

Para 27: That the contents of paragraph 27 of the petition are denied. It is specifically denied that any alleged request was made by the petitioner and the allegations are concocted and fabricated for the purpose of the present petition. It is submitted that the ^ucation was removed by sri Kundan Lal PWI (II)/LKO within the knowledge of the petitioner. It is also submitted that the petitioner was fully satisfied after the removal of the caution, as is evident from the answer to question no. 46 made by the petitioner while making a statement before the Accident Enquiry Committee. The question and answer to question no. 46 has been reproduced in para 25 and 26 above. It is further submitted that there was no undue interest by the Enquiry Officer while conducting the enquiry entrusted to him, as alleged by the petitioner.

in reply to

Para 28: That the contents of paragraph 28 of the petition, it is not denied that the petitioner through a defence note dated 21.7.82 examination of the witnesses mentioned therein. However after due consideration the said request was rejected by the Enquiry Officer. It is submitted that Sri Kundan Lal was not called, as this was considered a delaying tactic on the part of the petitioner as on the facts of recorded statement of the petitioner in accident enquiry committee answer to question no. 46, it was considered irrelevant. The Guard of 343 Dn. the A.S.M. on duty at Sonik and porter on duty at Sonik were not called during the DA&R enquiry at the request of the petitioner for calling those witnesses was considered ~~as~~ and found as delaying tactic on his part

as these witnesses were irrelevant for deciding the case. The Enquiry Officer has given full reasons for not calling the witnesses in his report which is also produced below:-

"Guard of 334 Dn. Goods Train, porter and A.S.M. on duty at Sonik witnesses demanded by sri M.A.Khan is irrelevant as cause of action is beyond the scope of DA & R Enquiry.

It may also be emphasised that case put in the defence note dated 21.7.'82 was altogether different from what had been stated in the reply to the charge sheet submitted by the petitioner. The defence note speaks itself that the petitioner wanted to delay the proceedings on one pretext or the other.

Para 29: That the averments made by the petition in para 29 of the petition are incorrect and denied. The petitioner was given full opportunity to cross examine the witnesses produced by the administration. As already explained in earlier paragraphs, the defence witnesses given out by the petitioner were held to be irrelevant for the enquiry and amounted to delaying tactic. The enquiry officer rejected the prayer with due application of his mind.

Para 30: That in reply to the contents of paragraph 30 of the petition, it is not denied that D.S.E.-II/LKO passed orders of imposition of penalty under rule 6(V) of Railway Servants (Discipline and Appeal) Rules 68 vide no. TG8/B-4/9-81RB dated 15.10.(82 as contained in Annexure No. VII to the petition. Rest of contents are denied. It is specifically denied that there was any alleged vindictiveness, harrassing or dilatory tactics against the petitioner. It is submitted that a copy of

accident enquiry report drawn by the committee officers alongwith statement of witnesses recorded was given to the petitioner, as relied upon document on 20.2. '82 which was duly acknowledged on 24.2.1982. It is also submitted that there was no request for change of the enquiry officer from the petitioner. At any rate there was no ground or reason for change of the enquiry officer.

Para 31: That the contents of paragraph 31 of the petition are denied. It is wrong to say that final decision was made very late. It is submitted that DAR enquiry report was received on 10.8.1982 and after that DA Authority took final decision on the DAR enquiry on 4.9.1982. It is further submitted that in DAR enquiry report, petitioner had been held responsible for violation of rules mentioned in S.F.5. The E.O. had drawn his findings on the basis of all relevant record and over all assessment of the evidence on record.

Para 32: That the contents of paragraph 32 of the petition are denied. It is submitted that the report submitted by the Enquiry Officer is based on assessment of oral and documentary evidence available on the DA & R record. The charges framed stood proved by the evidence in the D.A. & R. enquiry. The allegations of blatant abuse of powers and denial of reasonable facility and arbitrary action on part of enquiry officer to save himself by hook or crook and fasten guilt against the petitioner are

incorrect.

Para 33: That the contents of paragraph 33 of the petition are denied. It is submitted that sri Karamat Ali, P.W.I./Aj was not let off as alleged, but was awarded punishment of withholding of increment (WIP) for 2 years.

Para 34: That in reply to the contents of paragraph 34 of the petition, only this much is not denied that a defence note dated 21.7.1982 as contained in Annexure No. VI to the petition was submitted before the enquiry officer. It is also not denied that the petitioner made a reference in the said defence note that the enquiry officer should invariably part with the function of Enquiry Officer. The Enquiry officer disposed off the said defence request with reasons, as the parting away with the enquiry was not within the powers of the enquiry officer. It is further submitted that the petitioner did not make any application before the administration for change of the Enquiry Officer. The enquiry officer has acted with full fairness while holding the enquiry and thereafter when he made out his report and gave the findings.

Para 35: That in reply to the contents of paragraph 35 of the petition, it is not denied that the DAR enquiry was closed on 21.7.1982.

Para 36: That the contents of paragraph 36 of the petition are not denied.

Para 37: That the contents of paragraph 37 of the petition are not denied.

Para 38: That the contents of paragraph 38 of the petition are not denied.

Para 39: That in reply to the contents of paragraph 39 of the petition, it is not denied that the appeal preferred by the petitioner was rejected on 28.6.1983 vide order as contained in Annexure No.IX to the petition. The rejection was made after applying ~~applying~~ his mind.

Para 40: That the contents of paragraph 40 of the petition are denied. It is submitted that the appellate authority rightly dismissed the appeal of the petitioner after due application of his mind and considering all the evidence on record of DAR Enquiry.

Para 41: That the contents of paragraph 41 of the petition ~~are~~ are extracts from appeal preferred by the petitioner and they are verifiable from the memo of appeal itself. It is however submitted that the grounds alleged in the para under reply is completely incorrect, in view of the fact that the Enquiry Officer was completely fair while holding the enquiry and giving the report and findings and no imputation should have been made or are warranted by the facts of the case.

Para 42: That the contents of paragraph 42 are not relevant for the decision of the present writ petition.

AIS

Para 43. That the contents of paragraph 43 of the petition are denied. It is submitted that the charges levelled against the appellate authority are incorrect and false to the knowledge of the petitioner and have been put with a vengeance mind. The appeal of the petitioner was considered in all its aspect by the appellate authority and the orders were passed rejecting the same after applying mind and calculated judicious perusal of the entire case.

Para 44: That in reply to the contents of paragraph 44 of the writ petition it is stated that applicant had an opportunity to prefer a revision petition under rule 25 of the D&A rules, 1968 to the next higher authority but he did not do so. Apart from this, the applicant had a further remedy to approach the civil court which he also did not avail of. Thus the contention of the petition that he had no efficacious and alternate remedy except to file writ petition is incorrect, hence denied. The grounds given under para (a) to (j) are untenable in laid and the petitioner is not extitled to any relief claimed.

para 45: That the punishment awarded to the petitioner is merittèd & warranted by the evidence, on the record & there is no violation of principle of Natural Justice at all. The writ perition is liable to be dismissed with cost.

Lucknow

Dated: 11.4.89

Opp. Parties
एवं अधीक्षण समित्याः
एवं अधीक्षण दीर्घनाकाः
१० रु० लग्नम्

R116

Verification

I HARGUN RAM D.S.E.II N.Rly Lucknow

do hereby verify that the contents of paras 1 to 45 of this written statement are true to my belief based on information derived from record and legal advice signed and verified this 11th day of April 1989 at DRM's office Northern Railway Lucknow.

मेरा वर्तनीय विवरण
मेरा वर्तनीय विवरण

Annexure no Res/1

53

AII2

To,

The Divisional Engineer
N.Rly. Lucknow

Respected Sir.,

Sub:- Derailment of 334DN at
Alambagh on 16.7.81.

As per your orders, I attended your office on 24th & 31st December 81 for inspecting and noting down documents related to derailment of 334DN at Alambagh cabin on 16.7.81. But the same could not be copied out as required by me, and it will take another 3 days to copy out the same. I would like to bring to your kind notice that due to some important work going on in the section it is very difficult for me to devote another 3 days. Therefore, I request your honour to supply me the copies of the documents which I have flagged off. So that the reply of charge sheet can be framed. Thanking you.

With regards.

Df- 1-1-82.

Yours faithfully,
Naeem.

M. A. Khan.

P.W./ON

A2N/2 LKD

A102

In the Central Adminstrative Tribunal, Allahabad
Circuit Bench Lucknow.

Registration No. 1181(T) of 1097

Mohammad Ahmad Khan Petitioner

Versus

Union of India and others Respondents.

WRITTEN STATEMENT ON BEHALF OF THE OPPOSITE PARTIES

Para 1: That the contents of paragraph 1 and 2 of
2: the petition are not denied.

Para 3: That the contents of paragraph 3 of the
petition are not admitted, in view of non-
availability of the record. The petitioner
is put to strict proof of the same.

Para 4: That the contents of paragraph 4 of the
petition are not admitted, as stated. It is
submitted that the petitioner was promoted as
P.W.I. Fr.II in the scale of Rs.550-750 with
effect 3.4.1980.

Para 5: That the contents of paragraph 5 of the petition
are not denied except that the derailment occu-
red at 4.10 A.M. and not 4.30 A.M. as alleged
by the petitioner.

Para 6: That the contents of paragraph 6 of the
petition are not admitted as stated. It is
submitted that the position of the derailed
wagons were 1 to 5 and 17th. from the brake
van.

- 2 -

Para 7: That the contents of paragraph 7 of the petition are not denied. However, it is stated that fact finding enquiry was held in the case by Sr. D.S.O., Sr. D.M.E. and D.S.E.II as per administrative order.

Para 8: That the contents of paragraph 8 of the petition are not admitted as stated. It is submitted that ^{all} the members of the committee were of equal rank and every one was an expert, so to allege that only D.S.E.II was an expert is incorrect. It is also submitted that the petitioner should have attached the full report and not a part of it.

Para 9: That the contents of paragraph 9 of the petition are not denied.

Para 10: That in reply to the contents of paragraph 10 of the petition, only the genuineness of Annexure No.1 is not denied. So far as the alleged facts about the dissent note are concerned, they are verifiable from the Annexure No.1 itself. It is however submitted that Annexure No.1 is only a part of the report, as such it can not be considered without the other part being on record. It is also not denied that there was a majority finding about the derailment having taken place due to defective track.

- 3 -

Para 11: That the contents of paragraph 11 of the petition are not denied.

Para 12: That the averments made in paragraph 12 of the petition are not admitted. It is submitted that the D.R.M. had rightly accepted the majority finding with due application of mind. It is further submitted that all the members of the committee were of equal rank and every one was an expert, so to allege that D.S.E.-II was only an expert is incorrect.

Para 13: That in reply to the contents of paragraph 13 of the petition, the issue of the memorandum of charges is not denied. It is submitted that the memorandum was issued according to rules. It is submitted that according to the memorandum, the petitioner was required to inspect and take extracts from the documents mentioned in the list. The petitioner was also directed to submit a request for access to any other documents. Rest of the contents are denied.

Para 14: That in reply to the contents of paragraph 14 of the petition, only the receipt of the representation dated 17.7.'81 for supply of documents is not denied. Rest of the contents are denied.

