

Annexure - A

CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

INDEX - SHEET

CAUSE TITLE CA NO. 418/1987 OF 198

Name of the Parties

H. C. Srivastava

Versus

Union of India & others

Part A, B and C.

Sl. No.	DESCRIPTION OF DOCUMENTS	PAGE
1-	Check - List	A1 - A2 ✓
1-	Order - Sheet	A3 - A15 ✓
2-	Judgment - Dt. 13th Dec. 1991 Lko.	A16 - A17 ✓
3-	Petition	A18 - A135 ✓
4-	Power / In Chandra Ma Pd. Srivastava Advocate behalf Appl.	A136 ✓
5-	Counter Affidavit NO. 1, 2, 3	A137 - A173 ✓
6-	Counter Affidavit NO. 4	A174 - A180 ✓
7-	Reply Affidavit NO. 1, 2, 3	A181 - A217 ✓
8-	Reply Affidavit NO. 4	A218 - A226 ✓
9-	SLP 12265 of 92 dt. 16/10/92 B. file	A227 - A229
S		B 227 - B 433
10-	C. file	C 434 - C 451

1- Supra Court No 3101/92/XI ✓
C.A. No 200/94 A229 to A232
dt. 20-1-94

B/c weeded out

Rechecked
on 26.3.12
m

B/c not trace for 29.5.12.

So (S)

Encl. 11/10/12
20/02/92

18/5

A1

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

O.A. 418/87

Registration No.

418 of 1987

APPLICANT

(s) Harish Chandra Srivastava

RESPONDENT(s)

U.O.I. through General Manager, N.E. Rly.

Gorakhpur & 3 others.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent?
2. (a) Is the application in the prescribed form?
(b) Is the application in paper book form?
(c) Have six complete sets of the application been filed?
3. (a) Is the appeal in time?
(b) If not, by how many days it is beyond time?
(c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation, Vakalat-nama been filed?
5. Is the application accompanied by B. D. /Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?

48

48

48

48, 6 sets filed

48

-

-

48

48

48

48

48

11.11.418/87

12.4.94

No sitting of D.M. adjourn to
26.5.94
Mee

OR 18.5.84

SLB n. 12265

order from Supreme Court

at 13.184 need through D.M.

3101/92/23 Put up before

Hon Bench on the date

fixed is 26.5.84 re
Bor

Notice on record.

Contention by defence with
Submitted for final

2
24/5

26/5/94

Hon. Mr. Justice B. C. Saxena, V.C.
Hon. Mr. V. K. Seth, A.M.

List on 8/8/94 for

orders.

Bor

V.C.

with
A.M.

8/8/94

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

OR

Submitted for final

26/8

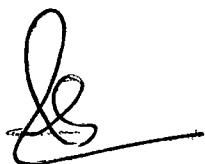
None for the Parties.

List for order on 31/8/94.

↓

J.M.

with
A.M.



31.8.94

No sitting of D.M. adjourn 19.10.94

Mee

02410/87

23.3.95

no adjournment
19.4.95
more

19/4/95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Kumar, J.M.

for applicant: Sh. Suresh Chandra P.
for respondents: Sh. A.O. Singh
Sh. Suresh Chandra P. Prays for
adjournment.

List for hearing on
12/7/95.

J.M.

L.K.
A.M.

on
recd. of
copy of
SFH
17/7/95

Se

12.7.95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Kumar, J.M.
on the request of both
parties Counsel appear in
16.10.95

J.M.

L.K.
D.M.

16-10-95

Hon. Mr. Justice B.C. Sengupta, VC
Hon. Mr. V.K. Seth, A.M.

on the request of learned
counsel for applicant
and on 7.12.95. The learned
counsel for respondents
is present

L.K.
D.M.

Se
VC

on
SFH
11/12/95

Se

5A 418/87

30/4/96

Hon. Mr. Justice B.C. Saksena, Jc
Hon Mr V.K. Seth, A.M.

Sh. Anil Srivastava has filed
power on behalf of respondent
today. He seeks adjournment
since the record has been
received recently.

List on 11/7/96.

on
pleadings are
complete
15/5/96

b

✓
Am.

bol
vc

11.7.96

No adjournment
19.8.96
or
Doe

19/8/96

Hon. Mr. V.K. Seth, A.M.
Hon Mr. D.C. Verma, J.M.

Counsel for both the sides
have sought adjournment.

List on 26/8/96 for
hearing.

