

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

INDEX SHEET

CAUSE TITLE *TA 1507/82* *C.W. No 324/83* OF

NAME OF THE PARTIES *Mirnedha Prasad Srivastava*

.....Applicant

Versus

Union of India Ministers

.....Respondent

Part A, B & C

Sl. No.	Description of documents	Page
1	Index sheet	A1 to A2
2	Order sheet	A3 to A6
3	Judgement <i>Pathology</i> dt. 19-10-92	A7 to A15
4	Set. wait Petition	A16 to A30
5	Affidavit/Answer	A31 to A53
6	Index	A56 to A57
7	Answer to Affidavit	A58 to A116
8	H.C. Notices	A117 to A119
9	Rejoinder Affidavit	A120 to A149
10	Power	A150 to A
11		
12		
13		

CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Proceeded out

Dated 07-2-12

B/C destroyed on 9-5-12.

Counter Signed.....

Section Officer / In charge

on
Signature of the
Dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Lucknow-BENCH
Lucknow

CAUSE TITLE O.A.
T. A.

1507 / 82

OF

199

(L)

(T)

Name of parties..... A.P. W.P. (M) 324/84 Sri. V. A. S. V. A. Applicant's.

VERSUS
Union of India..... U.O. I. & others Respondents.

Sl. No.	Particular of Documents	No. of page
<u>Part - A</u>		
	Check list..... to.
	Order Sheet.....	A- A1..... to. A3
	Final Judgment Dated: 19.10.92 (Photo. A&B4) Original by TAN 1185/87	A4 to. A12
	Petition copy with power.....	A13 to. A30 & A54-A55
	Annexure.....	A31 to. A53
	Counter with power.....	A56 to. A79
	Rejoinder with Annexure.....	A80 to. A149
	Supplementary counter	
	Supplementary Rejoinder	

Part - B

B150 — B252

Part - C

One copy / C253 - C254
30/12/2011

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

A

AM

.....No. 77-1507 of 1987

.....Vs.....

Sl. No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
3-5/07		<p><u>Per</u></p> <p>No order sheet has been maintained stating whether as to when this case was heard by Court and whether the notice have been issued or not.</p> <p>Per before court on 6/7/07 as already advised in connected case TA No</p> <p>TA 1165-07</p>	
20/12/88		<p>No sitting, Adjourned to 23/12/89 for hearing</p> <p><u>Per</u> 20/12</p>	

ORDER SHEET
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

NO. TA 1507

OF 1987

VS.....

Sl. No. of Order	Date of Order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
		<u>OFFICE NOTE</u>	
		<p>An application has been filed in this Tribunal for transferring the case No. 1507 of 1987 to the Circuit Bench, Lucknow. If an order of 25 April, 1988 may kindly be fixed for hearing of Circuit Bench, Lucknow. In this regard the notices may be sent to the parties concerned.</p> <p><u>JKGm</u> 25/5/88 List this case on 25th May 1988 before D.R.P.J for orders at Circuit Bench also.</p>	
			DR (5).
	<u>25-5-88</u>		
		<p>CA 2 R.A has been filed. List this case after hearing on 20-7-88.</p> <p><u>DR (5)</u></p>	
<u>20-07-88</u>		<p><u>DR (5)</u></p> <p>Sri B.C. Saxena for the petitioner is present. The case is ripe for hearing. As two other cases of petitioner are not ripe & 1919188 has been given in both the above cases, fix this case also on the same date - 1919188 for orders.</p>	

27
P.20

Registered

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

(1) T.A. 1165/87
(W.P. No. 3335/82)
(2) T.A. No. 1501/87
(W.P. No. 324/84)
(3) T.A. No. 1225/87
(W.P. No. 5711/83)

A.P. Srivastava

Petitioner

versus

Union of India & others

Opp. Parties.

Shri P.N. Dajjal Counsel for Applicant/
Petitioner.
Shri R. K. Shukla Counsel for Respondents.

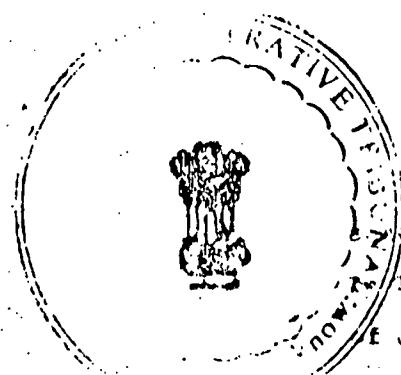
CONT'D.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Bharyya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

In the above three applications filed by the
applicant, different reliefs have been claimed.

In T.A. No. 1165/87 the petitioner has prayed for issue
of certificate quashing the order dated 9.7.82 reverting
the petitioner to one scale below and withholding
the seniority for a duration of three years and mandamus
directing the respondents not to revert the petitioner
in pursuance of the aforesaid order dated 9.7.82 and
to treat him still continuing in the same post and scale
of Rs 425-610. In T.A. No. 1225/87 he prayed for quashing
the order dated 3.9.83 and for a mandamus commanding the



respondents to hold the fresh selection for the posts of Station Masters Grade B 550-750 and Grade B 455-700 under the restructuring scheme after considering the case of the petitioner vis-a-vis his juniors. In T.A. No.

1507/87 the petitioner has prayed for issuance of a certiorari quashing the entire disciplinary proceedings right from the stage of issuing chargesheet appointing Enquiry Officer and recording of prosecution witnesses after summoning the original from the respondents and for a mandamus commanding the respondents not to initiate disciplinary proceedings against the petitioner pertaining to the incident of 17.5.1979 for which he has already been punished.

2. The petitioner, admittedly, attained the age of superannuation in the year 1988 during the pendency of this case. He started as a Clerk in the office of Loco and Carriage Superintendent as a permanent employee in the year 1948 and after confirmation he was promoted to the post of Assistant Station Master at Railway Station Aishbagh, Lucknow. On 12.5.79 he was served with a charge sheet under the signatures of Divisional Safety Officer, N.E. Railway, Lucknow. The charges against the applicant were that while functioning as Assistant Station Master on duty at the West Cabin/ASH from 16.00 to 24.00 hours the petitioner refused to allow to the movement of engines and from ASH and Loco Shed and obstructed the movement in contravention of Appendix 'P' (Correction slip No. 1 dated 21.11.1977) para II Note No. (ii) below para (g) to the Station working Rules No. LGN/



162 dated 7.9.1976 of Aishbagh JMC and thus he violated the G.R. 179 for not obeying the lawful orders prescribed in the Station Working Rules and further disobeyed the orders given by SM/ASH on 9.5.1979 and failed to maintain the devotion to duty and behaved in a manner which was unbecoming of a Railway Govt. servant. The applicant denied the charges. The enquiry proceeded. The applicant appointed his defence Assistant also. As a result of the enquiry report the respondent No. 3 passed the order reverting the applicant as stated above. The applicant refuted the charge sheet and he stated that as a matter of fact he acted under the directions of respondent No. 2 and had not violated any rules. The enquiry officer held the applicant responsible for disobedience and that is why he was awarded with the above penalty. The impugned order of reversion was stayed by the High Court with the result that it never came into effect at all. The applicant was removed from service against which he filed another case. The applicant has challenged the order on variety of grounds including that the order has been passed without application of mind and with malafide intention and the applicant was denied opportunity to defend himself and that the petitioner has not disobeyed any order, and he has acted in accordance with the order given by his officer.

3. On behalf of the respondents the action of reverting the applicant has been justified and it has been contended that the applicant having been removed from service this application becomes infructuous. It is true that the punishment order did not come into effect but the grievance

of the applicant is that the punishment order has been passed by the Divisional Safety Officer who is the head of Safety Division and the applicant was working under the direct control of Operating Dep'tt. and thus the order is without jurisdiction. Thus, according to the respondents it has been contended that at Zonal level the Chief Operating Superintendent is the Head of Operating Department and he is assisted by Sub-Heads viz. Chief Freight Traffic Superintendent, Chief Passenger Traffic Superintendent, Chief Traffic Safety Superintendent. At Divisional level the Senior Divisional Operating Superintendent is the head of the Operating Department. He is assisted by Divisional Safety Officer. Thus, the Divisional Safety Officer is a competent authority to exercise control over working of all Transportation staff for the purposes of disciplinary action and as such the orders of reversion of the petitioner is legal and valid.

Reference has been made to the Railway Board Circular dated 22.10.84 in this behalf. The only document which has been filed by the respondents is the letter which was sent by the Railway Board to the General Manager with reference to the query regarding the disciplinary authority of the staff of the Operating Department and it was stated in the letter that the writ petitions challenging in the case of Operating staff may be contested and may be pointed to the High Court that Safety Officers, as distinct from Commercial Officers, belong to operating side and there should be no objection to their taking disciplinary action

against Operating staff like SMs, ASMs, etc. who perform train passing duties. The letter is only in reply to a particular letter and it does not confer any power on the Divisional Safety Officer to take disciplinary action against ASMs who belong to the other side. May be that subsequently powers have been given but no document has been produced indicating that the said authority was entitled to take disciplinary action. Even otherwise, this renders the entire proceedings void and the action has been taken by the authority who is not competent and even otherwise the Enquiry Officer held that the applicant cannot be held responsible but the disciplinary authority was to ~~refer~~ from the finding of the enquiry officer, he was to record reasons and show cause should have been given to the applicant to represent the case by him. The same having not been done, vitiates the enquiry proceedings, as has been observed in the case of Narain Miga vs. State of Orissa (1969 SCR 557) and it is on this ground that the punishment orders dated 9.7.82 (Annexure No. 1) stands quashed. Accordingly this application deserves to be allowed and the reversion order dated 9.7.82 is quashed. It is a different matter that because of the subsequent orders it may have become infructuous but in case the subsequent order goes this order automatically will go out.

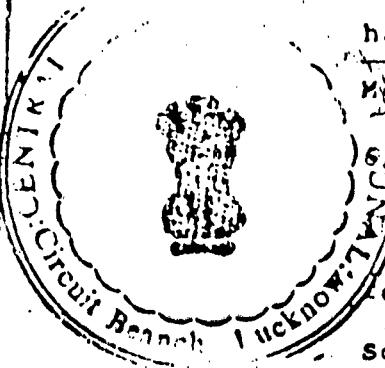
4. In T.A. No. 1225/87 the applicant has challenged the ~~premijb order~~. According to the

72
99

to the respondents
applicant he ranks senior in the seniority list of
Assistant Station Master working in the N.R.Railway. The
applicant ranked at serial No. 15 whereas the other
respondents are below him. Under the restructuring scheme
a number of posts of Station Master grade Rs 550-750 were
to be filled up from the category of Asstt. Station
Master's grade Rs 425-700 on the basis of seniority maintained
by the respective Divisions. While promoting respondents
5 to 18 the case of the applicant was not considered
though he was senior to them. In this application, the
applicant has challenged the order dated 3.9.83 promoting
in the grade of Rs 550-750
the respondents 5 to 18/ and the order dated 3.9.83
promoting the respondents 19 to 29 to the post of Station
Master in the grade of Rs 455-700. Under the restructuring
scheme it was directed that various cadre under different
Departments pertaining to group C and D posts may be
restructured with reference to the sanctioned cadre
strength as on 1.8.1983. The scheme further provided that
for the purpose of promotion existing selection promotion
will be modified and selection will be on the basis of
scrutiny of the service record and without any written
examination. The applicant who was promoted to the post
of Assistant Station Master in the year 1953 in the grade
of Rs 425-640 w.e.f. 29.6.1963 and was confirmed on the
said post with effect from 1.4.1964 and he was at serial
No. 15 in the seniority list and was entitled to the
benefit of promotional post but he was not promoted
because of the punishment of reduction of rank vide
order dated 9.7.82 against which he filed representation which
was stayed and despite the interim order the
punishment was taken into account for not promoting
him and giving him a particular grade.

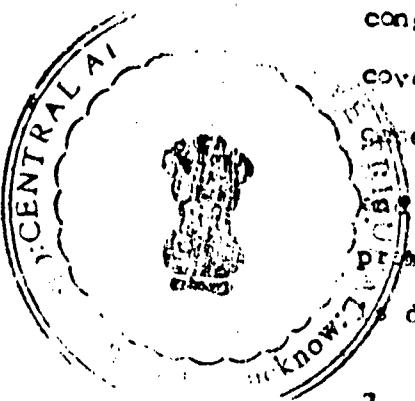
5. The respondents have opposed the application and have pointed out that because of serious accident, the petitioner was charged of misconduct and removed from service ultimately. While the petitioner has pointed out that this tribunal has allowed the application and quashed the removal order though subsequent to his retirement but according to the respondents the S.I.P. has been admitted and is pending. It has been stated by the respondents that as the applicant's name was considered but as he was undergoing penalty for major punishment his name was excluded from promotion. It has been further stated that he was not promoted in the grade of Rs 550-750 as Station Master. Besides the order of reversion, disciplinary proceedings against the petitioner was also pending, so he was not promoted against which he has filed another T.A. in which he has challenged the Memo of charge sheet itself.

6. It appears that the respondents admittedly took no consideration that the applicant has already been reverted. The reversion order was stayed by the High Court. So far as the applicant is concerned he could not have been treated as reverted in view of the operation of the interim order. The respondents should have considered the case of the applicant for time being, may be due to the note that he is being promoted but the same shall be subject to final orders passed in the writ petition or in case the interim order is vacated and consequences to follow. But the respondents committed an error in not



Promoting the applicant. It is a different matter that the applicant may not have been promoted to the higher post in view of pendency of the disciplinary proceedings but so far as earlier one is concerned he should not have been deprived of the same. The respondents are directed to consider the case of the petitioner for the benefit of restructuring scheme for seniority taking as if there was no punishment order against him and he could be, on the relevant date, when the proceedings re-started later on, the benefit of promotion with effect from that date will not be given to the applicant because of pendency of disciplinary proceedings, except that he was to be considered and the result was to be kept in sealed cover. The respondents are directed to re-consider the xxx case of the applicant in view of the above observations and in case the applicant is entitled to one or two promotions he may be given promotions and obviously is deemed to be in continuous service.

7. In T.A. No. 1507/87 the petitioner has challenged the removal order which was passed after holding the departmental enquiry. The applicant was charge-sheeted because of his act of omission and negligence, and due to accident. The applicant denied the responsibility and the proceedings were pending. Petitioner filed writ petition which was transferred to this tribunal but no interim relief



RESERVED

AIY.

-9-

was granted, with the result that the writ petition was pending but at the same time no further action, it appears was taken on this application. The applicant has attained the age of superannuation. Even if the benefit of superannuation would have been given to the applicant if the proceedings not having been culminated into proceedings against retired persons, this application becomes infructuous making the entire proceedings against the applicant also infructuous.

8. The above three applications are disposed of in the manner indicated above. No order as to costs.

Sd/-

Mr. Member:

Sd/-

Vice Chairman.

Shakeel/

Lucknow: Dated: 19.10.92

Certified Copy

Shakeel
10/10/92
Incharge

Judicial Section

C. A. T.

LUCKNOW.

10041
A-14-(e)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. 204 OF 1983

AIU

324

ANRUDHA PRASAD SRIVASTAVA

... ... PETITIONER.

VERSUS

UNION OF INDIA AND OTHERS

... OPPOSITE PARTIES.

: INDEX:

SL.NO.	DESCRIPTION OF PAPERS	PAGE NUMBERS
1.	Writ Petition under Article 226 of the Constitution of India.	1 - 14
2.	A F F I D A V I T	15 - 16
3.	ANNEXURE NO. 1 (Order dated 19.5.79 passed with the approval of Opp. Party No. 3)	17 - --
4.	ANNEXURE NO. 2 (Order dated 19.5.83 similar to that of the petitioner)	18 - --
5.	ANNEXURE NO. 3 (Chargesheet dated 5.6.79)	19 - 24
6.	ANNEXURE NO. 4 (Chargesheet dated 5.6.79 issued to Sri Abdul Mannan)	25 - --
7.	ANNEXURE NO. 5 (Petitioner's Application dated 6.8.79)	26 - 27
8.	ANNEXURE NO. 6 (Letter dated 29.9.83 - reply to the Chargesheet to the Petitioner)	28 - 29
	ANNEXURE NO. 7 (Relevant extract or the order sheet dated 22.4.81 prepared in enquiry proceedings)	30 - --
	ANNEXURE NO. 8 (Objection/Representation dated 21.11.83)	31 - 34
11.	ANNEXURE NO. 9 (Order dated 29.5.82 condoning the break-in-service)	35 - 36
12.	ANNEXURE NO. 10 (Order dated 24.8.82 passed by Opp. Party No. 2)	37 - --
13.	ANNEXURE NO. 11 (Railway Board's letter dated 16.10.73)	38 - 39

LUCKNOW: DATED:

DECEMBER 12, 1983.

(R.C. SAXENA)
ADVOCATE,

COUNSEL FOR PETITIONER.

A15

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

Writ Petition No. 324 of 1981



Anrudha Prasad Srivastava, aged about 52 years

S/o Late Sri Mangal Prasad Srivastava, R/o
Bhola Khera, Alambagh, Lucknow-5

... PETITIONER.

Sept 9/12
17/12

Versus

1. The Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Safety Officer, N.E. Railway, Ashok Marg, Lucknow.
3. Senior Divisional Operating Superintendent, N.E. Railway, Ashok Marg, Lucknow.

... OPPOSITE PARTIES.

Writ Petition under Article 226 of the Constitution of India

The Petitioner most respectfully submits as under:-



1. That the present Writ Petition is directed against the initiation of disciplinary proceedings against the petitioner by and under the orders of Opposite Party No. 2 for the same alleged act or omission for which the petitioner had already been punished by Opposite Party No. 3.

A. S. Jaiswal

2. That in the year 1979 on the call of All India Railway Employees confederation registered under Trade Unions Act 1926 (Registration No. 2297) the Railway employees on All Indian Railways took a decision to work according to Rules which is commonly known " Work to Rule", with effect from 8.5.79 to 20.5.1979.

3. That while the petitioner and other Railway employees were observing safty Rules strictly, allegedly the movement of certain trains was delayed due to observance of safty Rules.

4. That the Railway administration illegally considered observance "work to Rule" adopted by the Railway employees as their refusal to work and participated in an illegal strike arbitrarily issued punishment orders punishing the Railway employees.

5. That on 17.5.1979 the petitioner was posted as Assistant Station Master (West Cabin) N.E. Railway Aishbagh, Lucknow in 16. to 24 Hours shift.

6. That although the petitioner had been performing his duties as per Rules on 17.5.79 during 16 to 24 Hours shift and neither he himself refused or stopped work nor he instigated any one else to stop work, yet the Railway authorities acting on a preconceived notion passed orders alleging that the petitioner performed duty from 16 to 18.30 Hours and thereafter stopped the work and refused to perform duty which resulted in disruption of train services.

AP. Srinivas

7. That on a wrong assumption of fact that the petitioner refused to work and his refusal resulted in disruption of trains services, under the approval of opposite party No. 3 an order dated 19.5.1979 was passed and issued for and on behalf of Divisional Railway Manager (P) Lucknow directing that the petitioner will be paid wages for only $2\frac{1}{2}$ hours and there will be a wage cut for $5\frac{1}{2}$ hours for that day. Besides that break-in-service of the petitioner was also caused from 17.5.79 allegedly for ~~re~~ resorting to alleged illegal stoppage of work. A true copy of order dated 19.5.79 passed with the approval of opposite party No. 3 is filed herewith as Annexure No. 1 to this writ petition.

8. That the break-in-service of a Reailway employee entails penal consequences in as much as it causes forfeiture of all previous services before the break and service is taken as fresh. The person losses his earned seniority and his date of ~~increment~~ increment ^{L.H.A.P.} is changed. All previous leave L.A.P. & ~~leave~~ stands to be forefieted. The privilege of getting 3 sets of passes for free journey is reduced to only one set. All pensionary and gratuity benefits are reduced and are counted from the date of break treating the services as a fresh.

9. That Chapter XIII of the Indian Railway Establishment Manual deals with Break-in-Service and its condonation by the President of India and according to para 1303 of the said Chapter even the break-in-service after condonation visits the Railway employee concerned with the most evil consequences in as much as the period of break-in-service is treated as ~~discon~~ and is not counted for any purpose whatsoever and the employee has to loose his all benefits for that period which are otherwise admissible to him under Rules.

M. Srinivas

10. That alike the petitioner several other Railway employees who also observed safety Rules and worked according to Rules during 8.5.1979 to 20.5.1979 were also subjected to arbitrary punishment of break-in-service with a wage cut of 17.5.1979. A true copy of order dated 19.5.1979 similar to that of the petitioner issued in respect of few other employees is filed herewith as Annexure No. 2 to this writ petition.

11. That thereafter the opposite party No. 2 for ~~at~~ the alleged incident of refusal and stoppage of work on 17.5.79 in 16 to 24 Hours shift resulting in disruption of trains services issued chargesheet dated 5.6.79 to the petitioner. A true copy of the chargesheet dated 5.6.79 issued by the opposite party No. 2 is filed herewith as Annexure No. 3 to this writ petition.

12. That ~~that~~ a similar chargesheet for the alleged incident of refusal and stoppage of work on 17.5.79 in 16 to 24 Hours shift resulting in disruption of trains services was also issued to Sri Abdul Mannan, Assistant Station Master, Lucknow Junction whose name finds mention at S~~K~~.No. 1 in Annexure No. 2 of this writ petition. A true copy of the chargesheet dated 5.6.79 issued to Sri Abdul Mannan, A.S.M., Lucknow Jn. is filed herewith as Annexure No. 4 to this writ petition.

13. That the petitioner requested the opposite party No. 2 for supply of certain documents which were necessary from the point of defence of the petitioner vide his application dated 6.8.1979, a true copy of which is filed herewith as Annexure No. 5 to this writ petition.

14. That despite several others' requests made by

the petitioner when the copies of the below noted documents which were necessary from the defence point of view could not be supplied to him and he was being pressurised to file the written statement of defence, the petitioner ultimately even in absence of the documents asked for, submitted his reply to the chargesheet vide his letter dated 29.9.1980 denying the charges and explaining the position. A true copy of letter dated 29.9.1983 submitted in reply to the chargesheet is filed herewith as Annexure No. 6 to this writ petition.

Details of documents not supplied to the Petitioner:-

- (i) Statements of the staff on ~~xx~~ yard ~~and taken~~ duty from 16 to 24 Hours shift on 17.5.79 as recorded who were alleged to be instigated to stop work.
- (ii) Abstract of the train and Cabin Register of 16 to 24 hours shift on 17.5.79 of A.S.M. (Main), Aishbagh West Cabin and Cabin, Lucknow Junction.
- (iii) Copies of ~~xx~~ Line clear procedure between Aishbagh West Cabin and Lucknow Junction indoor cabin as laid down in Station working Rule.
- (iv) Abstract of detention register of Lucknow Junction on 17.5.79 from 16 to 24 Hours shift.

