PWI(C)LPJ and it was received by you under your clear signature at BVJ. On 26.2.85, you claimed that only 2796 Sleepers were received by you. You claimed for 4 sleepers but as the delivery was taken by you under your clear signature on 18.9.84, the claim was turned out by the authority and thus, Railway has to suffer loss to the tune of Rs. 600.00. Shri Panchal has been held responsible for the said loss of Rs. 600.00

(V) Claim No. SD/BVJ/Claim/159 :

INV No. 7,8,9,10 R.R.No. 212639 to 212640 dt. 2.6.86,
212648 to 212650 dt. 4.6.86 & 7.6.86.

M/s Jailal Agarwal, 3/20 Steel yard, booked 32.40 MT S.M. Round 6 mm dia from Bombay. The delivery was taken under the clear signature for full quantity on 25.7.86. You claimed for short receipt of 3.465 MT on 16.9.86 but as the delivery was taken for full quantity under your clear signature, it was turned down and with the result Railway has to suffer a loss of Rs. 22429/-. Shri Panchal DSK(C)BVJ is held responsible for the same.

(15)

(16)

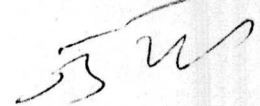
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(VI) Claim No. SD/BVJ/SP/Claim/162 :

INV No. - R.R.No. 35450 dt. 20/29.4.86.

M/s Steel Authority of India Ltd. Bakaro Steel Plant, Booked 55.700 MT S.M.T. Plates 6 mm dia of various sizes. It was received at BVJ by you in full quantity under your clear signature. But on 17.9.86, it was claimed by you that 1.292 MT was received short and claimed refund of Rs. 9070.00.

As the material was received by you under your clear signature on 19.6.86, the claim was turned out and Railway has to suffer to the tune of Rs. 9070.00. Shri Panchal is held ~~laid~~ responsible for the same.



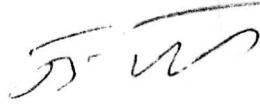
Dy.CE(CN)BVJ.

(18) (17)

ANNEXURE 'III'

List of documents by which the articles of charge framed against Shri N.A.Panchal, DSK(C)BVJ (Name and designation of Railway Servant) are proposed to be sustained -

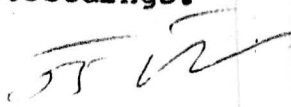
1. CCO-CCG's letter No. CL/A11/L/83/2429 dt. 5.6.85 & 17.11.87.
2. CCO-CCG's letter No. CL/A11/L/84/1140/SPL372/Govt.)
--do-- /1141/SPL373/Govt.) Dt.
--do-- /1142/SPL374/Govt.) 8.10.86.
--do-- /1143/SPL375/Govt.)
3. CCO-CCG's letter No. CL/A11/L/84/1733 dt. 21/24.9.87.
4. CCO-CCG's letter No. CL/A11/L/1953 dt. 22/24.9.87.
- 5.(i) Goods Supervisor-BVJ's letter No. Bhuj/S/556/5/2 Vol.I dt. 26.9.86.
(ii) ARS-GIM's letter No. C/125/1 dt. 18.11.86.
(iii) CCO-CCG's letter No. CL/A11/L/86/218 dt. 13.11.87.
6. CCO-CCG's letter No. CL/A11/L/86/217 dt. 28.10.86.



DY.CE(CN)BVJ.

ANNEXURE 'IV'

List of witnesses by whom the articles of charge framed against Shri N.A.Panchal, DSK(C)BVJ (name and designation of the Railway servant) are proposed to be sustained.

As found necessary during the proceedings.


DY.CE(CN)BVJ.



BY REGISTERED POST AD.

WESTERN RAILWAY

Notice of Imposition of a Penalty (N.I.P.) under
Rule 6 of the Railway Servants.
(Discipline and Appeal) Rules, 1968.

No. BVJ/E.DAR/308/1(HAI-9).

Office Dy.CE(C)'s office
Bhuj

Dated 29-09-1989.

To,

Shri H.A.Panchal, Retired DSK(C)
Behind Old Power House,
New Deesa, Distt: Banaskantha
PIN : 385535 (Gujarat).

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

" A LOSS of Rs.79,142-27 (Rupees Seventy nine thousand
One hundred forty two and Paise Twenty seven)
sustained by the Railway on account of your misconduct
while working as DSK(C)/Bhuj is to be recovered
from your retirement dues. The copy of orders of
the Disciplinary Authority is enclosed. "

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

Name R.K.Sharma

Designation Dy.CE(C)Bhuj

Signature

Encls: 1 (3 pages) + 1 Statement.

Instructions

- (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 Chief Engineer(Construction)West-Churchgate,Bombay
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 _____

Dated _____

Signature or left hand
thumb impression of employee

Name and
Father's Name _____
(In Block
letters _____

Designation
of employee _____

N.B.-This portion must be detached, signed and return to the
office of issue.

18 (50) 1

Copy of orders of the Disciplinary Authority

I have carefully gone through the charges made against Shri N.A. Panchal, the then DSK(C) Bhuj, his defence, the enquiry proceedings and the findings of the Enquiry Officer. For clarity sake a complete position of all six claim cases, giving nature of R.R. (clear or said to contain), Date of R.R., Material booked, Booking station, Consignor, Date of receipt of the material, Extent of shortage, Place of delivery, Remarks in the Traffic delivery book, Value of shortage, Date of submission of claim, Amount withheld as 2% or 5% as the case may be, etc. etc. is given in tabular form. (Copy enclosed). In brief, the charges are as under.

1) Claim was preferred after 6 months of the date of R.R. in some cases. These claims were rejected by CCO/COG as time barred.

ii) Delivery has been taken in some cases under clear signature. The claims preferred were, therefore, rejected by CCO.

In defence, Shri Panchal has mentioned that due to pre-occupation with other urgent works, he could not prefer claims in time. Regarding receipt under clear signatures, he has mentioned that the delivery was not handedover by GSR/Bhuj to DSK(C) Bhuj unless the later signed the delivery book under clear signatures. He explained that the un-loading was not witnessed by Comm. staff when the delivery was given in the DSK siding.

In this connection, the extant circular Codel provision and procedure orders etc. were gone through by the undersigned. Having done that, I have arrived at following conclusion in respect of individual claim.

I. Claim Case No. 1/58 - In this case, the employee was allowed to pass remarks of shortage in the Traffic delivery book although the material was received in the DSK siding. Material was received on 30/5/84 but he did not prefer the claim in six months period of date of R.R. expiring on 4/6/84. Since he was allowed to pass the remarks in the Traffic delivery book, the claim would have been accepted by CCO had it been submitted by 4/6/84. Payment against 2% bill amounting to Rs.1062.37 has not been released by him. Shri Panchal, is, therefore, held responsible for causing a loss of Rs.49.45 to Rly. This amount to be recovered from his retirement dues.

II. Claim Case No. 2/61 - In this case the material was received on 6.5.84 and the claim for shortage of 11.225 M.T. of 10 mm dia Steel amounting to Rs.54901.47 was preferred by Shri Panchal as late as on 14.9.84. Shri Panchal has admitted in his defence dated 21.12.83 and in response to question No. 2 in the enquiry held on 29.12.88 that Firm's Representative contacted him in April '84 and informed him (Shri Panchal) that the Firm has sent the materials short by about 10 tonnes. In spite of this knowledge Shri Panchal received the material under clear signature in the Goods shed duly supervised by the Comm. staff. For six months Shri Panchal kept on waiting for the Firm's Representative for dubious reasons and ultimately preferred the claim rather late which was rejected by CCO/COG as time barred initially and subsequently again vide his lt. dt.8.10.86

Contd.....

for the reason that the material was received under clear signature. Since he knew about the shortages before receipt of the material, he should not have taken the delivery under clear signature in the Goods shed where Comm. staff was available as witness.

Shri Panchal is, therefore, responsible for deliberately causing loss of Rs.54901.47 less the amount against 2% bill i.e. Rs.5146.00. Thus, the balance amount of Rs.49755.47 should be recovered from the retirement dues of Shri Panchal.

III. Claim Case No. 3/63 - In this case 0.429 M.T. of 32 mm dia steel amounting to Rs.2076.87 was received short but Shri Panchal accepted the delivery under clear signature in the Goods shed where Comm. staff was available. Since the material was despatched on said to contain R.R., it was possible for the Railway to recover this amount from the Consignor if clear receipt had not been given by Shri Panchal. Though the Consignor has been paid 100% as advance payment yet it was possible to recover the amount of shortages from his other payments had Shri Panchal not taken the delivery under clear signature. The plea of Shri Panchal that he was forced by GSR/BVJ to take delivery under clear signature is not valid in view of the procedure described in joint procedure order of COS, CCS, FA&CAO and CE dated 22.8.74. Shri Panchal is, therefore, held responsible for the shortage of 0.429 M.T. of 32 mm dia steel amounting to Rs.2076.87. This amount should, therefore, be recovered from the retirement-dues of Shri Panchal.

IV. Claim Case No. 4/65 - The shortage of four sleepers has since been accounted for. The claim was inadvertently preferred by Shri Panchal. Although no loss has been sustained by the Railway but the case shows the negligence of duty by Shri Panchal.

V. Claim Case No. 5/159 - In all 613 bundles equivalent to 32.740 M.T. of 6 mm Bars were despatched under clear R.R. by a Private Firm. When the material was received by Shri Panchal at the Goods shed, 525 bundles were intact while other bundles were disturbed. When the Consignment was received in disturbed condition, the employee Shri Panchal should have insisted on weighment and there was no necessity for him to give clear signature. Shri Panchal is, therefore, responsible for the loss. An amount of Rs.4238.52 has been withheld against 2% bills. The balance amount of Rs.18190.48 should be recovered from his retirement dues.

VI. Claim Case No. 6/162 - Out of 55.70 M.T. of 6 mm dia steel sent by M/s SAIL on 19-4-86 under clear R.R., 54.408 MT steel was received on 19-6-86 by Shri Panchal in the DSK siding. As per para 2 of joint procedure order dt.22.8.74 Shri Panchal was permitted to record entry of the actual quantity received in the delivery book on the same day. But this was not done by Shri Panchal and he accepted the delivery under clear signature with the result that the claim preferred by him was rejected by CCO/CCG. I do not agree with Enquiry Officer's remarks dated 15-9-89 that it was not possible

Contd...