J.M.

✓
A.M.

28/8/96

Hon. Mr. V.K. Seth, A.M.
Hon Mr D.C. Verma, J.M.

for applicant: Sh. Surendranath
for respondents: Sh. A. Srivastava
is on leave.

List on 8/10/96 for
hearing.

J.M.

✓
A.M.

on
Sh. Anil Srivastava
15/8/96

on
Sh. Anil Srivastava
15/8/96

524181

9.7.97

NO stay of D. B. order
04.9.97

12
BOL

2
Pleading are
complete

17/8/97

4997

Hon. Mr. V. L. Seth, A.M.
Hon. Mr. D. C. Verma, J.M.

For applicant: Sri R Verma, pro
counsel, for Sri Swendran (2)

Learned counsel for applicant
states at the bar that the applicant
does not wish to press this O.A. The
same is, therefore, dismissed as such.
No order as to the costs.

2
Copy for
proton

Dec

101.

12
B.M.

D.NO. 3121/92/41
SUPREME COURT OF INDIA
DATED: 2-1-94

From: The Assistant Registrar
Supreme court of India

TO: Deputy
The Registrar
High Court of Judicature Central Admin. Tribunal
Allahabad (UP) (Lucknow Bench) Lucknow

CIVIL APPEAL NO. 200 OF 1994
(From High Court Judgment and Order dated 13th Dec. 1991
in O.A. No. 418 of 1987)

U.O. 1 + cos ...Appellants

Vs.

Harish Chandel Solicitors...Respondent

Sir,

In pursuance of Order 13, Rule 6, S.C.R.1966, I am directed by their Lordship of the Supreme Court to transmit herewith a Certified copy of the Order dated the 13th January 1994 in the appeal above-mentioned.

The Certified copy of the decree made in the said appeal and the Original Records if any will be sent later on.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR.

650
18/2/94
VK/SEC.XI

13(1-2)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION **490231**
CIVIL APPEAL NO. ²⁶⁰.....OF 1994.
(Arising out of S.L.P.(C) No.12265 of 1992)

Union of India & Ors.

....Appellants.

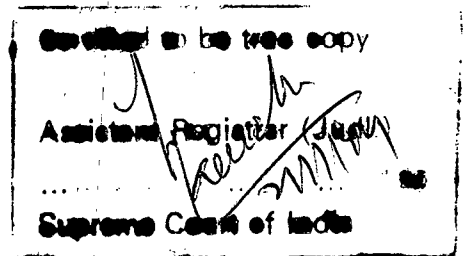
Versus

Harish Chand Srivastava

....Respondent

O R D E R

Special Leave Granted.



This appeal is preferred against the judgment of the Central Administrative Tribunal, Lucknow Bench, allowing the Original Application filed by the respondent on the ground that the respondent was not supplied the copy of the enquiry report before imposing the penalty of reversion upon him. Before the Tribunal, the respondent raised several contentions. But the application was allowed only on the aforesaid ground. The order of punishment is earlier to November 20, 1990. The said ground stands negatived by the Constitution Bench of this Court in Managing Director, E.C.I.L., Hyderabad v. B.Karunakar & Ors. (1993 (6) J.T.1). Since there has been no adjudication upon the other grounds urged before the Central Administrative Tribunal, the matter has to go back for consideration of those other grounds raised by the respondent.

....2/-

The appeal is accordingly allowed. The order of the Central Administrative Tribunal is set aside and the matter is remitted for fresh disposal in accordance with the observations made in the preceding paragraph. No costs.

SM
B.P. Jeevan Reddy --- J
SM
B.L. Hansaria --- J

NEW DELHI,
JANUARY 13, 1994.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW

NO./CAT/LKO/JUDL/ 61

DATED : 4/4/94

O. A. No. 418/87 of 199

Harish Chandra Srivastava

Applicant (s)

Versus

Union of India & others.

Respondents.

- 1-Union of India through General Manager, North Eastern Railway, Gorakhpur
- 2-Senior Divisional Commercial Superintendent, North Eastern Ry., LKO.
- 3-Divisional Commercial Superintendent, North Eastern Railway, Lucknow.
- 4-Miss Meena Sah, Enquiry Officer/(Defence and Appeal) North Eastern Railway, Gorakhpur.
- 5-Sri Harish Chandra Srivastava S/O Sri M.L. Srivastava, Resident of T. 232 A, Girja Colony, N.E. Railway, Gonda.
- 6-Shri Surendran P., Advocate, 27, Indira Market Basement, Aminabad, LKO.
8. Shri Hari Om Singh, Advocate, Awadh Bar Association, High Court, LKO.