15. That in the case of the petitioner opposite party No. 2 appointed Sri R.S. Sharma, Executive Assistant to D.R.M. Lucknow as enquiry Officer who examined Sri G.C. Bhatnagar, T.I. Sitapur, S.N. Misra, A.S.M., Lucknow Junction and K.L. Chug, A.S.M. Aishbagh on various dates in support of the charge but again on 22.4.1981, the Enquiry Officer on being requested for production of documents referred to in para 14 for the purpose of effective cross examination of the prosecution witnesses Sri S.N. Misra, A.S.M., Lucknow Jn. and Sri K.L. Chug, A.S.M., Aishbagh, agreed to the

W.L. Singh / av

request made on behalf of the petitioner and adjourned the enquiry proceedings with a direction to produce the documents in question on the next date of enquiry. A true copy of relevant extract of the ordersheet dated 22.4.81 prepared in enquiry proceedings is filed herewith as Annexure No. 7 to this writ petition.

16. That thereafter the enquiry officer Mr. R.S. Sharma was transferred and in his place Sri O.P. Gupta Assistant Commercial Superintendent, N.E. Railway, Lucknow has been appointed as Enquiry Officer in the petitioner's case.

17. That Sri O.P. Gupta present Enquiry Officer fixed enquiry proceedings on ~~19.3.83~~ 19.3.83, 19.4.83, 27.5.83, 26.7.83 and 26.11.83 but the requisite documents could not be produced and the petitioner is being unnecessarily harassed.

18. That under the Railway Servants (Discipline & Appeal) Rules 1968, the enquiry proceedings are required to be completed within a period of 65 days or at the most within 202 days and the proceedings cannot be permitted to be prolonged for an indefinite period ~~till~~ till the Railway employee is not retired from service. In the present case more than $3\frac{1}{2}$ years time has elapsed but the enquiry has not been completed as yet.

19. That on 21.11.1983 the petitioner submitted a detailed objection by way of representation and clearly indicated that the enquiry proceedings initiated against the petitioner are wholly without any authority of law, absolutely unwarranted and the petitioner having been already punished for one and the same ~~char~~ vide Annexure No. 1 cannot be again subjected with the

H.P. Joshi, IAS
H.P. Joshi, IAS



disciplinary proceedings ~~xx~~ so as to punish him again for the same act or omission for which he was already punished. The petitioner besides the above also specifically asserted that the Divisional Safety Officer who signed the chargesheet, appointed the Enquiry Officer and is finalising the enquiry proceedings in the capacity of disciplinary authority belongs to the Safety Organisation which is quite different and distinct department and has nothing to do with the operating (Teafic) Department to which the petitioner belongs, since the Divisional Safety Officer Opposite party No. 2, does not exercise any administrative control over the petitioner and he belongs to other department he cannot act as Disciplinary Authority in the petitioner's case and the entire proceedings right from the stage of issuing charge sheet till the recording of statements of the prosecution witnesses mentioned in para 15 are null and void and the petitioner requested to set aside the same. A true copy of objection/representation dated 21.11.1983 submitted to the Divisional Safety Officer through Enquiry Officer, is filed herewith as Annexure No. 8 to this writ petition.

20. That the representation dated 21.11.83 contained in Annexure No. 8 is still pending ~~xx~~ for decision and no orders so far rejecting or accepting the same have still been communicated to the petitioner.

21. That it is pertinent to point out here that the petitioner and other Railway Employees who were punished with the break-in-service alongwith wage cut for the period in question, represented individually and through their Association to the President of India for condoning the break-in-service as the same was illegally caused on a wrong assumption that the



H.P. Singh/As

AVV

AVV

petitioner and other Railway Employees participated in an illegal strike.

22. That the President of India considered the matter in issue and condoned the break-in-service and consequently orders condoning the break-in-service were issued by the concerning Authorities. A true copy of order dated 29.5.82 condoning the break-in-service of the petitioner and other employees issued by Divisional Railway Manager (P) N.E. Railway, Lucknow is filed herewith as Annexure No. 9 to this writ petition.

23. That the perusal of Annexure No. 9 indicates that the break-in-service which was subsequently condoned, was caused as the petitioner observed "Work to Rule" and it was not due to participation in an Strike which might have been declared illegal.

24. That after the condonation of break-in-service the pending chargesheets against various employees relating to the incident of 17.5.1979 were also withdrawn.

25. That the chargesheet pending against Sri Abdul Mannan, A.S.M., Lucknow Jn., vide order dated 24.8.82 was also withdrawn. A true copy of order dated 24.8.82 passed by opposite party No. 2 withdrawing the charges against Sri Abdul Mannan is filed herewith as Annexure No. 10 to this writ petition.

26. That the action of opposite party No. 2 in withdrawing the chargesheet against Sri Abdul Mannan, A.S.M., Lucknow Jn., whose case is quite similar to that of the petitioner and still subjecting the petitioner with the disciplinary proceedings on



AP. S. J. 2012

basis of chargesheet issued to him, is wholly arbitrary and discriminatory and is hit by the provisions of Article 16 of the Constitution of India.

27. That the petitioner having been already punished for the alleged act or omission pertaining to the incident of 17.5.79, cannot be again subjected to the disciplinary proceedings so as to punish him again for the same act or omission for which he has already been punished. The proceedings in question are hit by the well known principle of "Double Jeopardy".

28. That even otherwise also the opposite party No. 2 who belongs to Safety Department and not to the Operating Department in view of Railway Board's order dated 16.10.73 cannot act as disciplinary Authority of the petitioner and the entire proceedings right from the stage of issuing chargesheet till the recording of statements of the prosecution witnesses, are nullity in the eye of law having been initiated and finalised by an Authority who has no power to do the same. A true copy of Railway Board's letter dated 16.10.73 is filed herewith as Annexure No. 11 to this writ petition.

29. That the appointment of Enquiry Officer in the present case also becomes illegal in as much as the opposite party No. 2 cannot act as the disciplinary Authority of the petitioner nor he is competent to appoint any Enquiry Officer in his case.

30. That the opposite party No. 3 who belongs to the operating department and exercises administrative control over the petitioner and other employees of the Operative Department is alone competent to act as Disciplinary Authority and not the opposite part

A.P. Singh Star

who belongs to the Safety Department which is a separate, different and distinct department at Divisional Head Quarter and Board's level.

31. That the question of competence and exercise of powers by opposite party No. 2 as Disciplinary Authority in respect of Railway Employees belonging to the operating Department ~~is~~ is involved in various writ petitions which are already admitted and pending decisions, The earlier writ petition No. 3335 of 1982 admitted by this Hon'ble Court and pending for decision also ~~is~~ involves the same question of competence of opposite party No. 2 to act as Disciplinary Authority in respect of Railway Employees belonging to the operating department.

32. That the entire disciplinary proceedings initiated and conducted by the Enquiry Officer appointed by opposite party No. 2 are absolutely without any authority of law and wholly unwarranted under the facts and circumstances of the case.

33. That the pendency of the disciplinary proceedings is adversely affecting the petitioner in as much as the petitioner who is quite senior and fully eligible for getting the benefit of promotion under the restructuring Scheme provided by the Railway Board, has been illegally denied the benefit of promotion due to the pendency of the above disciplinary proceedings and persons junior to him have been promoted to the higher grade illegally superseding the petitioner even without considering his case.

34. That on 26.11.83 the petitioner met opposite party No. 2 and requested to consider the points

Abdul Karim

AS

raised by the petitioner in his representation dated 21.11.83 contained in Annexure No. 8 to the writ petition and drop the enquiry proceedings as has been done in the case of Sri Abdul Mannan but the opposite party No. 2 instead of sympathetically considering the matter threatened the petitioner to remove him from service even if the charges may or may not be proved against him.

35. That looking to the attitude of opposite party No. 2 the petitioner has lost his hopes for justice from him and he has a reasonable apprehension that the opposite party No. 2 will remove him from service even without touching the real merits of the petitioner's case. Thus the petitioner's request for setting aside entire proceedings vide Annexure No. 11 will be deemed to have been refused.

36. That the petitioner feeling aggrieved and having no other alternative efficacious remedy begs to prefer the present Writ Petition on the following amongst the other:-

: G_R_O_U_N_D_S:

(i) Because the opposite party No. 2 who belongs to the Safety Department and does not exercise administrative control over the petitioner and other employees of the Operating Department to which the petitioner belongs in view of Railway Boards letter dated 16.10.73 contained in Annexure No. 11 is wholly incompetent to initiate and finalise the disciplinary proceedings against the petitioner acting as the Disciplinary Authority.

(ii) Because the entire proceedings initiated and finalised till dated i.e. issuance of chargesheet, appointment of Enquiry Officer and recording of statements of prosecution witnesses by the Enquiry Officer appointed by opposite party No. 2 are wholly without any authority ~~in~~ of ~~law~~ law and absolutely null and void.

(iii) Because in any case the opposite party No. 3 who belongs to the Operating Department is the competent Authority \neq to initiate and finalise the Disciplinary proceedings against the employees of the Operating Department and not the opposite party No. 2.

(iv) Because the petitioner never instigated, refused or stopped the work on 17.5.79 and his participation in "Work to Rule" programme specifically on 17.5.79 during 16 to 24 hours shift cannot be regarded his participation in any illegal strike and no penal action in that behalf can be taken against the petitioner.

(v) Because the petitioner having been already punished by the Railway Authorities acting on a wrong assumption that the participation of petitioner in "Work to Rule" programme was his participation in an illegal strike without even any declaration to that effect, cannot be again subjected with the disciplinary proceedings so as to punish him again for the same alleged acts or omission pertaining to the incident of 17.5.79 for which he has already been punished vide Annexure No. 1.

(vi) Because the participation of petitioner in "Work to Rule" programme cannot be considered participation in an strike specifically when the same was never declared as illegal having resorted to the legal

*Darshan G.
Advocate*

recourse available in law.

(vii) Because even otherwise also the action of Opposite Party No. 2 in withdrawing the chargesheet of Sri Abdul Mannan, A.S.M., Lucknow Junction, whose case is similar to that of the petitioner and still subjecting the petitioner with the disciplinary proceedings by not withdrawing his chargesheet is an extreme case of arbitrariness and unreasonable discrimination and is hit by the provisions of Article 16 of the Constitution of India.

(viii) Because the petitioner has a reasonable apprehension that he will be removed by the opposite party No. 2 although he is not empowered for the same as stated by the petitioner in his representation dated 21.11.83.

-: P_R_A_Y_E_R :-

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(a) Issue a writ, direction or order in the nature of certiorari quashing the entire disciplinary proceedings right from the stage of issuing chargesheet appointing Enquiry Officer and recording of prosecution witnesses after summoning the original record from the opposite parties.

(b) Issue a writ, direction or order in the nature of mandamus commanding the opposite parties not to initiate disciplinary proceedings against the

*Rakesh
Adm. Law*

petitioner pertaining to the incident of 17.5.1979
for which he has already been punished.

(c) Any other writ, direction or order
which is deemed fit and proper under the circumstances
of the case may also be passed in favour of
the petitioner.

(d) Issue a writ directing or order
in the nature of prohibition prohibiting the
officers of the said institution proceeding with the
Lucknow disciplinary process.
pend of the petition.

Dated : December 12, 1985.

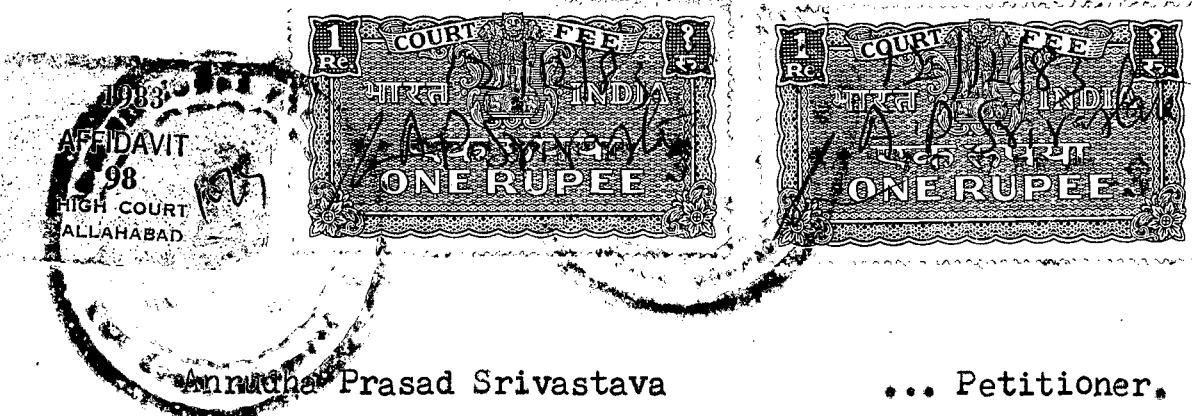
(R.C. Saxena)

Advocate,
Counsel for Petitioner.

I certify that there is
no defect in the aforesaid
writ petition

R. C. Saxena
Advocate
12.12.83

IN THE HON'BLE HIGH COURTOF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. OF 1983



Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opposite Parties.

A F F I D A V I T

19.1.84

I, Anrudha Prasad Srivastava, aged about 52 years, S/o Late Sri Mangala Prasad Srivastava, R/o Bhola Khera, Alambagh, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the Petitioner in the above noted Writ Petition and as such he is well conversant with the facts of the case.
2. That the contents of paras 1 to 33 of the Writ Petition are true to my knowledge.
3. That the Annexure Nos. 1 to 11 are the true copies and the deponent has compared them with their originals.

Lucknow:

Dated: December 12, 1983.

A.P.Srivastava
Deponent.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 to 3 of this Affidavit are true to my knowledge.

No part of it is false and nothing material has been concealed, so help me God.

Lucknow:

Dated: December 12, 1983.

A.P.S. is his
Deponent.

I identify the deponent who has signed before me.

Anrudha Prasad Srivastava
Advocate.

Solemnly affirmed before me on December 12, 1983, at 9-30 a.m./p.m. by Sri Anrudha Prasad Srivastava, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this Affidavit which have been read out to him and explained by me.

12/12/83
907/1028
12/12/83

A31

- 17 -

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : 'LUCKNOW :
WRIT PETITION NO. OF 1983

A3

Anrudha Prasad Srivastava ... Petitioner.
Versus
Union of India and others ... Opp. Parties.

ANNEXURE NO. 1

NORTH EASTERN RAILWAY

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P)
LUCKNOW DATED MAY 19TH, 1989

MEMORANDUM

The following staff of the Traffic Department under Station Master/N.E. Railway/Aishbagh performed duty at the West Cabin/N.E.Railway/Aishbagh from 16.00 to 18.30 hrs. on 17.5.1979. Thereafter they stopped the work and refused to perform duty, resulting in disruption of train services. Therefore, they will be paid wages for only 2½ hours and there will be a wage cut for 54 hours for that day.

Since they had resorted to illegal stoppage of work, break-in-service in their services as per extant orders has also been effected from 17.5.1979:-

1. Shri A.P. Srivastava, ASM/N.E.Railway/Aishbagh.
2. Shri Chhotey Lal, Shunt Man working as Lever Man, N.E.Railway, Aishbagh.
3. Shri Asgar Ali, Cabin Man, N.E.Railway, Aishbagh.

This issues with the approval of Sr.DOS/LJN

Sd/-
for Divisional Railway Manager(P)
Lucknow.

No.E/II/283/1/Strike/79 Dated 19.5.79.

Copy forwarded for information and necessary action to:-

1. SM/ASM
2. Staff concerned.
3. DAO/LJN
4. Hd.Clerks/Operating & Bills of this office.
5. Hd.Clerk/Pass Section of this office.

Sd/-
for Divisional Railway Manager(P)
Lucknow.

.....
TRUE COPY *A.P.Srivastava*

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983

A34

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. 2

NORTH EASTERN RAILWAY

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P)
LUCKNOW DATED MAY 19th, 1979.

MEMORANDUM

The following staff of Traffic Department under Station Superintendent N.E.Railway, Lucknow Jn. stopped working from 16/30 Hrs. on 17.5.79 and did not turned up Till the expiry of their shift thereby disrupting the train movement.

Since they had not worked for the full day they are not entitled to get their full pay including allowances for 17.5.79.

Further, since the following staff stopped the work at Lucknow ~~Jn.~~ Station, as per extent orders Break in services has been effected from 17.5.1979.



1. S/Shri Abdul Manan ASM/Lucknow Jn.
2. Hari Krishan Shunter/Lucknow Jn.
3. Ram Bodh Paints Man/Lucknow Jn.
4. Sagar Nath Paints Man/Lucknow Jn.
5. Ram Harakh Casual Labour Lucknow Jn.
6. Ram Deo Shunter Lucknow Jn.
7. Murli Lever Man Lucknow Jn.
8. Sunder Lal Lever Man Lucknow Jn.

This issues with the approval of Sr.DOS/LJN No.E/11/283/1/Strik/79 dt. 19.5.79.

For Divisional Railway Manager
(P)
Lucknow.

Copy forwarded for information and necessary action-
1. SS/LJN (2) Staff Cancern (3) DAO/LJN
4. Hd.Clerk Optg.& Bill of this office(5).Head Clerk
Pass Section.

For Divisional Railway Manager(P)
Lucknow.

.....
TRUE COPY *Ab Srivastava*

In the Hon'ble High Court of Judicature at Allahabad

(Lucknow Bench) : Lucknow :

Writ Petition No. of 1983

A.P. Srivastava

... Petitioner..

Versus

Union of India and others

... Opposite Parties.

ANNEXURE NO. 3

STANDARD FORM NO. 6

STANDARD FORM OF CHARGESHEET

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

No. T/190/Optg/LDN (Part II)

N.E. Railway (Name of Railway Administration)
(Place of issue) Lucknow Dated 5.6.1979

MEMORANDUM

The undersigned proposes(s) to hold an inquiry against Shri A.P. Srivastava, ASM/ASH under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held i.e. not out of the enclosed statement of Articles of charge (Annexure I). A statement of the imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by them, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Sri A.P. Srivastava is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within five days of receipt of this memorandum. If he desires to be given access to any other document which are in the possession of Railway Administration but not mentioned in



A.P. Srivastava

the enclosed list of documents (Annexure III), he should give a notice to that effect to the undersigned Railway within ~~XXXX~~ ten days of the receipt of this memorandum, indicating the relevance of the documents required by him for inspection. The disciplinary authority may refuse permission to inspect as or any such documents as are in its opinion not relevant to the case or it would be against the public interest or security of the date to allow access thereto. He should complete inspection of additional documents within five days of their ~~XXX~~ being made available. He will be permitted to take extracts from such of the additional documents as he is permitted to inspect.

3. Sri A.P. Srivastava is informed that request for access to documents made at later stages of the inquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances show clearly that the request could not have been made at an earlier stage. No request for access to additional documents will be entertained after the completion of the inquiry unless sufficient cause ~~XX~~ is shown for not making the request before the completion of the inquiry.

4. Sri A.P. Srivastava is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of a Railway Trade Union (who satisfied the requirements of rule 9(9) of the Railway Servants (Discipline and Appeal) Rule 1968, and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiry authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting railway servant(s) or Railway Trade Union Official(s). Sri A.P. Srivastava should obtain an undertaking from the nominee(s) that he (they) is(are) willing to assist him during the

A.P. Srivastava

disciplinary proceedings. The undertaking should also contain the particulars of other case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned Railway alongwith the nomination.

5. Sri A.P. Srivastava is hereby directed to submit to the undersigned (through Railway) a written statement of his defence (which should reach the said General Manager) & within ten days of receipt of this memorandum, if he does not require to inspect any document for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also:

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

** (c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

6. Sri A.P. Srivastava is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

7. Sri A.P. Srivastava is further informed that if he does not submit his written statement of defence within the period specified in para 5 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry *ex parte*.

8. The attention of Sri A.P. Srivastava is invited to Rule 20 of the Railway Services (conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under

H.S. Srivastava

the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Sri A.P. Srivastava is aware of such a ~~xx~~ representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

9. The receipt of this Memorandum may be acknowledged.

K.K. Sarkar
Divisional Safety Officer
N.E. Railway, Lucknow.

* By order and in the name
of the President.

To

Sri A.P. Srivastava,
ASM/ASH
through SM/ASH

@ Copy to Sri _____ (name and designation of
the lending authority) for information.

- % This time limit may be extended upto ten days at the discretion of the competent authority.
- & This time limit may be extended upto twenty days at the discretion of the competent Authority.
- £ To be retained wherever President or the Railway Board is the competent authority.
- * Where the President is the disciplinary Authority.
- @ To be used wherever applicable - See Rule 16(1) of the Railway Servants (Discipline & Appeal) Rules 1968 - Not to be inserted in the copy sent to the Railway servant.
- ** Strike out whichever is not applicable.
- ** Submission of such list at this state need not be insisted upon if the employee does not comply with this requirement.

A.P.S. vs 1/20

Annexure I

Article of Charge against Shri A.P. Srivastava, ASM/ASH

On 17.5.79 while functioning as ASM/West Cabin/ASH in 16.00 to 24.00 hours shift Shri A.P. Srivastava instigated the yard and cabin staff of ASH to stop work. He also refused to grant line clear to 48 Dn when officered by ASM/LJN. Thus Shri Srivastava contravened Rule 3(i)(ii) & (iii) of Railway Service Conduct Rules 1966 (Correction slip No. 222) and failed to maintain devotion to duty and behaved in a manner which are unbecoming of a Railway Servant.

Sd/- Illegible

Divisional Safety Officer
N.E. Railway, Lucknow

Annexure II

Statement of Imputation in support of the Article of Charges against Shri A.P. Srivastava, ASM/ASH

On 17.5.79 Shri A.P. Srivastava, ASM/ASH while functioning as ASM/West Cabin/ASH in the shift 16.00 to 24.00 hours instigated the ~~yard~~ yard and cabin staff to ~~stop~~ stop work.

In the same shift of duty, Shri Srivastava refused to grant line clear for 48 Dn at 20.45 hours when offered by ASM/LJN. This resulted in serious detention to 48 Dn and other ~~trains~~ trains at Lucknow Jn.

Thus Shri A.P. Srivastava by his aforesaid acts of commission and omission contravened Rule 3(i)(ii) & (iii) of Railway Services (Conduct) Rules, 1966 and failed to maintain devotion to duty and acted in a manner which was unbecoming of a railway servant.

Sd/- Illegible

Divisional Safety Officer
N.E. Railway, Lucknow.

A.P. Srivastava

Annexure III

List of documents replied upon in support of the imputations against Shri A.P. Srivastava.

.....

1. Item 4 of AYM/ASH's Diary dated 17.5.79 in 16.00 to 24.00 hours shift.
2. Item 4 of the Diary of ASM/(Main)/ASH in 16.00 to 24.00 hours shift of 17.5.79.
3. Diary entry of the ASM(O/D)/LJN in 16.00 to 24.00 hours shift of 17.5.79.

Sd/-
Divisional Safety Officer
N.E.Railway, Lucknow.

Annexure IV

List of witnesses by whom the Article of charges and the imputations are to be sustained against Shri A.P. Srivastava, ASM/ASH

.....

1. Shri Bhola Ram, AYM/ASH
2. Shri K.L. Chugh, ASM/ASH
3. Shri S.N. Mishra, ASM/LJN
4. Shri G.C. Bhatnagar, TI/STP

Sd/-

Divisional Safety Officer
N.E. Railway, Lucknow.