20 (48) 2
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for Shri Panchal to verify the weight of the consignment. He could have quoted paid on the Private Weigh Bridge as he did in the case of short receipt of 11.225 M.T. of 10MM dia Steel despatched by M/s Kaysons -Bombay. After detecting the shortage we could have taken action as per the joint procedure order.

Shri Panchal is, therefore, held responsible for causing a loss of Rs.9070-00 to the Railways by accepting the short receipt of material.

In view of above, the undersigned as Disciplinary Authority, pass the following orders :

" Shri Panchal is held responsible for causing a loss of Rs.79,142-27 to the Railways due to his mis-conduct. This amount should be recovered from his retirement-dues."

NIP may be issued accordingly.

Encl: One statement.

Shri Panchal
Dy.CE(C)Bhuj.

पु. प्र. उ. वि. (पु. प्र.)
प. प्र. उ. वि. (पु. प्र.)
Dy. CHIEF ENGINEER (C)
W. Riv. Bhuj-Kutch

WESTERN RAILWAY

is of Claim cases under D A R in favour of Shri N.A. PANCHAL
EX. DSK(C)EWJ.

Sl. No.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.
1.	53, 7/7/34	Plates 50 x 6mm	660 Nos.	5/12/83	CCB-M/s. Kayson Trd Co., Bombay	Clear	30.5.34	17 Nos	1111.32	DSK(C) siding.	NO	Remarks given in traffic delivery book.	Yes.	7/7/34	2% = 1062/57 Approx.
2.	61, 14/9/34	SM Round 10mm dia	50.53MT	15, 17, 20 21-3-34	CCB--do--	Clear	6/5/34 & 15/5/34	11.225 MT.	54901.47	Goods shed	Yes	Clear	No	14/9/84	2% = 5146/- Approx.
3.	63, 10/1/35	SM Round 32 mm Tor	17.580 MT.	4/9/84	Amli Road M/s. Indian Iron & Steel Co. Ltd, ADI.	STC	19/9/84	0.429 MT.	2076.87	--do--	Yes	Clear	No	10/1/85	100% Adv. payment for 96352.46 made
4.	65, 26/2/35	ST sleeper 60 R.	2300 Nos.	--do--	PW(C)LPJ.	STC	26/2/85	4 Nos.	600.00	DSK(C) siding	No	--	--	26/2/85	Since accounted for No loss.
5.	159, 16/9/36	SM Round 6 mm.	32.740 MT.	2, 2, 4, 7 June '86	M/s. Jallal Agarwal, 3/28, Bombay.	Clear	21/7/36	3.465 MT	22429.00	Goods shed.	Yes	Clear	Yes	16/9/86	2% = 4238.52
6.	162, 17/9/86	SMT Plate 6 mm dia.	55.700 MT.	19-20/4/ 1986	BKF M/s. steel Authority of India Ltd. Bokaro Steel Plant	Clear	19/6/86	1.292 MT	9070.00	BSK(C) siding.	No	Clear	No	17/9/86	100% Adv. Payment made by PA & CAO(C)CG for Rs. 388959.36

W. RIV. BROS. CO.

Wm. H. H. H.

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ANNEXURE A-2 22

WESTERN RAILWAY

BY REGISTERED A.D.

CONFIDENTIAL

No. BWJ/E.LAR/308/1(NAP-9) August 29, 1991

Office of the
Chief Engineer(Construction)
Western Railway,
B.G. Railway Station Building
2nd Floor, PO: Railwaypura,
AHMEDABAD - 380 002

✓ Shri N.A. Panchal
Retired DSK(C) BWJ
A-17, Sadashiv Society
Near Ambica Vidhyalay
Viratnagar Road
ODHAV
AHMEDABAD

Sub: Appeal against the orders of Dy.
Chief Engineer(C) Bhuj -

Ref: Your Appeal dated 28-6-91 -

With reference to your Appeal dated 28-6-91,
CE(C)ADI & Appellate Authority in this case has
passed the Speaking Order which is enclosed herewith
for your information.

Encl: 1 copy of
Speaking Order.

L. S. B. S.
29.8.91
Dy. CE(C) North-ADI

T. C. S. S.

23 86 (71) 2u

Sub: O.A. No. 511 of 1987 filed by Shri
N.A. Panchal, Retd Depot Store Keeper
(Construction), Western Railway, Bhuj

SPEAKING ORDER

The present appeal has been preferred by Shri N.A. Panchal, Retd DSK in pursuance of Hon'ble Tribunal's order dated 15-4-91, in O.A. No. 511 of 1987. It is noted that the appeal made by the employee is, prima-facie, time-barred as the appeal against the order of Disciplinary Authority dated 10-9-89, which was received by him on 5-11-89, should have been made within the time limit of 45 days from 5-11-89 in terms of Rule 18 of the Disciplinary & Appeal Rules. Shri Panchal had made a statement before Hon'ble Tribunal that he had submitted an appeal against the said order of imposition of penalty, on 12-11-89 to the Appellate Authority. This appeal has neither been received by the Administration nor Shri Panchal has produced any documentary evidence in support of submission of such an appeal to the Department in the past/with the present appeal. This has been specifically checked by the Administration by making a reference to him. Thus the present appeal suffers from laches under Limitation Act and deserves to be rejected summarily.

2 Though there is no sufficient cause on the part of Shri N.A. Panchal in not preferring an appeal in time, yet considering the magnitude of the amount of recoveries involved, the undersigned has been inclined to examine the present appeal dated 28-6-91 in terms of Rules 20 & 27 of the Disciplinary & Appeal Rules relaxing the time-limit and condoning the delay.

3 After going through the appeal and orders passed by the Disciplinary Authority in respect of each claim, the undersigned observes as under:-

3.1 Shri N.A. Panchal has repeatedly failed in the discharge of his duties as DSK (Depot Store Keeper) in respect of six consignments received by him at Bhuj on different occasions from May 84 to June 86, by not taking proper & timely action in preferring claims for short receipt as per the procedure in force leading to a loss of Rs. 79,142.27 to the Department. He should not have taken clear delivery by signing in the Delivery Book in token of full receipt of materials as mentioned in the Railway receipts especially when he was encountering cases of short receipts. Even if he did so in the interest of work or there being no means available for weighing of Railway consignments at the time of taking delivery, as stated in his appeal, he should at least have taken action as per the Joint Procedure Order No. S 87/28/4 (Vol. II) dated 21-3-74 specially issued by the Department to counter such cases of short receipt of consignments and further by not preferring claims in time.

85-27

24 2

3.2 Shri N.A. Panchal has been working as Depot Store Keeper for nearly more than two decades and ought to know the rules better than any one else, but seems to have taken things very casually with the result such huge loss has been suffered by the Department, for which he is ~~solely~~ ^{solely} and ~~squarely~~ held responsible by the Disciplinary Authority. 28/8/91

4 In view of the above facts on record, the undersigned finds no valid grounds to reverse the penalty imposed by the Disciplinary Authority on the employee. As a result, the present appeal fails and the punishment imposed on the employee is upheld.

Ahmedabad

Dated 28-8-1991

Sidhanta
28/8/91
(S.P. VATSM)
Chief Engineer/Const.,
Western Railway,
Ahmedabad

*For
file*

HP
2
Relivement dues

Annexure A-3

62 25

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXXXXXXXXXX

O.A. No. 511
XXXXXX

1987

DATE OF DECISION 15.4.1991

Shri Naranbhai A. Panchal Petitioner

Mr. P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)



The Hon'ble Mr. M. M. Singh

The Hon'ble Mr. K. C. Bhatt

: Administrative Member

: Judicial Member

26 6 128

Shri Naranbhai A. Panchal,
'Rasala Bazar'
Behind Old Power House,
New Dassa (Banaskantha)

: Applicant

(Advocate: Mr. P. H. Pathak)

Versus

1. Union of India,
Through:
The General Manager (W.R.)
Churchgate, Bombay.
2. Chief Engineer (Const.)
West, II Floor, Railway Station,
Ahmedabad.

3. Deputy Chief Engineer (Const.),
(W.R.), Bhuj (Kutch).

: Respondents.

(Advocate: Mr. B. R. Kyada)

J U D G M E N T

O.A./511/1987

Date: 15.4.1991

Per: Hon'ble Mr. R. C. Bhatt

: Judicial Member

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for a declaration that the order of the respondents dated 14.9.1987 (A/6/1) keeping the order of applicant to retire voluntarily in abeyance as illegal, invalid and inoperative in law and for quashing and setting aside the same i.e. Annexure 6/1 and to direct the respondents to pay all the dues and retirement benefits to the applicant with interest. The applicant, amended the application during the pendency of this proceeding, stating that the respondents be directed to consider the applicant having retired from services w.e.f. 30th September, 1987 and to grant him all the pensionary benefits and further be declared that once the resignation is tendered by the employee, the running of the time cannot be stopped by the department, and the applicant be deemed to have retired from service as per resignation dated 19th June, 1987 (A/3).



2. The case of the applicant is that he was serving as a deputy store keeper Grade I, in 1984, but after operation of cataract in his eyes, he applied for voluntary retirement by application dated 19th June, 1987 produced at Annexure (A/3) to the respondent No.2, that the same was accepted by the department vide letter dated 22nd July, 1987 (A/3/1) but thereafter, the respondent No.3 without giving any reasoned order, kept the application for voluntary retirement in abeyance vide order dated 14th September, 1987 (A/6/1).