* Recd a copy of order of Hon. S.C. passed in C.A.No.280/94 with the DO No.3107/92/XI dt.20-1-94 of DA S.C./dt.20-1-94 Hon.S.C. has remanded this case for fresh disposal. Hence place this case before Hon.Bench on 12-4-94 for order. Inform the parties and counsels.

Sd/-
D.R.

Please take notice that the applicant above named has presented an application on a copy of.....there of is enclosed here with which has been registered in this Tribunal and the Tribunal has fixed.....day of.....to show cause as to why the petition be not admitted. Counter may be filed Within.....weeks. Rejoinder, if any to be filed within.....weeks there after.

If, no appearance is made on your behalf your pleader or by some one duly authorised to act, plead on your behalf on the said application, it will be heard and decided in your absence. Given my hand and the seal of the Tribunal this day of _____ 199.

25th

March-94.

ENCL 1

For. DEPUTY REGISTRAR
C. A. T.

LUCKNOW BENCH, LUCKNOW.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW

NO./CAT/LKO/JUDL/ 2 TO 8

DATED : 4/4/94

O. A. No.....of 199
412/87

Harish Chandra SrivastavaApplicant (s)

Versus

Union of India & others.Respondents.

- 1-Union of India through General Manager, North Eastern Railway, Gorakhpur
- 2-Senior Divisional Commercial Superintendent, North Eastern Ry., LKO.
- 3-Divisional Commercial Superintendent, North Eastern Railway, Lucknow.
- 4-Miss Meena Suh, Enquiry Officer/(Defence and Appeal) North Eastern Railway, Gorakhpur.
- 5-Sri Harish Chandra Srivastava S/O Sri M.L.Srivastava, Resident of T.232 A Girja Colony, N.E.Railway, Gonda.
- 6-Shri Surendran P., Advocate, 27, Indira Market Extension, Aminabad, LKO.
- 8. Shri Hari Om Singh, Advocate, Awadh Bar Association, High Court, LKO.

" Recd a copy of order of Hon. S.C. passed in C.A.No.280/94 with the DO No.3107/92/XI dt.20-1-94 of DR S.C./dt.20-1-94 Hon.S.C. has remanded this case for fresh disposal. Hence place this case before Hon.Bench on 12-4-94 for order. Inform the parties and counsels.

GA/-
D.R.

Please take notice that the applicant above named has presented an application on a copy of.....there of is enclosed here with which has been registered in this Tribunal and the Tribunal has fixed.....day of.....to show cause as to why the petition be not admitted. Counter may be filed Within.....weeks. Rejoinder, if any to be filed within.....weeks there after.

If, no appearance is made on your behalf your pleader or by some one duly authorised to act, plead on your behalf on the said application, it will be heard and decided in your absence. Given my hand and the seal of the Tribunal this day of _____ 199.

25th

March-94.

ENCL :

For. DEPUTY REGISTRAR
C. A. T.

LUCKNOW BENCH, LUCKNOW.

1936
18/5/94

Communications should be
sent to the Registrar.
Court, by designation.
NOT by name
Telegraphic address —
"SUPREMECO"

D.No. 3101/92/XI

SUPREME COURT
INDIA

Dated New Delhi, the 10th May, 1994. 19

FROM The Registrar(Judicial),
Supreme Court of India,
New Delhi.

TO The Deputy Registrar,
Central Administrative Tribunal,
Lucknow Bench, Lucknow.

CIVIL APPEAL NO.200 OF 1994.

Union of India & Ors.

...Appellants.

Versus

Harish Chand Srivastava

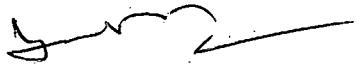
...Respondent.

Sir,

In continuation of this Registry's letter of even number dated the 20th January, 1994, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 13th January, 1994 of the Supreme Court in the said appeal.

Please acknowledge receipt.

Yours faithfully,


for Registrar(Judicial)

18/5/94
Mr. Raza

24-5-94
146

SUPREME COURT
CRIMINAL/CIVIL APPELLATE JURISDICTION

78.

16/01/94

CIVIL APPEAL NO.200 OF 1994.

Union of India & Ors.