.....

TRUE COPY *HP Singh (as)*

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. 44

Article of charges against Shri Abdul Manan ASM/Lucknow Jn.

Annexure I

On 17.5.79 while functioning as ASM Indoor at Lucknow for Cabin M 16-00 to 24-00 hours shift Shri Abdul Manan refused to arrange reception of Train engine 23 UP despite order of his superiors. His refusal to obey the order of his superiors amounted to stoppage of work and by doing so Shri Abdul Manan failed to maintain devotion to duty. Thus he contravened Rule 3(i) (ii) of Railway Services(Conduct) Rules 1966.

Sd. K.K. Sarkar
Divisional Safety Officer,
N.E. Railway.

Statement of Imputation against Shri Abdul Mannan ASM Indoor Lucknow Jn.

Annexure II

Shri Abdul Mannan ASM/LJN took over charge as indoor ASM at 16-00 Hrs. in the shift 16-00 to 24-00 hours on 17.5.79 in the Cabin at Jn. but there was no work up to 19/55 hours as yard and Cabin staff had struck work at 19/55 Hours. Shri Abdul Mannan was asked to arrange Reception of train engin of 23 UP which had appeared on the Panel but he refused in presence of Shri K.R. Ahirwar, Chief instructor safty Camp Gonda and Ram Suman TI(T) Mailani on the plea that he will not allow the Cabin liver to be pulled by other than lever Man with the result, train running to and from Lucknow me was disrupted. His refusal to do so amounted to stoppage of work and disobedience of order there by he failed to maintain devotion to duty & thus contravened sub-Rule (ii)of Rule 3(i) of Rly. Service (Conduct Rules 1966).

NER, LJN Divl.Safty Officer



ABM

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. 5

To

The Divisional Safety Officer,
North Eastern Railway,
Lucknow.

Through Station Master/Aishbagh.

Ref. No. T/190/Optg/LJN (Part II) dated 5.6.1979
received on 28.7.1979.

Sir,

In response to the memorandum under reference I beg to request you to supply me with the following documents as necessary under para 9(5) of D.A.R. for preparation of my defence:-

1. Abstract of item No. 4 of AYM/ASH8S Diary dated 17.5.1979 in 16-00 to 24-00 Hrs. shift.
2. Abstract of the Diary of ASM(Main)/ASH in 16-00 to 24-00 hours shift of 17.5.1979.
3. Abstract of entry of ASM(O/D)/LJN in 16-00 to 24-00 Hours shift of 17.5.1979.
4. Statements as recorded of the following witnesses as proposed by you:-
 - a) Shri Bhola Ram, AYM/ASH
 - b) Shri K.L. Chugh, ASM/ASH
 - c) Shri S.N. Mishra, ASM/LJN
 - d) Shri G.C. Bhatnagar, TI/STP

H.P.Srivastava

5. Statements of the Staff on Yard and Cabin duty from 16-00 to 24-00 hours on 17.5.1979 as recorded, who were alleged to be instigated to stop work.
6. Abstract of the Train and Cabin Registers of 16-00 to 24-00 hours on 17.5.1979 of ASH (MAIN), ASH(WEST CABIN), CABIN/LJN.
7. Copies of Line Clear Procedures between ASH (West Cabin) and LJN (Indor Cabin) as laid down in the Station Working Rules.
8. Abstract of Detention Register of LJN and ASH (Main) of 17.5.79 from 16-00 to 24-00 hours shift.

With due regards,

Yours faithfully,

(A.P.Srivastava)
ASM/ASH.

Dated, Aishbagh,
the 31st July, 1979.
6.8.1979.

.....
TRUE COPY *AP Srivastava*

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. 6

To

The Divl. Safety Officer,
N.E. Railway,
Lucknow.

Through Station Supdt./N.E.Rly/Aishbagh.

Ref. No. T/190/0ptg/LJN(Pt.II) dated 21.8.80
received on 20th Sept. '80.

Sir,


With due respect I beg to state that the supply of documents as requested vide my application dated 16.6.80 is as per para-3(2) of the Clarification and Railway Board's decisions as mentioned in page-38 of the Brochure on Railway servants (D&A) Rules, 1968, so the denial of supply of those documents is against natural justice. As such I again request your honour to supply documents as requested vide para-2(a) (b) (c) for preparation of my defence.


Further, I beg to state that the list of witness by whom the Article of Charges and the imputations are to be sustained against me, namely-S/Shri Bhola Ram, AYM/ASH, K.L. Chugh, ASM/ASH, S.N. Mishra, ASM/LJN and G.C. Bhatnagar, T1/STP-statement of whom were not recorded as intimated by your goodself vide letter under reference, it is therefore stated that

AUG

the imputation of charges so alleged upon are without any ground and there was no truth as alleged that I had instigated the Yard and Cabin Staff to stop work. It was a spontaneous action of Yard and Cabin Staff themselves on certain demands.

Further, the list of documents as relied upon in support of the imputations never stated that I refused in granting the line clear for 48 Dn, nor I refused in granting line clear for any other train, rather I was not asked to grant line clear to any train let aside the question of 48 Dn. These documents never tells that I instigated the Yard and Cabin Staff to stop work.

Under the circumstances stated above, I beg to state that the imputation of charges so alleged upon me are without any truth and I deny all the charges as such. I request your goodself to cancell the charges as alleged.

Further I proposed S/Shri S.C.Dhar & C.L. Upadhyay, both are Guard/Lucknow Jn. to act as my defence Counsel, their consents are attached herewith.

With kind regards,

Yours faithfully,

Ad/- A.P. Srivastava

(A.P. Srivastava)
ASM/ASH.

Dated, 29th Sept. '80.

.....
TRUE COPY H.P.Sivasas

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983.

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. 7

Proceedings of D.A.R. inquiry held on 22.11.1982 in the chamber of the undersigned in connection with charge memorandum No. T/190/OPTG/LJN(Pt.II) dt. 5.6.79 issued against Shri A.P. Srivastava, ASM/ASH.

.....

Present:

1. Shri O.P. Gupta	A.C.S.(W)/LJN	Enquiry Officer
2. " A.P. Srivastava		Charged employee
3. " S.C. Dhar		Defence Assistant

The Defence Counsel pointed out at the outset that the cross-examination of Shri K.L. Chug, TNL and Shri S.N. Misra, ASM/LJN are due although statements have been recorded. He further pointed out that the cross-examination of Shri G.C. Bhatnagar is still not over. He mentioned that certain documents viz. Train Register, Cabin Register of both the west cabins and Cabin Register of ASH (Main) were requested by him which are to be supplied. The documents made available to the E.O. is Cabin registers of West Cabin alone. In other words, train register and cabin register of LJN and train register of ASH(M) have yet not been received. These have to be called for from the stations concerned. Since Prosecution Witness Shri Bhola Ram has not attended inquiry and since others were not called for besides documents were not available, inquiry is postponed. Next date will be advised after the records from the stations are received.

Sd/- A.P. Srivastava Sd/- S.C. Dhar Sd/- O.P. Gupta
(O.P. GUPTA)
ENQUIRY OFFICER
22.11.1982.

.....
TRUE COPY *A.P. Srivastava*

In the Hon'ble High Court of Judicature at Allahabad
(Lucknow Bench) : Lucknow ;
Writ Petition No. of 1983

Anrudha Prasad Srivastava ... Petitioner
Versus
Union of India and others ... Opposite Parties.

ANNEXURE NO. 8

To

The Divisional Safety Officer,
North Eastern Railway,
Lucknow.

Through: Enquiry Officer (ACS/N.E.RLY./Lucknow)
Station Supdt., N.E.Rly, Aishbagh.

Reg: D.A.R. Inquiry.

Ref: No. T/190/Optyg/LJN/Pt.II dated 10.11.83.

Sir,

The applicant respectfully submit as under:-

1. That the All India Railway Employees
Confederation took a decision to work strictly according
to rules in the month of May, 1979; notwithstanding,
Railway Employees have been working according to rules;
but to rejuvenate and to ~~maxx~~ inculcate spirit of
observing the Safety Rules particularly in the movements
of trains.

2. That, the applicant, an employee direct
under the control of the Operating Deptt. responsible
for the movement of trains; and a member of the one of
the constitute units of the Confederation, observed
Safety rules strictly-what the Railway Authority took,
as if, the Railway Employees refused to perform their
duties as well as resorting to strike.

3. That, under the conception the Railway
Authorities took severe action by ~~not~~ imposing heavy

R.P.S. 22/10/83

punishment to the individual employee - wage cut for the respective period and their service were treated to be 'break-in-service' from the respective period and date of the month of May, 1979.

4. That, the applicant was inflicted upon the heavy punishment of wage cut for the month of May, 1979; and his service was treated to be 'break-in-service' from 17.5.1979 vide office memorandum No. E/II/283/I/Strike/79 dated 19.5.79; no doubt it was stated in the memorandum that ~~the~~ ^{5½ hrs.} wage cut for that day would be made.

5. That, consequent upon such orders the employees concerned sustained heavy loss and suffered a lot. The applicant was performing his duty from 16.00 to 24.00 Hrs. shift of 17.5.1979 as ASM/West Cabin)/Aishbagh and was working by observing Safety rules while the Railway Authority disallowed him in performing his duty alleging that he had resorted to illegal stoppage of work and the punishment under para-4 stated above was imposed alongwith other employees.

6. That, on representations from the employees concerned individually and from the Confederation itself, the President of India was pleased to condone the 'Break-in-service' of the employees under such punishment alongwith the applicant.

7. That, every employee under break-in-service sustained consequential punishment due to break-in-service and the applicant was also sustained the same consequential punishment before it was condoned vide letter No. E/II/4/Misc/0ptg. dated 24.5.1982. Besides, the date 17.5.1979 was declared DIES NON in the case of the applicant resulting shortage of one day in the total length of service affecting pension and gratuity benefit.

8. That, besides the punishment stated above

inflicted upon the employees under break-in-service, disciplinary proceedings were initiated by issuing Major Penalty Memorandum to others similar to that of the applicant; but subsequently withdrawn consequent upon the fact that the President of India was pleased to condone the break-in-service and was communicated to the employees concerned vide letter No. cited in para-7 above.

9. That, as-ill-luck-would-have-it, the Major Penalty Memorandum under reference dated 3.6.1979 was issued by the Divisional Safety Officer/N.E.Rly./Lucknow, to the applicant under the same allegation and imputation of charges - resorted to illegal stoppage of work was not withdrawn arbitrarily.

10. That, in order to reply the alleged charges the applicant has been applying for the copies of the relevant documents since 31.7.1979; but a few documents has been supplied to him stating that other documents will be supplied.

11. That, even without supplying the relevant materials and without offering the reasonable opportunity for submitting the proper reply to the charges, the Enquiry Officer in the case was nominated; and he arbitrarily had been proceeded and has been proceeding regarding the statement of the Prosecution Witnesses and now further 26.11.1985 has been fixed for proceeding with the inquiry.

12. That, it would be proper to state that the inquiry proceeding right from the stage of issuing charge-sheet ~~will~~ till recording the statement of Prosecution Witnesses are absolutely null and void, and are absolutely without any authority of law.

13. That, the applicant belongs to the Operating Department and thus his disciplinary authority for the purpose of initiating and finalising disciplinary

proceeding is the Sr. Divisional Optg. Supdt., and not the Divisional Safety Officer, who belongs to the Safety Organisation which is quite different and distinct Deptt. from the Operating Deptt. right from the Division, Zonal Headquarters and Railway Board level.

14. That, it appears that the Divisional Safety Officer has already made up his mind to punish the applicant without taking into consideration that he has not been vested with such power under rule.

15. That, it may also be borne in mind that no delinquent employee can be punished for one and the same charge twice where in the present case the applicant having been already punished vide order dated 19.6.1979, is being again subjected to illegal D.A.R. proceeding undermaning the fact of already imposition of the punishment.

16. That, it is, therefore, respectfully requested that the entire disciplinary proceeding being null and void right from the stage of issuing charge sheet to the stage of recording statements, may be set aside and the applicant may be exonerated from the charges; and his case for promotion to the grade of ~~Ex56~~ Rs.550-750 may be considered under the restructuring scheme for which a Writ Petition No. 5741 of 1983 has already been admitted in the Hon'ble High Court, Lucknow and direction has been issued to consider the case of the applicant. Disciplinary proceeding at this stage may kindly be stayed till the time of the disposal of the application and decision is communicated to the applicant.

With kind regards,

Yours faithfully,

Sd/-

Dated: Aishbagh:
21.11.1983.

(A.P. Srivastava)
ASM/Aishbagh.

.....
TRUE COPY *AP Srivastava*

AUG

- 35 -

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1983

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXTURE NO. 9

पूर्वोत्तर रेलवे

कर्त्तव्य

मण्डल रेलवे प्रबन्ध कार्यालय (कार्मिक)

संख्या- इ/11/4/विधिधा/यात्रायात

लड्जमऊ दिन की 24-5-1982

1- लेन सुपरिषेन्ट,
रेशबाग, गोप्ता, लड्जमऊ जौ

2- फैस्टर लिपिक

विध्या:- मई 79 में लक्ष्मी इण्डिया रेलवे इन्डिया कंफ्रेंस
अधिनन्दन पर वर्क -2 रुप. में सेवा में भवरेश
कर्मचारियों का सर्विस को कहीं करना।

निम्नलिखित कर्मचारियों को जिनकी रुप. लाई आरु रुप. 50. सी.

द्वारा चलाये गये वर्क - टू - रुप. में भाग लेने के पश्चात सर्विस ब्रेक कर
दिया गया था उसे राष्ट्रपति के अदेश से रेल परिवाद ने इनकी ब्रेक - इन
सर्विस को कहीं कर दिया है।

इनका नाम तथा पद लेशन ब्रेक की तिथि

जिनकी ब्रेक कहीं किया गया है।

1- श्री रुपीष्ठश्रीवार्तव स०८देस्मा०/रेशबाग 17-5-79

2- श्री आर०रुन० तिवारी गाँव र/ गोप्ता 8-5-79

Abhishek

3- श्री रघुपीठ गुप्ता	गार्ड/गोडा	16-5-79
4- श्री आर०८० जयसिंह	पैट्रियट्समैन/लखनऊ	17-5-79
5- श्री अश्वगर अली	कैबिनमैन/ऐश्वार्य	17-5-79
6- श्री हरि कृष्ण	इटर/लखनऊ ज०	"
7- श्री सुन्दर लाल	लीवररैन/लखनऊ ज०	"
8- श्री रामबोध	इटमैन /लखनऊ ज०	"
9- श्री जगन्नाथ शर्मा	कीपमैन/लखनऊ ज०	"
10- श्री अब्दुल मनम	इनडोर स्टेमैप/लखनऊ ज०	"
11- श्री रामदेव	इटमैन / लखनऊ ज०	"
12- मुरली	लीवररैन/लखनऊ ज०	"
13- छोटे लाल	इटर / लखनऊ ज०	"

50

ਕੂਤੇ ਮਣਡਲ ਰੇਲ ਪ੍ਰਕਿਧਕ(ਕਾ) /ਲਾਭਨਜ਼ ।

सत्य प्रतीतिपि. *Abhisarita*



AS1

- 37 -

83

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1983

ANRUDHA PRASAD SRIVASTAVA

... PETITIONER.

VERSUS

UNION OF INDIA AND OTHERS

... OPP.PARTIES.

ANNEXURE NO. 10

NORTH EASTERN RAILWAY

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER ~~(EX)~~
(SAFTY)
LUCKNOW DATED 24.8.1982

Shri Abdul Mannan
ASM/LJN

C/- SS/LJN

Sub:- Charge Memorandum No. T/190/0ptg/LJN/Pt.III
dated 5.6.79.

Charges levelled against you vide charge
Memorandum quoted above have been dropped.

Sd/- J.N. Mehrotra
For Divl.Rly. Manager(Safty)
Lucknow.

.....
TRUE COPY *No. 5, as last*

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1983

Anrudha Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. 11.

Railway Board's letter No.E (D&A) 72, RG.6-13 dated 16.10.1973.

Sub:- Disciplinary authorities for imposition of penalties for varlous types of irregularities under the Railway Servants (D & A) Rules.

In Board's circular letter No.E(D&A) 60.R.G.6-30 dated 28.7.1962, it had inter alia been indicated that it would be procedurally wrong for an authority to initiate and finalise disciplinary proceedings against an employee who is not under its administrative control.

It has however been brought to the notice of the Board that some difficulties are being experienced in initiating and finalising the disciplinary proceedings against the staff involved in irregularities concerning purely personal matters such as misuse of Passes/PTOs, unauthorised occupation/retention of quarters, unauthorised absence from duty, etc. and it has been suggested that the instructions referred to above may be so amended, as to provide for initiation/finalisation of disciplinary proceedings by the officers of the Personnel Department, such as

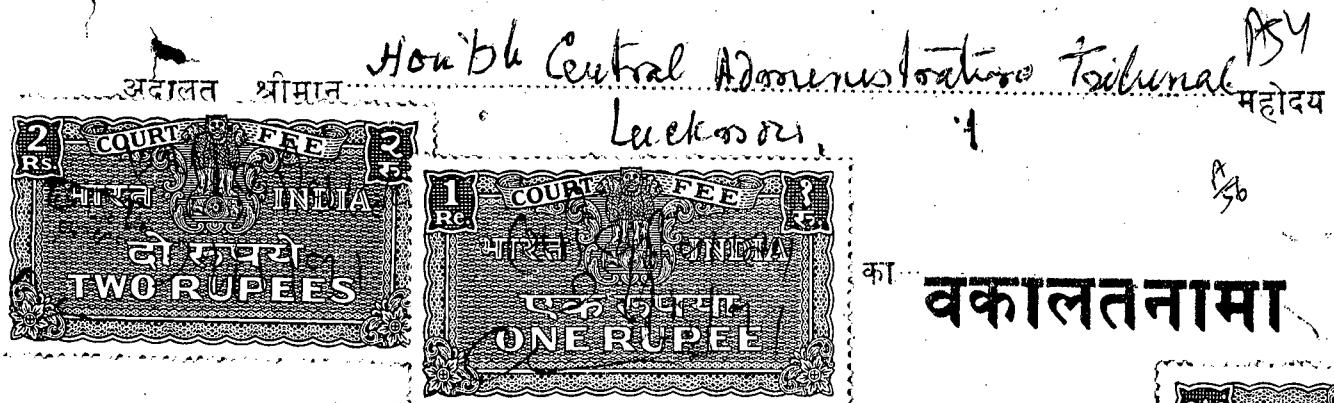
H.P.Srivastava

✓

APOs. DPOs, even against the staff who may be working in Departments other than the Personnel Department, and thus be not under their administrative control. It has been also mentioned that in respect of the category of Assistant Station Masters/ Station Masters, the disciplinary action is initiated and finalised both by the Divisional Safety Officer and Divisional Commercial Superintendent, depending upon the Department to which the irregularity committed pertains, despite the fact that the Assistant Station Masters belong to the Operating Department.

The matter has been carefully considered by the Board, and in consultation with their legal advisor, it is clarified that a Railway servant essentially belongs to only one Department, even though in the course of the performance of his day to day duties, he may violate certain rules/regulations administered by some other Department. The Assistant Station Masters and Station Masters belong to the Operating Department, even though, they may have to perform the duties pertaining to the Commercial Department also from time to time. The disciplinary authorities in their cases would thus belong to the Operating Department and none else. If any other practice is being followed, that is irregular and should be stopped forthwith. Disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working, as any other procedure would not be in keeping with the instructions referred to in para 1 above.

.....
TRUE COPY H.S. Sivaswam



वकालतनामा

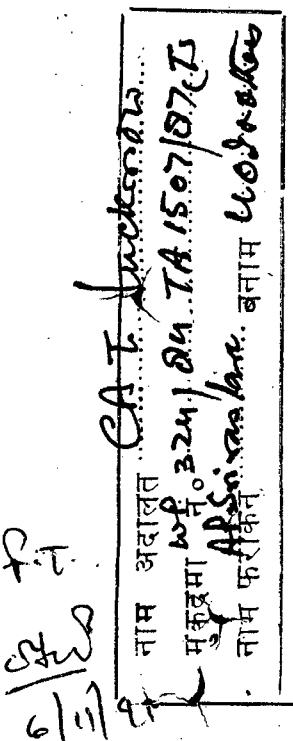
A.P. Srinivasa vs Union of India and others
बनाम प्रतिवादी रेस्पाइंट

नं० मुकदमा लं ३२५/सन्
TA 1507/87 वेशी की ता १४. १२. १९९१

ऊपर लिखे मुकदमा में अपनी ओर से

PANKAJ SRINIVASA & HAN KANT ADVOCADES महोदय
Naresh Kumar Roar Lucknow वकील एडवोकेट

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



Accepted

Pankaj Srivasa

साक्षी (गवाह)

Accepted
Han Kant

साक्षी (गवाह)

हस्ताक्षर

6/11

A.P. Srinivasa

दिनांक १० महीना १२ सन् १९९१ ई०

A.S

In the Hon'ble High Court of Judicature at Allahabad
ब अदालत श्रीमान (District Bench); द्विमहोदय

वादी (मुद्रा)
प्रतिवादी (मुद्रालेह) का वकालतनामा

A. P. Srivastava

वादी (मुद्रा)
1 रुपये



बनाम

Union of India vs प्रतिवादी (मुद्रालेह)
नं० १८० मुकदमा सन् १९८३ पेशी की ता० १६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री R. C. Sakhu

Advocate, High Court

एडवोकेट

महोदय

वकील

अदालत
नाम
मुकदमा
नं०

फैसला
नाम

Accepted

On Behalf
of Plaintiff

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकदमा में वकील महोदय रवयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटाएं या हमारी ओर से डिगरी जारी करावें और हपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युवत (दस्तखती) रसीद से लेवें या पंच नियुक्त करे-वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेसी स्वयं या किसी अपने पैरोकार को भोजता रहूँगा अगर मुकदमा छद्म पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर नहीं होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर A. P. Srivastava

साक्षी (गवाह)..... साक्षी (गवाह).....

दिनांक १२ महीना जून १९८३

Filed today

3/11/89
C22/14

PG 6

KS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

I N D E X

IN

REGISTRATION NO. 1507 OF 1987 (T)

A.P. Srivastava ----- Petitioner.

Versus

Union of India and others ----- Respondents.

S.No.	Particulars of papers	Page Nos.
1.	Written Statement.	1 to 14

A.K.Gaur
(A.K.Gaur)
Railway Advocate
COUNSEL FOR THE RESPONDENTS.

Dated: November , 1988.

AS

MS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT ~~XXX~~ LUCKNOW.

W R I T T E N S T A T E M E N T

On behalf of
Union of India and others-----Respondents.

IN
REGISTRATION NO. TA. 1507 OF 1987(T)
Anrudha Prasad Srivastava-----Petitioner.

Versus
Union of India and others-----Respondents.

The humble reply of the respondents nos.1 to 4
Most Respectfully Showeth:

1. That before dealing with parawise reply to the petition, it is significant to mention certain important facts which are very relevant for the purposes of the case.