3. It is mentioned in the application that after the applicant submitted his application for voluntary retirement and accepted by the respondents, the respondents with the malafide intention to harass the applicant issued two minor penalty chargesheets one of which is dated 15th August, 1987, that the applicant by his letter dated 7th September, 1987, submitted his explanation to the respondents produced at Annexure A/4. The second chargesheet issued by respondents is dated 7th September, 1987 which was about the incidents produced at Annexure A/5. It is alleged that the respondents knew that they had no powers to hold any inquiry of the incidents of 1981, still issued the chargesheet at Annexure A/5 with malafide intention to harass the applicant, that the applicant submitted his reply vide letter dated 14th September, 1987 produced at A/6. It is alleged by the applicant that there was no question of negligence on the part of the applicant in his duties as storekeeper but due to non-availability of staff and violation of store rules by the respondents, the applicant was served with baseless charges and the proceedings are pending. There were other two chargesheets given to the applicant regarding his negligence and for imposition of minor penalty and imposed on him of withholding his increment. It that no chargesheet is issued to the applicant for any major

penalty nor any such case is pending and therefore the order of the respondents dated 14th September, 1987 keeping the voluntary retirement of applicant in abeyance is illegal, arbitrary and unjust. The applicant made representation on 18th September, 1987 vide Annexure A/7 to reconsider his request for voluntary retirement due to difficulties in his vision: but the respondents did not care to reply to him. Then the applicant made another application dated 5th October, 1987 vide Annexure A/8 for payment of retirement dues but there was no response from the respondents.

4. The case of the applicant is that there was no disciplinary proceeding pending against him for imposing major penalties and therefore there was no reason for the respondent to keep the application for voluntary retirement in abeyance, that on expiry of 3 months time from 19th June, 1987 he should be deemed to have retired on 19th September, 1987 and the respondents had no powers to restrain the applicant retiring from service with effect from 19th September, 1987.

5. The applicant has further alleged by amendment that the respondents have given the chargesheet to the applicant dated 15th January, 1988 i.e. after retirement of the applicant that the respondents had no right to stop the running of the time of resignation. It is alleged that in the said inquiry, applicant has raised objection that the respondents had no authority to hold any inquiry against the applicant, but the inquiry officer has given the report that the charges levelled against applicant were proved, that the disciplinary authority has issued an order to recover the amount of Rs.79142.27 from the applicant as the loss has occurred due to negligence on the part of the applicant. It is alleged by the applicant that he has submitted the appeal dated 18th November, 1989 to the appellate authority and is pending but according to the applicant,

29. (3)

there was no authority on the part of the respondents to conduct any inquiry against the applicant after the retirement w.e.f. 30th September, 1987.

6. The respondents have filed written statement contending that the respondents had taken disciplinary action against the applicant and the penalties were imposed on the applicant in past by orders on 28.12.1984, 17.6.1985, 31.12.86, the copies of which are produced at Annexure R/1, R/2 and R/3. It is contended that due to negligence of the applicant, the huge claim amounting to about Rs.2,20,864.00 is standing and still 71 claim cases are yet to be disposed of. It is contended that to safeguard the public interest, the application of the applicant for voluntary retirement was kept in abeyance and the applicant was asked by the letter dated 27th June, 1987 Annexure R/4 to clear outstanding stocksheets etc. and after obtaining clearance and no claim certificate, his case would be considered, that thereafter he was further reminded by letter dated 11th July, 1987 Annexure R/5 and also he was sent the statement showing outstanding claims as shown in Annexure R/5A but the applicant did not reply.

7. The respondents have further contended that the applicant resumed his duties on 6th August, 1987 and thereafter he was advised by administration to clear all the liabilities before he retired from services but he avoided the same by one reason or other, and, therefore, there was no other option or alternative with the respondents, except to keep in abeyance the voluntary retirement which was to be given effect from 30th September, 1987 and that step was in the public interest and the interest of Administration. It is contended that heavy financial liabilities were involved, therefore the applicant was not allowed to retire voluntarily. It is contended that the applicant absconded from the ^uduties since 1st September, 1987 and he was immediately asked by letter dated 5th October, 1987 Annexure R/7 to resume duties,

but the applicant did not pay any heed to it. Another letter dated 5th October, 1987 Annexure R/7 was sent to the applicant to resume duty followed by the letter dated 10th October, 1987 Annexure R/8. It is contended that his application for voluntary retirement was kept in abeyance for above reasons as he was involved in financial liabilities and was absconding. It is contended that the chargesheet which was issued to the applicant was on 25th August, 1987 and not on 15th August, 1987 as alleged by the applicant. The respondents have, at the time of hearing of this application, produced the letter dated 20th February, 1991 from respondent No.3 addressed to their learned advocate Mr.B.K.Kyada in which it is mentioned that the retirement benefits of the applicant were already calculated and admissible pension has been released to the applicant. It is also mentioned in this letter that DAR action has been initiated against applicant and is finalised on 29th September, 1989 whereby the applicant has been held responsible for the loss sustained by the railway to the tune of Rs.79142.27 to be recovered from Retirement dues and therefore gratuity and other payments due on, account of retirement are to be adjusted against the said loss. It is mentioned that the applicant has accepted the same as he did not make any appeal or representation against penalty awarded to him.

The applicant has filed rejoinder controverting the contentions taken by the respondents in written statement. It is contended by the applicant in this rejoinder that he was not absconding as alleged, that he was not responsible for store articles and the penalties imposed upon him were arbitrary. The applicant has denied that he has committed any offence of misappropriation.

9. The learned advocate for the applicant submitted that once the applicant had by application dated 19th June, 1987 applied for voluntary retirement and the

respondents have given reply on July 22nd 1987 allowing the applicant to voluntary retire with effect from 30th September, 1987, there was no authority vawted with respondents to keep the application of the applicant for voluntary retirement in abeyance by letter of the respondents dated 14th September, 1987 to the applicant. Learned advocate for the applicant submitted that once the government servant exercises his rights of voluntary retirement from service by giving three months notice in writing, to the Government, the government is bound to allow him to retire as prayed in notice on expiry of the period of notice. Learned advocate for the applicant in support of his above submission relied on the decision in Dinesh Chandra Sangma vs. State of Assam and others 1978 S.C.C (L & S) Page-7 in which it is held that in view of F.R.56(c) there is corresponding right of the Government servant to voluntarily retire from service by giving the Government three months' notice in writing. It is held in this decision by Hon'ble Supreme Court that there is no question of acceptance of the request for voluntary retirement by the Government when the Government Servant exercises his right under F.R. 56(C). Now so far as the Railway Establishment Rules are concerned, on page 341 of the book "Railway Establishment Rules and Labour Laws" by B.S.Mainee (Edition 1982-83) there is note 7 on the topic of Voluntary Retirement which reads as under:

"(7) Notice of retirement should be accepted by the competent authority in all cases except:-

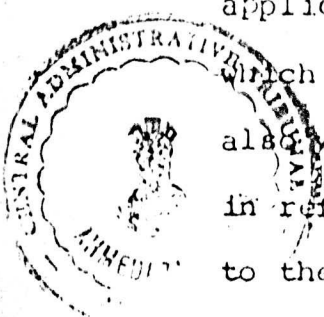
- (a) In cases where disciplinary proceedings are pending or contemplated for imposing major penalty and the disciplinary authority is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case or (b) in cases in which prosecution is contemplated or may have been launched in the court of law".

Learned advocate

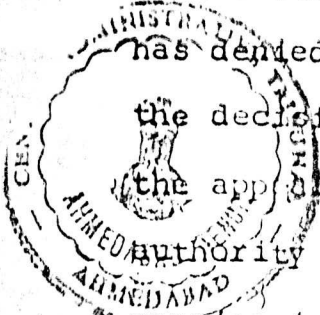
/ submitted that no where in the letter dated 14.9.1987

(A/6/1), it is mentioned that either disciplinary proceeding was pending or contemplated against applicant for imposing major penalty and hence the action of respondent in keeping the voluntary retirement of applicant in abeyance was illegal. Learned advocate for respondents submitted that the

application for voluntary retirement dated 22.7.1987 was accepted on the five conditions mentioned in it. Even reading that letter, it is nowhere found that any disciplinary action was pending or contemplated against applicant for major penalty. Therefore, in view of the decision cited by learned advocate for the applicant and in any case in absence of the intimation by respondents to the applicant within three months from the receipt of application for voluntary retirement that the disciplinary proceeding was pending or was contemplated against the applicant for major penalty, the action of respondents in keeping the voluntary retirement of applicant in abeyance was illegal. The letter Annexure K/A dated 30.11.1988 that the applicant attaining superannuation on 30.11.1988 stands retired from railway service with effect from 30.11.1988 and the mention of DAK proceeding for major penalty pending against applicant in that letter cannot have any legal effect on the voluntary retirement of applicant on 30.9.1987 because there was no such intimation of major penalty action to the applicant before 30.9.1987. Moreover letter of applicant dated 4.1.1989 produced at R/G by respondents in which applicant stated about his retirement from 30.11.1988 also will not change the legal position as this was written in reference to his retirement benefits. Thus having regard to the above facts, we agree with the submission of learned advocate for the applicant that the applicant should be considered as retired from service with effect from 30.9.87 and not with effect from the date of superannuation i.e. 30.11.1988 and his pensionary benefits should be calculated on that basis, and the impugned order dated 14.9.1987 is quashed. However this deemed date of 30.9.87 will not have any effect on ^{the} authority which initiated DAK action against applicant subsequent to 30.9.1987.



10. Next it was submitted by learned advocate for the applicant that the respondents should be directed to pay all dues and retirement benefits to the applicant with interest. The learned advocate for the applicant, at the time of hearing under instructions of his client, submitted that the pension of the applicant is fixed and the applicant is getting pension, that the applicant has received his provident fund amount from the respondent, but the other benefits namely gratuity, leave encashment salary and amount of commutation of pension are not paid to him on the ground that penalty is awarded to the applicant in DAK action against him for loss caused to the Railway to the tune of Rs-79,142-27. Learned advocate for respondents submitted that as per letter dated 20.2.1991 addressed to him by Executive Engineer (Const.) Western Railway, Bhuj, applicant has accepted the said penalty as he has not filed appeal or representation against the penalty awarded to him on finalisation of DAK action on 29.9.89. On the other hand, the applicant in his amendment application has denied that the applicant has not submitted appeal against the decision of the disciplinary authority, and has stated that the appeal was submitted on 18.11.1989 to the appellate authority which is pending. Be what it may, but the word pension includes, gratuity as per Article 2308 of Railway Establishment Code, and, therefore, the contention that gratuity could not be withheld cannot be sustained and the same will apply for encashment leave salary and commutation of pension. Learned advocate for the respondents submitted that these amounts namely gratuity, leave encashment salary and commutation of pension will be adjusted against the loss of Rs.79,142-27 caused to Railway as per penalty imposed on the applicant. At present we do not go into the merits of that case but it is sufficient to mention at this stage that the respondents are entitled to withhold the above amounts from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against applicant for the pecuniary loss.