A/S

Para 15: That in reply to the contents of paragraph 15 of the petition, only the fact of supplying documents on 20.2.'82 is not denied. It is submitted that the petitioner was afforded all opportunities to inspect the documents on 1.1.1982, when the petitioner attended the office and gone through the documents relied upon. On that date he moved an application, a copy of which is annexed to this written statement as ANNEXURE NO. C-1. A perusal of the said application will reveal that the petitioner himself adopted dilatory tactics to delay the enquiry. Since the petitioner did not care to inspect the documents after 1.1.'82, then the administration by its letter dated 20.2.'82 enclosed therewith copies of documents asked by the petitioner, which letter along with documents were received by the petitioner on 24.2.'82. A true copy of the said letter dated 20.2.'82 is annexed to the written statement as ANNEXURE NO. C-2. Therefore the delay as alleged is not attributable on the part of administration. It is submitted that at no stage the petitioner represented about non supply of the statement of A.Sabestien.

para 16 of the

Para 16: That in reply to the contents of/petition only the presentation of reply to the memorandum by the petitioner on 5.3.'82 is not denied. It is evident from his reply that it was on merit and there was no mention of any handicap as alleged. In fact the petitioner has gone

through all the documents mentioned in the memorandum during the inspection made by him.

Para 17: That the contents of paragraph 17 of the petition are not admitted in the way as stated. It is submitted that the petitioner was afforded all reasonable opportunity and defence reply by the petitioner was submitted after inspecting all the documents.

Para 18: That in reply to the contents of paragraph 18 of the petition, only this much is not denied that 12 witnesses were examined during the course of fact finding enquiry.. Rest of the contents are denied. It is submitted that the fact finding committee has taken into consideration the deposition of the witnesses in relation to the petitioner before giving report.

Para 19: That the contents of paragraph 19 of the petition are denied. It is submitted that the petitioner had inspected all the documents listed in the memorandum and there was no whisper about non supply of the statement of A. Sabestinat any stage. It is submitted that the assessment of evidence was made as a whole and findings recorded and the petitioner has been punished on basis of evidence on record.

Para 20: That the contents of paragraph 20 of the petition are not admitted. It is submitted that the enquiry was ordered after consideration of reply submitted by the petitioner and due application of mind. The allegations are baseless and an after thought.

Para 21: That in reply to the contents of paragraph 21 of the petition, it is not denied that Shri R.B.Gupta AEN-II/LKO was nominated as an enquiry officer by Shri R.L.Agarwal D.S.E. -II/LKO vide no. TG8/B-4/9-81 RB dated 5.4.'82. The allegations made by the petitioner that the enquiry officer was nominated by D.R.M. is therefore incorrect. It is also not denied that the Enquiry Officer issued letter dated 19/4/82 to the petitioner and sri Karamat Ali for holding the enquiry on 9.5.'82 at 10.00 hrs.

Para 22: That in reply to the contents of paragraph 22 of the petition, only this much is not denied that the dates mentioned were fixed by the Enquiry Officer. It is submitted that on several dates the enquiry could not proceed due to the absence of either the petitioner or his defence helpwer.

Para 23: That in reply to the contents of paragraph 23 of the petition, only this much is not denied that the enquiry officer was posted as A.E.N.-II at Lucknow at that time and having his jurisdiction upto Kanpur Bridge including the site of the accident. It is submitted that the nomination of Enquiry Officer was in accordance to rules.

Para 24: That in reply to the contents of paragraph 24 of the petition, only this much is not denied that the defence counsels for the petitioner applied for supply of certain copies on 1.6.82. Rest is denied.

The petitioner was supplied the documents on 5.6.'82 viz. Reading of track wagons and loco and Inspection note of DRM/LKO dated 10. 7.1981. The petitioner/defence counsels were informed that a copy of site plan and finalisation of enquiry proceedings cannot be supplied and they may see the site plan in the file.

Para 25. That the contents of paragraph 25 of the petition are not admitted as stated. It is submitted that the witness sri Kundan Lal , PWI/II/LKO was not called as this was considered a delaying tactic on the part of the petitioner, as on the face of recorded statement of shri M.A.Khan , the petitioner in the accident enquiry committee at page 6, answer to question no, 46, it was considered irrelevant. The question put to the petitioner by the Enquiry Committee as Q.No. 46 and answer given out by the ptitioner is reproduced below:-

Q.No.46 Were you satisfied of the speed restriction having been removed by sri Kundan Lal.

A. Yes, otherwise I would have reimposed the restriction.

The petitioner further elaborated satisfaction by answering question No.47 viz. How did you satisfy yourself and the answer was "By seeing the condition of the track on 9.7.81".

Annexure No Res/2

57

AIIB

Northern Railway.

R. L. Aggarwal,
DSE-II.

D. O. No. TG8/B-4/9-81RB

DIVL. Office,
LUCKNOW:

Dated: 20.2.1982.

My dear Malhotra,

Sub:- Derailment of 334Dn. Goods Train at Alambagh Cabin on 26.7.81.

A letter No. TG8/B-4/9-81 RB dated 20.2.82 addressed to Shri Karmat Ali previously PWI/Gr.III/Ajgain alongwith documents in 58 pages relied upon for issuing him a major penalty charge sheets are enclosed for delivering the papers to him by calling in your office. The acknowledgement of Shri Karmat Ali may please be sent to this office per bearer of the letter. Shri Karmat Ali was issued a charge sheet in connection with the train accident. Hd.Qrs. Office is pressing hard for early finalisation of the inquiry proceedings. Since PWI of the section is also involved in this case DRM/LKO has decided that the inquiry against the PWI as well as against Shri Karmat Ali may be constituted on this division and finalised quickly. Your co-operation in the matter in relieving Shri Karmat Ali to attend the enquiry as and when constituted is solicited.

With best wishes,

1. Documents in
58 pages.
2. One letter.

Yours sincerely,

R. L. Aggarwal

(R. L. Aggarwal) 29

Shri R. N. Malhotra,
DSE (Co-ord),
N. Rly., Moradabad.

9/9/6
S

Side 1

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

7865

(अध्याय १२, नियम १ और ७)

दौवानी विभाग

प्रक्रीणांक (मुतफर्क) प्रार्थना - पत्र संख्या सन १६ ई०

W. B. ४५८८ सन १६ ई० में

Mahmood Ahmad Khan — — — प्राधीन

Union of India & others — — — प्रत्याधीन

A Union of India through General Manager
Northern Railway

New Delhi प्रत्याधीन

चूंकि उपर लिखे प्राधीन ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
के नाम के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक २ माह सन १६ ई०
को या उससे पूर्व उपरिथित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार कर
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति कियी और
दिन होगी।

विदित हो कि आप उपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
बोकेट या ऐसे व्यक्ति द्वारा, जो आपको ओर से कार्य करने के लिए कानूनन अधिकृत
हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपको अनुपस्थित
न हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक १४ माह सन १६ ई०
को जारी किया गया।

A. M. Khan के राजबोकेट



14/11/1983

Recd.

डिप्टी रजिस्टरार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की मुतफर्की नियमादली के अध्याय ३७ नियम २ के अधीन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले कल्की के हस्ताक्षर

(6)

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ 7063

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रक्रीणांक (मुत्तफर्क) प्रार्थना - पत्र संख्या सन १६ ई०

Ms. No. २०५५८८ सन १६ ई० में

Mahomed Ahmed Khan — — — — — प्राधीन

Union of India & others — — — — — प्रत्याधीन

Divisional Railway Manager Northern
Railway

Mazratganj Lucknow प्रत्याधीन

चूंकि उपर लिखे प्राधीनों ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
कोने के नाम वे हिंदे २०५५८८

दिया है, जहां आपको आदेश दिया जाता है कि आप "दिनांक" २ माह १ सन १६ ई०
को या उससे पूर्व उपस्थित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार कर
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति कियी और
दिन होगी।

विदित हो कि आप उपर लिखे दिनांक पर या उससे पहले स्वयं अधिकारी किसी
राजवकेट द्वारा ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत
हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित
में हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक १७ माह १६ ई० सन १६ ई०
को जारी किया गया।

A. Muttalib के राजवकेट



छाप्टी रजिस्टरार
इलाहाबाद/लखनऊ

सुचना—इस न्यायालय की नियमपूर्वक नियमावली के अध्याय ३७ नियम १ के अधीन प्राप्त
तत्त्वाना मिल गया।

तत्त्वाना प्राप्त करने वाले छलक के हस्ताक्षर

(13)

हाईकोर्ट इलाहाबाद लखनऊ बैच, लखनऊ 7066

(अध्याय १२, नियम १ और ७)

दोवानी विभाग

प्रकौणांक (मुतफरिक) प्रार्थना - पत्र संख्या सन् १६ ई०

W. १० सन् १६ ई० ई० में

Mahmood Ahmad Khan — — — प्रार्थी

Union of India & Others — — — प्रत्याधी

Divisional Subdt Engineer (II) Northern
Railway

प्रत्याधी

1789

R. P. 31 (4)
Stamps affixed except in case of insured. Rs. P.
red letters of not more than the initial Date-Stamp
weight prescribed in the Post and Telegraph
Guide on which no acknowledgment is due.

Received a V. P. registered⁹ 7064
addressed to Divisional Subdt
Engineer Lucknow

⁹ Write here 'letter' 'parcels' or 'postage receipt'
Sig. of Receiving Officer with the word 'insured' before it when necessary.

To be filled in only when the article is to be insured; otherwise
to be crossed out by means of two diagonal lines.

Insured for Rs. (in figures) (in words) 5 - 50

Inst. onco see Rs.

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 14 माह 11 सन् १६८३

को जारी किया गया।

Amrit Khan के राजकोकेट



तिथि १४/११/१८८३
Request

डिप्टी रजिस्टरार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १६५६ की नियमाली के अध्याय ३७ नियम ६ के अधोन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले कल्की के हस्ताक्षर

(८८)

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ ७०६२

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकौणक (मुतफरिक) प्रार्थना - पत्र संख्या सन १६ ई०

..... १६१६ सन १६ ई० ८३ ई० में

Mohammed Ahmed Khan — प्राधीन

University of Lucknow — प्राधीन
Assistant Engineer (II) Northern
Railway

— Lucknow — प्रत्याधीन

घूंक अपर लिखे प्राधीन ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
के नाम के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक २ माह सन १६ ई० ८३
को या उससे पूर्व उपस्थित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार कर
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति कियी और
दिन होगी।

विदित हो कि आप अपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
राजकोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत
हो उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित
में हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक १४ माह सन १६ ई० ८३
को जारी किया गया।

A. Maitra के राजकोकेट



डिप्टी रजिस्टरार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की ईपर की नियमावली के अध्याय ३७ नियम २ के अधोन प्राप्त
तत्वाना मिल गया।

तत्वाना: प्राप्त करने वाले कल्कि के हस्ताक्षर

(65)

The Honorable Court
Central Administrative Tribunal
Lucknow

Respected Sir,

Subject :- ^{T.A} ~~WT~~ No 1101/87
WT No 4500/83

My Counsel Sir C. A. B. Sheer could not come due to sickness of his wife. It is therefore prayed that another date may kindly be fixed for hearing.