2. That it will not be out of place to mention here that the petitioner has already been removed from

25/11/89
प्रबंग संवित्तकारी,
राज्य रेलवे, लखनऊ

1750

150

100

service vide order No. T/537/TA/3/86 dated 7.4.88 passed by Senior Divisional Safety Officer, North Eastern Railway, Lucknow. A photostat copy of the aforesaid order dated 7.4.88 is being annexed herewith and marked as Annexure No.I to this reply.

3. That the order of removal was passed, as the petitioner was working as Assistant Station Master on duty at west cabin, Aish-Bagh, failed to advise the cabinman on duty at the Loco Cabin to change the route for the dispatch of incoming engine and thereby causing serious train accident. The petitioner was charged for the aforesaid misconduct and an enquiry was set up against him and he was ultimately found guilty for violation of subsidiary rules and General Rules and station working rules.

4. That the petitioner also preferred an appeal to Additional Divisional Railway Manager against his removal order and Addl. Divisional Railway Manager, after carefully considering his case rejected the same vide order dated 28.6.88. A photostat copy of the order dated 28.6.88 is

being filed herewith and marked as Annexure-II to this reply.

25/11/88 अधिकारी
प्रवास भवन पर्यावरण विभाग
पूर्वोत्तर रेलवे, लखनऊ

-3-

5. That the contents of paragraph no.1 of the writ petition are not admitted. It is further submitted that the petitioner was awarded one punishment of break in service for not working for full day on 17.5.79 i.e. for unauthorized absence from duty and the disciplinary proceeding was initiated by the Divisional Safety Officer for the charge of instigating the yard and Cabin Staff of Aishbagh to stop work and also instigated them for refusal to grant line clear for 48 down running in between Lucknow Junction and Gorakhpur. Thus the petitioner has committed serious offence by which there were chances for accident and derailment of Railway trains.

6. That the contents of paragraph no.2 of the writ petition are denied for want of knowledge ~~xxxxxx~~ as there is nothing on record regarding the decision taken by the Railway Employees for work to rule.

7. That the contents of paragraph no.3 of the petition are not correct hence denied. It is submitted that the petition

Kewari

25/11/88
प्रवासी संडल संस्था विधिकारी
पर्वती रेलवे वाहन

5. That the contents of paragraph no.1 of the writ petition are not admitted. It is further submitted that the petitioner was awarded one punishment of break in service for not working for full day on 17.5.79 i.e. for unauthorised absence from duty and the disciplinary proceeding was initiated by the Divisional Safety Officer for the charge of instigating the yard and Cabin Staff of Aishbagh to stop work and also instigated them for refusal to grant line clear for 48 down running in between Lucknow Junction and Gorakhpur. Thus the petitioner has committed serious offence by which there were chances for accident and derailment of Railway trains.

6. That the contents of paragraph no.2 of the writ petition are denied for want of knowledge ~~xxxxxxxx~~ as there is nothing on record regarding the decision taken by the Railway Employees for work to rule.

7. That the contents of paragraph no.3 of the writ petition are not correct hence denied. It is further submitted that the petitioner has not observed the safe

rules.

25/11/80
प्रबन्ध मंडल संघीयकारी,
पूर्वोत्तर रेलवे, लखनऊ

Khurda

-4-

8. That the contents of paragraph no.4 of the

writ petition are not admitted and are denied.

9. That the contents of paragraph no.5 of the

writ petition are ~~not~~ admitted and are denied.

10. That the contents of paragraph no.6 of the

writ petition are not correct and it is further submitted

that the petitioner refused to grant line clear to 48

down ~~Railway~~ Express Train running in between Lucknow

and Gorakhpur on 17.5.79 during his ~~duty~~ hours from

16 to 24 hours. The petitioner refused to grant line

clear to 48 Down Express Train with a view to disrupt

train movement. The petitioner also instigated other

staff to stop work resulting in dislocation of Railway

Trains.

11. That the contents of paragraph nos. 7,8 and 9

of the writ petition are not denied.

12. That in reply to the contents of paragraph no.

10 of the writ petition, it is stated that the petitioner

and some other employees refused to work after 18.30

1/10/1981
25 अप्रैल 1981
पूर्वोत्तर रेलवे, लखनऊ
प्रधान संस्थान अधिकारी,

hours on 17.5.79 thus the salary has been deducted on the principle of 'no work, no pay' as per the instructions of the Railway Board. This has resulted in Break in service of the petitioner's service.

13. That the contents of paragraph no.11,12 and 13 of the writ petition are not denied.

14. That in reply to the contents of paragraph no.14 of the writ petition it is stated that the petitioner was allowed to inspect the documents relied upon by him and he has also taken the abstract of the same. The petitioner has also submitted his defence accordingly with the consent of his defence counsel. It is, further, submitted that the petitioner has participated in the disciplinary proceedings initiated against him by the competent officer i.e. Divisional Safety Officer under the provisions of Railway Servants Discipline & Appeal Rule, 1968.

15. That the contents of paragraph no.15 and 16 of the writ petition are not denied.

16. That in reply to the contents of paragraph no.17

of the writ petition, it is submitted that the petitioner

Subhash Kumar Singh
प्रकाश निकाल संस्कार अधिकारी,
पुस्तक दबाव, लखनऊ

is trying to linger on the finalisation of the enquiry on the pretext that he has not been given the documents by the Railway Administration. The petitioner has already seen the documents relied upon by him and he has also taken abstracts of the same and thereafter he ~~has~~ submitted his defence on 29.9.80 with the name and comments of his defence counsel.

17. That in reply to the contents of paragraph no.18 of the writ petition it is submitted that the petitioner is himself responsible for the delay in completion of the enquiry as he has submitted representation during the course of enquiry to the Enquiry Officer for the change of Enquiry Officer. It is further submitted that the petitioner has also moved a representation during the course of enquiry that the entire ~~xx~~ disciplinary proceeding being null and void right from the stage of issuing charge sheet to the stage of recording of the statements because the disciplinary proceeding was not initiated by the competent authority hence the entire

D. Kewalji
proceedings may be set aside and the petitioner may be

25/11/80
कर्मचारी अधिकारी,
पर्यावरण रेलवे, लखनऊ

ACB

64

⑦ ~~EXONERATED FROM DISCIPLINARY~~

exonerated from the charges. That in view of the averments made in paragraph no.19 of the writ petition it is clear that the petitioner has himself delayed the disciplinary proceedings.

18. That in reply to the contents of paragraph no.19 of the writ petition it is submitted that the Divisional Safety Officer is the Competent Authority to initiate the disciplinary proceedings against the petitioner under the Discipline and Appeal Rules 1968 as the Divisional Safety Officer belongs to the operating Department and he is of the same rank of Divisional Operating Supdt. The petitioner also belongs to the Operating Department hence the Divisional Safety Officer is ~~enough~~ competent to initiate disciplinary proceedings against the petitioner.

It is further submitted that as per definition of the Disciplinary Authorities as provided in Sub Rule 2 of Rule 7 of Discipline & Appeal Rules 1968. The above said rules provides in Schedule 2 the list of Officers Competent to initiate Disciplinary proceedings under the

provisions of Discipline & Appeal Rules for imposing the

Below
25/11/08
प्रबंग संचालन अधिकारी,
प्रबंग संचालन अधिकारी,
प्रबंग संचालन अधिकारी,
प्रबंग संचालन अधिकारी

various penalties. Accordingly for imposing major penalties like compulsory retirement, removal from service and dismissal from service, the disciplinary proceedings can be initiated by the "Appointing Authority or an Authority of equivalent rank or any higher Authority". The petitioner was working as Assistant Station Master when the disciplinary proceeding was initiated against him in the year 1979 by the Divisional Safety Officer and the Divisional Safety Officer was also the appointing Authority on that date and is also appointing authority at present.

19. That the contents of paragraph no.20,21,22 and 23 of the writ petition are not ~~and~~ denied.

20. That the contents of paragraph no.24 of the writ petition are not correct. It is submitted that the chargesheet was issued to different employees and the enquiry was made against the individual employee. It may be pointed out that the enquiry pending against the petitioner against the charge that he has instigated the staff of the Aishbagh Station not to work and grant line clear to 48 down ~~Railway~~ ^{express} Train. The above said charge against the petitioner was not

withdawn अविकारी,
मुद्रित संरक्षा अधिकारी,
पुस्तक रेतवे, लखनऊ

25/11/80

21. That in reply to the contents of paragraph nos. 25 and 26 of the writ petition it is stated that it is correct that the charges levelled against Sri A. Mannan, it does not mean that the charges levelled against the petitioner may also be dropped against the petitioner automatically. Each and every case ^{is} ~~is~~ enquired on ^{its} their own merits.

22. That in the contents of paragraph no.27 of the writ petition are not correct, hence denied. As already stated in the preceding paragraphs of this reply that the petitioner was issued a charge sheet in the present writ petition is on different charge than those of charge on which he was exonerated.

23. That in reply to the contents of paragraph no.28 of the writ petition it is stated that the Divisional Safety Officer does not belong to any other department except the operating department as stated in the preceding paragraphs of this reply. The petitioner has wrongly interpreted the meanings of the Railway Board circular dated 16.10.73 contained in Annexure No.11 to the writ petition. The above said Railway Board circular dated

Dr. K. S. G. J. S.
प्रवर. मंडल संरक्षा अधिकारी,
२५/११/८८

16.10.73 clearly provides that the Assistant Station Master and Station Master belong to the operating department and the disciplinary Authorities in their cases would thus belong to the operating department and none else. The Divisional Safety Officer is the officer in the senior scale in the operating department and he is equal to that of Divisional Operating Superintendent who is also an Officer in the senior scale in the operating department. Both the posts in the operating department are interchangeable thus the Divisional Safety Officer is as Competent Authority to initiate disciplinary proceedings against the Assistant Station Masters and Station Masters as both are under the administrative as well as disciplinary control ^{equivalent} of the Divisional Safety Officer as he is also their appointing authority.

Moreover in view of the introduction of the divisional system on the N.E.Railway a procedure office order no.1 dated 3.4.69 was issued by the General Manager, N.E.Railway, Gorakhpur which provides therein the duties and powers of the various divisional officers working under the control of the General Manager, N.E.Railway,

प्रधान सचिव कार्यालय,
प्रधान सचिव कार्यालय, गोरखपुर

In the above said procedure office order at page No.3 and 4 the duties and responsibilities of Divisional Safety Officer are given, under the heading "Divisional Safety Officer", there is clause (i) which provides that the Divisional Safety Officer and Divisional Operating Superintendent will exercise control over the working of all transportation staff for the purpose of them. Similarly there is a clause (n)(o) which provide that the Divisional Safety Officer will control the Station Masters and Assistant Station Masters. A photostat copy of the aforesaid procedure office order No.1 dated 3.4.69 is being annexed herewith and marked as Annexure No. III to this reply.

24. That the Assistant Station Master and Station Masters both belong to the Traffic and Transportation which are under the operating department. The Station Master and Assistant Station Masters at some small stations are also required to sell the Railway Tickets through Railway Booking window in addition to the original duties assigned to them. Thus the Station Masters and Assistant Station Masters ^{perform the function} ~~comes under the control~~ of both the Commercial and Operating Department but as per Railway Board circular dated 16.10.73 it has been clarified that the disciplinary Authorities will be only of the

Khawaja

25/11/88

प्रबर मंडल संरक्षा अधिकारी
पूर्वोत्तर रेलवे, लखनऊ

operating Department. The Railway Board have also clarified vide their letter No. L/No. E (D&A)84 G6-47 dated 22.10.84 that Safety Officer, as distinct from Commercial Officers, belong to Operating side. A photostat copy of Railway Board's letter dated 22.10.84 is herewith annexed and marked as Annexure No.IV to this reply.

25. That the contents of paragraph no.29 of the writ petition are not admitted and it is further stated that the respondent no.2 the Divisional Safety Officer is competent to appoint the Enquiry Officer in the present case.

26. That the contents of paragraph no.30 of the writ petition are not correct. It is further submitted that the respondent no.2 and 3 both are competent to initiate the disciplinary proceedings against the petitioner under the D.A.R. Rules 1968. The Sub-Rule '2' of Rule 7 empower any officer to initiate disciplinary proceedings who is an appointing authority or any officer of equivalent rank to that of Appointing Authority or any higher authority than the Appointing Authority. The Divisional Safety Officer is the Appointing Authority of the Petitioner and he has rightly initiated the disciplinary proceedings against the petitioner.

27. That the contents of paragraph No.31 of the writ petition are not denied.

28. That the contents of paragraph no.32 of the

B. K. Patwari

प्रबंध संरक्षा अधिकारी,

25/11/88

-13-

writ petition are not correct on the ground stated in the preceding paragraphs of this reply. The disciplinary proceedings initiated and conducted by the Competent ^{are} Authority in accordance with the Rules.

29. That in reply to the contents of paragraph no.

33 of the writ petition it is stated that the petitioner is not entitled ~~for~~ ^{to} any further promotion until the disciplinary proceedings are finalised, in view of the provisions of D.A.R. Rules 1968. Moreover the petitioner himself does not want to finalise the disciplinary proceedings pending against him.

30. That the contents of paragraph no.34 of the

writ petition are incorrect, false, hence denied. It is further submitted that the petitioner did not meet the Divisional Safety Officer, opposite party no.2 on 26.11.83 as stated in para under reply. Therefore the question does not arise about the threatening ~~of~~ ^{to} the petitioner by opposite party no.2 that he ~~will~~ ^{could} be removed from service even if the charges may or may not be proved against him.

31. That the contents of paragraph no.35 of the

Bhavesh Patel
प्रदर्शन संस्कारकारी,
पत्रिका 25/11/88

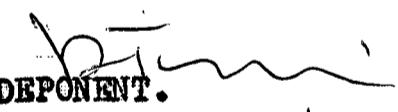
A70

- 14 -

writ petition are incorrect and denied. The petitioner's allegation in the paragraph under reply are false, incorrect and without any substance.

32. That the petitioner has efficacious and effective statutory alternative remedy by way of appeal under Rule 18 of the Discipline and Appeal Rules 1968. which he did not avail. Hence this writ petition is liable to be dismissed on this ground alone.

33. That the writ petition is premature as no penalty has been imposed upon the petitioner by the opposite parties. He has simply challenged the Disciplinary Proceedings pending against him to get the benefit by delaying the proceedings by filing above said writ petition in this Hon'ble Court.


DEPONENT.

25/11/08

Verification.

I, V.K.Thakur . . .

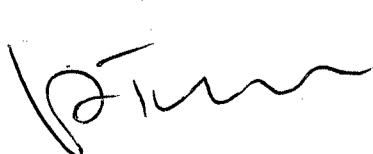
प्रवर मंडल संरक्षा अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ
s/o Late & W. Dr. Thakur

aged about 37 years working as Sr.Divisional Safety Officer, North Eastern Railway, Lucknow do hereby verify that the contents of paragraph nos. 1 to 33 of this reply are based on perusal of official records and legal advice received.

Verified on this

day of November 1988

at


DEPONENT.

प्रवर मंडल संरक्षा अधिकारी
पूर्वोत्तर रेलवे, लखनऊ
25/11/08

ORDERS OF IMPOSITION OF PENALTY OF DISMISSAL/REMOVAL/COMPULSORY RETIREMENT FROM SERVICE UNDER RULE 6 (VII), (VIII) AND (IX) OF THE RAILWAY SERVANTS (D/A) RULES, 1968.

No. 271832/TN/388

Date 24-1-88

To

Name Sri A. P. SivadasFather's name Mangal RaoDesignation Under Susp. Deptt. of EngineeringTicket No. 211 Date of appointment 24-3-1968Station Chennai Scale of pay 1400-2800Shri. A. P. Sivadas (Sgn) 24-1-88

(Name, designation & office in which he is employed),
 (Under suspension) is informed that the
 Inquiry Officer/Board of Inquiry appointed to enquiry into
 the charge(s) against him has/have submitted his/their report.
 A copy of the report of the Inquiry Officer/Board of Inquiry
 is enclosed.

2. On a careful consideration of the enquiry report
 aforesaid, the undersigned agrees with the finding(s) of the
 Inquiry Officer/Board of Inquiry and holds that the Article(s)
 of charge is/are proved. Orders are attached as Annexure I
 OR

* On a careful consideration of the enquiry report
 aforesaid, the undersigned agrees with the finding(s) of the
 Inquiry Officer/Board of Inquiry in so far as it relates to
 article(s) of charge No. (s) _____ and for
 reasons stated in the attached Memorandum holds that article(s)
 of charge No. (s) _____ which the Inquiry
 Officer/Board of Inquiry has / have held as not proved/ proved,
 is also proved/ not proved.

3. The undersigned has, therefore, come to the conclusion
 that Sri A. P. Sivadas _____ is not a fit
 person to be retained in service and has decided to impose
 upon him the penalty of dismissal/removal/compulsory retirement
 from service, Sri A. P. Sivadas _____ is, therefore,
 (Name of the Railway Servant) _____ dismissed/
 removed/compulsory retire from service with effect
 from Immediate effect.

(Contd.)

True Copy

25/1/88
प्रमाणित दिनांक

115

A22

4. Under Rule 18 of the Railway Servant (D & A) Rules, 1968 an appeal against these orders lies to A.D.R.M.L.J.M. provided:-

1) the appeal is submitted within 45 days from the date of receipt of these orders; and

ii) the appeal does not contain improper or disrespectful language.

5. Please acknowledge receipt of this letter.

* Strike out where not applicable.

DA/~~ASERIS~~
One

Signature V.K. Stewart

Name & Design. (V.K. Stewart)
of the disciplinary authority, Co. P.S. L.C.M.

To
Divl. Rly. Manager (Safety),
N.E. Railway,
Lucknow.

Received your N.I.P. No. T/537/11A/3/86
dated 7.4.86 alongwith 18 Pgs enclosures.

Page 9 to 18 Not Signed by E/O

WITNESS:

① Mr. Adams
R.R. Manager (ASR)

A. S. S. S. / A.R.F.
SIGNATURE:

DATE 7/4/86

② Mr. Adams
R.R. Manager (ASR)
7/4/86

True Copy

W. J. Stewart

प्रदर्शन संस्थान अधिकारी, 25/11/88
पूर्वोत्तर रेलवे, लखनऊ

A23
1114

Annexure I of N.I.P No.1/537/T/3/86 dated 27-4-1988
Issued to Sri A.P. Srivastava ASW/ASH under suspension.

ORDERS.

I have gone through the full case, and agree with the findings given by the Enquiry Officer. Charged employee deliberately non-cooperated with Enquiry Officer to delay the completion of enquiry.

I, therefore, order his removal from service with immediate effect.

V.A. TEWARI
(V.A. TEWARI)
Sr. DIVL. SAFETY OFFICER
M.E.D.Y. - LUCKNOW

True Copy

PT
25/4/88
प्रबन्ध नं० ३८८० क्र० ८८८८
पूर्वोत्तर रेलवे, लखनऊ

A74 1165

N.E. RAILWAY,

Annexeure no PA/II

No. T/537/T/3/86

DIVL. FLY. MANAGER'S OFFICE
LUCKNOW, 14.28-6-88,

To,
Shri A.P. Srivastava,
Ex-A.S.M/ASH

Through: SS/ASH

Subject: Permission of 24 Dn. Action on
31-5-86.

Ref: Your appeal dated 29.4.88 against order
of removal from service - NIP No. T/537/
T/3/86 dated 7.4.82.

ADM/VLJH has passed the following orders on
your appeal quoted above.

"I have gone through the appeal dated 29.4.88
of Sri A.P. Srivastava, ex-A.S.M/ASH and the whole
case and observed as under :-

On 31.5.86, the appellant Sri A.P. Srivastava
was on duty as A.S.M at West Cabin/Asibagh in 8.00
to 16.00 hrs. shift. He instructed Sri Balram Singh,
Cabinman on duty at the Loco cabin to despatch Down
Light Engine and accordingly gave slot by reversing
lever No. 12 in his cabin to enable the above said
cabin to set the cross over 5-5/6 for the despatch of
the above Light Engine to Asibagh. The above Light
Engine reached Asibagh at about 5.15 hrs.

790p had arrived at Asibagh at 9.10 hrs. and
its engine was to be sent to Shri on the same route
in which the Loco Light Engine, mentioned above,
had come to Asibagh. The above-named A.S.M also
advised Sri Balram Singh Cabinman of Loco Cabin
regarding this movement and gave his slot by reversing
lever No. 12. This fact has been asserted by Sri
Balram Singh, Cabinman in his statement dated 31.12.87.
He also gave his private No. for the above movement.

At the same time
At the same time, A.S.M/West cabin/ASH sought
permission of 24M(Main) for reception of 24 Dn.
for which he had already granted line clear. The
latter gave the permission and instructed that Up
Light Engine should be despatched to the Loco

True Copy

25/11/88
मुद्रक संस्था अधिकारी
पूर्वानुर इलेक्ट्रिकल लक्षण

the written advice, would have attended the cabin for rectifying the failure. Instead of adopting the proper procedure, Sri A.P. Srivastava adopted short cut method and violated the following rules :-

G.R. 2.56(a) - for not observing rules and special instructions i.e. he granted line clear for 24 Down to Amarsi and also advised Cabinman of Local Cabin for despatch of incoming engine of 790P without prior permission of ASM(Main)/ASU.

He also failed to declare the failure of lever No. 12 and did not adopt the correct procedure in case of failure of signals and signals.

G.R. 3.58(1) - in that he failed to report the occurrence to the Railway servant responsible for the upkeep of the signals in writing.

G.R. 3.68(1)(i) - signals shall be lowered by their proper levers. If a signal cannot be lowered by its lever, it is not to be taken off by other means". Sri A.P. Srivastava manipulated with the R.S.M for setting the route and clearing of signals for reception of 24 Down.

G.R. 3.68(2)(ii) - "when interlocking fails or becomes defective, the relevant signals shall also be treated as defective." In this case when Lever No.12 could not be normalized, the A.S.M (Sri A.P. Srivastava) should have adopted the proper procedure in case of failure of interlocking. He should have advised the maintenance staff in writing or should have piloted 24 Down after ensuring correct setting of route for its reception.

G.R. 5.61(2) - R.M is directly responsible for the working of signals. No signal must not be taken off without the personal order of R.M on duty. Sri Srivastava failed to adopt correct procedure when Lever No. 12 could not be put in normal position. He did not consult cabinman for getting necessary route signals cleared by manipulating with R.S.M. on duty.

Sri A.P. Srivastava also violated Section Working Rules of A.R. 1944 - para C(c)(iii) at page 11.