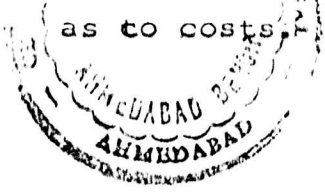
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loss of Rs.79,142-27.

10. The result is that the application is partly allowed. and impugned order dated 14.9.1987 of respondents Annexure A/7 is quashed. The respondents are directed to consider the applicant as voluntarily retired from service with effect from 30.9.1987 and his pensionary benefits be fixed and calculated accordingly. The rest of the prayers are rejected. No orders as to costs. Application is disposed of.



Sd/-

(R.C.Bhatt)
Judicial Member

Sd/-

(M.M.Singh)
Administrative Member

Prepared by : B.H. G.
Completed by : 16/10/91
COPY 6/11/91
10/11/91
COPIES (1)
COURT AND JUDGE'S OFFICE
Ahmedabad Bench

[Handwritten signature]

35
ANNEXURE A-4
(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A. No. 42 OF 1991 in
O.A. No. 511 OF 1987
~~L.A. No.~~

DATE OF DECISION 10.12.1991

Shri Naranbhai A. Panchal Petitioner

Mr. P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

B. A. K. K. K. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A. Singh : Administrative Member

The Hon'ble Mr. C. Bhatt : Judicial Member



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Shri Naranbhai A. Panchal,
'Rasala Bazar',
Behind Old Power House,
New Dissa, (Banaskantha)

...Applicant.

Versus

1. Union of India
Through :
The General Manager (W.R.),
Churchgate, Bombay.
2. Chief Engineer (Const.),
West, II Floor,
Railway Station,
Ahmedabad.
3. Deputy Chief Engineer, (Const.),
(W.R.),
Bhuj, (Kutch).

...Respondents.

Decided by Circulation

O R D E R

R.A. No. 42 Of 1981.

in

O.A. No. 511 of 1987

Date : 10.12.1991

Per : Hon'ble Mr. R.C. Bhatt : Judicial Member

This Review Application is put by the Office for disposal by circulation. The original applicant has filed this Review Application against the decision given by this Bench in O.A./511/87, by which the applicant's application was partly allowed. The impugned order dated 14th Sept. 1987, of respondents, at Annexure-A/7, by which the order of the applicant to retire voluntarily was kept in abeyance was quashed and the respondents were directed

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to consider the applicant as voluntarily retired from service w.e.f. 30th Sept. 1987, and were also directed that the applicant's pensionary benefits be fixed and calculated accordingly.

2. The applicant has filed this application for review of the observations made in para-10 of the Judgment. In para-10, this Bench has observed that the respondents were entitled to ^{withhold} the amounts of gratuity, leave encashment and commutation of pension from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against applicant for the pecuniary loss of Rs. 79,142.27/-. The applicant has alleged in the Review Application that in his original application he has specifically mentioned that the applicant was not making any comments with regard to the so-called allegation of loss of Rs. 79,142.27/- to the administration as it is not the issue to be decided before this Hon'ble Tribunal. It is alleged that the applicant had retired from service w.e.f. 30th Sept. 1987, i.e., the date prior to the issuance of any chargesheet with regard to the amount which was to be adjusted against the pensionary benefits of the applicant, and the said observation and the direction were not tenable at law and there was no necessity to make such observation and to give liberty to the administration by this Tribunal. At this stage it is important to note that the applicant had by amendment application dated 5th March, 1991, had prayed as under :

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VII (A) "The Hon'ble Tribunal be pleased to direct the respondents to consider the applicant as retired from service w.e.f. 30.9.1987, and grant him all the pensionary benefits and further be pleased to declare that once the resignation is tendered by the employee, the running of the time cannot be stopped by the department and therefore, the applicant deemed to be retired from services as per his resignation dated 19.6.1987."

This amendment was allowed. Thereafter, on merits, the application was partly allowed as observed earlier. So far the prayer for granting the applicant all the pensionary benefits was concerned, this Tribunal after hearing learned advocates and referring to Article 2308, of the Railway Establishment Code, and also considering the respondents' letter dated 20th Feb.1991, produced at the time of hearing, made the observations at para 10 of the Judgment because it was mentioned in the letter dated 30th February, 1991, that D.A. action had been initiated against the applicant and was finalised on 29th September, 1989, whereby the applicant has been held responsible for the loss sustained by the railway to the tune of Rs.79,142.27/-, to be recovered from retirement dues and therefore, gratuity and other payments on account of retirement were to be adjusted against the said loss. It was also mentioned in that letter that the applicant had accepted the same as he did not make any appeal or representation against penalty awarded to him.

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The applicant had controverted in his rejoinder by stating that he had filed an appeal which was not decided. Therefore, this Tribunal had observed that the respondents will be entitled to withhold the amount of gratuity, encashment of leave salary, and commutation of pension, as per para-10, of the judgment. There is no substance in the Review Application that the said observation in para-10, is not tenable at law. There is no substance in the Review Application that the said observation requires to be removed. The applicant has vaguely averred in the application that these observation is contrary to the judgment of the Hon'ble Supreme Court as well as the provisions of the Railway Establishment Manual. It is also alleged in the Review Application that the sum of the amount of Rs.79,142.27/-, to be adjusted against the pensionary benefits of the applicant is ex facie in flagrant violation of the principle of natural justice, fair play because the applicant has not argued that point nor legal position was pointed out to the Hon'ble Tribunal nor it was the prayer of the respondents and in the petition of the applicant and therefore, no prayer can be granted in favour of the administration.

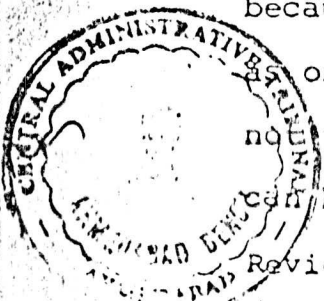
It is important to note that the applicant had by amendment sought the prayer to grant him all the pensionary benefits and hence on the strength of the evidence before this Tribunal and as per the judgment, the observation was made in para-10, "At present we do not go into the merits of that case but it is sufficient to mention at this stage that the respondents are entitled to withhold the above amounts from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against the

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applicant for the pecuniary loss of Rs. 79,142.27/-."The averments made in the Review Application, that the observations of the Tribunal on the said issue was not warranted and is in violation of the principles of natural justice, has no substance. None of the averments of this Review Application attracts order 47 Rule (1) of Civil Procedure Code. The result is that the Review Application deserves to be dismissed.

3. Before we part with this file, we are constrained to observe that though this Review Application was presented on 14th May, 1991, it is put for order by circulation as late as on 5th December, 1991. The Office, in our opinion is responsible for this undue and unexplained delay in putting this matter for orders. The Office note dated 3rd July, 1991, and 5th July, 1991, show that the copy of the Judgment of second set was not filed and there was no affidavit filed. Thereafter the Office endorsement dated 15th November, 1991, shows, "the learned advocate concerned has removed office objection to-day. Therefore, we may fix this RA for order". It is very strange that after this application was filed on 14th May, 1991, the objections were noted by the Office as late as on 3rd July, 1991 and 5th July, 1991. It is also not understandable as to why this application was not attended to by the Office, even thereafter for long time because the record shows that the applicant filed affidavit on 10th September, 1991. Even thereafter the matter was not put for order. Such a delay by the Office in our opinion can hardly be excused. The Office is directed to see that the Review Application are attended to and put for order at the earliest and no such incident takes place in future. The

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Deputy Registrar (J), also to bring to the notice of his staff attending the work of scrutinising Review Application and preparing Board that such laxity like the present one shall not be tolerated in future.

The Review Application is dismissed.

Sd/-

Sd/-

(R.C. Bhatt)
Judicial Member

(M.M. Singh) 10.12.11
Administrative Member

AIT

[Handwritten signature]

Prepared by : *B. Shah*
12.12.11
Compared by : *H. G. G. G.*
12.12.11
TRUE COPY

[Handwritten signature]
Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

V.R.

(22) ANNEXURE-7-542
G/323 F

Standard Form 7

Standard Form of Order relating to Appointment of Inquiry Officer/Board of Inquiry (Rule 9(2) of R.S.(D&A) Rules, 1968).

No. EVJ/E/308/1 (NAP-9)

Dy.CE(C)'s Office

Name of Railway Administration

BHUJ

Place of Issue

Dated: 24-6-88.

ORDER

WHEREAS an Inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, is being held against Shri N.A. Panchal, DSK(C) (Name and Designation of Railway Servant).

And whereas the undersigned considers that a Board of Inquiry/an Inquiry Officer should be appointed to enquire into the charges framed against him.

Now, therefore, the undersigned, in exercise of the powers conferred by Sub-rule (2) of the said Rule, hereby appoints :-

A Board of Inquiry consisting of -

	Name	Designation
1.		
2.	--	--
3.		

OR

Shri M.R.Sundaramurthy as Inquiry Officer to enquire into the charges framed against the said Shri N.A.Panchal

Signature [Signature]

Name

(K.K.Sharma)

Designation of the Disciplinary Authority.

Copy to Shri N.A.Panchal, DSK(C) (Name & Designation of the Railway servant).
Behind Old Power House, New Deesa (B.K.) (Gujarat).

Copy to Shri M.R.Sundaramurthy, (Name & Designation of the Members of the Board of Inquiry/Inquiry - Board).
XEN(C)1-BhuJ.

Copy to _____ (Name & Designation of the Lending Authority).

For information.

Note: To be used wherever applicable. Not to be inserted in the copy sent to the railway servant.

[Signature]

ANNEXURE ~~113~~ 113

From:- N.A. Panchal,
Retired DSK,
Bhuj
A-27-12-88

To
Dy. CE (CN) & E.O.
Bhuj

(44)

Subj:- DAR enquiry
ref:- your letter no. E.DAR/Enquiry/NAF
dated 16-12-88

Respected Sir,

Your kind honour is requested
to keep the following two persons of
DSKCC Bhuj available during the
above enquiry as I want to keep
them as witnesses in the above
enquiry.