Thanking you

Yours faithfully

Rehman

M. A. Khan

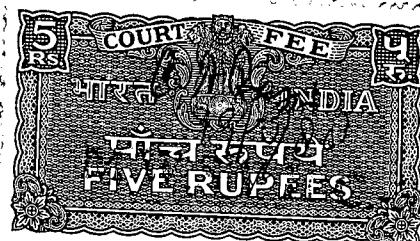
24.11.88

ब अदालत श्रीमान्

[वादी] अपीलान्ट

The Central Administrative Tribunal
श्री हैदराबाद

[रेस्प डेन्ट]



Tr No 1101-10

महोदय

वकालतनामा

Mahmood Ahmad Khan
वादी (अपीलान्ट)

Union of India and others

प्रतिवादी (रेस्पाडेन्ट)

नं० मुकदमा W.P. No 4588 मत 1983 पेशी की तारीख 21-3-1988 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री C. A. Bashir Advocate

दख्तर वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लीटावें या हमारी ओर से डिगरी जारी करावे और रूपया बसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकदमा उठावें या कोई रूपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसौद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गयी वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ से खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय प्रर काम आवे।

..... neelam
हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन १९ ई०

स्वीकृत

Fee paid
C. A. Bashir
(19) 1988

Registrar Central
Administrative Tribunal
Allahabad

TA 1181/87
WP 4588/83 (2)
21/3/88

Subject - Writ petition No 4588 of Lucknow High Court.

inform you that I had been working as
maao Railway Station when the above Writ
in 1983 with Lucknow High Court. Now, I
at Allahabad and residing at 162, Rani Mandi.
It, is therefore, requested that any notice etc
in above Writ, petition is to be sent on the
address.

Yours faithfully
M. A. Khan

P.W.J.
162, Rani Mandi
Allahabad

27

To,

The Deputy Registrar,
Central Administrative Tribunal,
Circuit Branch,
Lucknow.

Scpl
OS

Sept

Ref: Registration 1181 of 1987 (E), Mahmood Ahmad Khan
Vs. Union of India and others.

Sir,

The above noted has been listed before the Court on 26-8-1988. I appeared on behalf of the respondents but I am indisposed and down with fever and as such I am not in a position to attend the Court. You are requested to kindly ~~not~~ fix some other date for filing the reply.

Thanking you,

Yours faithfully,


(ASHOK KUMAR SHUKLA)

RAILWAY ADVOCATE
21, Hamilton Road, George Town
Allahabad.

KOL
A
25/8/88

22/2/95
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
23-A, THORNHILL ROAD, ALLAHABAD-211001

7
FC (a)

No. CAT/Alld/

Dated 10/2

Transfer Application No. 1181 of 1908 (T)

Mohd. Ahmed Khan

APPLICANT(S)

Versus

Union of India & others

RESPONDENTS)

Mohd. Ahmed Khan, S/o Ismail
Abdul
Qo, Mahmood
Habib Khan, 162, Ram Mandi
Allahabad.

WHEREAS the marginally noted cases has
has been transferred by High Court under the
provision of the Administrative Tribunal 1 Act (No.13
of 1905) and registered in this Tribunal as above.

Writ petition 1538 of 1903 of the Court of High
Court arising out of order dated
passed by ir

If no appearance is
MADE ON YOUR behalf by
your some one duly auth-
orised to

and plead on your behalf, the matter will be heard
and decided in your absence.

Given under my hand seal of the Tribunal
this 10 day of February 1908.

Union of India through
General Manager Northern
Railway New Delhi
Divisional Railway Manager Northern Railway
Hazratganj Lucknow

DEPUTY REGISTRAR

व अदालत श्री माम, Central Administrative Tribunal
 वादी मुद्दा
 प्रतिवादी मुद्दालेहा का वकालतबामा

Mahmood Ahmad Khan वादी मुद्दा
 बागम
 Union of India as other प्रतिवादी मुद्दालेहा
 नं० १० मुकदमा ददा १९ पैशाँ फी ता० १९८१ अ-१९८७(ट)
 T. A. ८० १९ फी
 यह लिखो मुकदमा में अपनी ओर से श्री
 एडवोकेट

Sri Ashok Kumar Shukla, Advocate महोदय
 वकील

को क्या वकील बियर्त लें प्रतिवादा इकरार। करता हूँ। लिखें देता हूँ। इस
 मुकदमा में वकील महोदय संवय अदावा अद्य वकील द्वारा जो कुछ पैरवी व जवाब
 हेही व प्रश्न करेगा अन्य कोई फारज दाखिल करें या तौटा या हगारी और से
 डिग्री जारी करावें और रूपया वसूल करेगा सुलहबामा इक्कात दावा अपील व
 बिग्राही हमारी और से हमारें या अपने हस्ताक्षर से दाखिल करें और तसदीक
 करे या मुकदमा उठायें या कोट में जमा करें या हमारी या विपदा एवं किसी
 का दाखिल किया रूपया अपनें या हमारे हस्ताक्षर यक्ति। दस्तावेज से
 लेवाया पंच बियर्त करें वकील महोदय छवारा फी गई वह कार्यवाही हस्को सर्व
 दा सवीकार है और होमी मैं जी यह कहता हूँ। कि मैं हर पैशाँ संवय या
 किसी अपने प्राक्ति को जीता रहूँगा अगर मुकदमा अद्य पैरवी में एक तरफ
 में उत्तराक देखा हो जाता है उसकी जिम्मेदारी तेरी वकील पर न होगी।
 इसलिये यह वकालतबामा लिखा दिया कि प्रमाण रहे और समय पर फैस आवें।

दावी गवाह

दिल्ली महीना

Union of India through
 दस्तावेज़ अथवा दीप्ति विवरण
 अधिकारी विवरण
 बागम अद्यता
 नं० मुकदमा
 दाम एक बात

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
(ALLAHABAD BENCH)

25-A Thornhill Road, Allahabad-211001.

REGD.

10/CAT/ALD/29/20 to 4/9

Dated 11/11/1987

Transfer Application No.

11/11/1987 (T)

APPLICANT

PERSONS

RESPONDENT(S)

To,

WHEREAS the marginally noted case has been transferred
by _____ under the
provisions of the Administrative Tribunal Act (No.13 of 1985) and
registered in this Tribunal as above.

No. 11/11/1987 of 1987
of the Court of Mr. Justice _____
arising out of the order dated _____
passed by _____
The Tribunal has fixed the
date of 25/11/1987 for
the hearing of the matter. _____
If no appearance is made on your
behalf by yourself, your pleader
or by some one's duly authorised to
act and plead on your behalf,
the matter will be heard and decided in your absence.

Given under my hand and seal of the Tribunal on
the 11 day of 11/11/1987.

DEPUTY REGISTRAR.

To,
The Registrar,
Central Administrative Tribunal,
Allahabad.

Sir,

, Reg:Transfer of cases to Lucknow. TA 1101-87

Fixed for 26/4/87 for filing
Court

Respectfully, I beg to say that Writ Petition as per details given below was filed in High Court Allahabad, Lucknow Bench, the matter coming within the jurisdiction of Lucknow Bench of Central Administrative Tribunal.

It is prayed that the same may be transferred to the Lucknow Circuit Bench of the Tribunal for hearing and disposal.

1. Writ Petition No. 4588 of 1983 — 1181-87 (T)
2. Name of Parties: Petitioner Mahmood Ahmad Khan
Vs.
Opposite Parties Union of India and others

Thanking you for the same,

Yours faithfully,

O. A. Basu
Advocate
21/3/87

Post up with
file

21/103
Sri S. K. Srivastava to take
m-a-plea

921
3

To,
The Registrar,
Central Administrative Tribunal,
Allahabad.

Sir,

Ref:TA 1181-87

Writ Petition No.4588/83.
In re: Mohd. Ahmad Khan

Vs.

Union of India & Others.

In the above noted case, it is respectfully submitted as under:

1. That this case was fixed for 21.3.88 and on this date, under the instructions of the applicant, I put in appearance and filed my power.
2. That I moved an application for transfer of the case to Lucknow Bench of CAT as the Lucknow Bench of the Allahabad High Court had jurisdiction and had also admitted this petition.
3. That respondents having not filed their counter so far prayed for time to file counter and 26.4.88 is not fixed for filing of counter by respondents.

That as I am residing at Lucknow, the respondent may kindly directed to make over the counter to me by regd. post ~~xx~~ at the ~~areas~~ given below.

4. That I require 6 weeks time to file rejoinder after receipt of counter affidavit.

It is therefore prayed that:

- a. This case may be transferred to Lucknow Bench of CAT.
- b. That directions be issued to applicant to send a copy of counter affidavit at Lucknow address.
- c. That 6 weeks time be granted to me to file rejoinder affidavit.
- d. That due to Ramzan, it would not be possible for me to come to Allahabad on 26.4.88 and therefore transfer of the case to Lucknow may be ordered early.

Thanking you for the same,
Yours faithfully,

C. A. Basir
(C. A. Basir)
Advocate,
152, Ghasiari Mandi, Lucknow-1.

Dated: 8/4/88

139 to 192
ON THE CENTRAL ADMINISTRATIVE
CIRCUIT BENCH,
GANDHI BHAVAN, NEW DELHI

OK (CIV)
TRIBUNAL

new part/ceo

DATED

TA No. 1101 of 07 (T)

M. A - Khan

Applicant

vs.

D. o. 2. & 25 (NCL)

Respondent

to.

1. D. O. L.

2. D. R. M.

3. Dist. Subdt.

4. Ass'tt Engr.

WIP No 45201703

25/07/04

of the Trial Court, New

file Refd by

2/07/04

for

2

SL No 19

(C15)

Before Central Administrative Tribunal
व अदालत श्रीमान
Circuit Bench, Lucknow

महोदय

श्रीवादी अष्टिलान्त्र श्री

प्रतिवादी रेस्पान्डेन्ट

का बकायलनामा

Mahmood Ahmed Khan

वादी अपीलांट

बनाम

Union of India & others

प्रतिवादी रेस्पान्डेन्ट

T.A. मुकदमा सं 1181 दे 1987

उमर मुकदमा में अपनो और से श्री Arjun Bhanguava

Railway Advocate

एडवोकेट

महोदय

वकील

को अपना वकील नियुक्त करके इकरार करता हूँ और लिखे देता हूँ कि इस मुकदमे में वकील महोदय स्वंयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देती व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी और से डिगरी जारी करावें और र्यावे वसूल करें या दूलहनामा या इकबाल दावा तथा अपील व नियानी हमारी और से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्वीक करें या मुकदमा उठावें या कोई र्यावे जर्जा करे या हमारी विषयी प्रपरीक्षानी का दाखिल किया हुआ र्यावे या हमारे हस्ताक्षर युक्त दस्तखती रसीद से लेवे या पैच नियुक्त करें वकील महोदय द्वारा गई वड सब को धनाही हमले स्वीकार है और होगी इस लिये यह वकालतनामा लिख दिया कि द्वारा रहे और समय पर काम आये।

हस्ताक्षर

Union of India

Through the S. D. Peers and others
S. R. Bhanguava

साक्षी गवाह

दिनांक

महीना

सन् 1988

द्वं

Accptd

19

19/9/88

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.
T.A. NO. 1181/87 (L)

Mahmood Ahmad Khan ... Applicant.
Union of India & Others Versus
... Respondents.

09.10.1990

M.W.
Hon'ble # Justice K. Nath, V.C.