**Appellants
Respondents, Appellts.**

Versus

Harish Chand Srivastava

Respondent

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.
Registration Original Application
No.418 of 1987.**

**SEE ALLOWING THE APPEAL AND REMITTING THE
MATTER TO THE TRIBUNAL WITH NO COSTS.**

Dated the 13th day of Jan. 1994.

NT

SHRI V.K.Verma,

Examined by

Advocate on Record for the Appellants.

Compared with

SHRI

No. of folios

Advocate on Record for

SEALED IN MY PRESENCE

195784

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL APPELLATE JURISDICTION

515313

CIVIL APPEAL NO. 200 OF 1994.

(Appeal by special leave granted by this Court by its Order dated the 13th January, 1994 in Petition for Special Leave to Appeal (Civil) No. 12265 of 1992 from the Judgment and Order dated the 13th December, 1991 of the Central Administrative Tribunal, Lucknow Bench, Lucknow in Registration Original Application No. 418 of 1987)

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Senior Divisional Commercial Superintendent, North Eastern Railway, Lucknow.
3. The Divisional Commercial Superintendent, North Eastern Railway, Lucknow.
4. Miss Meena Sah, Inquiry Officer (Defence and Appeal), North Eastern Railway, Gorakhpur.

...Appellants.

Versus

Harish Chand Srivastava, S/o Shri M.L. Srivastava,
R/o T-232-A, Girja Colony, North Eastern
Railway, Gonda.

...Respondent.

13th January, 1994.CORAM:

HON'BLE MR. JUSTICE B.P. JEEVAN REDDY
HON'BLE MR. JUSTICE B.L. HANSARIA

For the Appellants: Mr. V.C. Mahajan, Senior Advocate.
(M/s. A.S. Bhasme, C.V. Bubba Rao and
V.K. Verma, Advocates with him).

The Appeal above-mentioned being called on for hearing before this Court on the 13th day of January, 1994, UPON perusing the record and hearing counsel for the appellants herein, THIS COURT in view of its Judgment in Managing Director, E.C.I.L., Hyderabad Vs. B. Karunakar & Ors. reported in (1993(6)J.T.1) DOT in allowing the appeal ORDER:

1. THAT the Judgment and Order dated 13th December, 1991 of Central Administrative Tribunal, Lucknow Bench^m Registration Original Application No. 418 of 1987 be and is hereby set aside

Date 1 Note of progress of proceedings and routine orders Date to which case is adjourned

relief. we are not convinced about the same and the same is rejected.

BL

A.M.

J.M.

OR: Reply has not been filed in the court so far.

22/7

7/7/87 Deputy Registrar

On the request of Counsel for respdt, he is allowed to file reply by 31/7/87. Put up undist.

file over 26/7/87

DR(J)

8/8 Deputy Registrar

On the request of Counsel for respdt, he is allowed to file reply by 10/8/87.

he

DR(J)

8/8 On the request of Counsel for respdt, he is allowed to file reply by 21/8/87.

by order
DR(J)

क्रम संख्या
तारीख
Number of
and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ
करने की ता
How complied
date of compl

21/8/87

DR

In spite of allowing sufficient time, respondents have not filed reply so far. List this case for hearing before court on 25/11/87.

25/11/87

Registrar

DR(T)

As the cases of Shri VK Goel are adjourned, list this case for hearing before Court on 22/1/88 as prayed.

Registrar

25/1/88

Hon. S. Zahier Hasan - A
Hon. D. S. Misra - A

Not received Adj to 25.4.88
RSC

25/2/88

Hon. S. Zahier Hasan - A
Hon. D. S. Misra - A

The applicant has requested that the case may be listed on 17/2/88.

The case along with this application is submitted accordingly.

Maharashtra
17/2/88

The applicant's counsel is ill today. Our diary is full in the month of March. So as an - the date fixed.

✓
A

✓
A

Order Sheet

A7

CA 418/81

25-4-88

Hon D.S. Mishra — AM

Hon G.S. Sharma — JM

On the request of
learned Counsel for the
Applicant, the case is
adjourned to 8-8-88 for
hearing.

A.M

J.M

8-8-88

No sitting. Adj to 22-9-88

22-9-88. No. sitting Adj to 23-10-88

22-10-88. No. sitting adj to 17-1-89.

JSN

16-11-88

O.R.

Misc Application 174 of 88
filed. Case is submitted
before the Honble court
on 17-11-88 as undist.