Thanking you,

1) Shri Vishnu Das
Khalasi
2) A. Mahesh Patel

Yours faithfully,

N.A. Panchal
27/12
(N.A. Panchal)
Retired DSK

[Handwritten signature]

By Regd Post A.D.

ANNEXURE A-7 48

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N.A. Panchal, Retired DSK(C)

Behind Old Tower House
New Deesa
Dist: Banaskantha
Pin: 385 535 (Gujarat)

Date: 18-11-1989

The Chief Engineer (C)
Western Railway
Church Gate
Bombay

Sub: Appeal against the order of Dy. Chief Engineer(C)
WR, Bhuj dated 29.9.1989 imposing the punishment
of recovery of money.

.....

Respected Sir:

I, the undersigned, a retired DSK(C), Bhuj, do hereby
beg to submit the appeal against the order passed by
the Dy. Chief Engineer (C), Bhuj dated 29.9.1989
as under:

- (a) It is submitted that the imposition of the
penalty is exfacie arbitrary, illegal and
unconstitutional and is required to be
quashed and set-a-side.
- (b) That ~~no~~ regular enquiry as per the provisions
of law is held against me nor the provisions
of Discipline and Appeal Rules 1968 are followed,
straight away the punishment is imposed by the
disciplinary authority which is exfacie arbitrary
and illegal.

So far the fact of the case is concerned I was
served with a charge sheet dated 15.1.88 and the same
was replied by me on 21.12.88. That the Enquiry Officer
Mr. Sunder Murthy, Executive Engineer (C), Bhuj was
appointed as Enquiry Officer in my case. That the
Enquiry Officer was not examined any witness from the
department to prove the allegations against me nor any
presenting officer from the department was present ~~in~~
in the enquiry. That I was not given an opportunity
to submit the documents on which I was relying as
well as the witness to whom I want to examine were also
allowed. That on 29.12.88 the day on which the Enquiry
was fixed I was present and nobody from the department
side ~~was~~ presenting officer was there. The Enquiry
Officer has asked formal questions to me as discussion
of the charge sheet and thereafter he informed me that
the regular enquiry will start on the next date as the
departmental officers to present the case is not available.

.....2/-

When I was waiting for the next date of enquiry all of a sudden without any show cause notice a letter dated 29.9.89 issued by the Disciplinary Authority imposing the ~~authority~~ penalty as if the charges are proved against me is received by me on 5.10.89. I was shocked when I received the penalty order with the copy of the decision of the disciplinary authority. The said actions on the part of the department and the disciplinary authority are prima facie bad in law and the disciplinary authority cannot be allowed to short cut the proceedings violating the principle of natural justice and Article 311(2) of the Constitution of India. That the enquiry officer has not held enquiry no witnesses from the department were examined to prove the charges against me nor my witnesses were called for or allowed to examine. I was not allowed to defend my case and the day on which my statement recorded by the enquiry officer i.e. 29.12.88, I was said as a formal statement no witness or presenting officer from the department was available, my defence counsel was also not available. But the enquiry officer has stated that the regular proceedings will start on the next day and therefore no difficulties in case of absence of my defence counsel, but he has in turn said that I should keep my defence counsel ready on the next date. The enquiry officer has categorically stated to me that he has to show the proceedings as the enquiry is pending since little long time he has recording my statement as formal statement and it will not be considered for any other purposes. Thus the so called enquiry is a one man show and mis-guiding me my statement was recorded by the enquiry officer saying that the next date will be informed to me by letter. That I was waiting for the next date of hearing and immediately the penalty order is served to me. The order of penalty is without following the principle of natural justice and mandatory provisions of Article 311 (2) of the Constitution of India, is required to be quashed and set-aside.

I say that there is no enquiry report served to me nor any show cause notice for imposition of the penalty was given and straight away the order of punishment was served to me. The said exercise of powers are illegal. No penalty can be imposed on any employee without following the regular enquiry and giving him an opportunity of defend his case. That for imposition of the penalty the employee should also be served with the findings of the enquiry officer as well as the show cause notice required to be issued for proposed penalty and therefore considering all the circumstances if there is any necessity of imposing penalty it can be imposed. In my case none of the above requirement was followed. Not only this but I was not even served with the statement of the witnesses who were to be examined by the presenting officer or the department on which the department rely for providing

levelled against me therefore also the punishment imposed is required to be quashed and set-a-side. That so far the allegations made in the charge sheet they are baseless and there is no question of any misappropriation on my part nor any negligence but unfortunately without allowing to lead appropriate evidence the enquiry officer has behind my back submitted his report and the disciplinary authority has also acted improperly and illegally and without giving a show cause notice or finding of the enquiry officer to me, decided to impose the major penalty and withheld my pensionary benefits. I am not given an opportunity to defend my case to prove my honesty. That I am not at all in fault for the so-called charges levelled against me. That without prejudice to my rights and contentions to submit the detailed documentary evidence and the witnesses for in support of my defence I am giving the sought details about the so-called allegations and fixing my responsibilities. So far the all the claims are concerned, I would like to draw your kind attention that the duties of the DSK is concerned is very particularly which is specifically mentioned in Stores Code Book. So far my position as DSK, Bhuj is concerned, I was the only person who has to look after about 800 Stores items worth of Rs.2 Crores in spite of my repeated requests to give me a assistance the department has did not care to realise the difficulties which I was facing. So far the Store at Bhuj was concerned as per the rules the following store staff should be there. One DSK, Two DSK GIII, (one is for the receipt of material and the second is for the issuance of the material) Two Senior Clerk (One is for the establishment and the second is to assist the DSK G III in the receipt section). These are the major requirement as per the provisions of law. In spite of deputing five persons on the Store at Bhuj, the staff given to me was only one Senior Clerk. The work of the project was in full swing and as I have stated above 800 items are to be taken care worth Rs.2 Crores. It is pertinent to note here that it is not the case of the department that any misappropriation is there but the allegations are of negligence. Unfortunately the enquiry officer do not allow to lead appropriate evidence and to examine the witnesses and find out the factual situation under which circumstances the so-called incidence have happened and whether I am the responsible person for that or not. And therefore the enquiry proceedings and its finding as well as the penalty order is required to be quashed and set-a-side.

I would like to draw your further attention that the charge sheet is served to me only in the year 1988 for the so-called incident of 1984 and therefore it is settled law by the Courts of law that no enquiry can be held for the belated incident. That the Hon'ble Gujarat High Court was held that 'a man is not a Computer' and the enquiry for the incident occurred before one and half

year cannot be held. And therefore also the charge sheet, so-called enquiry, its findings and decision of the disciplinary authority is required to be quashed and set-aside.

At this juncture I would like to draw your kind attention that I am not submitting my reply for each and every charges levelled against me in the charge sheet and I am reserving my right to file further statement in detail if your Honour is not satisfied to quash the proceedings of enquiry findings and the punishment etc. At this stage I do not want to bother your Honour by stating the factual aspect of the matter because all the facts are required to be examined by the enquiry officer and the documents on which I rely is also required to be submitted from my end and therefore I reserve my right to file detailed statement..

So far the claims mentioned in the charge sheet, at the outset, I would like to say that I am not at all responsible for any of the allegations or charges levelled against me nor there was any negligence on my part looking to the circumstantial evidence. That so far the time barred claims are concerned it is wrongly rejected by the Chief Claim Officer and the department has not taken due care to point out the particular dates of the claim. That there is no question of delay in submitting claims from my end. I have tried my level best to file the claim case immediately and I have informed all the concerned officers and Depot Officer immediately. It is the duty of the Depot Officer to move the proceedings immediately, particularly when there is single person handling a huge depot.

That there is no negligence on my part booking of the claim. Whether it is rejected on the ground of delay or otherwise, the circumstantial evidence, which I am not allowed to lead before the disciplinary authority are clearly in my favour which itself speaks about the efficiency and honesty of my work. That in this appeal, as I have stated earlier I am submitting my contentions with regard to certain facts which is after service of the charge sheet to me and reserving a right to submit my detailed reply on the factual aspect of the matter for the so-called charge sheet levelled against me. That to prove the charges against me it is the duty of the department to examine the witness, to produce records and it is the duty of the enquiry officer to examine the witness ~~xxxxxx~~ of both sides and documents and thereafter considering all other circumstances he has to submit his enquiry report. Here the enquiry officer has acted singly without the presence of presenting officer of the department, without examining the witnesses and only with a view to show that he has completed his duty he has acted hurriedly and adopted short-cut and misleading me as a formal talk he has enquired few questions to me, particularly ~~xxxxxx~~ categorically he has informed me the next date of hearing will be informed to me by post he has submitted his report.

The action of the enquiry officer is a clear cheating and misleading. That the disciplinary authority has also did not care to supply me the report of the enquiry officer nor issued any show cause notice and straight away imposed the major penalty and withheld my pensionary benefits which is arbitrary, unconstitutional and required to be quashed and set-a-side.

At this juncture I would like to draw your kind attention that I am a retired employee and I am victimised by the enquiry officer and the disciplinary authority because I have filed an application before the Hon'ble Central Ad. Tribunal, at Ahmedabad about my retirement date. That with a view to victimise me, hurriedly the Officers have taken the decision and my pensionary benefits are withheld. It is pertinent to note that no punishment can be imposed and enquiry can be held on a retired person. I would like to draw your attention that I do not want to avoid the fair enquiry, But I would say that the enquiry should be fair and ~~xxx~~ in accordance with the law and a retired ~~should~~ employee should not be harassed intentionally by the higher officers. I am at present hand to mouth, my all the retirement dues are withheld, I have suffered a lot because of my operations and I beg to submit your honour that looking to above legal submissions the orders of charge sheets, the finding of the enquiry officer if any, the proceedings of enquiry and the actions of disciplinary authority be pleased to quash and set-a-side and the department may be directed to release my pensionary benefit with cost.