The judgement under review was passed on 17.5.90 and the respondents were given three month's time from the date of receipt of copy to comply with the directions. It is likely that the time may have expired and in the mean time final orders in compliance of the directions of this Tribunal may have passed.

A.L

Issue notice to both parties to indicate whether or not the compliance of this Tribunal's judgement dated 17.5.90 have been done by the respondents and put up for orders on 06.11.90 in Chambers.

Sd/

Sd/

--

V.C.

//TRUE COPY//

Sd/

Mohd. Umar Khan
(Mohd. Umar Khan)
Court Officer,
Central Administrative Tribunal,
Circuit Bench,
LUCKNOW.

checked

rsb

9/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

Gandhi Bhawan, Opp. Residency, Lucknow

No. OA/TA/ 5206-10.

dated the

11/10/90

Review No. 398/90(L)

Registration no. T.A. NO. 1181/87(L) of 1990

O/C
R

Mahmood Ahmad Khan

APPLICANT

VERSES

UNION OF INDIA & OTHERS

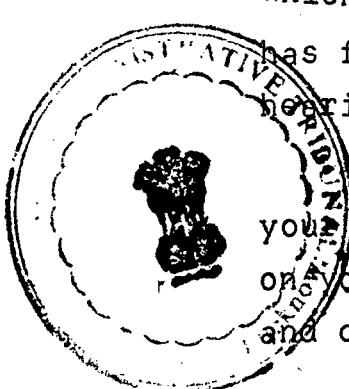
RESPONDENT

1. Mahmood Ahmad Khan, Permanent Way Inspector, Gondhar, RAI BAREILLY under N.RLY. & LUCKNOW, DIVISION.
2. UNION OF INDIA THROUGH GENERAL MANAGER N.RLY. NEW DELHI.
3. DIVISIONAL RLY. MANAGER N.RLY. HAZRATGANJ LUCKNOW.
4. DIVISIONAL SUPERINTENDING ENGINEER (II) N.RLY. HAZRATGANJ LUCKNOW.
5. ASSISTANT ENGINEER (II) N.RLY. HAZRATGANJ LUCKNOW.

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal, and the Tribunal has fixed 10 day of 11 1990 for the hearing of the said application.

If no appearance is made on your behalf by yourself your pleaser or by some on duty authorised to act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this day of 10 1990.


DEPUTY REGISTRAR

ENCL: COPY OF COURTS ORDER DATED 9-10-90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.
T.A.NO. 1181/87 (D)

Mahmood Ahamed Khan ... Applicant.
Union of India & Others Versus
... Respondents.

09.10.1990

Hon'ble # Justice K. Nath, V.C.

The judgement under review was passed on 17.5.90 and the respondents were given three month's time from the date of receipt of copy to comply with the directions. It is likely that the time may have expired and in the mean time final orders in compliance of the directions of this Tribunal may have passed.



dhk
Issue notice to both parties to indicate whether or not the compliance of this Tribunal's judgement dated 17.5.90 have been done by the respondents and put up for orders on 06.11.90 in Chambers.

Sd/

--

Sd/

V.C.

///TRUE COPY///

M.U.K/119c
(Mohd. Umar Khan
Court Officer,
Central Administrative Tribunal,
Circuit Bench,
LUCKNOW.)

checked
Sd/
5/10



केन्द्रीय प्रशासनिक अधिकरण
(इलाहाबाद न्यायपीठ)
इलाहाबाद

Insured Parcel for
Rs. 500/- (Rupees five
Hundred only)

Confidential

(C3)

CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH)

ALLAHABAD

No.CAT/Alld/Admn/Misc./33/91/

23-ए, थार्नहिल रोड
इलाहाबाद-२११००१

23-A, Thornhill Road
Allahabad-211001

Dated the January 29, 1991

To

Shri V.C.Vijaya Raghavan,
Deputy Registrar,
Central Administrative Tribunal,
Madras Bench,
5th Floor, TNTBS Building,
DPI Compound,
College Road,
Madras - 600 006

Sub : Forwarding of judgements in respect of
Review No. 398 of 1990(L) in TA No. 1181
of 1987(L) Mahmood Ahmad Khan Vs Union
of India and others. - reg.

Sir,

Please find enclosed copies of Judgements in
respect of Review No. 398 of 1990(L) in TA No. 1181/87(L)
(Mahmood Ahmad Khan vs Union of India and others).

2. It is requested that the Confidential Parcel
containing copies of judgements in the above related cases
may please be handed over to the Hon'ble Member, Shri
K.J.Raman for necessary action. The same may be returned
to the Hon'ble Vice-Chairman, Allahabad Bench after
doing the needful.

3. Its receipt may kindly be acknowledged.

Yours faithfully

Anurag Kumar
29/1/91
(ANURAG KUMAR)
Deputy Registrar
Tele No. 602741 (Office)

*ppm
RKM
V.K. Raman*
Encl : As above

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

Gandhi Bhawan, Opp. Residency, Lucknow

CC
No. OA/TA/

521^o

dated the 11.10.90

Review No. 300/90 (L)

Registration no. 32A NO. 1101/97(L) of 1990

APPLICANT

VERSES

RESPONDENT

1. Muhammad Ahmed Khan, Permanent Way Inspector, Gondaibazar, RAI BAREILLY under N.R.L.Y. & LUCKNOW, DIVISION.
2. UNION OF INDIA THROUGH GENERAL MANAGER N.R.L.Y. NEW DELHI.
3. DIVISIONAL M.L.Y. MANAGER N.R.L.Y. MARGATEBAGH LUCKNOW.
4. DIVISIONAL SUPERINTENDING ENGINEER (II) N.R.L.Y. MARGATEBAGH LUCKNOW.
ASSISTANT ENGINEER (II) N.R.L.Y. MARGATEBAGH LUCKNOW.

S.6.6

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal, and the Tribunal has fixed --- day of --- 1990 for the hearing of the said application.

If no appearance is made on your behalf by yourself your pleaser or by some one duly authorised to act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this day of 1990.

DEPUTY REGISTRAR

ENCL: COPY OF COURTESY ORDER DATED 9-10-90

Received on
29/10/90 at
1.10.90
29/10/90

SD/De
7/11/90
29.10.90

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.
T.A.NO. 1181/87 (T)

Mahmood Ahmed Khan ... Applicant.
Union of India & Others Versus
... Respondents.

09.10.1990

Hon'ble 2 Justice K. Nath, V.C.

The judgement under review was passed on 17.5.90 and the respondents were given three month's time from the date of receipt of copy to comply with the directions. It is likely that the time may have expired and in the mean time final orders in compliance of the directions of this Tribunal may have passed.

Issue notice to both parties to indicate whether or not the compliance of this Tribunal's judgement dated 17.5.90 have been done by the respondents and put up for orders on 06.11.90

In Chambers.

checked
sd/-
9/10

sd/-

-

sd/-

V.C.

11/TRUE COPY/1

10/9/10/90
(Mohd. Umar Khan)
Court Officer,
Central Administrative Tribunal,
Circuit Bench,
LUCKNOW.

sd/-

(CB)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Appln. No. 398 of 1990 (L)

In

Registration T.A. No. 1181 of 1987 (L)

(W.P. No. 4588 of 1983)

Mahmood Ahmad Khan Applicant

Versus

Union of India & Others Respondents

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. J. Raman, A.M.

(By Hon. Mr. Justice K. Nath, V.C.)

This is an application for review of our judgement dated 17.5.90 in the Transfer Application described above. In consequence of a departmental disciplinary enquiry, the applicant was awarded the punishment of a reduction to a lower stage of the time scale from Rs. 650/- to Rs. 550/- for 5 years with postponing of future increments but without affecting his seniority. The applicant filed an appeal, Annexure-8 to the T.A. against the punishment order and among the various grounds stated in para 4 that no witness in support of the charges stated anything against the applicant that 2 of the 3 witnesses have stated that the applicant was not guilty of negligence and the third witness was dropped by the Department so that it was a no evidence case. In para 5 read with para 7 of the grounds of appeal it was stated that the Inquiry Officer wrongly refused to summon a defence witness Kundan Lal. We quashed an earlier non-speaking appellate order dated 28.6.83 and instead of hearing and disposing of the T.A. on

(C7)

merits, considered it appropriate to direct the Appellate Authority to reconsider the appeal contained in Annexure-8. In paras 11 and 12 of the judgement we observed as follows :-

" 11. We do not consider it necessary to scrutinize the findings and orders of the disciplinary authority, because his findings and orders are fully open before the appellate authority having regard to the provisions of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. It is expected that the appellate authority will carefully examine the record of the enquiry file and consider the findings given by the disciplinary authority after due consideration of the points raised by the petitioner in the memo of appeal (Annexure-8) and will pass an order contained in the revision which is known as a "speaking order". This petition deserves to succeed in this light.

12. The petition is partly allowed and the appellate order dated 28.6.83 contained in Annexure-A9 is quashed. The competent appellate authority shall now consider the petitioner's memo of appeal dated 15.10.82 contained in Annexure-8 and bearing in mind the observations contained in the body of this judgement shall dispose of the appeal by a speaking order within a period of three months from the date of receipt of copy of this judgement."

2. It may be seen immediately that we decided not to scrutinize the finding and orders of the disciplinary authorities as after observing that the findings and orders being fully open before the appellate authority, it was expected that the appellate authority would

(CB)

carefully examine the record of the enquiry file, consider the findings, give due considerations to the points raised in the memo of appeal, Annexure-8 and will pass a speaking order. Direction was given to the appellate authority to dispose of the appeal bearing in mind the observations contained in the body of the judgement.

3. The Review Application was filed on 18.6.90 on the ground that since after the delivery of the judgement the applicant discovered important documentary evidence namely paras 101 and 102 of the Indian Railway Permanent Way Manual containing the duties of permanent Way Officials/Men and Assistant Engineers. It was further stated that Inquiry Officer had not summoned the necessary witnesses even though demanded by the applicant and that there being no evidence against the applicant, the findings of guilt could not be sustained.

4. While this Review Application was still pending, the Appellate Authority passed the order dated 9.11.90. We asked the appellant to file a copy of the appellate order. Accordingly, the applicant filed it on 22.11.90.

5. So far as the consideration of paras 101 and 102 of the Indian Railway Permanent Way Manual is concerned it cannot be said to be a new material; these are instructions which have been in existence since 1967. Ignorance of law is no excuse and therefore it cannot be said that it is a new material for the purposes of hearing of the T.A. Indeed, it does not constitute a documentary evidence concerning the subject matter of the T.A. So far as the question of summonning witness

(C)

or of the existence or non existence of evidence in proof of the charges is concerned, this Tribunal had expressly stated that it would not be considering the merits of the case and would be content only with a direction to the appellate authority to hear and dispose of the appeal. The existence of an alternative remedy qua an application under Section 19 of the Administrative Tribunals Act, 1985 has always been a relevant consideration and in a number of cases this Tribunal has been disposing of such applications only with a direction to exhaust the alternative remedy like a Departmental appeal against the order of punishment. It is in the discretion of the Tribunal whether or not to dispose of an application under Section 19 on the merits or only to direct the alternative remedy to be followed. The discretion had been exercised in the judgement under Review. It cannot be said that there any error apparent on the face of the record which could be remedies by a means of a Review Application.