It is also established beyond doubt that it was a case of procedural failure due to conflicting movement made by Sri A.P. Srivastava R.S.M on duty at West cabin A1B1D1B1, which he failed to detect. He again failed to declare it and also failed to observe the proper

True Copy

W. D. D. D.

प्रबन्ध संकाय
पूर्वोत्तर रेलवे, लखनऊ
25 जून 1988

2. DIVISION OR DIVISIONAL SUPERINTENDENCE

A22

Part of which will be placed under the administrative charge of a Divisional Officer who will be designated as the Divisional Superintendent. He will be responsible for all the various branches at present constituting the Service except the Financial, Safety, Health and Security branches. The Divisional Superintendent will be responsible for the overall working of the Division, may direct the various officers to fulfil their allotted functions and be beyond their respective departments. The Head of the Divisional Superintendent will be responsible for their administrative control. For matters within their cognizance, he will be responsible, adjudge the relative importance of the requirements of the different departments and will ultimately take the responsibility for their decisions. If and as beyond their powers may arise, he will be responsible to the Headquarters office to the detriment of departmental interests. The various points for consideration relating to the different department, with their officers, will be submitted to the Headquarters office, they will ensure implementation thereof.

Similarly with the formation of the divisions, all the District Officers within the jurisdiction of the division will be located at the Divisional Headquarters. In some cases, and for some other reasons, they may have to be located at other specified points, either in public interest or in administrative interest, but these officers will form part of the division concerned and work under the control of the divisional officer concerned and the Divisional Superintendent. All work now done in the districts will be transferred to the Divisional officers.

3. NON-DIVISIONALISED UNITS

The Store Depots at Itanagar, Goralpore and Samastipur will continue to be controlled from the Headquarters office and will not be affected by the Divisional System.

Similarly the different Workshops including the Bridge and Signal Workshops at Gondwanagar, will continue to be controlled from the Headquarters and will not come within the ambit of divisionalisation.

The Security Department, also will not be in-corporated in the Divisional Scheme. The different Security units and Assistant Security Officers, however, will continue to maintain close liaison with the Divisional authorities and will seek advice regarding security and cognate problems.

4. DIVISIONAL OFFICERS

The Divisional Superintendent will be assisted by a number of Divisional and Assistant Officers for the various technical branches of division; the strength of the officers being commensurate with the quantum of work of each division. Normally the Divisional Superintendent will be assisted by the following Divisional Officers:

Designation of the Divisional Officers.	Designation
1. Divisional Superintendent	DSO
2. Divisional Safety Officer	DSO
3. Divisional Commercial Superintendent	DCS
4. Divisional Mechanical Engineer (and a second DME (C. & W.) if justified)	DME
5. Divisional Engineer (and a second DEN if justified)	DEN
6. Divisional Signal & Tele-communication Engineer	DSTE
7. Divisional Electrical Engineer	DEE
8. Divisional Personnel Officer	DPO
9. Divisional Accounts Officer	DAO
10. Divisional Medical Officer	DMO

The Divisional and Assistant Officers of the various technical branches of the division would function as Technical Advisers to the Divisional Superintendent. They would on the one hand be responsible to the Divisional Superintendent for the day to day general administrative work of their respective departments and on the other, they would be answerable to their Heads of Departments for the technical work. In their respective spheres, in accordance with the policy/directives issued by the Headquarters office. Their relationship will be on a par with that of the Head of Department with the General Admin.

The Divisional Superintendent will be similar to that of the Head of Department with the General Admin.

True Copy

B. S.

प्रबन्ध विभाग अधिकारी, 11/80
दिल्ली राज्य, लखनऊ

1 - 1

八

H28

(d) Conducting all Safety, Line and Board Light and other inspections and exercising powers such as powers being or to be given by Transportation and other departments.

(e) DSO and DSO will exercise control over working of all transportation staff for the purpose of disciplinary action in respect of items of work allotted to them.

(f) Preparatory operations concerning safety aspects, accidents, etc.

(g) Work programme proposals concerning safety aspects.

(h) Control over budget, expenditures and allocations, etc. concerning the requirement of working department.

(i) Preparation of station working rules jointly with the DOS.

(j) Trade Welfare will be under the control of DSO.

(k) Control over staff of whole operating Department. Transfers and postings of all Inspector, Assistant Inspectors, Station Masters and other categories of staff in grade R-35 will be above all class III yard staff, all controllers including Area controllers will be decided by DSO in consultation with DOS.

(l) The DSO will be assisted by a member of the Divisional Committee on Transport and Railways to be responsible for the efficient management and control of the Division. The DSO will administer all the commercial staff such as Assistant Officers, Assistant Clerks, Assistant Clerks, checker, checker and other commercial staff.

(m) All commercial staff supervised with Assistant Officers, if any will be relieved of their posts if they cannot be recalled in case of emergency pertaining to the Division.

(n) Arrangement for making arrangements for booking and delivery of goods and passengers.

(o) Prevention of ticketless arrangement of passengers.

(p) Control of ticketless arrangement of drivers such as drivers of trolley and trolley of wagons and drivers of trolley of trolley.

(q) Control of fare public regarding commercial and other matters.

(r) All matters regarding fare, other than those dealt with by the fare committee.

(s) Acceptance of payment.

(t) Dealing with delinquents and Audit Inspection Report.

(u) All arrangements for collection, safe custody and disbursement of commercial property and arrangements into cases of loss or theft of cash.

(v) All work in connection with issues of concession orders, sea of tickets, etc.

(w) All matters in connection with handling contracts of goods and passengers and fare and fare billing for all items falling within powers of division.

(x) Management of station premises (except those controlled by the DSO and DSO).

(y) Prevention of ticketless Travel.

(z) Passenger inquiries.

(aa) All matters concerning licensed porters.

(bb) Maintenance of cleanliness of all stations.

(cc) Effective maintenance of station equipment and arrangement for supplies, stationery, etc.

(dd) Development of traffic and market research. Advising Divisional Committee on Railways about the pattern of traffic ordering from time to time so as to regulate the same and to plan distribution of available stock in the best possible way to operate in the Division.

(ee) Verification, Acceptance, Allocation, Adjustment of all cash and revenue bills relating to the Department.

(ff) Parliament and elections.

(gg) Works and scheme pertaining to commercial activities and passenger amenities.

(hh) Regarding delivery and wagon shunting premises to merchants for stacking of goods, collection of accounts, realisation of license fees, etc.

(ii) Supervision and control over the Bleeding Posts, Sheds, Repacking sheds and transit freight sheds.

(jj) Arrangement for reservation of berths and seats in trains except ~~100~~ and ~~100~~ of which are to be allotted by DSO at stations.

(kk) Social welfare functions of L. A. T. C. C. and Station Cooperative Committee.

(ll) All kinds of financial matters are dealt with at Headquarters level.

True Copy

प्रवर्त्तन लम्पां तिर्त्ते

पूर्वोत्तर देश, लैंगक । ११८८

Annexeure NO RA/120

A79

Copy of Railway Board's /New Delhi's L/No. R(1984) 8406-47 dated 22.10.1984 to the General Manager/Railway Gorakhpur.

sub - Disciplinary authority under Railway
servants (BDA) rules, 1968 - staff of
Operating Department.

Reference your letter No. E/74/2/16, 4/IV dated 24/6/84
on the above subject. The Board desire that your railway should
forcefully contest the writ Petition challenging exercise of
disciplinary powers by the Divisional Safety Officers in the case
of operating staff and point out to the High Court that
Safety Officers, as distinct from Commercial Officers, belong
to operating side and there should be no objection to their
taking disciplinary action against Operating staff like A.R.S.,
A.M.S., etc. who perform train passing duties.

Please acknowledge receipt.

True Copy

h/m

इयर गोदान कंसो अधिकारी, 08
पुस्तकालय, राज्य

Filed today
APR 30/81

In the Central Administrative Tribunal,
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

T.A. No. 1507 of 1987 (T)

A.P. Srivastava

-Applicant

versus

Union of India and others

-Respondents

INDEX

Sl. no.	Description of papers	Annex. no.	page no.
1.	Replication		
2.	Instructions published vide notification dated 27.4.79	R-1	
3.	Letter dated 21.5.1979	R-2	
4.	Letter dated 20.3.1980	R-3	
5.	Statement of P.W. I dated 16.4.1984	R-4	
6.	Statement of P.W. II dated 16.4.1984	R-5	
7.	Letter dated 29.8.1980	R-6	
8.	Letter dated 18.4.1983	R-7	
9.	Letter dated 6.7.1979	R-8	
10.	Notice dated 28.2.1984	R-9-	

Applicant

Abdul Aziz

Counsel for the applicant

Lucknow Dated
March 10, 1989

AOI

In the Central Administrative Tribunal
Additional Bench at Allahabad,
Lucknow Circle, Lucknow

Replication on behalf of the applicant in
reply to the written-statement of the
respondents

In
TA. No. 1507 of 1987 (T)

BETWEEN

A.P. Srivastava

--Applicant

versus

Union of India and others

--Respondents

1. That I am the applicant in the above noted application and I am fully acquainted with the facts of the case.
2. That the contents of para 1 do not call for any reply.
3. That in reply to the contents of paras 2 to 4 it is stated that the punishment order dated 7th April, 1988 removing the applicant from service and the order rejecting the departmental appeal against the same had been challenged by means of another application no. OA 216/88 (L) before this Hon'ble Tribunal. The same was admitted on 24.11.1988 and is pending. The relevant facts and grounds to challenge the

said order have been detailed in the said application. It is, therefore, not necessary to indicate the said facts and pleas in the present petition.

4. That the contents of paras 5, 6, 7 and 8 of the counter-affidavit are not correct as stated and are denied and in reply the contents of paras 1 to 6 of the writ petition are reaffirmed as correct.

As a matter of fact the Central Body of All India Railway Employees Confederation duly served the Railway Board with the notice that the Railway Employees will resort to "Work to Rule" w.e.f. 8.5.79 and onwards in order to press their grievances. It was also within the knowledge of all Divisional Railway authorities and a notification dated 27.4.1979 was issued to various other Railway Authorities directing them to bring to the notice of all Railway Employees the consequences of resorting to "Work to Rule". The true copy of instructions published vide notification dated 27.4.1979 regarding "Work to Rule" and consequences thereof is filed herewith as Annexure no. R-1 to this replication.

^{applicant}
The ~~other~~ deponent and the other employees had to observe the Safety Rules for the safe operation of the train movements. The deponent duly attended his duty on 17.5.1979 and taken over charge at 16.00 hours at West Cabin at Aishbagh Railway Station. He was allowed to work from 16.00 hours to

Af Srinivas

18.30 hours at West Cabin at Aishbagh Railway Station. He was allowed to work from 16.00 hours to 18.30 Hours as is evident from Annexure no.1 to the writ petition. Thereafter the deponent was asked to hand over charge to Sri G.C.Bhatnagar, T.I. Sitapur deputed as Enquiry Officer in connection with "Work to rule" as per orders of Sri R.S. Sharma, A.O.S., Lucknow Area. The deponent handed over charge to Sri G.C. Bhatnagar at 18.30 hours. The deponent did not refuse to work at all. Since the deponent was not kept on duty after 18.30 hours, there was no question of giving or not giving line clear to 48 Dn. at 20.40 hours. The charge of either refusal to work or refusal to grant line clear to 48 Dn. at 20.40 hours is totally false and baseless.

The Railway Employees who actually observed Safety Rules and maintained such safety in operation of trains their working known as "work to rule" was taken as obstruction in the smooth running of the trains, refusal to work and the same was considered as illegal strike. A true copy of letter dated 21.5.1979 is filed herewith as Annexure no. R-2 to this replication.

Abinav
The Railway authorities considering "work to rule" as causing obstruction in smooth running of trains, refusal to work and unauthorised absence from duty punished the active members of All India Railway Employees Confederation "with break in service and consequently issued major penalty/charge-sheet to the leaders alleging that they refused to work in one way or the other and instigated the staff working under them likewise, the deponent having the post of

Divisional Secretary of All India Station Masters' Association posted as A.S.M., Aishbagh Railway Station, was also punished with break in service vide Annexure no.1 and subsequently charge-sheet contained in Annexure no. 3 to the writ petition was issued to him adding the charge of instigating the yard and Cabin Staff of Aishbagh to stop work and the charge of refusal to grant line clear to 48 Dn. were levelled against him. Both the charges were false and baseless. The deponent was not permitted to work after 18.30 hours, as evident from Annexure no.1 and his services were terminated. The charge was made over by him to Sri G.C.Bhatnagar at 18.30 hours. There is no question of not giving line clear to 48 Dn. at 20.40 hours ~~xx~~ after the termination of the services at 18.30 hours

Regarding the charge of instigation it is respectfully submitted that the charge itself is vague, non-speaking and unspecific. No statements of persons instigated have been recorded. No time of instigation has been pointed out. Even on demand the names of persons instigated were not furnished and the names are not included in the list of other witnesses. Annexure no. 5 to the writ petition at item no.5 indicates that the deponent demanded the statements of persons who were alleged to be instigated to stop work. The said letter of the deponent was replied ~~xxxxxx~~ order dated 10.3.1980 passed by opposite-party no.2 and it was stated that no statement of the persons instigated were recorded and as such there is no

AP Singh

question of supplying the same. A true copy of letter dated 10.3.1980 referred to above is filed herewith as Annexure no. R-3 to this replication. The Railway Administration while proving the charge of instigation examined P.W.1 Sri Bhola Ram, Asstt. Yard Master, Aishbagh and P.W. II Sri K.L. Churg, A.S.M., Aishbagh who in their cross-examination by the Enquiry Officer did not establish the charge of instigation. The P.W.I in reply to question no.1, "There is a charge against Mr. A.P. Srivastava who was A.S.M. in the West Cabin on 17.5.1979 that he participated in the said strike and that he instigated the staff to suspend work. What you have to say in this connection clearly replied "I have no idea whether there was any instigation from Sri A.P. Srivastava or not. I had no personal talk with Sri A.P. Srivastava." Similarly the P.W. II in reply to question no. 4 i.e. "would you please recall if there was any talk that Mr. A.P. Srivastava was instrumental in suspending train movement or instigating staff" replied "there was no such talk". Thus there is no evidence to sustain the charge of instigation and the same is wholly false and fabricated. The true copies of the statements of P.W.1 and P.W. II dated 16.4.1984 are filed herewith as Annexures nos. R-4 and R-5 respectively to this replication. It is wholly wrong to say that the deponent was awarded punishment of break in service only for not working for full day on 17.5.79 i.e. unauthorised absence from duty and the Divisional Safety Officer initiated the disciplinary

AP Srivastava

proceedings for the charge of instigating the yard and cabin staff of Aishbagh to stop work. The fact is that the entire incident of "Work to Rule" was taken as illegal strike (without any authority of law), refusal to work and the charge of instigation was fabricated with a view to punish the leaders more rigorously. The cause for punishment was the alleged illegal strike and once the employee was already punishment ^{ed} it did not remain open to the Railway Authorities to further initiate the disciplinary proceedings to punish them again for the same charge. The ^{an} defendant did not commit any offence at all, much as less serious offence as alleged. It is wholly false and incorrect to allege that there were chances for accident and derailment of Railway trains when the train operation was stand still. "Work to Rule" means observation of Safety Rules and when the Safety Rules are observed there remains no chances for accident or derailment.

It is very surprising that the Railway Administration did not hesitate in punishing the railway employees who had resorted to work to rule in order to maintain safety in train movement. Work to rule cannot be taken as illegal strike or refusal to work and no proceedings or punishment can be justified on that account. There is no evidence on record to prove that the defendant ever refused to work or to grant line clear to 48 Dn. and instigated Cabin and yard staff. The charge-sheet contains the false charges only in order to crush the spirit of the leadership.

5. ~~4.~~ That with reference to the contents of para 12 of the counter-affidavit it is stated that the deponent or any other employee actually never refused to work but as a matter of fact the opposite-parties treated the working of the Railway Employees i.e. "Work to Rule" as refusal to work or illegal strike and punished them arbitrarily with break in service. This fact has already been admitted in para ~~8~~¹¹ of the counter-affidavit wherein the contents of paras 7, 8 and 9 of the writ petition have been admitted. Since the Railway authorities on their own accord did not take work from the deponent and other employees observing "work to rule" and posted substitutes in their place who were untrained and unqualified and under these circumstances the deponent cannot be charged for refusal to work etc.

6. That with reference to the contents of para 14 of the counter-affidavit it is stated that the opposite-parties did not even provide the documents referred to in para 14 and asked for vide Annexure no.5. The deponent even after inspection had been provided with the documents mentioned at item no. 1, 2 and 3 in Annexure no.5 and the rest of the documents have still not been given even after reminders dated 22.4.1981, 24.8.1981, 7.9.1981, 30.9.1981, 18.11.1981, 23.1.1982 and 22.11.1982, issued by the enquiry Officer, during the enquiry and for want of the said records the cross-examination of P.W. II and P.W. III could not be done since 22.4.1981 till 16.4.1984. The Enquiry Officer ultimately proceeded with the

Abhishek

enquiry and recorded that the same could not be produced by the Railway. The Station Superintendent vide letter dated 29.3.1980 and 18.4.1983 shown inability to provide the Train and Cabin Register of Aishbagh (Main) and West Cabin and the detention register of Lucknow Jn. and Aishbagh mentioned at Item no. 6 and 8 in Annexure no.5. A true copy of letter dated 29.3.1980 and 18.4.1983 issued by Station Superintendent are filed herewith as Annexures nos. R-6 and R-7 respectively to this replication. The entire delay in proceedings has occurred solely due to negligence on the part of Railway authorities. The proceedings against the deponent have been initiated by the Divisional Safety Officer who is not the competent authority as alleged. The deponent also represented the matter regarding the competence of the opposite party no.2 vide Annexure no. 8 to the writ petition and prayed that the proceedings may be quashed being null and void and further prayed that till the disposal of the representation further proceedings be stayed but the opposite party no.2 did not accede to the the request of the deponent. The opposite-party no.2 is bent upon to punish the deponent and even the proceedings have not been stayed while the application/representation of the deponent dated 25.5.1984 preferred to Chief Operating Superintendent Gorakhpur for change of Enquiry Officer is still pending disposal. There is provision for stay of proceedings during pendency of such representation (R.B.'s letter no. E (DA) 70 RG-6-14/1 of 1974).

Aishbagh

¶.7. That the contents of paras. 16 and 17 of the counter-affidavit are denied and those of paras 17 and 18 of the writ petition are re-affirmed as correct. The contents of para 5 of the replication may also be perused. The railway is responsible for the whole delay. Demand of documents, making representation for change of enquiry officer and representation for setting aside proceedings for want of competence of ~~opposite~~ opposite-party no.2 are the legal rights available to the deponent and if he resorted to the same in order to defend himself it cannot be said to be abuse of his rights but the opposite-parties who did not furnish the requisite documents and did not decide the representation within a reasonable time will be held responsible for delaying the proceedings.

8. That the contents of para 18. of the counter-affidavit are denied and those of para 19 of the writ petition are re-affirmed as correct.

Ab Singh
The contention of the opposite-parties that the Divisional Safety Officer, opposite-party no.2 belongs to the operating department is wholly false and emphatically denied.

The Railway as a whole is run by the Railway Board. The Railway Board has 27 Directorates. The Directors in the Railway Board are the Head of their respective departments and keep liaison with the Railway administration at zonal level.

Out of 27 Directorates the below noted Directorates pertaining to operating, commercial and safety relevant for the case are given as under :-

1. Traffic Transportation
2. Traffic Commercial and General
3. Safety and Coaching.

Each Directorate has its Zonal Head known as Head of the Department at Zonal level. There are 9 zones on Indian Railway. North Eastern Railway is one of the nine Zones. The relevant Head of the Departments at Zonal Level under the Directorates are as under:-

<u>Name of Department</u>	<u>Head of the Department</u>
1. Operating	Chief Operating Superintendent
2. Commercial	Chief Commercial Superintendent
3. Safety	Chief Traffic Safety Superintendent.

Zonal Railways are further divided into Divisions. Each Division has separate Heads to the respective departments. North Eastern Railway is divided into 5 Divisions. Lucknow is one of them. The relevant Divisional Heads of the relevant Departments are as under:-

<u>Name of Department</u>	<u>Divisional Head of Deptt.</u>
1. Operating	Divl. Operating Superintendent.
2. Commercial	Divl. Commercial Superintendent.
3. Safety	Divisional Safety Officer

Operating, commercial and safety are the different and distinct departments from Board to Divisional level having their respective Directors, Head of the Departments and Divisional Heads. The classification of accounts of expenditure being distinct to each further establishes that the operating, commercial and the safety are the separate and distinct departments. The pay of the officers of the operating, commercial and safety departments and the employees working under them are allocated under the separate Head of classification of Accounts of Expenditure as under:-

	<u>Operating officer</u>	<u>Commercial officer</u>	<u>Safety Officer</u>
Pay	03-911-01	03-921-01	03-931-01
D.A.	03-911-02	03-921-02	03-931-02
T.A.	03-911-05	03-921-05	03-931-05
H.A.	03-911-04	03-921-04	03-931-04
TA	03-911-16	03-921-16	03-931-16
Staff under administrative control	03-912	03-922	03-932

From the above it is clear that the operating, commercial and safety are different and distinct departments and the Divisional Safety Officer does not belong to the operating department. The Divisional Operating Superintendent, Divisional Commercial Superintendent and Divisional Safety Officer have their separate establishment of office and staff and exercise administrative control over their staff independently.

petition makes it clear that a Railway servant essentially belongs to only one department even though in the course of his day to day duties, he may violate certain rules/regulations administered by some other departments,. The Asstt. Station Masters and Station Masters belong to the operating department. The Disciplinary authority in their cases would thus, belong to the operating Department and none else.

Since the Divisional Safety Officer belongs to Safety Department and not to operating hence he cannot act as disciplinary authority for the Assistant Station Masters/Station Masters belonging to the operating department.

The Railway Board vide its letter no;E(D&A) 78 RG-6-15 dated 6.7.1979 further issued clear instructions clarifying that an employee cannot be treated as under the administrative control of more than one department. The Railway Board further directed that the instructions contained in Annexure no. 11 shall continue to be followed. A true copy of R.B's letter dated 6.7.79 referred to above is filed herewith as Annexure R-8 to this replication. The rank of Divisional Safety Officer being equal to the rank of Divl. Operating Superintendent is immaterial since he belongs to safety Department he cannot act as disciplinary authority.

H. Soniwal

Regarding the contents of the opposite-parties that the disciplinary proceedings for major penalties can be initiated by the

appointing authority or an authority of equivalent rank or any higher authority, it is respectfully submitted that the appointing authority of the equal rank or any higher authority for the purpose of initiating disciplinary proceedings will be considered and determined with reference to the particular employee and particular department which he belongs. Since the deponent belongs to operating department, the appointing authority/ authority of the equal rank or the higher authority would also belong to the operating department and none else. The Divisional Safety Officer is not the appointing authority of the deponent and cannot act as disciplinary authority in his case.

The deponent gives the date of appointments to the respective posts/grades held by him and the officers who actually appointed him on the said posts:-

Post	Date of appointment	Appointing authority	Equivalent authority
clerk	20.9.48	Loco & Carriage Supdt., GKP	Chief Mechanical Engineer and Chief Optg. Supdt.
Signallar	27.7.51	Deputy General Manager (Personnel) GKP	
A.S.M.	21.7.51	Distt. Traffic Supdt., IZN	Divl. Operating Supdt.
ASM.	29.6.63	Distt. Traffic Supdt.	Divl- Operating Supdt.