Shankaran
16-11-88

18.17.11.88

Hon. D.S. Mishra, AM
Hon. G.S. Sharma, JM

On the request of learned
counsel for the parties, the
case is adjourned to 21.11.88 for
hearing.

JM

AM

15.2.89 SL

on the request of parties
not before court for hearing
02.3.89

[Signature]

2.3.89

Hon. D.S. Miera, AM
Hon. D.K. Aggarwal, J.M.

on the request of both
the parties counsel, the case
is adjourned to 13.3.89
for hearing.

[Signature]

J.M.

AM.

142

13.3.89 No sitting adj. to 10.5.89
for hearing.

[Signature]

10/5/89 DK

As the Hon'ble bench concerned
is not available today, put up
before court on 16/5/89, as humbly
prayed by the applicant, present in
person.

[Signature]
DK (D)

AM

OA 418/87

7.8.89 On the request of the
Counsel for the Parties
let this case is put up
before hearing on 23-8.89

lee 07/889

23.8.89 Due to lawyer's strike the
case is adj. to 11.10.89 for
hearing. B

11.10.89 Due to lawyer's strike the
case is adj. to 3.11.89 for
hearing. B

3.11.89 No sitting adj. to 11.12.89 B

11.12.89 Hon. D. K. Agarwal - J.M.
Hon. K. Obayya - AM.

Not reached, the case
is adjourned to 12.2.90 for
hearing.

A.M.

De
J.M.

12.2.90 The case is adj. to 3-4-90
before DR(3) fixing a date
for hearing

Regd

A13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

O.A./T.A.NO. 418 ... 1987

..... H.C. Srivastava Applicant(s)

..... Verse
..... U.O. 288 Respondent(s)

Office Report | Date |

Orders

7-7-90

DR

The case is adjourned to 5-10-90
for fixing a date for hearing.

DR(7)

5-10-90 DR

The case is ripe for hearing.
List the case before court
for final hearing on 12-11-90,
as prayed by the applicant.

DR(7)

12-11-90 - No sitting. Adjourned
to 25/2/91 for hearing.


25.2.1991

Hon. Mr. D.K. Agrawal, J.M.

Hon. Mr. K. Obayya, A.M.

On the request of Shri V.K. Goel, counsel for
the respondents, the case is adjourned to
14.5.1991 for hearing.


A.M.


J.M.

(n.u.)

AM

ORDER SHEET
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

O.A. No. 418 OF 1987
Vs.

Sl.No.	Date	Office Report	Orders
		<p><u>O.R</u></p> <p>In compliance with Hon'ble V.C's order dt 18-3-91, complete records of this case is being sent to Circuit Bench Lucknow. Information to the parties counsel has been given. O/c of notice attached herewith.</p> <p><u>Sharma</u> 8-4-91</p>	
		<p><u>OR</u></p> <p>This file has been recd. from CAT, Atd, by Sr. Shrokr. V.D.C on 10/4/91.</p> <p>Submitted before D.R (J).</p> <p>Date is fixed as 14.5.91 from CAT, Atd.</p> <p><u>L</u> 10/4/91</p> <p><u>14.5.91</u></p>	

No sitting adj to 8.7.91
2

No sitting of Division Bench adj to 14.10.91
2

A/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
Registration O.A.No. 418 of 1987

H.C.Srivastava

....

Applicant

Vs.

Union of India & Others

....

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

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

The applicant who was working as Senior Goods Clerk in N.E. Railway, Gonda was chargesheeted in respect of loading of wheat in a wagon without preparation of forwarding note and Railway receipt. During the continuance of restriction as per allocation of business on the relevant date Chief Goods Clerk had to allot wagons and maintain T 80 Register. But as the same was not done, a chargesheet was issued against the applicant. The applicant submitted his reply against the said chargesheet. An enquiry was held. The grievance of the applicant is that in enquiry he was not given reasonable opportunity to defend himself and not even to find a Defence Assistant of his choice or even to examine the cross-examine of the witness. Various other flaws have been pointed out. It has also been stated that the Enquiry Officer's report was not furnished to the applicant either by the Disciplinary Authority or by the Enquiry Officer and the Disciplinary Authority without furnishing the copy of the Enquiry Officer's report to the applicant reverted him to the lower post of Goods Clerk at the initial pay scale for five years. Against the said order the applicant filed an appeal. The punishment order was maintained but the period was reduced from five years to two years. Thereafter, the applicant approached this Tribunal. A number of plea has been taken by the applicant.