6. Even so, we do notice that the appellate order mainly rests on the preliminary enquiry proceedings of a fact finding Committee; it had not even touched the question of there being evidence or there being no evidence in support of the charges or of the effect of the failure to summon defence witnesses like Kundan Lal. The question of calling the enquiry officer who had ordered removal of caution by order of 9.7.81 was not material because apart from the fact that the derailment

which is subject matter of the enquiry occurred one week later, the applicant has not taken any such case in his reply, Annexure-4 (to T.A.) to the chargesheet and has not stated that the Inquiry Officer was biased or was himself interested in / result of the enquiry. Nevertheless, the fact remains that the appellate authority has not examined the material points contained in the grounds of appeal. The learned counsel for the applicant has referred to the case of Kishore Kumar Rajak Versus Union of India & Others (1990) 30 ATC 36 where the Patna Bench of this Tribunal quashed the punishment order when the appellate authority did not comply with the directions of the Tribunal given in an earlier Original Application. The learned counsel says that in this situation, it would not be appropriate to direct the appellate authority to reconsider the matter. This contention seems to be outside the scope of the present Review Application and may be raised when a fresh application under Section 19 of the Administrative Tribunals Act, 1985 is filed. Indeed, the decision in the case of Kishore Kumar Rajak Versus Union of India and Others (supra) was rendered in a subsequent Original Application No.285 of 1988 after the appellate authority had failed to comply with the directions given by the Tribunal in the earlier O.A. No.384 of 1987.

7. It is regrettable that the appellate authority should not have appreciated the clear directions given in our judgement under review. When the statute and rules provide alternative remedies and the judicial authorities choose not to decide the petitions of grievance on merits but relegate the employee to the alternative remedy, the Tribunal believes that the

JK

(c)(i)

authority dealing with the alternative remedy would bestow its due consideration and thought to the matters in issue and render justice to the employee. If this hope of the Tribunal is shattered by orders of the authority dealing with alternative remedy in an unreasonable and improper manner, the whole purpose of the statute is frustrated. We feel that in view of the circumstances of the case, we might as well have decided the case in the Original Application on the merits instead of directing the appellate authority to rehear and decide the case which had earlier rejected the appeal by bald statement and non speaking order that the punishment imposed was reasonable and, there was no justification to reduce the same. However, the T.A. has been decided and we do not think that we would be acting in accordance with law if we direct the T.A. to be reopened under this Review Application. If the applicant chooses to file a fresh application under Section 19 of the Administrative Tribunals Act, he may request the Bench considering it for admission to dispose of the case expeditiously. So far as the present matters stand the Review Application is not capable of being accepted. With these observations, this Review Application is rejected.

Member (A)

Vice Chairman

Dated the _____ 1991.

RKM

(C12)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Appn.No.398 of 1990 (L)

In

Registration T.A.No.1181 of 1987 (L)
(W.P. No.4588 of 1983)

Mahmood Ahmad Khan Applicant

Versus

Union of India & Others Respondents

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K.J. Raman, A.M.

(By Hon. Mr. Justice K. Nath, V.C.)

This is an application for review of our judgement dated 17.5.90 in the Transfer Application described above. In consequence of a departmental disciplinary enquiry, the applicant was awarded the punishment of a reduction to a lower stage of the time scale from Rs.650/- to Rs.550/- for 5 years with postponing of future increments but without affecting his seniority. The applicant filed an appeal, Annexure-8 to the T.A. against the punishment order and among the various grounds stated in para 4 that no witness in support of the charges stated anything against the applicant that 2 of the 3 witnesses have stated that the applicant was not guilty of negligence and the third witness was dropped by the Department so that it was a no evidence case. In para 5 read with para 7 of the grounds of appeal it was stated that the Inquiry Officer wrongly refused to summon a defence witness Kundan Lal. We quashed an earlier non-speaking appellate order dated 28.6.83 and instead of hearing and disposing of the T.A. on

merits, considered it appropriate to direct the Appellate Authority to reconsider the appeal contained in Annexure-8. In paras 11 and 12 of the judgement we observed as follows :-

* 11. We do not consider it necessary to scrutinize the findings and orders of the disciplinary authority, because his findings and orders are fully open before the appellate authority having regard to the provisions of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. It is expected that the appellate authority will carefully examine the record of the enquiry file and consider the findings given by the disciplinary authority after due consideration of the points raised by the petitioner in the memo of appeal (Annexure-8) and will pass an order contained in the revision which is known as a "speaking order". This petition deserves to succeed in this light.

12. The petition is partly allowed and the appellate order dated 28.6.83 contained in Annexure-A9 is quashed. The competent appellate authority shall now consider the petitioner's memo of appeal dated 15.10.82 contained in Annexure-8 and bearing in mind the observations contained in the body of this judgement shall dispose of the appeal by a speaking order within a period of three months from the date of receipt of copy of this judgement.*

2. It may be seen immediately that we decided not to scrutinize the finding and orders of the disciplinary authorities, as after observing that the findings and orders being fully open before the appellate authority, it was expected that the appellate authority would

carefully examine the record of the enquiry file, consider the findings, give due considerations to the points raised in the memo of appeal, Annexure-8 and will pass a speaking order. Direction was given to the appellate authority to dispose of the appeal bearing in mind the observations contained in the body of the judgement.

3. The Review Application was filed on 18.6.90 on the ground that since after the delivery of the judgement the applicant discovered important documentary evidence namely paras 101 and 102 of the Indian Railway Permanent Way Manual containing the duties of permanent Way Officials/Men and Assistant Engineers. It was further stated that Inquiry Officer had not summoned the necessary witnesses even though demanded by the applicant and that there being no evidence against the applicant, the findings of guilt could not be sustained.

4. While this Review Application was still pending, the Appellate Authority passed the order dated 9.11.90. We asked the appellant to file a copy of the appellate order. Accordingly, the applicant filed it on 22.11.90.

5. So far as the consideration of paras 101 and 102 of the Indian Railway Permanent Way Manual is concerned it cannot be said to be a new material; these are instructions which have been in existence since 1967. Ignorance of law is no excuse and therefore it cannot be said that it is a new material for the purposes of hearing of the T.A. Indeed, it does not constitute a documentary evidence concerning the subject matter of the T.A. So far as the question of summonning witness

or of the existence or non existence of evidence in proof of the charges is concerned, this Tribunal had expressly stated that it would not be considering the merits of the case and would be content only with a direction to the appellate authority to hear and dispose of the appeal. The existence of an alternative remedy qua an application under Section 19 of the Administrative Tribunals Act, 1985 has always been a relevant consideration and in a number of cases this Tribunal has been disposing of such applications only with a direction to exhaust the alternative remedy like a Departmental appeal against the order of punishment. It is in the discretion of the Tribunal whether or not to dispose of an application under Section 19 on the merits or only to direct the alternative remedy to be followed. The discretion had been exercised in the judgement under Review. It cannot be said that there any error apparent on the face of the record which could be remedies by a means of a Review Application.

6. Even so, we do notice that the appellate order mainly rests on the preliminary enquiry proceedings of a fact finding Committee; it had not even touched the question of there being evidence or there being no evidence in support of the charges or of the effect of the failure to summon defence witnesses like Kundan Lal. The question of calling the enquiry officer who had ordered removal of caution by order of 9.7.81 was not material because apart from the fact that the derailment

which is subject matter of the enquiry occurred one week later, the applicant has not taken any such case in his reply, Annexure-4(to T.A.) to the chargesheet and has not stated that the Inquiry Officer was biased or was himself interested in the result of the enquiry. Nevertheless, the fact remains that the appellate authority has not examined the material points contained in the grounds of appeal. The learned counsel for the applicant has referred to the case of Kishore Kumar Rajak Versus Union of India & Others (1990) 30 ATC 36 where the Patna Bench of this Tribunal quashed the punishment order when the appellate authority did not comply with the directions of the Tribunal given in an earlier Original Application. The learned counsel says that in this situation, it would not be appropriate to direct the appellate authority to reconsider the matter. This contention seems to be outside the scope of the present Review Application and may be raised when a fresh application under Section 19 of the Administrative Tribunals Act, 1985 is filed. Indeed, the decision in the case of Kishore Kumar Rajak Versus Union of India and Others (supra) was rendered in a subsequent Original Application No.285 of 1988 after the appellate authority had failed to comply with the directions given by the Tribunal in the earlier O.A. No.384 of 1987.

7. It is regrettable that the appellate authority should not have appreciated the clear directions given in our judgement under review. When the statute and rules provide alternative remedies and the judicial authorities choose not to decide the petitions of grievance on merits but relegate the employee to the alternative remedy, the Tribunal believes that the

CR

- 6 -

authority dealing with the alternative remedy would bestow its due consideration and thought to the matters in issue and render justice to the employee. If this hope of the Tribunal is shattered by orders of the authority dealing with alternative remedy in an unreasonable and improper manner, the whole purpose of the statute is frustrated. We feel that in view of the circumstances of the case, we might as well have decided the case in the Original Application on the merits instead of directing the appellate authority to rehear and decide the case which had earlier rejected the appeal by bald statement and non speaking order that the punishment imposed was reasonable and there was no justification to reduce the same. However, the T.A. has been decided and we do not think that we would be acting in accordance with law if we direct the T.A. to be reopened under this Review Application. If the applicant chooses to file a fresh application under Section 19 of the Administrative Tribunals Act, he may request the Bench considering it for admission to dispose of the case expeditiously. So far as the present matters stand the Review Application is not capable of being accepted. With these observations, this Review Application is rejected.

Member (A)

Vice Chairman

Dated the 5th March 1991.

RKM

(31)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

Review Case No. 398 of 1990.

Mahmood Ahmad Khan

..Applicant

Versus

Union of India and Others

..Opposite Parties.

I N D E X

S.No.	Particulars	Page No.
1.	Review Petition	1 to 15 9
2.	Copy of impugned order of the Hon'ble CAT in the above case	10 to 14
3.	Power	

(C. A. Basir)

Counsel for the applicant.

Dated: 18/6/90

at Lucknow

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

(b2)

Review Case No. of 1990.

arising out of Case No. TA No. 1181 of 1987.

Mahmood Ahmad Khan ... Applicant

Versus

Union of India and Others ... Opposite Parties.

Application under Order 47, Rule I, CPC, read with
Section 22(3)(f) of Administrative Tribunal Act, 1985
for review of the judgement dated 17-5-90 passed in
TA Case No. 1181/87.

Judgement delivered on 17-5-90, copies
signed on 22-5-90 and received on 25-5-90.

Applicant begs to set forth grounds for
review as given in this application for favourable
orders. The impugned order is at Annexure I.

Details of the applicant:

Mahmood Ahmad Khan, aged about 47 years,
son of Shri Abdul Habib Khan, working as Permanent Way
Inspector, Oonchahar, Distt. Rai Bareilly, under N. Railway,
Lucknow Division.

Details of the Respondents:

Union of India through:

roelvan
m/s

(i) General Manager, N.Railway, New Delhi.

(ii) Divisional Railway Manager, N.Railway,
Hazratganj, Lucknow.

(iii) Divisional Rx~~xx~~ Superintending
Engineer (II), N.Railway, Hazratganj, Lucknow.

(iv) Assistant Engineer, NII), N.Railway,
Hazratganj, Lucknow.

1. That the applicant has on 25-5-90
discovered important documentary evidence which
could not be produced at the time the case was heard
and decided.