A93
A93

If the definition of appointing authority is to be taken into consideration the highest of them would be Deputy General Manager, in deponents case. If the last authority who appointed the deponent as A.S.M. on 29.6.1963 is taken the Divisional Operating Supdt. is the appointing authority of the deponent who alone can act as disciplinary authority. The Divisional Safety Officer nowhere comes into picture.

Even otherwise also the power of disciplinary authority in respect of the employees of operating department cannot be conferred upon the officers of the Safety Department like Divisional Safety Officer/^{at} Divisional level. Rule (1)(d) of the Railway Servants (Discipline & Appeal) Rules, 1968 provides that the Head of the Department for the purpose of exercising the power of appointment, disciplinary, appellate or reviewing authority means the authority declared to be head of the department in terms of clause (9) of rule 2202 of Volume II of Indian Railway Establishment Code. Rule 2202 (9) of the Indian Railway Estt. Code Volume II provides that Head of the Department for the purposes of these rules means an authority specified in Appendix XXXVIII. Appendix XXXVIII item5 reads Chief Operating Supdt. as Head of the Deptt. Thus the Chief Operating Superintendent alone can exercise the power of appointment, disciplinary appellate or reviewing authority.

that except where the President by General or special order directs otherwise a power may be exercised by an authority to which it is delegated in respect to these railway servants only who are under the administrative control of that authority.

The President by general or special order never conferred powers on opposite-party no.2. Thus the opp-party no.2 is wholly incompetent to initiate and finalise the disciplinary proceedings against the deponent and the entire proceedings are null and void and without any authority of law.

9. That the contents of para 20 of the counter affidavit are not correct as stated and are denied and in reply the contents of para 24 of the writ petition are reaffirmed as correct.

10. That the contents of para 21 of the counter affidavit are denied and those of para 25/26 of the writ petition are reaffirmed as correct. The act of opposite party no.2 in withdrawing the charge-sheet of Abdul Mannan and still subjecting the deponent even without any authority is wholly arbitrary and discriminatory hit by Articles 14 and 16 of the Constitution of India.

11. That the contents of para 28/29 of the counter affidavit are false and denied and in reply while reiterating the contents of para 27 of the writ petition it is respectfully submitted that the deponent having been already punished with break in service for observing work to rule, there remains no separate cause for further proceedings. The proceedings are wholly unwarranted.

Abdul Mannan

12. That the contents of para 23 of the counter-affidavit are emphatically denied and in reply while reiterating the contents of para 28 of the writ petition it is respectfully submitted that neither the opp-party no.2 belongs to the operating deptt. nor exercises any administrative control as such he cannot act as disciplinary authority in the case of the deponent. He is also not the appointing authority of the deponent as already stated. Rank being equal is wholly immaterial. The position regarding the competence of opposite-party no.2 to act as disciplinary authority has already been explained in the previous paragraphs.

The office order no.1 dated 3.4.1969 issued by the General Manager is misread by the opposite-parties. The said order is old enough and will be deemed to be substituted by Annex. no. 11 to the writ petition and Annexure no. R-8 to this replication which are relevant Railway Boards specific circular letters clearly providing as to who would act as the disciplinary authority in the cases of Assistant Station Masters/ Station Masters. Moreover, the opposite-parties cannot place any reliance on the alleged order dated 3.4.69 as it is beyond the powers of the General Manager to issue any executive instructions in consistent to the instructions or rules made by the President or Railway Board. The provisions of Rule 158 of I.R.E.C. Vol I. are clear in this regard. The contention of opposite-parties is wholly misleading and denied.

Affidavits

13. 42. That with reference to the contents of para 24 of the counter-affidavit is stated that the contents of para 28 of the writ petition are correct. The deponent

belongs to operating department and the opposite-party no.2 is wholly incompetent to initiate and finalise the disciplinary proceedings against him.

14. That the contents of para. 25. of the counter affidavit are denied and those of para 29 of the writ petition are re-affirmed as correct. The disciplinary authority alone can appoint the enquiry officer and the opposite-party no.2 who is not the disciplinary authority of the deponent acted illegally and without jurisdiction in doing so. The entire enquiry proceedings are vitiated on this account alone.

15. That in view of Annexure no.11 to the writ petition and Annexure no. R-8 to the ~~xx~~ replication and the submissions already made regarding appointing authority, the contents of para 24/ of the counter-affidavit are emphatically denied and those of para 30 of the writ petition are re-affirmed as correct.

16. That the contents of para. 28. of the counter affidavit are denied and those of para 32 of the writ petition are re-affirmed as correct.

17. 16. That the contents of para 29 of the counter affidavit are denied and those of para 33 of the writ petition are reaffirmed as correct. The deponent has already explained about the delay in proceedings. Moreover, the case for promotion is to be considered even when proceedings are pending. Besides this, the Hon'ble Court in Writ Petition no. 5741 of 1983 vide order dated 28.10.1983 directed the opp-parties

Affidavits

to consider the case of the deponent but in utter disregard to the said order the opp-parties further promoted junior without considering the case of the deponent. The deponent through his counsel served a notice dated 28.2.1984 for moving the Hon'ble Court for contempt but opposite-parties even did not respond to the same. A true copy of the notice dated 28.2.1984 served to opposite-parties referred to above is filed herewith as Annexure no. R-9 to this replication.

18. That the contents of paras ~~28 and 29~~ 30 and 31 of the counter-affidavit are denied and those of paras 34 and 35 of the writ petition are reaffirmed as correct.

19. That the contents of para ~~32~~ 32 of the counter affidavit are denied. The deponents representation contained in Annexure no. 8 and representation dated 28.5.1984 preferred to Chief Operating Superintendent are still pending.

20 ~~21~~. That the contents of para ~~33~~ 33 of the counter affidavit are denied. He cannot maintain the writ petition.

Ab Srivastava

Ab Srivastava
Applicant

Lucknow Dated

10.3.1989

Verification

I, A.P.Srivastava, aged 59 years, son of Sri Mangala Prasad Srivastava, resident of Bhola Khera, Aishbagh, Lucknow- 5, do hereby

A99

-19-

A
100

verify that contents of para 1 to 10 are true to
my own knowledge .

A. S. Sarker
Applicant

Lucknow Dated

10.3.1989

D. Sarker
Adv.

A/00

In the Central Administrative Tribunal

Addl. Bench at Allahabad.

Lucknow Circle, Lucknow.

T.A No. 1507 /87 (T)

Anrudh Prasad Srivastava...Petitioner.

versus

Union of India and othersOpp. parties.

Annexure No.R-I

NOTIFICATION

In order to safeguard the interest of staff who may not be fully aware of the rules on the subject 'Work to Rule/Stoppage of work', the instructions notified through this office notification dated 11.1.79 are re-iterated, as under:-

"The rules provide for short term as well as long term officiating promotion of staff. They also provide for utilising them in higher categories in the exigencies of train services. Such arrangements are regular and legal and staff are eligible for pay and allowances as per rules. Any member of the staff who refuses to or desists from working the trains, renders himself liable for the stringent disciplinary action. Such action will also be taken into account while assessing the quality of his service for promotion and for pension and D.C.E.G. and other retirement benefits".

2. Further, on the subject of work stoppage, the instructions on the subject are also notified for the information of all the subordinates who in turn, will bring these instructions to the notice of all the railway employees working under them. These instructions

affixed

A/01

are notified ssunder:-

"It has been constant endeavour on the part of the Rly. Admin. to seek cooperation from Rly. workers of all categories in the smooth and efficient running of the railways. This is amply manifest from the decisions taken by the Rly. Minister during the last two years which have conferred benefits in the shape of improvement in service conditions, pay scales and allowances and other welfare measures. The Rly. Ministry will continue to consider such proposals for the betterment of service conditions of staff. It has been a matter of regret that certain sections of Railwaymen have been indulging in sporadic work stoppages on one plea or the other, resulting in dislocation of train services, causing great inconvenience to the Public affecting national economy at a time when there is a pressing need to ensure expeditious movement of essential raw materials to key industries. In this connection, reference is invited to the effect that in the case of an employee who has absented himself unauthorisedly after working for a short period, say for an hour or so on a day payment should be allowed to him only for the hours already worked by him and reductions made for the actual period of his absence on that day. This is based on the decision of the Govt. of India, as notified from time to time that 'work no pay' ^{XX.} and this should not be circumvented in any way including by grant of leave for the period of stoppage of work.

A/S/01

A/102

It should be brought to the notice of the employees working under the charge of each Sr. Subordinate that in the event of such illegal strikes/ stoppages of work, consequential action, as per extent rules, will automatically come into force. In other words, if a Railwayman indulges in illegal work stoppage, he is not only liable to deduction of proportionate wages for the period of such absence from work, but also, in addition, he will suffer the consequences of a BREAK IN SERVICE INVOLVING FOR VITIATION OF ALL LEAVE EARNED UP TO THE DATE OF THE STRIKE/ STOPPAGE OF WORK? POSTPONEMENT OF THE DATE OF INCREASING AND COMMENCEMENT OF SURVIVAL OF ELIGIBILITY FOR LEAVE AND PAUSES AND SANCTION OF SPECIAL CONTRIBUTION TO THE PROVIDENT FUND AND PENSIONARY BENEFITS ON RETIREMENT. IT MAY ALSO BE NOTIFIED THAT THE CONDONATION OF BREAK IN SERVICE CAN BE ORDERED ONLY WITH THE AUTHORITY OF THE PRESIDENT AND TILL THE BREAK IS CONDONED, NO LOWER AUTHORITY CAN ASSUME THAT THE BREAK WILL NOT BE CONDONED AND GIVE THE STAFF BENEFITS THAT THEY HAVE LOST BY PARTICIPATION IN AN ILLEGAL STRIKE/STOPPAGE OF WORK.

The above instructions should be made known to all the railway employees working under your charge for their information and guidance so that occasions for such work stoppages and consequential action, which will follow automatically do not actually arise.

By order
Divisional Superintendent
Izamnagar.

No. E/Con/IZN/7. dated 27.4.79.

Copy to

All Divl. Officers including Me and Sr. Ben,

All Asstt. Officers,

All PIs, 10 Ws, AR, ARMs, ARMs, ARs, ARs, ARs,
DCIs, WIS/PIs, SIs and all other Sr. Subordinates,

including OS/G & CA to DC.

ATTESTED TRUE COPY

B.C. Dikshana
Advocate

Sd/-
for Divisional Superintendent
Izamnagar.

23

A/C 3

In the Central Administrative Tribunal

Addl. Bench at Allahabad,

Lucknow Circle Lucknow.

T.A.No.1507 /87(T)

Anup Prasad SrivastavaPetitioner

versus

Union of India and others.....Upp. parties

Annexure No. R.2

NORTH EASTERN RAILWAY

MEMORANDUM

The following staff of the Traffic Department, N.E.Railway under station Superintendent/Lucknow and Station Supdt.N.E.Rly.Gonda obstructed in the smooth running of trains by resorting to work to rule. Therefore, break in service in their services as per extant orders has been effected from the dates shown against each:-

1.C.L.Upadhyay, Guard B/LJN.W.E.f.9.5.79

2.R.N.Tewari, Guard 'A'/CD w.e.f.8.5.1979.

3.Ram Awach Jaiswal, Sr.PM/LJN.w.e.f.8.5.1979.

This issues with the approval of Sr. C.L.JN.

Ad/- 21.5.79

for Divisional Railway Manager(P).
Lucknow.

No.E/II/283/1/Strike/79 Office of the
Divisional Railway Manager(P)
Lucknow dated May 21st 1979.

Copy forwarded for information and necessary
action to:-

1.SS/LJN, SS/JD

•Divisional Accounts Officer/Lucknow Jn.

GCs/Bills, Cadre & pass of this office.

•Staff concerned.

5:pare copies for their P cases.

ATTESTED TRUE COPY
B.C. *Shukla*

3d/-
Divisional Railway Manager(P)
Lucknow.

Advocate

24

A104

In the Central Administrable Tribunal

Adcl. Bench at Allahabad

Lucknow Circle Lucknow.

T.A.No.1507/87 (1)

Anrudh Prasad Srivastava... Petitioner.

versus

Union of India and others..... Opp. parties.

Annexure No. R-3

North Eastern Railway

N.T/190/Optg/LJN(Pt.II) Divisional Office

Lucknow 19.3.1980

Shri A.P. Srivastava
ASM/ASH

Through SM/ASH.

Sub. Your letter No. 111 dated 6.8.79 in reference to this office major penalty memorandum of even number dated 5.6.79.

In this connection you are advised asunder:

Items 1,2 & 3 of your letter under reference : Please attend this office on any working day and inspect/take extract of relevant paragraphs of the diaries.

Item 4. These are the witnesses who will be produced in the DAR enquiry, if necessary.

Item 5. No statements of the staff on yard/cabin duty in the shift from 16.00 to 24.00 hrs. on 17.5.79 were recorded and, therefore, question of supply of these statements does not arise.

Items 6,7,&8. The relevant records are available with SM/ASH which may be consulted, if necessary.

Please inspect all the relevant documents within 5 days and submit your defence by 31.3.80 failing which ex parte decision will be taken.

ATTESTED TRUE COPY
B.C. *Signature*
Advocate

Sc/-
Div. Safety Officer/LJN,

25

A105

X6

In the Central Administrative Tribunal

All Bench at Allahabad

Lucknow Circle, Lucknow.

T.A.No.1507/87(T)

Anurudh Prasad Srivastava.....Petitioner

versus

Union of India and others.....Opp. parties.

Annexure No. R-IV

Proceedings of D.A.R.inquiry held on 16.4.1984
in the chamber of the undersigned(A.C.S./LJN) in
connection with charge memorandum No. T/190/OP/IC/LJN
(ptd.1D) dated 5.6.79 issued against Shri A.P.
Srivastava A.S.M/ASH.

.....

Present

1. Shri O.P.Gupta A.C.S.(W) /LJN Enquiry Officer
2. " A.P.Srivastava charged employee
3. S.C.Dhar defence Assistant

Defence counsel raised an objection about no
reply against his letters dated 21.4.82 and 9.4.84 has
been received. It was made clear to him that appeals
are addressed to D.S.O. and he is the proper man to
reply. E.O. has nothing to do with it. As for non
availability of record viz. documents listed in
letter dated 9.4.83, it was finally pointed out
that the records could not be located. Therefore,
the inquiry has to proceed with the available records.
The charged employee and D/A both were requested to
co-operate in finalization of the case.

The Defence counsel and the charged employee
has been co-operative with the E.O. from the time
the case started. The object of the D.A.R.inquiry

-2-

is to findout the truth and the means are all record and statements as recorded during the course of the period of occurrence. So unless those record are available it would not be possible to find out the truth. At this state cross-examination of the prosecution witness without the record will be against natural justice.

It has already been pointed out that records are not being located. Therefore, the inquiry has to proceed without the records viz. Ca. in Register of ASH (Main) etc.

Mr. Chug and Mr. Bholu Ram are available in inquiry today. Statement of Mr. Chug has already been recorded. It is upto the charged employee to cross-examine him failing which it will be treated that no cross-examination is to be made by the defence side. Likewise, Shri Bholu is also available for statement and cross examination by the Defence counsel.

Charged employee as also D.C. refused to cross-examine Mr. Chug as the truth could not be come out without those records. Therefore, cross examination by T.O. begins:-

Q.1. In your statement in chief you have stated that no line clear was asked from JN side from 18.30 hrs. Can you say if this statement is based on your clear memory or some documentary evidence?

Ans. It is based on memory and diary entry. Can you describe the procedure and system of demanding and giving line clear for train movement between JN and ASH for AMS side as also for HAL side

Ans. 106

Ans. According to SWR LTN has to communicate directly with ASH(M) but the practice was that LTN was communicating ASH (West) Cabin. ASH (West) Cabin contacting ASH/ASH(M) and then line clear was given.

Cross examination of Shri K.L.Chug by E.O. continued

Q.3 Kindly clarify if your statement in Chief is based on SWR or your talks between Shri A.P. Srivastava who was ASH on duty on west Cabin on 17.5.1979?

Ans. My statement is based on my talks with Shri A.P. Srivastava. In fact there was practically no communication between LTN (Indoor) and ASH (main) except Control or ADL Phone. to when LTN (Indoor) did not respond.

A.4. Would you please recall if there was any talk that Mr. A.P. Srivastava was instrumental in suspending train movement or instigating staff?

Ans. There was no such talk.

Sd/- Illegible Sd/- A.P. Srivastava Sd. K.L. Chug
16.4.84 16. 4.84 16.4.84

True copy

ATTESTED TRUE COPY

B.C. *hira*

Advocate

28
AOD
AOD

In the Central Administrative Tribunal

Adal.Bench at Allahabad

Lucknow Circle Lucknow.

T.A.No.1507/87(T)

Anrudh Prasad Srivastava...Petitioner

versus

Union of India and others.....Opp.parties

Annexure No.R-V

Statement of Shri Bhola Ram, Yard Master/JEA

I came on duty at 1600 hrs.on 17.5.79 .After giving instructions to Sunter Shri Ram Autar I started to inspect my Yard.After about an hour I saw the shunting engine standing on the ladder.This arose my curiosuty and I proceeded towards shunting engine.I saw it totally abondoned.Then I proceeded to station.Traffic Shunter and Loco shunter were seen at the station.They were in discussion that there was strike at L.J.N.Shri D.J.Sharma, D.T.I.and Shri Chug A.S.M.were in ASI's office.I asked them about what Shunters were discussing.They also confirmed that there was some souffle at L.J.N because of which there was a strike.The work could not start till I left at 2400 hrs.I close my statement.

Sd/-
(Bhola Ram 16.4.84
Yard Master

Cross-examination of Shri Bhola Ram by E.O.

Q.1. There is a charge against Mr.A.P.Srivastava who was A.S.M.in the west cabin on 17.5.79 that he participated in the said strike and that he instigated the staff to suspend work.What you have to say in this connection?

Abhishek
ATTESTED TRUE COPY

Ans. I have no idea whether there was any instigation from Shri A.P.Srivastava or not.I had no personal talk with Shri A.P.Srivastava.

१०९

इन दि सेन्ट्रल सडमिनिस्ट्रौट्व फ्रेन्चुल सडीशनल बैन्च सट इलाहाबाद
लाहानजा सर्किल लाहानजा

टी०४०१५०७/८७२०४

अनुरूप प्रसाद श्रीपास्त्रम् ————— प्रिटीशनर

बनाम

यूनियन आफ इण्डिया तथा अन्य ————— अपोजिटपार्टीज
स्नेक्स नं R-6

नं० ई/प्रोप/स-स-एम 29-३-८०

श्री ए०पी० श्रीपास्त्रम्
स०४८०४८० एशाबाग

विषय । ७-५-७९ को कोविल रजिस्टर तथा डिटेन्शन रजिस्टर

प्रयासो के बावजूद काफी छानबीन करने के बाद उपरोक्त रजिस्टर
किरेकर्द में नहीं मिले । प्रतीत होता है कि यह रेकर्ड श्री माधुर साहब
स्टैम्पा० के विशेष संक्षण में है या मंडल कार्यालय में है ।

अतः श्री माधुर साहब के आने पर आपको उक्त रजिस्टर देखाने की

व्यवस्था सम्पन्न हो सकेगी ।

ह० सी०पी०वमा०

स्टेशन मास्टर
पूर्वार्त रेलव
एशाबाग

सत्य प्रतिलिपि

ATTESTED TRUE COPY

B.C. A. Kizrau
Advocate

इन दिन सेन्टल एडमिनिस्ट्रेटिव टिवुनल एडीशनल बैन्च स्ट इलाहाबाद

ਲਖਾਨਤਾ ਬੇਨ ਚ ਲਖਾਨਤਾ

टीएस०नं० १५०७/८७ टी०३

अनिलधा प्रसाद ----- पिटीशन

બનામ

गृनियन आप॑ इंडिया तथा अंग-—अपोजिटपार्टीज

एनेक्झर नं R-7

पं इं ०८८८/एपीएम/ए-एस-एम

18-483

संग्रह ० अधिकारी
इन्हें क्वायरी आपेक्षा

ਪ੍ਰਵਾਨਤ ਰੇਲਵੇ ਲਖਾਨਾ

विषय । 7-5-79 को ऐशाबाद मैन संशान का लाइन ऐलाटमेन्ट
रजिस्ट्र ।

महाद्यु

उपरोक्त राजस्थान तत्कालीन इन्होंने-इस प्रैसल-एवं श्री शार्मा

जी को पहले ही देखिया गया है जैसे वे व्यक्तित्व से ले जाये

अतः इउम ०५ क्लू० आई० श्री शशीकला प्रसाद जी को यह रोज़ेस्टर नहीं
दिया जा सका ।

ह० आर बी ज्ञा धुर
स्ट्रशन अधीक्षक
पूर्वत्तर र लव
सशाबाग जद्धान

सत्य पृतिलिपि

ATTESTED TRUE COPY

B.C. 2 b.c.

Advocates

In the Central Administrative Tribunal

Addl. Bench at Allahabad
Lucknow Circle Lucknow.

T T.A. No. 1507/87 (1)

Anruddh Prasad Srivastava.... Petitioner

versus

Union of India and others..... Opp. parties

Annexure No. R-8

Disciplinary authority for imposition of penalties for various types of Irregularities under Railway servant (Disciplinary & Appeal) Rules 1968.

Reference confidential L.O. No. E/74/2/(14) dated 9th Feb. 1979 on the above subject.

The Board have carefully considered the proposal contains there in consultation with legal adviser and they are of definite opinion that an employee cannot be treated as under the administrative control of more than two department. Therefore, there is no necessity of making any amendment in the Ry. Servant (Discipline and Appeal) Rule 1968. The instruction as contained in Boards letter No. E(D&A) 72 RG6-13 dated 16.10.73 and reiterated in their letter of even number dated 10.1.79 should therefore continue to be followed.

Rly. Board letter No. E(D & A) 78 RC-6-15 Dt. 6.7.79.

True copy

Abdullah

ATTESTED TRUE COPY
B.C. *Sarker*
Advocate

32

A 112

In the Central Administrative Tribunal

Addl. Bench at Allahabad.

Lucknow Circle, Lucknow.

T.A.No.1507/87(T)

Anrudh Prasad Srivastava....Petitioner

versus.....

Union of India and others..... Opp. parties.

Annexure No. R-9

Under Registered Post A/D.

From

R.C. Saxena,
Advocate, High Court,
E/3665.Rajali Puram, Lucknow.

For and on behalf of Shr. A.P. Srivastava,
Ass. Station Master,
N.E. Railway Aishbagh,
Lucknow-226004.

To

1. The Union of India, through General Manager,
N.E. Railway. Gorakhpur.
2. The Divisional Safety Officer, N.E. Railway,
Ashok Marg, Lucknow.
3. The Sr. Divl. Optg. Supdt.,
N.E. Railway,
Ashok Marg, Lucknow.
4. The Sr. Divl. Personnel Officer,
N.E. Railway,
Ashok Marg, Lucknow.

Notice for contempt of Court.

Dear sir,

Under the instruction of my above named client
I have to serve upon you with the following notices:
of Asst. Station Master in grade Rs.425-640 at
Aishbagh, and stands senior to opposite parties,

-2-

No.5 to 29 mentioned in the writ petition No.5741 of 1983, according to the seniority list contained in annexure no.4 of the said writ petition.