2. The respondents have tried to justify their action and have stated that the applicant himself was responsible for malice of the enquiry, as it was deemed that he was avoiding to appear in the enquiry, and enquiry had to be concluded and it was accordingly

A17

copy of the concluded. But admittedly even then the Enquiry Officer's report was not furnished to the applicant to file a representation against the same, and the same was given to him alongwith the penalty order. The same vitiates the entire proceedings. As has been held in the case of Union of India & Others Vs. Mohd. Ramzan Khan & Others, AIR 1991 SC 471. Wherever an Enquiry Officer was appointed and the enquiry has been held and the Enquiry Officer submitted his report to the Disciplinary Authority holding the delinquent employee guilty and proposed him punishment and the copy of the Enquiry Officer's report is not given to the applicant to make effective representation against the proposed punishment. Thus the entire enquiry proceedings have been vitiated and the same violates the principal of natural justice, and the punishment cannot be maintained. The same arises here, and accordingly this application is allowed and the order of punishment dated 9.4.87 and the Appellate Order dated 25.11.86 are quashed, and the applicant shall be deemed to be continuing in service and entitled to all the consequential benefits. However, this judgment will not preclude the Disciplinary Authority from going ahead with the enquiry proceedings after furnishing the copy of the Enquiry Officer's report to the applicant after giving him reasonable time to file objection against the same. No order as to costs.


Member (A)


Vice-Chairman.

13th December, 1991, LKO.

(sph)

All communications should
be addressed to the Registrar,
Supreme Court, by designation,
NOT by name.
Telegraphic address :-
"SUPREMECO"

D. No. 3101/92/XI.

**SUPREME COURT
INDIA**

Dated New Delhi, the 16th September, 19 92.

FROM

**Mr. H.S. Kaicker, B.A. LL.B.,
Assistant Registrar.**

TO

**The Deputy Registrar,
Central Administrative Tribunal
Lucknow Bench at Lucknow.**

PETITION FOR SPECIAL LEAVE TO A PPEAL (CIVIL) NO. 12265 OF 1992.

WITH

**INTERLOCUTORY APPLICATION NO. 1
(Application for condonation of delay in filing Special leave
Petition)**

AND

**INTERLOCUTORY APPLICATION NO. 2
(Application for stay by Notice of Motion with a prayer for
an ex parte Order).**

Union of India & Ors.

.. Petitioners.

Versus

Harish Chand Srivastava

.. Respondent.

Sir,

**I am directed to forward herewith for your information record
and necessary action a certified copy of the Order of this Court
dated 14th September, 1992 passed in the matter above mentioned.**

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR.

SK
24/9/92
SO

28/9/92
R. No. 579/92

IN THE SUPREME COURT OF INDIA

~~ORIGINAL~~/CIVIL APPELLATE JURISDICTION

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 12265 OF 1992.
 (Under Article 136 of the Constitution of India from the judgment and order dated 13th December 1991 of the Central Administrative Tribunal (Lucknow Bench) at Lucknow in Registration O.A. No. 418 of 1987). ~~xx~~ ~~xx~~ ~~xx~~

WITH

399165

INTERLOCUTORY APPLICATION NO. 1
 (Application for condonation of delay in filing the Special Leave Petition)

AND

INTERLOCUTORY APPLICATION NO. 2
 (Application for stay by Notice of Motion with a prayer for an ex parte Order).

1. Union of India,
through the General Manager,
North Eastern Railway, Gorakhpur.
2. The Senior Divisional Commercial
Superintendent, North Eastern Railway,
Lucknow.
3. The Divisional Commercial
Superintendent, North Eastern Railway,
Lucknow.
4. Miss Meena Sah,
Inquiry Officer (Defence and Appeal)
North Eastern Railway,
Gorakhpur.

Certified to be true copy

Assistant Registrar (Judl.)

Supreme Court of India

... PETITIONERS.

Versus

Harish Chand Srivastava,
son of Shri M.L. Srivastava,
Resident of T-232-A, Girja Colony,
North Eastern Rly. Gonda.

... RESPONDENT.