2. That this document is an extract of
Indian Railway Permanent Way Manual issued by
Govt. of India, Ministry of Railways, Railway Board,
1967/
New Delhi issued in 1984. It gives the duties of
permanent way officials/men and part A gives the
duties of Assistant Engineers. It states in para 101
that the Assistant Engineer is generally responsible
for the general maintenance and safety of all way
and works in his charge, for the accuracy, quality and
progress of new works and control over all
expenditure over budget allotment. (Annexure II)

Para 102 of this manual states the
duties of the Assistant Engineer regarding inspection
and maintenance of tracks and all structures in

Recd on
1/1/90

(BU)

satisfactory and safe condition, and some more duties.

Para 103 onwards defines about knowledge of rules and regulations and para 104 mentions about co-ordination of officers of the department, etc.

3. That this document pertains to the duty of permanent way officials/men also and provides in clear terms the duties assigned to the Assistant Engineer.

4. That this document would have altered the findings of the Hon'ble Court about the ~~in~~ acts of omission and commission of the Assistant Engineer who was the Enquiry Officer in this case and who flouted many of the statutory rules and instructions of the Railway Board in remaining as the Enquiry Officer despite written requisition from the applicant desiring to call him as witness in regard to his orders for removal of caution, etc. in the enquiry conducted by him in the matter of accident and he did not observe and follow the instructions of the Railway Board in this regard without assigning any reasons as he was the Assistant Engineer of the section and he was equally responsible for the maintenance and supervision of the track and he ordered for removal of caution to Shri Kundan Lal

retd an
W

PWI, Lucknow which must have been done after his satisfaction about the track being fit and thus it was a vital point to be brought on record which due to his illegal refusal in the enquiry proceedings and rejected without assigning any reason. Thus, the applicant was handicapped in examining Enquiry Officer and Shri Kundan Lal. (Annexure III)

4

5. That the Railway Board's instructions in this regard may kindly be perused at Annexure IV ~~III~~, which provide that it is obligatory to examine all witnesses produced by the delinquent Railway servant and it would not be correct to refuse examination of such witnesses on any account. (Annexure IV)

6. That the Railway Board, vide their letter dated 19-6-7 (S.No.6168) has notified that "although there is no provision for filing an appeal against the order appointing a person as Enquiry Officer, such an order could be reviewed under the said rules" and the Railway Board's decision in this regard is to the effect that whenever a delinquent Railway servant makes a request for the change of Enquiry Officer on the ground of bias, the departmental proceedings should be stayed and the application along with the relevant material should be forwarded to the appropriate reviewing authority for the

Deewan
LAW

necessary orders. (Annexure VI)

That the lack of action of submission of the applicant's request to the Disciplinary Authority by the Enquiry Officer - AEW - Opposite Party No.4, was thus a serious omission, error and irregularity apparent on the face of the record in flouting the Board's orders and in attempting to prove by hook and crook to shut/deny to the evidence desired by the applicant so as to fasten the guilt of the applicant. This omission is apparent on the face of the record and demonstrates patently prejudicial biased and illegal action of the Enquiry Officer, vide Annex. V

by

7. That the applicant thus reasonably apprehended that the Opposite Party No.4 was reasonably biased against him and thus the Enquiry Officer's act of omission and commission being manifestly against rules as borne out on the face of the record, the entire enquiry proceedings become vitiated. *This being a case of 'no evidence' no proof must ever be demanded.*

4

8. The rejection of calling defence witnesses in the enquiry by the Enquiry Officer i.e. Opposite Party No.4, without assigning any cogent reasons was again an act of serious omission as it amounts to denial of reasonable facility of putting forward adequate defence and thus it amounts to an

rebut

4

error of a serious nature, patent error on the face of the record and speaks loudly of the errors and omissions on the part of the Enquiry Officer and disregard of the instructions of the Railway Board to the effect that it is obligatory to examine ~~all~~ all the witnesses produced by the Railway servant and it would not be correct to refuse examination of such witnesses on any account, vide Annexure IV, 2 & 4

9. That there being no shortage of AEN's in Lucknow division, AEN's being about a dozen in the division, there would have been ~~appointed~~ as no difficulty if any other AEN would have been appointed as Enquiry Officer ^{but the reason is} not forwarding the application ^{by} to the Disciplinary Authority on the request of the applicant, ^{was} because he was interested to decide the case himself to avoid the possibility of any adverse inference against him.

10. That it is patently manifest that while these acts of omission and commission on the part of Opposite Party No.4 that the facilities regarding defence, summoning of defence witnesses and change of Enquiry Officer was negatived by the Enquiry Officer due to his biased and prejudicial action of the Enquiry Officer, vide Annex III & IV

reelman
4/

11. That the above grounds are based on statutes and statutory rules having the force of law and the error being patent, it does not require elaborate arguments.

12. That it has been held by the Hon'ble Allahabad High Court placing reliance on the Hon'ble Supreme Court's ruling that "when a delinquent officer reasonably apprehended that the Enquiry Officer was biased against him, the entire proceedings become vitiated." The Hon'ble Supreme Court having held that "every member of a Tribunal is called upon to try issues in judicial and quasi judicial proceedings must be able to act judicially and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases, the test is not whether in fact a bias has affected the judgement, the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

Thus, in this case, there is not only cryptic non-speaking order of both Disciplinary Authority and appellate authority displaying non

real on
W

(B9)

applications of mind, but denial of reasonable facility in leading evidence in producing defence witnesses, in summoning witnesses and wrong actions of the Enquiry Officer ~~if~~ regarding continuing as Enquiry Officer despite protests. In a similar case, the Hon'ble Supreme Court in re - Kashinath Dikshita Versus Union of India and Others - decided on 15-5-86, i.e. after the case of Ram Chander Versus Union of India and Others relied upon by the Hon'ble Tribunal in this case that ~~the~~ ⁱⁿ case of failure to supply statements of witnesses, etc., here also documents and some relied upon documents and statements of witnesses were not given despite demand, where the order was upheld even by the High Court but the Hon'ble Supreme Court, was pleased to allow the appeal on the ground for denial of reasonable opportunity to the delinquent employee and therefore, the order was declared to be null and void. The Hon'ble Supreme Court further ordered that taking into account the facts and circumstances of the case and the time which has elapsed ~~xxxxxx~~ we are of the opinion that the State Government should not be permitted to hold a fresh enquiry against the appellant against the charge in question. Here also, more than 9 years have passed and the errors and commissions being patently wrong, the applicant merited success.

Anil Chauhan
4/1

(b10)

13. That the Annexures filed are true copies and have been duly compared.

Thus, taking into view the errors and commissions apparent on the face of the record, the Hon'ble Court may be pleased to allow the Review Petition.

Naehan
Applicant

Dated: 10/6/50

VERIFICATION

I, Mahmood Ahmad Khan, son of Shri Abdul Habib Khan, aged about 47 years, working as P.I. Oonchahar, Distt. Rai Bareilly (N. Railway) do hereby verify that the contents of paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Dated: 10/6/50

Naehan
Applicant.

Annex I

(B11)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,

CIRCUIT BENCH

LUCKNOW.

T.A. 1181/87

(Writ Petition No. 4588/83 of the High Court of
Judicature at Allahabad, Lucknow Bench)

Mahmood Ahmad Khan

..Petitioner

versus

Union of India & others

..Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. J. Ramam. Adm. Member.

(Hon. MR. Justice K. Nath, V.C.)

The above described Writ Petition has come on transfer to this Tribunal under section 29(1) of the Administrative Tribunals Act, 1985 for quashing the orders of punishment awarded to the petitioner by Annexure -7, dated 15.10.82 and confirmed vide ^{appellate order} Annexure -9 dated 28.6.1983.

2. The petitioner was working as Permanent Way Inspector (P.W.I.) in Unnao, when, in the early hours of, 16.7.1981, 6 wagons of Goods Train got derailed between down home and neuting home signals near Lucknow Railway Station, after the train had left Amausi. The track was in charge of the petitioner. A preliminary enquiry committee consisting of Senior D.S.O., Senior D.M.E. and D.S.E. II was constituted. On the basis of the major opinion, the petitioner was charge-sheeted by Annexure-2 dated 7.9.81 in which it was stated that the petitioner, in his capacity as P.W.I. had failed to maintain the track satisfactorily



-2-

in
and/safe condition, on account of which the derailment
was caused.

3. A list of documents and the names of witnesses were indicated in the charge sheet. By letter dated 17.9.81 (Annexure 3), the petitioner requested for supply of certain documents to the A.E.N. II who was Enquiry Officer. None of the papers in Annexure -3, however, refers to the papers mentioned in the charge sheet.

4. On 5.3.1982 the petitioner filed a reply vide Annexure A-4. He also applied vide Annexure -6 for calling of certain witnesses in defence, namely Shri Kundan Lal, Guard of the Goods Train, Porter and A.S.M. on duty on Railway Station Sonik.

5. Evidence having been recorded and representation having been dealt with, the Enquiry Officer submitted his report stating that the charge levelled against the petitioner was proved. Annexure 6-A to the petition only contains extracts of the report and the findings, not a complete document.

6. The disciplinary authority, namely the D.S.E. II stated in his order dated 15.10.82 (Annexure 7) that he agreed with the findings of the Enquiry Officer and held the charge to be proved, and did not find the representation of the petitioner in reply to the charge sheet to be satisfactory.

7. Annexure 8 dated 15.10.82 (it is rather strange that both the punishment order and the memo of appeal are of the same date) is the memo of appeal which raises a large number of points. Annexure 9 is the appellate order.



dated 28.6.83 by the A.D.R.M., the appellate authority and runs as follows:

"Having gone through the relevant documents of this case, I find that the punishment imposed is reasonable and that there is no justification to reduce the same".

8. The impugned orders of punishment and the appellate order of confirmation thereof have been challenged on several grounds in this petition. It is stated that documents and statements of witnesses named in the charge sheet were not furnished to the petitioner; that the Enquiry Officer, who was A.E.N., had himself given the order of removal/ caution on 9.7.81 which would not have been done if the track was not in order and therefore the Enquiry Officer was a person himself involved in the subject matter of the charge; the defence witnesses named above were improperly refused to be summoned; that this is a case of 'no evidence' and that both the disciplinary authority and the appellate authority have not applied their minds to the record and have passed non-speaking orders, which, therefore, are illegal.

9. In the counter affidavit, answers to each of these points have been given. Thus, it is pointed out that the only document which the petitioner wanted to see by Ann. -3- was certain read/ings of track parameters and detail^{ed} of site plan which were not included in the charge sheet; that the Enquiry Officer had recorded proper reasons for refusing to summon the defence witnesses having regard to the petitioner's own admission during the course of the enquiry; that there was evidence on the record to sustain the charge and that the disciplinary authority, as well as the appellate authority had applied their mind to the matter on record.