2. That, although my client was fully eligible for the benefit of up gradation under the restructuring of the cadre scheme initiated viae Railway Boards letter No.PC-III/80/UPC/19 dated 29.7.83 he ought to have been given the benefit of up gradation with effect from 18.82 but arbitrarily the opposite parties no.5 to 29 were placed / given benefit of up gradation under the restructuring of cadre scheme totally ignoring to considering the case of client. The case of my client should have been considered in preference to his juniors opposite parties no.5 to 29.

3. That my client filed the above noted writ petition challenging the validity of the promotion order No.E/II/210/4/SM/83 and E/II/210/3M/83 dated 3.9.83 placing to opposite parties no.5 to 29 in scale of Rs.455-700 and Rs.550-750 illegally superseding my client and prayed for quashing the said order and also for holding a fresh selection for the post of station Master in the grade of Rs.550-750 and ASM in the grade of Rs.455-700.

4. That, the Hon'ble High Court, Lucknow, being satisfied with the contention of my client admitted the writ petition and passed interim order dated 28.10.83, directing you, the opposite parties no.2 to , detailed in the writ petition, that in the meantime, if any selection for the post of station Master in the grade of Rs.550-750 is to be held the case of my client may also be considered in accordance with rules.

5. That, it would be relevant to state here that

A. Srinivasan

A/14
A/14

-3-

according to Railway Board's restructuring letter (annexure-3) the holder of the post for which upgradation is made automatically become entitled to be placed in the higher grade except there are special reasons to be recorded in writing to superseding him with juniors in the present case without disclosing any reason my client have been superseded with number of juniors. Besides, this even otherwise all so there was no other valid and firm material on the basis of which my client could have been adjudged unfit to be placed hold the post and grade in question, the entire records pertaining to service is unblamed.

6. That my client served on 21.1.1.83 the copy of the Interim order passed by the Hon'ble High Court, Lucknow, for considering the case if any selection is held after filing the W.P.

7. That, vide order No.E/11/210/SM/84 dated 8.2.84 again all persons juniors to my client have been placed and given benefit of up gradation under the restructuring scheme, without first considering the case of my client.

8. That, non consideration of the case of my client while considering the case of juniors is a will full malafided and deliberate act of disobey the orders of the Hon'ble High Court, Lucknow, dated 28.10.83.

Allover for

Please take notice that in case my client is not promoted and given benefit of up gradation in preference to his juniors and he is not placed in

A16

A15

-4-

grade of Rs.550-750 within one month time from the date of receipt of this notice, my client will be compelled to move to the Hon'ble High Court for contempt of court against you at your risk and cost.

Yours faithfully,

Sd/-

(R.C.Saxena)

28.2.84

Advocate.

For and on behalf of
Shri A.P.Srivastava ASK/
N.E.Rly./Aishbagh.

True copy

ATTESTED TRUE COPY

B.C. Saxena

Advocate

ORDER SHEET

IN THE HIGH COURT

JUDICATURE AT ALLAHABAD

No. 329

of 1984

25.

AIIB

A/T

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
	Ch. No 5. De Gopi Nath v. list this respondents Ch. No 50004	
	2-2-84 fixed P.O Co. 85004 for ordering H.C.C.D.S. 5 H.C.S.A. 5 do / P	
24/8/84	FOUND THAT H.C.K.MATH No time left. So	

30
24/8/84 MS

ORDER SHEET

IN THE HIGH COURT

JUDICATURE AT ALLAHABAD

No.

324 of 1986

25.

AIJ

A/18

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
27.8.86	Fixed for order Hon. & R. Jha. J. Hon. K. N. G. J. Shankar	C 27/8
11-9-86.	Service Report of 163. Notices received by Sri Lalchand Chandra, Advocate Many offices proceed	D 14/9
	Fixed in cause 9620 AIJ for orders before Addl Regs	

Received
Duplicals

for

Chambers
9/11/84 Ad
for bank check

Genies Island for
Chief Revenue for
E. Rail way

7/11/84

6/7/79
A/10

India Railway Employees Confederation duly served the Railway Board with the notice that the Railway Employees will resort to "Work to Rule" w.e.f. 8.5.79 and onwards in order to press their grievances. It was also within the knowledge of all Divisional Railway Authorities and a notification dated 27.4.1979 was issued to various other Railway Authorities directing them to bring to the notice of all Railway Employees the consequences of resorting to "Work to Rule". The true copy of instructions published vide notification dated 27.4.79 regarding "Work to Rule" and consequences thereof is filed herewith as Annexure No. R-1 to this Rejoinder Affidavit.

The deponent and the other employees had to observe the Safety Rules for the safe operation of the trains movement. The deponent duly attended his duty on 17.5.79 and taken over charge at 16.00 hours at West Cabin at Aishbagh Railway Station. He was allowed to work from 16.00 Hours to 18.30 Hours as evident with Annexure No. 1 to the writ petition. Thereafter the deponent was asked to hand over charge ^{Emergency} to Sri G.C. Bhatnager, T.I. Sitapur deputed as ^{Emergency} ~~Enquiry~~ Officer in connection with "work to rule" as per orders of Sri R.S. Sharma. A.O.S, Lucknow area. The deponent handed over charge to Sri G.C. Bhatnager at 18.30 hours. The deponent did not refuse to work at all. Since the deponent was not kept on duty after 18.30 hours, there was no question of giving or not giving the line clear to 48 Dn. at 20.40 hours. The charge of either refusal to work or refusal to grant line clear to 48 Dn. at 20.40 hours is totally false and baseless.

The Railway Employees who actually observed Safety Rules and maintained such safety in operation of trains their working known as "work to Rule" was taken as obstruction in the smooth running of the

A.P. Singh Laxmi



A121

trains, refusal to work and the same was considered as illegal strike. A true copy of letter dated 21.5.79 is filed herewith as Annexure No. R-2 to the Rejoinder Affidavit.

The Railway authorities considering "work to rule" as causing obstruction in smooth running of trains, refusal to work and unauthorised absence from duty punished the active members of All India Railway Employees Confederation ~~work to rule~~ with break in service and subsequently issued major penalty/chargesheet to the leaders alleging that they refused to work in one way or the other and instigated the staff working under them. Likewise, The deponent having the post of Divisional Secretary of All India Station Masters' Association ~~had~~ was posted as A.S.M., Aishbagh Railway Station, was also punished with break in service vide Annexure No. 1 and subsequently chargesheet contained in Annexure No. 3 to the writ petition was issued to him adding the charge of instigating the yard and Cabin Staff of Aishbagh to stop work and the charge of refusal to grant line clear to 48 Dn. were levelled against him. Both the charges were false and baseless. The deponent was not permitted to work after 18.30 Hours, as evident from Annexure No. 1 and his services were terminated. The charge was made over by him to Sri G.C. Bharbager at 18.30 Hours. There is no question of not giving line clear to 48 Dn. at ~~20.40~~ Hours after the termination of the services at 18.30 hours.

Regarding the charge of instigation it is respectfully submitted that the charge itself is vague, non-speaking and unspecific. No statements of persons instigated have been ϕ recorded. No time of instigation has been pointed out. Even on demand the names of persons instigated were not furnished and the names are not included in the list of ~~other~~ ^{witnesses}. Annexure No. 5

A.P. Srinivasarao



to the writ petition at item No. 5 indicates that the deponent demanded the statements of persons who were alleged to ~~xxx~~ be instigated to stop work. The said letter of the deponent was ~~rejected~~ ^{replied} vide order dated 10.3.80 passed by opposite party No. 2 and it was stated that no statement of the persons instigated were recorded as such there is no question of supplying the same. A true copy of letter dated 10.3.80 referred to above is filed herewith as Annexure No. R-3 to this rejoinder affidavit. The Railway Administration while proving the charge of instigation examined P.W.I, Sri Bhola Ram, Asstt. Yard Master, Aishbagh and P.W.II Sri K.L. Churg, A.S.M., Aishbagh who in their ~~not~~ cross examination by the Enquiry Officer did not establish the charge of instigation. The P.W.I, in reply to question No. 1, "There is a charge against Mr. A.P. Srivastava who was A.S.M. in the West Cabin on 17.5.79 that he participated in the said strike and that he instigated the staff to suspend work. What you have to say in this connection ?" clearly replied "I have no idea whether there was any instigation from Sri A.P. Srivastava or not. I had no personal talk with Sri A.P. Srivastava." Similarly the P.W. II in reply to question No. 4 i.e. "would you please recall if there was any talk that Mr. A.P. Srivastava was instrumental in suspending train movement or instigating ~~xxx~~ staff" replied "there was no such talk.". Thus there is no evidence to sustain the charge of instigation and the same is wholly false and fabricated. The true copies of the statements of P.W.I and P.W.II dated 16.4.84 are filed herewith as Annexure Nos. R-4 and R-5 respectively to this rejoinder affidavit. It is totally wrong to say that the deponent was awarded punishment of break in service only for not working for full day on 17.5.79 i.e. unauthorised

A.P. Srivastava



absence from duty and the Divisional Safety Officer initiated the disciplinary proceedings for the charge of instigating the yard and cabin staff of Aishbagh to stop work. The fact is that the entire incident of ~~Work~~ "Work to Rule" was taken as illegal strike (without any authority of law), refusal to work and the charge of instigation was fabricated with a view to punish the leaders more regoriously. The cause for punishment was the alleged illegal strike and once the employee was already punished it did not remain open to the Railway Authorities to further initiate the disciplinary proceeding to punish them again for the same charge. The deponent did not commit any offence at all much ~~less~~ less serious offence as alleged. It is wholly false and incorrect to allege that there were chances for accident and derailment of Railway trains when the train operation was stand still. "Work to Rule" means observance of Safty Rules and when the Safty Rules are observed there remains no chances for accident or derailment.

It is very surprising that the Railway Administration did not hesitate in punishing the Railway employees who had resorted to work to rule in order to maintain safty in train movement. Work to Rule cannot be taken as illegal strike or refusal to work and no proceedings or punishment can be justified on that account. There is no evidence on record to prove that the deponent ever refused to work or ~~not~~ to grant line clear to 48 Dn. and instigated cabin and yard staff. The chargesheet contains the false charges only in order to ~~not~~ crush the spirit of the leadership.

4. That with reference to the contents of para 10 of the counter affidavit it is stated that the deponent or any other employee actually never refused to work but

AP.Srinivas



as a matter of fact the opposite parties treated the working of the Railway Employees i.e. "work to rule" as refusal to work or illegal strike and punished them arbitrarily with break in service. This fact has already been admitted in para 9 of the counter affidavit wherein the contents of paras 7, 8 and 9 of the writ petition have been admitted. Since the Railway authorities on their own accord did not take work from the deponent and other employees observing "work to rule" and posted substitutes in their places who were untrained and unqualified and under these circumstances the deponent cannot be charged for refusal to work etc.

5. That with reference to the contents of para 12 of the counter affidavit it is stated that the opposite parties did not even provide the documents referred to in para 14 and asked for vide Annexure No. 5. The deponent even after inspection have been provided with the documents mentioned at item No. 1, 2 and 3 in Annexure No. 5 and rest of the documents have still not been given even after reminders dated 22.4.81, 24.8.81, 7.9.81, 30.9.81, 18.11.81, 23.1.82 and 22.11.82 issued by the enquiry Officer, ~~the~~ during the enquiry and for want of the said records the cross examination of P.W.II and P.W.III could not be done since 22.4.81 still 16.4.84. The Enquiry Officer ultimately proceeded with the enquiry and recorded that the same could not be produced by the Railway. The Station Superintendent vide letter dated 29.3.80 and 18.4.83 shown inability to provide the Train and Cabin register of Aishabagh (Main) and west Cabin and the detention register of Lucknow Jn. and Aishabagh mentioned at Item No. 6 and 8 in Annexure No. 5. A true copy of letter dated 29.3.80 and 18.4.83 issued by Station Superintendent are filed herewith as Annexure No. R-V and VI respectively to



P. S. on page

A/S

this Rejoinder Affidavit. The entire delay in proceedings has occurred solely due to negligence on the part of Railway authorities. The proceedings against the deponent have been initiated by the Divisional Safety Officer who is not the competent authority as alleged. The deponent also represented the matter regarding the competence of the opposite party No. 2 vide Annexure No. 8 to the writ petition and prayed that the proceedings may be quashed being null and void and further prayed that till the disposal of the representation further proceedings be stayed but the opposite party No. 2 did not accede to the request of the deponent. The opposite party No. 2 is bent upon to punish the deponent and even the proceedings have not been stayed while the application/representation of the deponent dated 25.5.84 preferred to Chief Operating Superintendent Gorakhpur for change of Enquiry Officer is still pending disposal. There is provision for stay of proceedings during pendency of such representation (R.B's letter No. E(DA) 70 RG-6-14/1 of 1974).

6. That the contents of paras 14 and 15 of the Counter Affidavit are denied and those of paras 17 and 18 of the writ petition are reaffirmed as correct. The contents of para 5 of Rejoinder Affidavit may also be perused. The Railway is responsible for the whole delay. Demands of documents, making representation for change of enquiry officer and representation for setting aside proceedings for want of competence of opposite party No. 2 are the legal rights available to the deponent and if he resorted to the same in order

A.P. Srinivas Rao



to defend himself it cannot be said to be abuse of his rights but the opposite parties who did not furnish the requisite documents and did not decide the representations within a reasonable time will be held responsible for delaying the proceedings.

7. That the contents of para 16 of the Counter Affidavit are denied and those of para 19 of the writ petition are reaffirmed as correct.

The contention of the opposite parties that the Divisional Safety Officer, opposite party No. 2 belongs to the operating department is wholly false and emphatically denied.

The Railway as a whole is run by the Railway Board. The Railway Board has 27 Directorates. The Directors in the Railway Board are the Head of their respective departments and keep liaison ~~session~~ with the Railway administration at Zonal level.

Out of 27 Directorates the below noted Directorates pertaining to operating, commercial and safety relevant for the case are given as under:-

- 1- Traffic Transporation
- 2- Traffic Commercial and General
- 3- Safety and Coaching.

Each Directorate has its Zonal Head known as Head of the Department at Zonal level. There are 9 Zoans on Indian Railway. North Eastern Railway is one of the nine Zoans. The relevant Head of the Departments at Zonal level under the said Directorates

A.P.Srinivas



are as under:-

<u>Name of Department</u>	<u>Head of the Department</u>
1. Operating	Chief Operating Superintendent
2. Commercial	Chief Commercial Superintendent
3. Safety	Chief Traffic Safety Superintendent.

Zonal Railways are further devided into Divisions. Each Division has separate Heads to the respective departments. North Eastern Railway is devided into 5 Divisions. Lucknow is one of them. The relevant Divisional Heads of the relevant Departments are as under:-

<u>Name of Department</u>	<u>Divisional Head of Department</u>
1. Operating	Divisional Operating Superintendent
2. Commercial	Divisional Commercial Superintendent
3. Safety	Divisional Safety Officer.

Operating, Commercial and Safety are the different and distinct departments, from Board to Divisional level having their respective directors, Head of the Departments and Divisional Heads. The classification of accounts of expenditure being distinct to each further establishes that the operating, commercial and the safety are the separate and distinct departments. The pay of the officers of the operating, commercial and safety departments and the employees working under them are allocated

Sivasankar

under separate Head of classification of Accounts
of Expenditure as under:-

	Operating Officer	Commercial Officer	Safety Officer
Pay	03-911-01	03-921-01	03-931-01
D.A.	03-911-02	03-921-02	03-931-02
T.A.	03-911-05	03-921-05	03-931-05
H.R.	03-911-04	03-921-04	03-931-04
T.A.	03-911-16	03-921-16	03-931-16
✓ Staff under Administrative Control	03-912	03-922	03-932

From the above it is clear that the operating, commercial and safety are different and distinct departments and the Divisional Safety Officer does not belong to the operating department. The Divisional operating Superintendent, Divisional Commercial Superintendent and Divisional Safety Officer have their separate establishment of office and staff and exercise administrative control over their staff independently.

A perusal of Annexure No. 11 to the writ petition makes it clear that a Railway servant essentially belongs to only one department even though in the course of his day today duties, he may violate certain rules/regulations administered by some other departments. The Assistant Station Masters and Station Masters belong to the operating Department. The Disciplinary authority in their

A.P.Singhal



cases would, thus, belong to the operating department and none else.

Since the Divisional Safety Officer belongs to Safety Department and not to operating hence he cannot act as disciplinary authority for the Assistant Station Masters/Station Masters belonging to the operating department.

The Railway Board vide its letter No.E (D & A) 78 RG-6-15 dated 6.7.79 further issued clear instructions clarifying that an employee cannot be treated as under the administrative control of more than one department. The Railway Board further directed that the instructions contained in Annexure No. 11 shall continue to be followed. A true copy of R.B's letter dated 6.7.79 referred to above is filed herewith as Annexure No. R-8 to this Rejoinder Affidavit. The rank of Divisional Safety Officer being equal to the rank of Divisional operating Superintendent is ~~im~~ material since he belongs to safety department he cannot act as disciplinary authority.

Regarding the contention of the opposite parties that the disciplinary proceedings for major penalties can be initiated by the appointing authority or an authority of equivalent rank or any higher authority, it is respectfully submitted that the ~~appointing authority~~ ^{Authority} of the equal rank or any higher authority for the purpose of initiating disciplinary proceedings will be considered and determined with reference to the particular employee and particular department which he belongs. Since the deponent

P. Sivasankar



belongs to operating department, the appointing authority/ authority of the equal rank or the higher authority would also belong to the operating department and none else.

The Divisional Safty Officer is not the appointing authority of the deponent/ and cannot act as disciplinary authority in his case.

The deponent gives the date of appointments to the respective posts/grades held by him and the officers who actually appointed him on the said posts:-

Post	Date of appointment	Appointing Authority	Equivalent Authority
Clerk	20.9.48	Loco & Carriage Supdt. GKP.	Chief Mechanical Engineer.
Signalar	1950	Deputy General Manager (Personnel) GKP.	do
A.S.M.	21.7.51	Distt. Trafic Supdt., IZN.	Divisional Operating Supdt.
A.S.M.	29.6.63	Distt. Trafic Supdt.	Divisional Operating Supdt.

If the definition of appointing authority is to be taken into consideration the highest of them would be Deputy General Manager, in deponent's case. If the last authority who appointed the deponent as A.S.M. on 29.6.63 is to be taken the Divisional Operating Supdt. is the appointing authority of the deponent who alone can act as disciplinary authority. The Divisional Safty Officer nowhere comes into picture.

Even otherwise also the power of disciplinary authority in respect of the employees of operating department cannot be conferred upon the officers of the Safty Department like Divisional Safety Officer at Divisional level. Rule (1)(d) of the Railway Servants (Discipline & Appeal) Rules 1968 provides that the Head of the Department for the purpose of exercising the power of appointment, disciplinary, appellate or reviewing

A. S. S. S. S.



authority means the authority declared to be head of the department in term of clause (9) of Rule 2202 of Volume II of Indian Railway Establishment Code. Rule 2202 (9) of the Indian Railway Establishment Code Volume II, provides that Head of the Department for the purposes of ~~their~~ these rules means an authority specified in Appendix XXXVIII. Appendix XXXVIII item 5 reads Chief Operating Superintendent as Head of the Department. Thus the Chief Operating Superintendent alone can ~~not~~ exercise the powers of appointment, disciplinary, appellate or reviewing authority.

Rule 2283 (a) of I.R.E.C. Volume II provides that except where the President by general or special order directs otherwise a power may be exercised by an authority to which it is delegated in respect to those Railway Servants only who are under the administrative control of that authority.

The President by general or special order never conferred powers on opposite party No. 2. Thus the opp. party No. 2 is wholly incompetent to initiate and finalise the disciplinary proceedings against the deponent and the entire proceedings are null and void and without any ~~their~~ authority of law.

8. That the contents of para 18 of the counter affidavit are not correct as stated and are denied and in reply the contents of para 24 of the writ petition are reaffirmed as correct.

9. That the contents of para 19 of the counter affidavit are denied and those of para 25 of the writ petition are reaffirmed as correct. The act of opposite party No. 2 in withdrawing the chargesheet of Abdul Mannan and still subjecting the deponent even without any authority is wholly arbitrary and discriminatory hit by

A. Srinivasan



Article 14 & 16 of the Constitution of India.

132

10. That the contents of para 20 of the counter affidavit are false and denied and in reply while reiterating the contents of para 27 of the writ petition it is respectfully submitted that the deponent having been already punished with break in service for observing work to rule, there remains no separate cause for further proceedings. The proceedings are wholly unwarranted.

11. That the contents of para 21 of the counter affidavit are emphatically denied and in reply while reiterating the contents of para 28 of the writ petition it is respectfully submitted that neither the opposite party No. 2 belongs to the operating department nor exercises any administrative control as such he cannot act as disciplinary authority in the case of the deponent. He is also not the appointing authority of the deponent as already stated. Rank being equal is wholly immaterial. The position regarding the competence of opposite party No. 2 to act as disciplinary authority has already been explained in the previous paragraphs.

The office order No. 1 dated 3.4.69 issued by the General Manager is misread by the opposite parties. The said order is old enough and will be deemed to be substituted by Annexure No. 11 to the writ petition and Annexure No. R-8 to this Rejoinder Affidavit which are relevant Railway Board's specific circular letters clearly providing as to who would act as the disciplinary authority in the cases of Assistant Station Masters/ Station Masters. Moreover the opposite parties cannot place any reliance on the alleged order dated 3.4.69 as it is beyond the powers of the General Manager to issue any executive instructions in consistent to the



Ans/As

instructions or rules made by the President or Railway Board. The provisions or Rule 158 of I.R.E.C. Vol. I are clear in this regard. The contention of opposite parties is wholly misleading and denied.

12. That with reference to the contents of para 22 of the counter affidavit it is stated that the contents of para 28 of the writ petition are correct. The deponent belongs to operating department and the opposite party No. 2 is wholly incompetent to initiate and finalise the disciplinary proceedings against him.

13. That the contents of para 23 of the counter affidavit are denied and those of para 29 of the writ petition are reaffirmed as correct. The disciplinary authority alone can appoint the enquiry officer and the opposite party No. 2 who is not the disciplinary authority of the deponent acted illegally and without jurisdiction in doing so. The entire enquiry proceedings are vitiated on this account alone.

14. That in view of Annexure No. 11 to the writ petition and Annexure No. R-8 to the rejoinder affidavit and the submissions already made regarding appointing authority, the contents of para 24 of the counter affidavit are emphatically denied and those of para 30 of the writ petition are reaffirmed as correct.

15. That the contents of para 26 of the counter affidavit are denied and those of para 32 of the writ petition are reaffirmed as correct.