I reiterate that if on the above legal grounds your Honour is not with me I may be given a weeks time to submit my detailed appeal on each and every factual aspect of the matter and as I have stated earlier the facts are required to be examined by the enquiry officer and to allow me to lead the appropriate evidence. I am sure that your Honour will appreciate the harassment to a retired employee and will give justice to me immediately

Yours faithfully,

N.A. Panchal
(N.A. Panchal) 18/11

Date: 18.11.1989

S. C. ...
S. C. ...

ANNEXURE A-8

WESTERN RAILWAY

By Regl Post AD
Without Prejudice

Office of the
Executive Engineer (Constr.)
BHUJ (Kachchh)

No. BVJ/E.1084/1 (CAT)

Date 2 /5/1991

Shri N.A. Panchal
Retd DSR (C)
A-17- Sadashiv Society
Near Ambica Vidhyalay
Visat Nagar Road, Odhav
Ahmedabad (Gujarat)

Sub:- C.A. No. 511/1987 Filed in the CAT Ahmedabad.

Ref:- Your letter dt. 26/4/91.

.....

With reference to your above cited letter it is advised as under.

- i) It is correct that above matter has been disposed off on 15-4-91, but it is not correct that CAT has passed orders to pay all retirement dues with interest. The Hon. CAT has held only to consider your Voluntary Retirement from service with effect from 30.9.87 and pensionary benefits to be fixed and calculated accordingly vide para 10 of the Judgement.
- ii) The CAT has further upheld in the last of para 9 of the Judgement that the Respondents (Rly. Administration) are entitled to withhold the amounts from the retirement benefits of the Applicant (Shri N.A. Panchal) subject to the final decision of the departmental proceedings against applicant for the pecuniary loss of Rs. 79,142.27. The action is being taken accordingly and payment due if any will be arranged after adjusting Rly's dues i.e. rent of quarters, Electric charges etc. etc. and retaining Rs. 79,142.27.
- iii) You had made averment before CAT that appeal against the HIP dt. 29.8.89 under which you were awarded penalty of Rs. 79,142.27 to be recovered from the retirement dues, was made to the appellate authority on 18.11.89. Since this office is not aware of such appeal, please send a copy of the same alongwith acknowledgement of the appellate authority so that necessary action in view of the judgement may be taken.

An early action in the matter will be appreciated.

[Signature]

Executive Engineer (Constr.)
Western Railway, BHUJ (Kachchh)
370 001.

[Signature]

BY REGD. POST A.D.

From

N.A. Panchal
Retd. DSK (C) BVJ
A-17, Sadashiv Society
Nr. Ambica Vidhyalay
Viratnagar Road, Odhav
Ahmedabad.

Date: 28.6.1991.

To,

1. The General Manager
Western Railway
Churchgate, Bombay.
2. Chief Engineer/(Const) West
Western Railway
Churchgate, Bombay.
3. Deputy Chief Engineer (Const)
Western Railway, Bhuj (Kutch).

Sub: Appeal against the order of Dy. Chief
Engineer (C) Bhuj No. BVJ/E.DAR/308/1
(NAP-9) dated 29.9.89.

Ref: Central Administrative Tribunal, Ahmedabad's
No. O.A. No. 511/1988 dtd. 15.4.1991.

Respected Sir,

I the undersigned beg to laydown the following few
lines for your kind and sympathetic consideration and true
justice in the above matter.

1. Claim Case No. 1/58 - 17 Nos. M.S. Flat 50mm x 6mm
were received short against the consignment of 50mm x 6mm
M.S. flat booked by M/s. Kaysons, Trading Co. Bombay, ex
Carmac-bridge Bombay to Bhuj under RR No. 195624, Invoice
No. 7 dated 5.12.83. The consignment was received in DSK
siding Bhuj on 30.5.1984 and got witnessed by RPF Staff
vide DSK(C) Bhuj's letter No. SD/BVJ/R/2505 dated 30.5.84
(Copy enclosed) and necessary D.D. message No. DD/97/84
dt. 30.5.84 (copy enclosed) was issued by goods Supervisor,
Bhuj. No remarks were allowed to pass in the delivery
book. The late preferring of claim is due to DSK(C) Bhuj
having under heavy load on account of heavy receipt of
cement being single handed at that time as advised by

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XCN(C)1, Bhuj to CCU-CCG vide his letter No.SD/BVJ/claim/58 dated 22.9.1987 (copy enclosed).

2. Claim No.2/61:- M/s. Kaysons Trading Co., Bombay had despatched 50.580 M.T. S.M.Cold twisted deformed bars 10mm dia under RR No.197023 invoice No.25 dt.15.3.84, RR No.197024 invoice No.26 dt.19.3.84, RR No.197025 invoice No.28 dt.20.3.84 & RR No.197026 invoice no.29 dt.21.3.84 ex carnac bridge to Bhuj. The consignment was received in DSK siding Bhuj, on 6.5.84 and on good shed on 15.5.84. At the time of receipt of the consignment it was noticed that the rounds were received in loose condition and hence it was not possible to check the bundles at the time of unloading from wagons. This happened during the transshipment at sabarmati as thin wire was used to tie the bundles. This was brought to the notice of the firm vide DSK(C) Bhuj's letter No.SD/BVJ/R/78356 dt.9.5.84 and copy to COS-CCG and XEN(C)II, Bhuj (copy enclosed) for information. In this regard firm advised to send their representative and keep material intact vide their telegram dt.25.5.84. On making actual weighment the nett shortage of 11.224 M.T. found was advised to the firm vide DSK(C) Bhuj's letter No.SD/BVJ/R/78356 dt.25.8.84. Before this information the firm again advised to send their representative by the end of May or early June '84 to find out their consignment. On receipt of the advice of shortage firm advised to sort out the matter personally and arrange for the balance materials to complete supplies for which please rest assured. From the above statement of the firm it is noticed that firm had despatched short quantity of material. When first load of consignment ~~xxxxxxquantityxxxxxxmaterial~~ received on 6.5.84 DSK(C) Bhuj has taken book delivery of the consignment by surrendering the RRS. Unless and until the consignment is actually weighed how DSK(C) Bhuj can know what actual quantity is received. When the shortage is noticed goods supervision, Bhuj did not allow to pass the remarks for the shortage in the delivery book. At the time of taking delivery, Goods, Supervisor Bhuj did not allow to pass any remarks in be delivery book to the staff of DSK(C) Bhuj. The matter was brought to the notice of XCN(C) II Bhuj.

The firm did not reminded for payment of their balance payment of 2% bills. It means that firm had actually despatched the less quantity. In the end of April 84 from the visit of firm's representative visit to Bhuj. I came to know that firm has despatched less quantity. Then on the next day I brought the matter to the notice of Shri Mirani, KSN(C) II, Bhuj on his visit to depot. I advised to KSN(C) II, Bhuj to stop the payment of 98%

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bill, but he advised that how we can stop payment when the consignment is booked under clear RRS. The firm had also despatched the consignment of steel to other consignment of W.Rly. i.e. DSK(C) SBI during this time who has received less material against the consignment booked to him. In the beginning of the year 1986 DKS(C) Bhuj found about 1.300 M.T. 10mm dia cold twisted bars from depot yard and taken on bookes through stock sheet subject to stock adjustment account. Hence the shortage is reduced to about 10 M.T.

From the facts mentioned above it is seen that firm has despatched material short.

3. Claim case No.3/63:- M/s.Indian Iron & Steel Company Ltd., Ambliroad, Ahmedabad had booked 3 bundles - 17.580 M.T. 32 mm dia cold twisted bars in BG ~~SRP~~^{BFR} No.LR 95024 ex ~~Amex~~ Ambliroad to Bhuj under RR No.621674, invoice no.1 dt.4.9.84. On receipt of 3 bundles in loose condition of the consignment the weight could not be done in absence of weigh bridge at Bhuj. The number of bars were also not mentioned in the RR. On unloading the consignment on goodshed 254 nos. ~~xx~~ of bars were found and brought in depot. On taking delivery goods supervisor-Bhuj did not allow to pass any remarks in the delivery book, on making the measurement the theoretical weight arrived was 17.151 M.T., against 17.580 M.T. booked.

The shortage of 0.429 M.T noticed, the claim was preferred on CC0-CCG ~~by~~^{DSK} by DSK(C) Bhuj vide his letter No.SP/BVJ/Claim/63 dt.10.1.85 and copy to COS-CCG and XEN(C)II, Bhuj for information. As the consignment was booked under said to contain RR the firm is responsible for the shortage. When the claim is repudiated it is the duty of XEN(C)II, Bhuj to get the refund of 0.429 M.T. bars received short from the firm. Due to non posting of siding clerk in depot and non availability of weight bridge facility goods supervisor. Bhuj was not allowing to pass any remarks in the delivery book. How the DSK(C) Bhuj is held responsible for shortage. There may be difference between the weight calculated on the optional basis (by measurement) and actual weightment.

4. Claim Case No.4/65:- The shortage of four sleepers has since been accounted for by DSK(C) Bhuj, the claim was left remained to withdraw due to rush of work and shortage of staff.

5. Claim Case No.5/159 :- M/s.Jailal Agarwal, Bombay had

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booked 613 bundles - 32.740 M.T. S.M. Rounds 6mm dia ex carmac bridge to Bhuj vide RR No.212639, 212640 inv.7 and 8 dt.2.6.86, RR.No.212648, 212650 inv. 9 & 10 dt.4.6.86 and 7.6.86. On receipt of consignment at Bhuj goods Shed, G.S. Bhuj got unloaded the consignment on goods Shed, as there was no weigh bridge facility for weighing the wagon load consignment at Bhuj, it was not possible to ascertain the exact weight of the consignment received. Unless the consignment is not weighed it was not possible to find out the actual weight of the consignment received. Unless the book delivery is not taken goods supervisor - Bhuj was not allowing to remove the consignment for weightment. Also he refused to give delivery of steel consignment by weightment.

As 6mm dia bars were urgently required at site as the works being hammered for want of 6mm rounds XEN(C)II, Bhuj ordered me to take the delivery of 6mm rounds and get it weighed on private truck weight bridge. and issue some quantity to contractor M/s.Jagmohan Bhatiya through low according to his orders DSK(C) Bhuj took the delivery and go the consignment. weighed on truck weigh bridge. On making weightment of the consignment the weight found 29.275 M.T. against 32.740 MJ i.e. 3.465 M.T was received short. This quantity was advised to G.S.: - Bhuj but he did not allow to pass the marks for shortage in delivery book. G.S. Bhuj has issued necessary XR message. However claim was preferred on CCO-CCG, but he has turned down the claim on basis that the consignment is delivered under clear signature.