10. We have heard the learned counsel for the parties and have gone through the papers contained in the Paper



Book. We are clearly of the opinion that the appellate order contained in Annexure 9 suffers from the vice of being a non-speaking order. Shri Arjun Bhargava, appearing for the respondents relied upon the remark that the appellate authority had gone through the relevant documents and of the case and says that there was an application of mind. In the first place, such a bald statement without advertizing to any of the grounds taken in the memo of appeal (Annexure 8) would not satisfy the requirements of "recording reasons". In the second place, there is not a word in appellate order either about the memo of appeal of the petitioner or about the findings of guilt. The appellate authority has mentioned that the matter contained in the disciplinary enquiry file justified the finding that the charges were proved. The learned counsel for the petitioner has correctly relied upon the case of Ram Chander vs. Union of India (1986(2) SLR, 608) where the Hon' Supreme Court have laid down the law in clear terms that an appellate or disciplinary authority must record reasons in the form of a speaking order.

11. We do not consider it necessary to scrutinise the findings and orders of the disciplinary authority, because his findings and orders are fully open before the appellate authority having regard to the provisions of Rule 22 of the Railway Servants(Discipline & Appeal)Rules, 1968. It is expected that the appellate authority will carefully examine the record of the enquiry file and consider the findings given by the disciplinary authority after the consideration of the points raised by the petitioner in the memo of appeal (Annexure 8) and will pass an order contained in the revision which is known as "speaking order". This petitioner deserves to succeed in this light.



(BIS)

-5-

12. The petition is partly allowed and the appellate order dated 28.6.83 contained in Annexure A-9 is quashed. The competent appellate authority shall now consider the petitioner's memo of appeal dated 15.10.82 contained in Annexure 8 and bearing in mind the observations contained in the body of this judgment shall dispose of the appeal by a speaking order within a period of three months from the date of receipt of copy of this judgment.



(ADM. MEMBER)

(VICE CHAIRMAN)

Lucknow Dated: May 17, 1990.

C.T.C.

Attested
Temporary COPY

Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

(B16)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

Review Case No. of 1990.

Mahmood Ahmad Khan ..Applicant

Versus

Union of India and Others ..Opposite Parties.

P A P E R B O O K

S.No.	Particulars	Page No.
-------	-------------	----------

1.	Review Petition	1 to 9
2.	Copy of impugned order of the Hon'ble CAT in the above case	10 to 14
3.	<u>Annexure II:</u> Extracts of Indian Railways Permanent Way Manual, defining the duties of permanent way officials/men - duties of Assistant Engineer	15 to 17
4.	<u>Annexure III:</u> Statement of the applicant in connection with the derailment.	18
5.	<u>Annexure IV:</u> Extract from Rly. Board's letter dtd. 2-5-70, regarding examination of witnesses.	19
6.	<u>Annexure V:</u> Application of applicant for calling defence witnesses.	20
7.	<u>Annexure VI:</u> Extract from Rly. Board's letter dtd. 19-6-7 , regarding change of Enquiry Officer.	21

(C. A. Basir)

Counsel for the applicant.

Dated: 18/6/79
at Lucknow.

Extracts of Indian Railways Permanent Way
Manual - issued by Government of India, Ministry
of Railways, Railway Board, New Delhi.

DUTIES OF PERMANENT WAY OFFICIALS/MEN.

PART 'A'

Duties of Assistant Engineer.

101. General - The Assistant Engineer is generally responsible for the maintainence and safety of all way and works in his charge, for the accuracy, quality and progress of new works and control over all expenditure in relation to budget allotment.

102. Essential Duties of Assistant Engineer. - The duties of the Assistant Engineer are detailed in various chapters of the Indian Railways Permanent Way Manual, the Indian Railway Works Manual and the Indian Railway Bridge Manual, the most essential being -

- (1) Inspection and maintenance of track and all structures in a satisfactory and safe condition;
- (2) Preparation of plans and estimates; execution and measurement of works including track works;
- (3) Verification of stores held by stock-holders;
- (4) Submission of proposals for inclusion in the track renewal programme, revenue budget and the works programme.

103. Knowledge and of Rules and Regulations:

He shall observe the rules and procedures laid

Dealt
by

B18

in the General and subsidiary Rules, The Indian Railways Permanent Way Manual, the Indian Railway Works Manual, The Indian Railway Bridge Manual, the Engineering Code and other departmental codes and orders and circulars issued from time to time relating to his duties. He shall ensure that all the staff under him are acquainted with the relevant rules and working methods connected with their duties and that they perform their allotted duties.

104. Co-ordination with Officials of other Departments. -

He should cooperate effectively with officers and staff of other departments in matters that warrant co-ordination.

105. Inspection by Higher Officials - (1). When the Assistant Engineer has to accompany a periodical or special inspection such as that of the Territorial Heads of Departments, the Chief Engineer, the General Manager, the Commissioner of Railway Safety or any Officer of the Railway Board, he should have with him the undermentioned drawings and registers for reference as required -

- (a) Permanent Way diagrams of the section and of station yards.
- (b) Index Plans and Sections
- (c) The bridge inspection register
- (d) Plans and current files of important works recently completed, on hand and proposed.

✓ 100

(B)F

(e) Progress reports on works, and any other papers and plans that are likely to be required for discussion.

(f) Working time table.

(g) Inspection notes of higher officers and compliance reports.

(2) All Inspection notes should receive prompt attention within a reasonable time.

106. Inspection by Assistant Engineer. - The Assistant Engineer shall conduct inspection in his jurisdiction as per the Schedules laid down by the Administration from time to time. He should maintain the records of the results of his inspection and ensure compliance of the instructions within a reasonable time. He should submit to the Divisional Engineer copies of the inspection diagram at the end of every month indicating the inspections carried out during the month.

✓ neelam

6/

Statement of Dr. S. S. T. (Ex-Officer) (in connection with derailment of 334 S.W. Goods Train at Nimbard Cabin on 16.7.1981.

I maintain defence Statement written by me on technical aspects and re-assert that the accident did not take place due to bad maintenance as alleged in the charge. I however add that non-provision of an opportunity to cross examine all prosecution witnesses and to adduce evidence in my self defence is likely to prejudice interest of my self defence adversely. The learned E.O is himself a witness whom I would like to cross examine in connection with the reasons of removing caution from the concerned area through Sri Kundan Lal P.W.D. I.K.O in case he was not fully convinced about the safety and proper maintenance of the track. As such the learned Enquiry Officer should invariably part with the function of Enquiry Officer. In any case I may be permitted to emphasize that before arriving at a reasonable conclusion examination of the following witnesses is also essential because there is likely hood of detachment of a shot axle wagon and coupling of the wagon thereafter at Sonik ^{which} is also likely to have contributed substantially in the alleged accident.

1. Guard of 334 SW
2. Porter on duty at Sonik
3. A.S.M. on duty at Sonik
4. Sri Kundan Lal P.W.D. I.K.O

I therefore again deny the charges contained in SF 5 and clarify that the accident did not take place on account of improper maintenance of the track and that it has taken place due to mechanical defects, the condition of the load and heavy bumping due to sudden application of brakes from the side of the train engine. I have nothing further to add and close my statement on my accord.

17/07/82 Am 00
Enquiry Report 21.7.82
Sect. 1
M.A. Khan
Defence Helper
P.W.D./ON

B.S.L.
Defence Helper

M.A. Khan
P.W.D./ON

Anna P/IV

(B2)

19

It is obligatory to examine all the witnesses produced by the delinquent Railway servant and it would not be correct to refuse examination of such witnesses on any account. (R.B.'s No.E(D & A)70 RG

6-5 of 2-5-70) (N.R., S.No.5017)

Verdict
not given
in

Anna 2

b

卷之三

THE NORTHUMBERLAND RAILWAY
11.10.1845. 11.10.1845.

LR 021/6/82

The Enquiry Officer
(A.B.N.-D.)

L. Nelson

Reg:- Defense Witness

big

I require 8/8m

Kundalal PWS - Lko

and got 334 don't 16/7/81

bound: as my defence witnesses
will copy in this enquiry. They
may please be called
on the next date
as soon as possible.

Although there is no provision in the D & A Rules for filing an appeal against the order appointing a person as an inquiry officer, such an order could be reviewed under the said rules. Accordingly, it has been decided by the Railway Board, that when ever a delinquent Railway servant makes a request for the charge of Enquiry Officer on the ~~xx~~ ground of bias the departmental proceedings should be stayed and the application along with other relevant material forwarded to the appropriate reviewing authority for necessary orders. (R. B. 's No. E(D & A)70 RG-6-14 (1) of 19-6-7- (S. No. 6168)

sent to the
Chairman
Central
Committee
✓
by
6/

(B24)

In the Central Administrative Tribunal, Circuit Bench
Lucknow.

O.A. No. TA - 5206-1181/87(H)

Review No. 398/90(L)

Mahmood Ahmad Khan ... Applicant

Versus
Union of India and others ... Respondents

Fixed for 26.11.1990

Objection to the decision of Divisional Railway
Manager, Appellate Authority.

In the above noted case, the applicant
respectfully submits as under :-

1. That in reference to your Lordship's order dated 9.10.1990 regarding compliance or otherwise of Your Lordship's order dated 17.5.1990 by opposite parties, it is submitted that opposite parties did not comply with these orders in 3 months time and did not seek any extension also. However, disposal of appeal was done by opposite party no.2 by his order dated 9.11.1990, received on 18.11.1990, that is after about six months (vide Annexure RR-1).

.....2

neelam

W

--2--

2. That as the order of the Hon'ble Court and the directions contained therein were time bound and period of 3 months expired after 3 months, without any extension being taken or any explanation for delay or prayer for extension, legally the order of quashing the order imposing punishment stands final and confirmed and so the punishment stands quashed and stood valid no more, after 3 months.

Applicant has filed Contempt application which is number as 12 of 1990, fixed for 14.1.1991 for admission, for non-compliance of the orders of Hon'ble Court dated 17.5.1990.

3. That in regard to the order of Divisional Railway Manager dated 9.11.1990 it is submitted :-

(a) In this case the appellate authority was A.D.R.M. and the appellate order dated 9.11.90 has been passed by D.R.M., higher authority. It is totally false and incorrect that Mr. Chattha, the then D.R.M., rejected the applicant's appeal of imposition of punishment which is borne out from Annex. (IX) of the Application.

(b) That judgement of the Hon'ble Court on the application under review indicates in paras 3 and 4 and 8 which were the objections raised by applicant that those were to be looked into and also the petition's memo of appeal dated 13.10.1982 (Annex.8) of application and then a speaking order be passed.

.....3

retd on

4/1

(c) That the order passed now is in clear breach of these orders and the statutory rules Rules of D.A.R. and rulings of the High Court and Supreme Court. Applicant in his appeal had stated that (Annex.8, page 50) appellate authority has not said a word that out of 3 prosecution witnesses, 2 attended and they could not substantiate the charge, the 3rd was given up (para 7 of the findings page 49A). Thus nothing has been proved and this is a case of no evidence. D.R.M. has ignored this altogether. E.O. further adds that prosecution supported applicant's case that track was in sound condition and derailment was due to some other reason (Para 7, page 49A) of petition. Thus despite vehement protest by appellant and this is a case of no evidence, not a whisper is on record from D.R.M.

(d) That applicant has vehemently pressed for calling his defence witnesses (Annex.5 of Review) and statutory rules framed by Railway say (Annexure IV) that it is obligatory to examine all the witnesses produced by delinquent Railway servant and it would not be correct to refuse examination of such witnesses on any account. Thus there was denial of reasonable facility to defend and breach of statutory rules.

4. (i) That statutory rules 'Brochure of Railway Servants (D & A Rules) 1968 provide in

para 22(2) that in case an appeal against an order imposing any of the penalties specified in Rule 6, the appellate authority shall consider whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.