16. That the contents of para 27 of the counter affidavit are denied and those of para 33 of the writ



A.P. Srinivasan

A134

~~TA
134~~

petition are reaffirmed as correct. The deponent has already explained about the delay in proceedings. Moreover the case for promotion is to be considered even when proceedings are pending. Besides this the Hon'ble Court in Writ Petition No. 5741 of 1983 vide order dated 28.10.83 directed the opposite parties to consider the case of the deponent but in utter disregard to the said order the opposite parties further promoted juniors without considering the case of the deponent. The deponent through his counsel served a notice dated 28.2.84 for moving the Hon'ble Court for contempt but the opposite parties even did not respond to the same. A true copy of the notice dated 28.2.84 served to opposite parties referred to above is filed herewith as Annexure No. R-9 to this rejoinder affidavit.

17. That the contents of paras 28 and 29 of the counter affidavit are ~~thus~~ denied and those of paras 34 and 35 of the writ petition are reaffirmed as correct.

18. That the contents of para 30 of the counter affidavit are denied. The deponent's representation contained in Annexure No. 8 and representation dated 28.5.84 preferred to Chief Operating Superintendent are still pending.

19. That the contents of para 31 of the counter affidavit are denied. He can not maintain the writ petition.

Lucknow:

Dated; NOV 7, 1984.

A. S. S. Deponent.

A135

X135

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 to 19, except ~~brackets~~ bracketed portions, of this Rejoinder Affidavit are true to my own knowledge.

No part of it is false and nothing material has been concealed, so help me God.

Lucknow:

Dated: ~~Nov 17~~ 1984.

A. S. Saxena
Deponent.

I identify the deponent who has signed before me.

A. S. Saxena
Advocate.

Solemnly affirmed before me on ~~17 Nov. 1984~~
at 8-30 a.m. ~~p.m.~~ by Sri Anrudh Prasad Srivastava,
the deponent, who is identified by Sri R.C. Saxena,
Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this Rejoinder Affidavit which have been read out to him and explained by me.

Craig
OATH COMMISSIONER

High Court, Allahabad
Lucknow Bench

No. 946 of 957

Date 7-11-89

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. 324 OF 1984

Anupdh Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. R-I

NOTIFICATION

In order to safeguard the interest of staff who may not be fully aware of the rules on the subject 'Work to Rule/Stoppage of work', the instructions notified through this office notification dated 11.1.79 are re-iterated, as under:-

" The rules provide for short term as well as long term officiating promotion of staff. They also provide for utilising them in higher categories in the exigencies of train services. Such arrangements are regular and legal and staff are eligible for pay and allowances as per rules. Any member of the staff who refuses to or desists from working the trains, renders himself liable for the stringent disciplinary action. Such action will also be taken into account while assessing the quality of his service for promotion and for Pension and D.C.R.G. and other retirement benefits."

2. Further, on the subject of 'Work Stoppage', the instructions on the subject are also notified ~~before~~ below for the information of all the Sr. Subordinates who in turn, will bring these instructions to the notice of all the railway employees working under them. *These instructions*

A. Srivastava

19

are notified as under:-

" It has been constant endeavour on the part of the Rly. Admn. to seek cooperation from Rly. workers of all categories in the smooth and efficient running of the railways. This is amply manifest from the decisions taken by the Rly. Minister during the last two years which have conferred benefits in the shape of improvement in service conditions, pay scales and allowances and other welfare measures. The Rly. Ministry will continue to consider such proposals for the betterment of service conditions of staff. It has been a matter of regret that certain sections of Railwaymen have been indulging in sporadic work stoppages on one plea or the other, resulting in dislocation of train services, causing great inconvenience to the public affecting national economy at a time when there is a pressing need to ensure expeditious movement of essential raw materials to key industries. In this connection, reference is invited to the effect that in the case of an employee who has absented himself unauthorisedly after working for a short period, say for an hour or so on a day, payment should be allowed to him only for the hours already worked by him and deductions made for the actual period of his absence on that day. This is based on the decision of the Govt. of India, as notified from time to time that 'No work no pay' and this should not be circumvented in any way including by grant of leave for the period of stoppage of work.



Al Sinsola

A138

138

It should be brought to the notice of the employees working under the charge of each Sr. Subordinate that in the event of such illegal strikes/ stoppages of work, consequential action, as per extant rules, will automatically come into force. In other words, if a Railwayman indulges in illegal work stoppage, he is not only liable to deduction of proportionate wages for the period of such absence from work, but also, in addition, he will suffer the consequences of a BREAK IN SERVICE INVOLVING FOREFEITURE OF ALL LEAVE EARNED UPTO THE DATE OF THE STRIKE/ STOPPAGE OF WORK, POSTPONEMENT OF THE DATE OF INCREMENT AND COMMENCEMENT OF SERVICE OF ELIGIBILITY FOR LEAVE AND PASSES AND SANCTION OF SPECIAL CONTRIBUTION TO THE PROVIDENT FUND AND PENSIONARY BENEFITS ON RETIREMENT. IT MAY ALSO BE NOTIFIED THAT THE CONDONATION OF BREAK IN SERVICE CAN BE ORDERED ONLY WITH THE AUTHORITY OF THE PRESIDENT AND TILL THE BREAK IS CONDONED. NO LOWER AUTHORITY CAN ASSUMS THAT, THE BREAK WILL WILL BE CONDONED AND GIVE THE STAFF BENEFITS THAT THEY HAVE LOST BY PARTICIPATION IN AN ILLEGAL STRIKE/STOPPAGE OF WORK.

The above instructions should be made known to all the railway employees working under your charge for their information and guidance so that occasions for such work stoppages and consequential action, which will follow automatically do not actually arise.



BY ORDER
DIVISIONAL SUPERINTENDENT
IZATNAGAR.

No. E/Con/IZN/7, dated 27.4.79.

Copy to:-

All Divl.Officers including MS and Sr.DEN,
All Asstt.Officers,

All PWIs, IOWs, LFs, ALFs, EFO, ECs, SIs, TCIs, TIs,
DCIs, WIs/PIs, SMs and all other Sr.Subordinates,
including OS/G & CA to DS.

Sd/-
for Divisional Superintendent,
Izatnagar.

T.C
AP Singhania

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. 324 OF 1984

Anrudh Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. R-II

NORTH EASTERN RAILWAY

MEMORANDUM

The followings staff of the Traffic Department,

N.E. Railway under station Superintendent/Lucknow and
Supdt.
Station S.N.E.Rly Gonda obstructed in the smooth running
of trains by resorting to work to rule. Therefore,
break in-Service in their services as per extant orders
has been effected from the dates shown against each:-
S/Shri

1. C.L. Upadhyaya, Guard 'B' /LJN. w.e.f. 9.5.79
2. R.N. Tewari, Guard 'A' /GD w.e.f. 8.5.1979
3. Ram Awadh Jaiswal, Sr.PM/LJN w.e.f. 8.5.1979.

This issues with the approval of Sr.DOS/LJN.

Sd/- 21.5.79
for Divisional Railway Manager(P),
Lucknow.

No.E/II/283/1/Strike/79

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P)
LUCKNOW DATED MAY 22nd, 1979.

Copy forwarded for information and necessary
action to:-

1. SS/LJN, SS/GD
2. Divisional Accounts Officer/Lucknow Jn.
3. HCs/Bills, Cadre & pass of this office.
4. Staff concerned.
5. Spare copies for their 'P' Cases.

TC
AP.Srivastava
Sd/-
Divisional Railway Manager(P),
Lucknow.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW.

WRIT PETITION NO. 324 of 1984

Anrudh Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO.R-III

North Eastern Railway

No. T/190/0ptg/LJN(Pt.II)

Divisional Office

Lucknow: 19.3.1980.

Shri A.P.Srivastava
ASM/ASH

Through SM/ASH.

Sub: Your letter No. Nil dated 6.8.79 in reference to
this office major penalty memorandum of even number
dated 5.6.79.

.....

In this connection you are advised as under:

Items 1,2 & 3 of your letter under reference: Please
attend this office on any working day and inspect/take
extract of relevant paragraphs of the diaries.

Item 4: These are the witnesses who will be produced in
the DAR enquiry, if necessary.

Item 5: No statements of the staff on yeard/cabin duty in
the shift from 16.00 to 24.00 hrs. on 17.5.79 were recorded
and, therefore, question of supply of these statements does
not arise.

Items 6,7 & 8: The relevant records are available with
SM/ASH which may be consulted, if necessary.

Please inspect all the relevant documents within
5 days and submit your defence by 21.3.80 failing which
ex-partes decision will be taken.

Sd/-

Divl.Safety Officer/LJN

Ab Srivastava

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. 324 OF 1984

Anrudh Prasad Srivastava

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. R-IV

Proceedings of D.A.R. inquiry held on 16.4.1984 in the chamber of the undersigned (A.C.S./LJN) in connection with charge memorandum No. T/190/OPTG/LJN (Pt.II) dated 5.6.79 issued against Shri A.P. Srivastava A.S.M./ASH.

Present

1. Shri O.P. Gupta	A.C.S.(W)/LJN	Enquiry Officer
2. " A.P. Srivastava		charged employee
3. " S.C. Dhar		Defence Assistant

Defence Counsel raised an objection about no reply against his letters dated 21.4.82 and 9.4.84 has been received. It was made clear to him that appeals are addressed to D.S.O. and he is the proper man to reply. E.O. has nothing to do with it. As far non-availability of records viz., documents listed in letter dated 9.4.83, it was finally pointed out that the records could not be located. Therefore, the inquiry has to proceed with the available records. The charged employee and D/A both were requested to co-operate in finalization of the case.

The Defence Counsel and the charged employee has been co-operative with the E.O. from the time the case started. The object of the D.A.R. inquiry



A.P. Srivastava

is to find out the truth and the means are all records and statements as recorded during the course of the period of occurrence. So unless those records are available it would not be possible to find out the truth. At this stage cross-examination of the prosecution witness without the record will be against natural justice.

It has already been pointed out that records are not being located. Therefore, the inquiry has to proceed without the records viz. Cabin Register of ASH (Main) etc.

Mr. Chug and Mr. Bhola Ram are available in inquiry to-day. Statement of Mr. Chug has already been recorded. It is upto the charged employee to cross-examine him failing which it will be treated that no cross-examination is to be made by the defence side. Likewise, Shri Bhola is also available for statement and cross-examination by the Defence Counsel.

Charged employee as also D.C. refused to cross-examine Mr. Chug as the truth could not be come out without those records. Therefore, cross-examination by E.O. begins:-

Q.1 In your statement in chief you have stated that no line clear was asked from LJN side from 18.30 hrs. Can you say if this statement is based on your clear memory or some documentary evidence?

Ans. It is based on memory and diary entry.

Q.2 Can you describe the procedure and system of demanding and giving line clear for train movement between LJN and ASH for AMS side as also for MAL side?

Ans. According to SWR LNJ has to communicate directly with ASH(M) but the practice was that LNJ was communicating ASH (West) Cabin. ASH (West) Cabin contacting ASM/ASH (M) and then line clear was given.

Cross-examination of Shri K.L. Chug by E.O. continued

Q.3 Kindly clarify if your statement in Chief is based on SWR or your talks between Shri A.P. Srivastava who was ASM on duty on West Cabin on 17.5.1979?

Ans. My statement is based on my talks with Shri A.P. Srivastava. In fact there was practically no communication between LNJ (Indoor) and ASH (Main) except Control or ADM Phone. to when LNJ (Indoor) did not respond.

Q.4 Would you please recall if there was any talk that Mr. A.P. Srivastava was instrumental in suspending train movement or instigating staff?

Ans. There was no such talk.

Sd/- Illegible	Sd/- A.P. Srivastava	Sd/- K.L. Chugh
16.4.84	16.4.84	16.4.84

TRUE COPY

T.C.
A.P. Srivastava



AIU4
X
1/1

- 26 -

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. 324 OF 1984

Anrudh Prasad Srivastava ... Petitioner.
Versus
Union of India and others ... Opp. Parties.

ANNEXURE NO.R-V

Statement of Shri Bhola Ram, Yard Master/JEA

I came on duty at 1600 hrs. on 17.5.79. After giving instructions to Sunter Shri Ram Autar I started to inspect my Yard. After about an hour I saw the shunting engine standing on the ladder. This arose my curiosity and I proceeded towards shunting engine. I saw it totally abandoned. Then I proceeded to station. Traffic Shunter and Loco Shunter were seen at the station. They were in discussion that there was strike at L.J.N. Shri D.J. Sharma, D.T.I. and Shri Chug A.S.M. were in ASM's office. I asked them about what Shunters were discussing. They also confirmed that there was some scuffle at L.J.N because of which there was a strike. The work could not start till I left at 2400 hrs. I close my statement.

Sd/-
(Bhola Ram 16.4.84
Yard Master

Cross-examination of Shri Bhola Ram by E.O.

Q.1 There is a charge against Mr. A.P. Srivastava who was A.S.M. in the West Cabin on 17.5.79 that he participated in the said strike and that he instigated the staff to suspend work. What you have to say in this connection?

Ans. I have no idea whether there was any instigation from Shri A.P. Srivastava or not. I had no personal talk with Shri A.P. Srivastava.

Sd/-

AP Srivastava

A145

-27-

इन दि अमरेबुल हाई कोर्ट आफ जूडीकेवर ऐट इलाहीबाद

(ਲਾਨਊ ਬੈਂਧ) ਲਾਨਊ ।

रिट प्रिटीशन नं० 324 आफ 1984

अनस्त्रृता प्रसाद श्रीवस्त्रव

पिटीषनर

बन मि

यूनियन आफ इन्डिया रेस्ह अर्दस

अपैं पार्टीज

अनेकजर नं० आर-६

न० ई/ए रेस/ए-स-रम

$$29 - 3 = 80$$

श्री र०पी० श्रीवृस्तव
र०स०स०स०. ऐश्वर्य

विध्य- 17-5-79 का केबिन रजिस्टर तथा डिटेन्शन रजिस्टर

प्रयासों के बावजूद काफी छसवीन करने के बाद उपरोक्त रजिस्टर रेकर्ड में नहीं मिले। प्रतीत होता है कि यह रेकर्ड श्री माधुर साहब स्टॉमा के विशेष संरक्षण में है या मण्डल कार्या लय में है।

अतः श्री माधुर साहब के आने पर आपको उक्त रजिस्टर दिखाने की व्यवस्था सम्भव हो सकेगी।



ह०. सी० पी० वर्मा
स्टेशन मास्टर
पूर्वाल्लिर रेलवे
टेशबाग

संस्कृत व्याख्यान

A. L. B. T. L. B.
A. L. B. T. L. B.

A 14b

✓
146

इन दिन मरेबल हाई कोर्ट आफ जूडीकेवर ऐट इलाहाबाद

(ਲਭਾਨਤੁ ਬੈਨ੍ਧ) ਲਭਾਨਤੁ

रिट प्रीटीशन नं० 324 आप 1984

अन स्तु त्र प्रसाद श्रीवास्तव

पिटीरमर

बन मि

यूनियन ऑफ इंडिया ऐण्ड अर्दस

अपौर्व, पार्टीज

एनेक्जर न० आर-7

प०स० ई०/प्रणीति०/प्र०स०स्म०

18-4-3

स० बा० अ० का० री

(इन्वियरी अपिसर)

ਪ੍ਰਵੰਤਰ ਰੇਲਵੇ 'ਲਾਨਾਂ

विषयः - १७-५-७९ का रेशबाग मेन स्टेशन का लाइन एलाटमेन्ट रजिस्टर

महेदयः

उपरेक्षित रजिस्टर तकातीन एन्डोस्यस(एलस) श्री शर्मा जी को

पहले ही दे दिया गया है जिसे वे व्यक्तिगत रूप से ले गए हैं।

अतः एम०डब्लूआई० श्री शीतला प्रसाद जी को यह रिजिस्टर
नहीं दिया जा सका ।

ह० आर०वी०माथुर
स्टेशन अ० रीक्षक
पूर्वोत्तर दैलवे
रेशाबाग जैक्शन

सत्य प्रतिलिपि



TL
H. S. Sardar

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. 324 OF 1984

Anrudh Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO.R-VIII

Disciplinary authority for imposition of penalties for various types of Irregularities under Railway Servant (Disciplinary & Appeal) Rules 1968.

Reference confidential D.O.No.E/74/2/(14) dated 9th Feb. 1979 on the above subject.

The Board have carefully considered the proposal contained there in consultation with legal adviser and they are of definite opinion that an employee cannot be treated as under the administrative control of more than two Department. Therefore, there is no necessity of making any amendment in the Rly. Servant (Discipline and Appeal) Rule 1968. The instruction as contained in Boards letter No. E(D&A) 72 RG6-13 Dated 16.10.73 and reiterated in their letters of even number dated 10.1.79 should therefore continue to be followed.

Rly. Board letter No.E(D & A) 78 RG-6-15 Dt.6.7.79.

.....
TRUE COPY

T.S.
A. Srivastava



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. 324 OF 1984

Anrudh Prasad Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. IX

Under Registered Post A/D.

From:

R.C. Saxena,
Advocate, High Court,
E/3665, Rajaji Puram, Lucknow.

For and on behalf of:- Shri A.P.Srivastava,
Asstt. Station Master,
N.E.Railway, Aishbagh,
Lucknow-226004.

To:

1. The Union of India, Through General Manager,
N.E. Railway, Gorakhpur.
2. The Divisional Safety Officer, N.E. Railway,
Ashok Marg, Lucknow.
3. The Sr. Divl. Optg. Supdt.,
N.E. Railway,
Ashok Marg, Lucknow.
4. The Sr. Divl. Personnal Officer,
N.E. Railway,
Ashok Marg, Lucknow.

NOTICE FOR CONTEMPT OF COURT.

Dear Sir,

Under the instruction of my above named claint
I have to serve upon you with the following notice:-

1. That, my claint is presently holding the post
of Asstt. Station Master in grade Rs.425-640 at
Aishbagh, and stands senior to Opposite Parties,

A. Prasad

No. 5 to 29 mentioned in the Writ Petition No. 5741 of 1983, according to the seniority list contained in annexure No. 4 of the said Writ Petition.

2. That, although my client was fully eligible for the benefit of up-gradation under the restructuring of the Cadre Scheme inuniated vide Railway Board's letter No. PC-III/80/UPC/ 19 dated 29.7.83, he ought to have been given the benefit of up-gradation with effect from 1.8.82; but arbitrarily the Opposite Parties No. 5 to 29 were placed/given benefit of up-gradation under the restructuring of cadre scheme totally ignoring to considering the case of client. The case of my client should have been considered in preference to his juniors-opposite parties No. 5 to 29.

3. That, my client filed the above noted Writ Petition challenging the validity of the promotion order No.E/II/210/4/SM/83 and E/II/210/SM/83 dated 3.9.83 placing to opposite parties No. 5 to 29 in scale of Rs.455-700 and Rs.550-750 illegally superceeding my client and prayed for quashing the said order and also for holding a fresh selection for the post of Station Master in the grade of Rs.550-750 and ASM in the grade of Rs.455-700.

4. That, the Hon'ble High Court, Lucknow, being satisfied with the contention of my client admitted the Writ Petition and passed interim order dated 28.10.83, directing you, the opposite parties No. 2 to 4, detailed in the Writ Petition, that in the meantime, if any selection for the post of Station Master in the grade of Rs.550-750 is to be held the case of my client may also be considered in accordance with rules.

5. That, it would be relevant to state here that

Albion Star



243

8/5

NS/CCS.
64

वकालतनामा

कार्यवाही प्रधानमंत्री का अधिवक्ता
राष्ट्रीय वित्त मंत्री के समक्ष
कार्यवाही प्रधानमंत्री के न्यायालय में
राष्ट्रीय प्रधानमंत्री का अधिवक्ता वित्त विभाग का अधिवक्ता

वादी श्री राम कौर अधिवक्ता	दावेदार श्रीलालार्थी
प्रतिवादी भारत संघ राष्ट्र अधिवक्ता	अर्जदार प्रत्यार्थी

भारत के राष्ट्रपति इसके द्वारा श्री राम कौर गीरा द्वारा अधिवक्ता

को उपर्युक्त वाद/अपील/कार्यवाही में भारत संघ की ओर से उपर्युक्त होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने के लिए दस्तावेज दाखिल करने और वापस लेने, न्यायालय की आदेशिका स्वीकार करने, काउन्सेल, अधिवक्ता या प्लीडर नियुक्त करने और उन्हें अनुदेश देने, हपया वापस लेने और उसका निशेष करने तथा उपर्युक्त वाद/अपील/कार्यवाही में भारत सरकार का साधारण प्रतिनिधित्व करने और भारत संघ के लिए इस प्रकार उपर्युक्त होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने की अनुबांधिक सभी वात करने के लिए नियुक्त और प्राधिकृत करते हैं। किन्तु यह इस शर्त के अधीन रहते हुए होगा कि जब तक भारत सरकार के समुचित प्राधिकारी से उस निमित्त पहले ही स्पष्ट प्राधिकार प्राप्त नहीं कर लिया गया है, तब तक उक्त काउन्सेल/अर्जी वक्ता/प्लीडर या उसके द्वारा नियुक्त काउन्सेल/अधिवक्ता/प्लीडर सभी या किसी प्रतिवादी/प्रत्यार्थी/अपीलार्थी/वादी/विरोधी पक्षकार के विवरण उस वाद/अपील/दावा/प्रतिरक्षा/कार्यवाही को पूर्णतः या भागतः न तो वापस लेगा, न उसका अधित्यजन करेगा, न एसा कोई करार करेगा या समझौता करेगा जिसके द्वारा वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित की जाए और न उससे उद्भूत या उसमें विवादग्रस्त सभी या किसी विषय को मध्यस्थ को नियुक्त करेगा, परन्तु आपवादिक परिस्थितियों में जब भारत सरकार के समुचित प्राधिकारी से परामर्श करने के लिए पर्याप्त समय नहीं है और वाद समझौता करने में लोप करना नियुक्त रूप से भारत सरकार के हित के प्रतिकूल होगा तो उक्त प्लीडर/अधिवक्ता/काउन्सेल एसा कोई करार या समझौता कर सकेगा जिसके द्वारा उक्त वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित हो जाय और एसे प्रत्येक मामले में काउन्सेल/अधिवक्ता/प्लीडर करार या समझौता करने के विशेष कारण बताते हुए उक्त प्राधिकारी को लक्षात रखना चाहिए।

राष्ट्रपति इस प्राधिकार के अनुक्रम में श्री राम कौर गीरा द्वारा अधिवक्ता

द्वारा किए गए सभी कार्यों का अनुसमर्थन करने को सहमत है।

इसके साक्ष्यस्वरूप भारत के राष्ट्रपति के लिए और उनकी ओर से इस विलेख को आज तारीख की सम्यक् रूप से निष्पादित किया जाता है।

तारीख 19

प्रधान अधिकारी का मिशन अधिकारी
निष्पादन करने वाले अधिकारी का
पदनाम

[वादी] अपीलान्ट ✓

प्रतिवादी [रेस्पान्डेन्ट]



H-P. Srivastava

मुकदमा नं० ३२४ सन् ८४ वकालतनाम प्रतिवादी (रेस्पान्डेन्ट) १६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Shri C. Saksena - Advocate

वकील
महोदय
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रूपया जमा करें या हमारी या विपक्षी (फर्रीकासनी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे विलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted
B.C. Saksena

हस्ताक्षर

A.P. Srivastava

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६ ई०