14th SEPTEMBER, 1992

CORAM:

HON'BLE MR. JUSTICE LALIT MOHAN SHARMA

HON'BLE MR. JUSTICE N. VENKATACHALA

For the Petitioners: Mr. V.R.Reddy, Additional Solicitor General
of India. (M/s. A.S. Bhasme and V.K. Verma
Advocates with him)

THE PETITION FOR SPECIAL LEAVE TO APPEAL AND THE
APPLICATIONS FOR CONDONATION OF DELAY AND STAY above mentioned
being called on for hearing before this Court on the 14th day of
September, 1992 UPON hearing counsel for the Petitioners herein

11229

THIS COURT while directing issue of Notice to the Respondent herein to Show cause why delay in filing Special Leave Petition be not condoned and Special Leave be not granted to the Petitioners herein to appeal to this Court from the Judgment and order above mentioned, DOTH ORDER that pending the hearing and final disposal by this Court of the application for stay after notice, the direction with respect to the payment of the monetary benefits pursuant to the judgment and order dated 13th December, 1991 of the Central Administrative Tribunal (Lucknow Bench) at Lucknow in O.A. No. 418 of 1987 shall remain stayed;

AND THIS COURT DOTH FURTHER ORDER THAT this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble SHRI MADHUKAR HIRA LAL KANIA Chief Justice of India at the Supreme Court, New Delhi dated this the 14th day of September, 1992.

sol ✓
(B.S. JAIN)
JOINT REGISTRAR.

A18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD

I N D E X
IN

CLAIM PETITION NO. OF 1987

BETWEEN

Harish Chandra Srivastava - - - - - Petitioner.

Versus

Union of India through Gneral Manager North Eastern
Railway Gorakhpur and others- - - - - Respondents.

S.L.No.	Particulars	Date	Remarks
1	2	3	4

1. DEAL Farm 1 (under Sec. Rule
Under 4 of Act) Rule 4.

2. Annexure No 1; True copy of letter dt. 31.10.81. 2-27

3. Annexure No 2: True copy of Charge Sheet. 29-31

4. Annexure No 3: True copy of letter dt. 10.1.85.
with the explanation dt. 18.2.82
Charge sheet dt. 10.2.82 and
notice of imposition of penalty
dt. 13.9.82. 36-44

5. Annexure 4: True copy of letter dt. 13.2.85. 45-46

6. Annexure 5: True copy of statement of P.B.
Pathak. 47-57

6: True copy of Statement of
M.S. Siddiqi. 58-68

7: True copy of statement of
G.S. Mishra. 69-72

7. Annexure 8: True copy of letter dt. 1.10.85. 73-74

8. Annexure 9: True copy of proceedings dt.
11.1.85 and 30.1.86. 75-76

9. Annexure 10: True copy of defence statement. 77-97

10. Annexure No 11: True copy of order dt. 25.11.86. 98-100

11. Annexure No 12: True copy of memo of appeal. 101-114

12. Annexure No. 13: True copy of order of the
Appellate Authority. 115-116

(C.P. SRIVASTAVA)
ADVOCATE

COUNSEL FOR THE APPLICANT.

Dated: 4/5/87

Noted for 18/5/87

PF-9

4/5/87

1
Reg. No. 418 of 1987
Central Administrative Tribunal
Additional Bench
ALLAHABAD/PATNA/JABALPUR
Date of Filing... 4... 5... 07... OR
Date of Receipt by Post
Deputy Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH ALLAHABAD.

(See. Rule 4)

APPLICATION Under Section 19 of Administrative
Tribunal Act, 1985
For use in Tribunal's office.

DATE OF FILING
or
DATE OF RECEIPT
BY POST
REGISTRATION
NO.

Signature
Registrar

[Signature]

2
App

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD.

—
BETWEEN

Harish Chandra Srivastava son of Sri M.L. Srivastava
resident of T 232 A Girja Colony, N.E. Railway.
Gonda.

And

1. Union of India through General Manager
North Eastern Railway, ~~Barodha House~~ Gorakhpur.
~~New Delhi.~~
2. Senior Divisional Commercial Superintendent,
North Eastern Railway, Lucknow.
3. Divisional Commercial Superintendent,
North Eastern Railway, Lucknow.
4. Miss. Meena Sah, Enquiry Officer/ (Defence and
Appeal) North Eastern Railway Gorakhpur.

1. Particulars of the Applicant:

- (i) Name of the Applicant: HARISH CHANDRA
SRIVASTAVA.
- (ii) Name of the father : Son of M.L. Srivastava
- (iii) Designation and Senior Goods Clerk
office in which employed: at Present working
Goods Clerk, North
Eastern Railway Gon

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(iv) Office Address : Goods clerk, Goods Shed ,
North Eastern Railway, Gonda.