I have to bring to your kind notice that in the year 1984 the said firm had booked one consignment of M.S. beam to DSK(C) Bhuj in the year 1984-85 for which he had submitted 100% bill. On receipt of the consignment the actual weight was done and the weight was found less than the weight shown in the bill. For the less quantity received, the firm was not agreed to accept the actual weight. Even though DSK(C) Bhuj passed their bill for the actual quantity received.

In this case if the firm had despatched the consignment in full, then question of shortage does not arise. They are managing to obtain clear RRS and thus cheating the administration, and innocent persons are being held, responsible for the shortage in *Lac* of facility of weight bridge and non posting of siding clerk.

6. Claim case No.6/162B- M/s. Steel Authority of India Ltd., Bokaro plant, booked 6 bundles 55.7 M.T. of S.M.T. Plates 6mm dia ex BKFO to Bhuj in BG wagon No.SE 60813 under RR No.354550 invoice No.1 dt.19/20-4-1986. The consignment was received at Bhuj in MG BFR No.WR 21024 and ~~RR~~^{NE} 59346 in DSK(C) Siding on 19.6.86. As number of plates were not mentioned in the RR it was difficult to check the exact quantity is received. On unloading the consignment 154 nos. plates were found of various sizes and book delivery was taken. After sorting out and stacking and on taking measurement of 154 Nos. plates the weight arrived was 54.408 nos. against 55.700 M.T. the details of which is given below :-

1. 5.03Mx1.25Mx6mm	= 27 Nos = 7.995.813 M.T.
2. 5.03Mx1.125Mx6mm	= 56 Nos = 14.660.176 M.T.
3. 6.33Mx1.5mx6mm	= <u>71 Nos = 31.752.229 MT.</u>
	154 Nos = 54.408 M.T.

As there was no weigh bridge facility the consignment could not be weighed and shortage could not sort out before taking the delivery of the consignment. Goods supervisor - Bhuj did not allow to pass any remarks in the delivery book. However claim was preferred on CCO-CCG, but he has repudiated the claim on the grounds that consignment is delivered under clear signature. The weight of ____ Nos plates received was calculated by measurement as theoritical basis were as the firm has taken weight by actual weightment. There may be difference between the weight arrived on theoritical basis and on actual weightment.

When such claim cases are turned down there are standing orders to prepare necessary write off proposal and to get the amount written off, by the competent authority. In the past such claim cases were dealt and amount was get written off by the competent authority in other construction projects like SBI - Gandhinagar project etc. The real facts mentioned above the case may please be considered sympethatically. Due to non posting of siding clerk and non availability of weigh bridge, the claims were not accepted. There is no negligence on my part.

I hereby mention that during my 36 1/2 years of services, I have performed my duty sincerely, honestly and faithfully.

Hoping for proper justice.

Yours faithfully,
Sd/-

N.A. Panchal
(Retd.DSK(C)/Bhuj)

/ True Copy /

H. K. Shah
Advocate

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 493 of 1992

N.A. Panchal Applicant.

Vrs.

Union of India & ors. Respondents.

Reply by the Respondents.

1. At the outset the Respondents states and submits that the present application is not maintainable and tenable under the provisions of law as the issues raised in this application has already been adjudicated in O.A. No. 511 of 1986 which has been decided by this Hon'ble Tribunal on 15-4-1991. Against the same the Applicant had filed Review Application which has also been rejected by the Hon'ble Tribunal on 10-12-1991 and therefore this present application is not maintainable and tenable. Not only this, Constructive Res Judicata will apply as the issues raised in this application has already been decided between the said parties.

2. The Respondents states that in this present case the Applicant has claimed Rs. 90,000/- said to have been recovered by the Respondents and the Charge Sheet issued by the Respondents is illegal and not maintainable. The said question cannot be raised at this juncture as it is yet to be decided after leading evidence. The question of retirement as on 30-9-1987, the Hon'ble Court has also decided it and therefore this present application is not maintainable. The Hon'ble Tribunal has observed in its judgement in para 9 on page 8 as under:

"However this deemed date of 30-9-1987 will not have any effect on the authority which initiated the DAR action against subsequently to 30-9-87."

Com. Served to
O.A. No. 511
of 1986

D 17-9-93/93

to 2

2/4/93
1002

30 30/9/93

From the above action it is very clear that the DAR action initiated is in order as already decided by the Hon'ble Tribunal in O.A. No. 511 of 1987. The Hon'ble Tribunal has further considered the pecuniary loss sustained by the Respondents to the tune of Rs. 79,142.27 and allowed to be withheld from the Pensionary benefits till the final disposal of the Appeal against the Order of Disciplinary authority. Though the Applicant did not submit any appeal on 18-11-1989, as claimed before the Hon'ble Tribunal, as neither the applicant submitted the acknowledgement nor the copy of the letter dt. 2-5-91 asked for by the Respondents. However, the applicant submitted appeal as late as on 28-6-91, after deciding the matter by the Hon'ble Tribunal on 15-4-1991 which was also considered by the Appellate authority and his decision was communicated to the Applicant vide Respondent's letter dt. 29-8-1991. According to the decision the Disciplinary authority has upheld the recovery of Rs. 79,142.27 is in order. It is denied that Rs. 90,000/- is due to payable as claimed by the Applicant and therefore the question raised by the Applicant in this application is not maintainable and tenable as the same has been decided earlier. Here the Petitioner has tried to mix up the question to take undue advantage of his own wrongs.

3. The Respondents further state that the Applicant has filed further review application bearing No. 42 of 1991 which was also decided on 10-12-1991 by the Hon'ble Tribunal, during which the Tribunal observed that " the Review Application was not warranted and it is in violation of the Principles of Natural Justice and it has no substance. None of the averments of the Review Application attracts Order 47 Rule (1) of C.P.C. The result is that the Review application deserves to be dismissed." And therefore it is very clear that the issues raised by the Applicant in this application are already settled and decided by the Hon'ble Tribunal and the only course of action left with the applicant is to appeal against

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the judgement of the Hon'ble Tribunal in OA 511 of 87 and as such the present application is not maintainable and liable to be rejected.

4. Talking about the grounds which were facts of the earlier case, the Respondents are filing their reply to the present application as under:

The averments made in paras A,B, &C are not disputed. But so far as the subject is concerned, the allegations made against the Respondents are baseless. So far as the charge sheet is concerned, the same was issued correctly and in the prescribed form. The Charge sheet has been issued by the Deputy Chief Engineer (C) Bhuj who is the Jr. Admn. Officer of the Railway Administration and he is competent to serve the Charge Sheet to the Applicant. The Respondents further submit that the complete charge sheet was issued to the applicant and it was received by him on 15-1-1988 (Anx R.1) under the clear signature as DSK(C) Bhuj. Since the applicant was having eye trouble he time to time submitted applications for filing reply or to attend Enquiry vide his letters dt. 25-1-1988, 9-5-88, 13 June 1988, and 8-10-88 (Anx R.2 to R.5) which was considered by the Disciplinary authority and the Enquiry Office and allowed full time to submit the defence by the Applicant. The Applicant submitted his defence vide letter dt. 21 Dec 88. The inquiry was held on 29-12-88 and on completion of the enquiry the Applicant has passed the following remarks at the bottom of the statement given by the Applicant (Anx R.6) which reads as under:

" I am satisfied with the conduct of the Enquiry and no more evidence or witnesses are to be produced".

The Respondents further state that after considering further reports and other relevant documents the Disciplinary

Authority has awarded the Penalty for recovery of Rs. 79,142.27 for the pecuniary loss sustained by the Respondents, which was established by the Tribunal in its judgement of OA No. 511 of 87.

Thereafter appeal was preferred late but it was considered sympathetically by the Appellate authority who condoned the abnormal delay but they upheld the Order passed by the competent authority. In view of the above it will be revealed that all the allegations put forward by the Applicant are afterthought, baseless and concocted and therefore it cannot be said that no opportunity was given to the applicant to defend himself. Here the applicant has tried to mix up the questions by filing this false application and tried to take undue advantage by doing so.

5. The Hon'ble Tribunal has no jurisdiction to entertain this case as the same has been decided earlier in OA 511 of 87 and the review which was preferred was also rejected and therefore if the applicant has any grievance it is for him to approach the Supreme Court by filing appeal. But instead of doing so this second application is not maintainable on the said cause of action.

6. With reference to the averments made in paras (A) to (H) the same are not correct and is denied hereby. The OA was filed by the Applicant regarding his retirement and payment and retirement benefits which was decided by this Hon'ble Court. The allegations advanced in para (B) are not correct and it is denied hereby. It is not true that there was insufficient staff. Even prior to the applicants transfer and after, only one DSK(C) was working through out the project period. On the contrary one Asstt. DSK(C) Gr III was provided during the applicant's time. The applicant himself was responsible for the lapses on his part and no responsibility of others has been put on the applicant as alleged by the Applicant. With reference to the allegation in para (C) the same are not correct and is denied hereby. Whether the Charge sheet has been issued for misconduct or not will be revealed from the charge sheet itself.

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The applicant has been allowed time to submit his defence and he has also attended the Inquiry and therefore there is no substance in the allegations made in para (D). At the end of the inquiry he has endorsed that he is satisfied with the proceedings and therefore the allegations made in para (E) are baseless and afterthought. So far as para (F) is concerned, the charge sheet is issued after following the formalities required under the rules. The names of the witnesses were to be given during the proceedings if necessary and as per the rules the inquiry was conducted by the Inquiry Officer and thereafter appeal was preferred though it was made by the applicant and therefore the new averments made are not in consonance with the earlier and it has no relevance and therefore the same are baseless and afterthought and concocted. With reference to para (H) the Inquiry Officer has submitted his finding to the Disciplinary authority. The statement recorded of the Applicant need not be signed by the Inquiry Officer. The list of documents to be relied upon was given vide Annex III of the Charge sheet and documents enclosed. Total 9 documents including the documents to be relied upon were enclosed as may be seen from the charge sheet. And therefore it cannot be said that opportunity was not given to the applicant nor is there any difficulty in the proceedings.