(ii) Whether the finding of the disciplinary authority are warranted by the evidence on record.

(iii) Whether the penalty or the enhanced penalty imposed is adequate, inadequate.

(iv) The order of the Divisional Railway Manager, the appellate authority, and the Assistant Divisional Railway Manager, the appellate authority, are in total breach of these statutory rules.

5. (a) That the appellate authority has again ignored, despite Hon'ble Court's orders, the points raised by appellant with regard to (a) Change of Enquiry Officer (b) non-production of defence witnesses (c) reliance on external matters not on record in the enquiry proceedings.

(b) Applicant had desired, vide Annexure 8 page 50 to 61, to change Enquiry Officer (page 60, para C) of the appeal to the Asstt. Divisional Railway Manager. Enquiry Officer

Was Sectional A.E.N. who was equally responsible for maintenance of track and it was he who ordered removal of caution through Shri Kundan Lal. Applicant requested that he would like to examine him and Shri Kundan Lal because caution is removed with track is safe. He asked him to get orders for change, which he failed to do. Thus he committed breach of Railway Board's orders vide Annexure 6 of the Review Petition. Hon'ble Calcutta High Court have held in 1986(2) SLR 303 "Article 311, Railway servants D.A. Rules, 1968 - Enquiry Officer ~~shutting~~ ^{by} ~~not~~ - the participation of delinquent employee at the time of examination of witnesses, documents part of charge sheet not supplied - Request to the appropriate review for change of Enquiry Officer in accordance with Railway Board letter No.E(B & F)70-RI-614(1) dated 19.6.1974 - Request turned down with one line order as 'no change of Enquiry Officer at this stage' - enquiry vitiated as a result of bias of Enquiry Officer. It is also violative of principles of natural justice".

Regarding the appointment of Enquiry Officer, and its illegality, 1975 Service Law Case 175 may kindly be perused.

(c) That the Divisional Railway Manager has ignored to observe the points duly raised in the Memorandum of Appeal on merits of the

--6--

case vide para VIII, page 55, Annexure 8 of the application which indicates non-application of mind, not passing an speaking order and ignoring the breach of statutory rules committed by the Enquiry Officer.

(d) That basic principle which is universally accepted is that a person trying a cause even in quasi-judicial capacity must be able to act above suspicion and unfairness.

In AIR 1956 Cal. 278 - Asutosh Das Vs. State of West Bengal, it was held that in a departmental enquiry the Enquiry Officer cannot rely on his own evidence. An Enquiry Officer cannot be a judge and witness.

In East India Electric Company Vs. S. C. Datta Gupta, 59 CWN, ¹⁶² it has been held 'Authority dealing with a disciplinary case should be one who has not already prejudged the issue".

In 1986(2) SLR 620 S.C. - Kashi Nath Dikshit Vs. Union of India and others, it has been held - Constitution of India, Article 361(2)

.....?

naelan

(G)

--7--

Reasonable opportunity - Refusal to supply copy of Statements of witnesses recorded during preliminary inquiry and list of documents mentioned in the charge sheet despite specific request amounts to denial of reasonable facility" - order of punishment was quashed.

In view of above mentioned submissions, it is prayed that the Hon'ble Court may be pleased to allow Review Petition and quash the punishment imposed.

Lucknow: Dated Applicant
November 21, 1990.

Verification

I, M.A. Khan, the applicant, do hereby verify that the contents of para 1 to 5 of objections are true to my knowledge and the pleas relating to legal matters are believed to be true on legal advise.

Dated Lucknow:
November 21, 1990.

rehan
Applicant

Applicant
M

(b3)

NORTHERN RAILWAY

No.TG-8/B-4/9-81-RB

Divisional Office,

Lucknow.Dt.9-11-90.

Shri M.A.Khan,
PWI/N.Rly.,
now posted UNCHAHAR

Sub: Your memo of appeal dated 19-11-1982 - Preferred
against the Punishment Notice No.TG-8/B-4/9-81
dated 15-10-1982.

The Divl.Rly.Manager, the appellate authority as
per directions of the HonTribunal in Case No.1181/1987
Central Adm.Tribunal, Lucknow considered your appeal
M.A.Khan Vs.Union of India and passed the orders
reproduced below:

Shri M.A.Khan, PWI was awarded a penalty of reduction
from the stage of Rs.650 to the stage of Rs.550/- (minimum)
in the scale of Rs.550-750(Rs) for a period of 5 years
from the date of the order with postponing future increments
but without affecting his seniority.This punishment had
been awarded to him in connection with the dreailment of
334 Dn Goods at Alambagh Cabin on 16.7.81 at 4.10 hrs.His
appeal was rejected by the then DRM(Sh.H.S.Chatta)
indicating that after going through the relevant
documents of the case he found that the punishment was
justified and there was no justification to reduce the same.

Sh.Khan filed a suit and vide the Judgement of
the Central Administrative Tribunal, directions have been
given that the Appellate Authority should reconsider the
various points raised by the Petitioner in his Memo of
Appeal and pass as speaking orders.

I have gone through the Case and also the Appeal
of the Applicant placed at SN 94/1 and observe as under:

The Enquiry Committee consisting of Sr.DME,Sr.DSO
and DSE(II) gave their findings wherein a Dissent Note
was attached by the DSE(II).Finally, the then DRM/LKO agreed

OPV

with the Majority findings but also included the Wagon defect as a Contributory cause in addition to Track defects

On going through the proceedings of the Enquiry Committee, I find that the condition of Track was not satisfactory as has already been brought out therein and, therefore, the Track and the Wagon defects both contributed to the Accident.

Accident Enquiries are generally held by Senior Officers and once the enquiries are completed and DAR enquiries are held, the nomination of officers even at the lower levels is done.

One member of the Enquiry Committee i.e. DSE (II) Officer of Engg. Deptt discharged with the Majority findings and gave a dissent note. The matter was finally decided by the then DRM who said that in addition to the Track defects as accepted in the Majority findings, the wagon defects had also contributed towards the accident.

All the concerned officers are Senior Railway Officers and in the Enquiry Committee no differentiation is made about the Departmental background of the officers.

As has already been mentioned, the Track reading and its condition as brought out in the Enquiry Committee do indicate that the condition of the Track was not satisfactory.

The various calculations given by Sh. M. A. Khan to defend himself do not hold ground as the derailment had occurred and the Track and the Wagon defects were found responsible for causing the derailment.

In view of the above, I find no justification to reduce the punishment imposed on Sh. Khan. He be replied accordingly. Accordingly, your appeal dated 19.11.82 is dismissed.

Sd/-

DEN/HG
N.Rly./Lucknow.

c/-

The Chief Law Asstt. Legal Cell, N.Rly. DRM Office, Lucknow for information.

Sh. Arjun Bhargav, Rly. Advocate, 223/1, Fizabad Road, Lko. for information.

sent to Lko
your copy

Sh. Arjun
Advocate

ANNEXURE - A

CAT

CENTRAL ADMINISTRATIVE TRIBUNAL
 Circuit Bench, Lucknow
 Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE 403 of 1987 (T)
 W.P. 3022/79

NAME OF THE PARTIES

S. C. Sharma

Applicant

Versus

U.O.I.

Respondent

Part A, B & C

Sl. No.	Description of documents	PAGE
A file -	Order sheet	A 4 to A-4
2	Writ Petition -	A-5 to A-24
3	Affidavit	A-25 to A-26
4	Annexure	A-27 to A-52
5	Power -	A-51
6	Application	A-52 to A-82
7	Counter Affidavit	A-84 to A-92
B file	Writ Petition	A-93 to B-116
8	Affidavit -	B-117 to B-118
9	Annexure -	B-119 to B-143 to B-164
10	Amended copy	B-165 to B-187
C file	Writ Petition	C-188 to C-203
12	Affidavit -	C-204 to C-205
13	Affidavit -	C-206 to C-229
14	Annexure -	C-230 to C-237
15	Application	C-238 to C-245
16	Application for Amendment	C-246 to C-258
17	Counter Affidavit	

Court find that no further action is required to taken and that the case is fit for being sent to the record room (D)

Re Checked
01/01/2012

Q. J.
S. (S)

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

FORM OF INDEX

~~D.A./T.A./B.A./C.C.P.I~~ No. 4-3-1987

S.C. Sharma, V.O.O.J
P A R T - I

1.	Index Papers	:- 1 to 4
2.	Order Sheet	:- 5 to 16
3.	Any other orders	:- 17
4.	Judgement	:- 18 (5.12.89) D.F.D (CONTINUED)
5.	S.L.P.	:-

23/12/98
D.Y. Registrat

20/12/98
Supervising Officer

20/12/98
Dealing Clerk

Note :- If any original document is on record - Details.

Nil

20/12/98
Dealing Clerk

V.K. Mishra

GENERAL INDEX

(3)

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case Wt. No. 30.82.70

Name of parties Subro. Chandra Sham. vs. Union of India

Date of institution 5-11-79. Date of decision

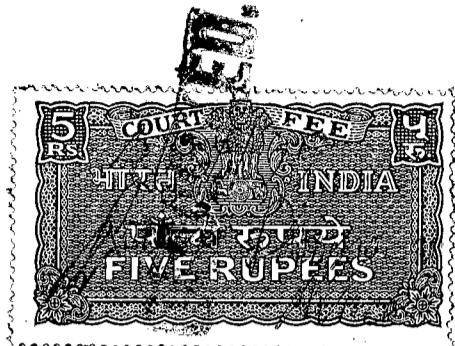
File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs. P.			
1.	W.P. with affidavit and Answer		48		102-00			
2.	Power		1-		5-00			
3.	C.M. 6893 (W) of 79 for 84		2-		5-00			
4.	C.M. 5454 (W) of 80 for Answer		9-		7-00			
5.	Amended Copy		20-		- - -			
6.	Memo -		1-		- - -			
7.	order Sheet		2-		- - -			
8.	Bened copy		1-		- - -			

I have this day of 197 examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Date.....

Munsarim.

Clerk.



3
14/11/79
15/11/79

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

6893
Civil Misc. (Stay) Application No. of 1979

(Under Section 151 of Civil Procedure Code)
on behalf of

Subhash Chandra Sharma - - - - - Applicant

in

Civil Misc. Writ Petition No. 3082 of 1979
(District Lucknow)

1. Subhash Chandra Sharma s/o Late Hukam Chandra
Sharma, r/o 512/404 3rd Lane, Nishatganj, Lucknow.
- - - - - Petitioner

Versus

1. Union of India
Chairman
2. ~~Chairman~~, Central Board of Direct Taxes, New Delhi
3. Commissioner of Incometax (Cadre Controlling
Authority) Allahabad / Lucknow
4. C.D.Shukla, stenographer (selection grade) aged
35 years s/o Prabhu Dayal c/o Office of the
Inspecting Asstt. Commissioner of Incometax,
Allahabad
5. Har Saran Lal aged 27 years s/o Babu Ram c/o
Office of the Appellate Assistant Commissioner of
Incometax, Moradabad.
6. K.C.Nandi, Steno, Office of the Chief Commandant,
Manu Group of Transit Centres, (Department of
Rehabilitation), Manu Camp, Raipur, M.P.

- - - - - Respondents

Sharm