7. With reference to paras J, J & K the averments made are not correct and is denied hereby. The applicant was allowed 45 days time to make appeal against the order of the disciplinary authority, but no appeal was made by the Applicant during this stipulated time. However, the applicant made statement before the Hon'ble Tribunal in OA No. 511 of 1987 that he has made appeal on 18-11-89, he was asked vide para (iii) of letter dt. 2-5-91 (Ann A.8) to send the copy of the appeal and acknowledgement, but he did not produce any documents. The first time the applicant

submitted the appeal was on 28-6-91 which was also considered by the Appellate authority by condoning the delay as stated above and therefore it cannot be said that the action of the Respondents are Arbitrary, illegal or malafide. From the above it is very clear that the Charge sheet issued to the Applicant for his fault is due to his negligence and for this the Respondents had to suffer and the penalty awarded is in order for the pecuniary losses sustained by the Railway which has been upheld.

8. The Respondents further states that the averments made in the grounds are nothing but repetitions of the earlier allegations made in this application and therefore it is not necessary to burden the records of the Hon'ble Tribunal by replying to each of them. The applicant is trying to mix up the question from end to end and ultimately he is trying to allege that no reasonable opportunity was given to him, documents were not supplied to him, etc. The same has been replied by the Respondents in the earlier paras in detail. The Respondents have not violated any rules or Art. 14, 16, 311(2) of the Constitution of India as alleged. The Penalty imposed is covered by Rule 6 of the D.A. Rules vide item (iii) which reads as under:

" Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders."

In view of the above, it is very clear that the penalty imposed is within rules and in order. And therefore no relief can be given to the Applicant as he has suppressed material facts before this Hon'ble Tribunal and has tried to conceal things which has already been decided by the authority.

9. For the above facts and facts which may be urged at the time of hearing of this application, this application of the applicant deserves to be dismissed. The Respondents reserve their right to file further reply, in future, if it is necessary to do so.

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Ahmedabad
Dt: 30/4/93
B.R. Kyada

(B.R. Kyada)
Advocate for the Respondents.

For and on behalf of the
Union of India.

Dy. Chief Engineer (C),
Western Railway, Bhuj.
DY. C.E.C. CENTRAL
W. R. AHMEDABAD.
उप मुख्य इंजीनियर (निर्माण) मध्य
प. रेलवे. अहमदाबाद.

VERIFICATION.

I, Ajit Pandit, Deputy Chief Engineer (C)
Western Railway, do hereby verify that the contents of
this reply are true on legal advice and that I have not
suppressed any material facts.

Ahmedabad.
Dt: 30/4/93

Deputy Chief Engineer (C)
Western Railway, Bhuj.
DY. C.E.C. CENTRAL
W. R. AHMEDABAD.
उप मुख्य इंजीनियर (निर्माण) मध्य
प. रेलवे. अहमदाबाद.

✓
Reply/Response written/submissions
filed by M. B.R. Kyada
learned advocate for
Respondent with reference to
Copy served/not served

Dt: 30/4/93 By: Registrar C
Ahmedabad

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 493 OF 1992

N.A. Panchal Applicant.

V/s.

Union of India & Ors. Respondents.

AFFIDAVIT IN REJOINDER

I, N.A. Panchal, applicant, do hereby state on solemn affirmation and oath as under:

1. That I have gone through the reply filed by Mr. Ajit Pandit, Deputy Chief Engineer(c) Western Railway, in reply thereto I submit as follows:

Unless specifically and categorically admitted herein above each and every averments made in the said reply is denied by me. I reiterate my averments made in O.A. 493/92 and also crave leave to refer and reply upon the same at the time of hearing.

2. With regard to para 1 the averments made by the respondents are not true hence denied by me. It is submitted that O.A.No. 511/86 ~~submitted~~ was against the order of the respondents for not allowing me to retire which was resulted in favour for the applicant. In view of the same I am to be considered as retired from the year 1987. Since I was not paid the amount of retirement dues. I preferred the review application, which was rejected on the ground that

Agreed
Subj to reply
Bor
8/9/93

Filed
in Court
by Mr K K Sot

Retired
8/9/93

it is a different matter and not the ground for review and therefore I have filed the present application ~~for~~ for quashing and setting aside the charge sheet and for release my pension and retirement dues which is maintainable and tenable under the provision of law. Hence it is denied that constructive res judicata will apply as the issue raised in this application has already been decided between the said parties.

3. As regards averments made in para 2 of the reply I deny the same. The question regarding my recovery of Rs. 90,000/- and the charge sheet issued by the respondents is illegal and not maintainable can be raised at this juncture. It is not true that I have not submit any appeal on 18.11.1989. Being aggrieved by the order of penalty the applicant appealed to the Chief Engineer, respondent No.2, by R.P.A.D. which is annexed in the present application at Annexure A-7. The Executive Engineer vide his letter dated 2.5.91, his office is not aware of such appeal. A copy of the letter dated 2.5.91 is also annexed in the present application. Hence the averments made by the respondents that the applicant did not submit any appeal on 18.11.1989 and neither the applicant submitted the acknowledgement nor the copy of the letter dated 2.5.91 asked for by the respondent is not true. I reiterate what is stated by ~~the~~ me in

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my petition and I rely on the averments made in my petition regarding the same. It is not true that I have submitted appeal as late as on 28.6.91 after deciding the matter by the Hon'ble Tribunal on 15.4.91. I have sent the appeal in addition to my earlier one on 28.6.91 which is annexed in the present application at Annexure A-9 and rely upon the same. The respondent No.1 decided the same and issued order on 29.8.91 by which Disciplinary authority upheld my recovery of Rs. 79,142.27 which is challenged in the present application by me. Therefore, Rs.90,000/- is due and payable by the respondents to me and the question is maintainable and tenable. It is denied that I have tried to mix up the question to take undue advantage.

4. I deny the averments made in para 3 of the reply of the respondents. It is not true that I have filed further review application. I have filed only one review application, order of which is annexed to my present application at Annexure A-4. I rely upon the same. I have presented review application on 14th May, 1991 & which is put for order by circulation as late as on 5th December, 1991 by the undue and unexplained delay of the office of CAT which is also mentioned in the order on 10.12.91. In view of the aforesaid situation the respondents might have

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considered it a further review application. Thus the issue raised by me in this application are not settled and present application is maintainable and liable to be rejected.

5. As regards averments made in para 4 are not true and it is denied hereby. It is submitted that the charge sheet was ambiguous and incomplete which will not give any clear idea to understand the charges to enable me to prepare proper defence. As without any list of witnesses and document it will be difficult for me to prepare the defence. It is not true that as I was having eye trouble, I submitted applications time to time for filing reply or to attend the enquiry vide letter dated 25.1.88, 9.5.88, 13.6.88 and 9.10.88 which was considered by the disciplinary authority and the enquiry officer and I denied that I have been allowed full time to submit the defence. It is not true that I am satisfied with the conduct of the enquiry and I have never given any statement that no more evidence or witnesses are to be produced. As respondents have stated in the reply that after considering further reports and other relevant documents the disciplinary authority has awarded the penalty of for recovery of Rs. 79142.27 for the pecuniary loss sustained by me. In view of the above statement it is stated that I have never given any further reports and

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other relevant documents which the disciplinary authority has sanctioned while awarding penalty of recovery of Rs. 79,142.27, therefore, the said award is illegal and against the law. I repeat that appeal was not preferred by me late and it is not true that it is considered sympathetically by the appellate authority. The order of the respondent No.3 is without complying the Rule 9 of the DAR Rules. The enquiry was not held as per Rule 9, therefore the same requires to be vitiated. I deny that I have tried to mix up question for filing this application and true to take undue advantage by doing so.

6. The averments made in para 5 of the reply ~~I deny that I~~ I denied hereby. I say and submit that this Hon'ble Tribunal has jurisdiction to entertain this case, therefore the Hon'ble Tribunal may be pleased to allow my application.

7. The averments made by the respondents in his reply at para 6 are not true and I denied hereby. The original application filed by me regarding my retirement dues is decided by this Hon'ble Tribunal and this present O.A. is for quashing and setting aside the charge sheet, therefore, the present O.A. is maintainable at law. It is true that while I was working at Bhuch as DSK the shortage of staff was there and I have also complained about the shortage of

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staff and the pressure of work, but since ~~now~~ after my retirement the respondents had tried to victimise ~~by~~ ^{shully} me by issuing charge sheet and also issued two penalties on me by knowing that I am retiring. The other averments made in para 6 are not true and it is denied hereby and I reiterate what is stated by me in my petition and I rely upon the same.

8. As regards para 7 of the reply I denied the averments made thereby. I have make appeal against the order of the disciplinary authority within 45 days, it is not true that no appeal was made by me during the stipulated time of 45 days. It is ^{not} true that I have submitted the appeal first time on 26.8.91, on the contrary, I have submitted ~~my~~ appeal first time on 18.11.89. The averments made in the para are the repetation, I have already replied the same in para 5 of this rejoinder, therefore I do not give my submission for the same again.

9. The averments made in para 8 of the reply ^{are} ~~are~~ not true and denied by me. The action of the respondents by furnishing the enquiry officers report ^{is} ~~with~~ the penalty against the law laid down ~~in~~ by the Hon'ble Gujarat High Court in the case of Ninama as well as the law laid down by the Hon'ble Supreme Court in the case of Mohd. Ramzan Khan case. In view of the above cases it is clear that the penalty

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imposed is without the rule. I have suppressed no material facts before this Hon'ble Tribunal and has not tried to conceal things.

10. In view of the above facts and circumstances this Hon'ble Tribunal may be pleased to allow this application, I reserve my right to file further rejoinder if any in future, if it is necessary to do so in the interest of justice.

VERIFICATION

I, N.A. Panchal, applicant, aged 62 years residing at Sadashivanagar, Odhav, Ahmedabad, retired DSK Bhuj do hereby states that what is stated in the above paras are true to the best of my knowledge and belief and I believe the same to be true. I further declares that I have not suppressed any material fact.

Ahmedabad.

Dt: 25-8-1993.

Heard 8/9/93

Identified by me:

Shubham
Kiran K. Shah
Advocate for the Applicant.

A. Panchal