(v) Address for service of : C/o Goods clerk
all notices. Goods Shed, North Eastern
Railway, Gonda.

2. Particulars of the Respondents.

(1) (i) Union of India through General Manager,
North Eastern Railway ~~Baroda House,~~
~~New Delhi.~~ **GORAKHPUR.**

(ii) Senior Divisional Commercial Superintendent
North Eastern Railway, Lucknow.

(iii) D-ivisional Commercial Superintendent,
North Eastern Railway, Lucknow.

(iv) Miss Meena Sah, Enquiry Officer/
(Defence & Appeals) North Eastern
Railway, Gorakhpur.

(2) Office address of the
Respondent. : -do-

(ii) Address for service
of all notices. : -do-

3. Particulars of the order against
which application is made.

The application is against the following order:-

(i) Order No.LD/SS-C/Vig/SA 82 and
No.LD/SS-C/Vig/58/82

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(ii) Dated : 9.4.1987 and 25.11.1986

(iii) Passed by : Senior Divisional Commercial
Superintendent and Divisional
Commercial Superintendent.

(iv) Subject in brief:- Petitioner was working as Senior Goods clerk at North Eastern Railway Gonda . Restriction for movement of wheat were imposed from 17.12.81 on 18.12.81 it is alleged that wheat was loaded in a wagon without preparation of forwarding note and Railway receipt. During the continuance of restriction as per allocation of business on the relevant date Chief Goods clerk namely Sri P.P.Pathak had to allot wagons and maintain T 80 Register. Enquiry was held and the petitioner has been found to be guilty of negligence under rule 8 of Railway Service Conduct Rules 1966. Disciplinary Authority imposed punishment of reverting the petitioner lower post of goods clerk at the initial pay scale for five years. On appeal the punishment of aforesaid was maintained but the period was reduced from five years to two years. The applicant is , therefore, filing present claim against the aforesaid orders.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject

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matter of the order against which he wants redressal is within the jurisdiction of the Additional Bench of the Tribunal at Allahabad.

5. Limitation :

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

6. Facts of the Case:-

The brief facts giving rise to the present petition are as under :-

1. That the petitioner was appointed as Goods clerk by Divisional Commercial Superintendent Jodhpur in Northern Railway in the pay scale of Rs.110-200 as then was subsequently the petitioner was transferred in N.E. Railway in the year 1966 in the same grade and terms and conditions of service. He was confirmed as Goods clerk in the year 1971. He was promoted to the next higher post i.e. Senior Goods clerk, in the year 1980 and was posted at Gonda. During the aforesaid period of service from 1963 till the year 1981 the petitioner earned appreciations from his superiors and always discharged his duties faith-

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fully and with integrity. His record of service is unblemished and he was never communicated or given any adverse remark in his character roll.

2. That in the year 1981 the petitioner was working as Senior Goods clerk at Gonda. Beside the petitioner there were two other senior Goods clerks namely Shri Kedar Nath Mishra and Sri Mohd. Shafi at Gonda. One Shri P.P.Pathak was posted as (C.G.O.) Chief Goods clerk at Gonda.

3. That the petitioner on 30.10.1981 was assigned the job of outward goods clerk of Broad gauge portion. The duty of the petitioner was to accept the Goods for Booking along with Forwarding Note for preparation of Railway receipts.

4. That the job of allotment of wagons and maintenance of wagon Demand Register (T-80) was assigned to the Chief Goods clerk namely Shri P.P.Pathak. A true copy of the letter relating to allegation of business dated 30.10.1981 is filed herewith and Annexure 1 is marked as Annexure No.1 to this petition and forms part of the petition.

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5. That on 23.9.1982 the petitioner was served with charge sheet along with statement of imputations, list of documents and witnesses proposed to be relied upon. The petitioner was called upon to file his reply. A true copy of the above charge sheet is filed herewith and marked as Annexure No.2 to this petition.

6. That the petitioner filed his reply to the charge sheet denying the charges. He also demanded the copy of the documents relied upon and the statement of witnesses if any as they were not supplied to the petitioner along with the chargesheet. The chargesheet was given to the petitioner by the disciplinary authority namely Divisional Commercial Superintendent and so the petitioner submitted his reply to the disciplinary authority.

7. That the petitioner heard nothing thereafter till he received the letter dated 12.12.1984 calling upon the petitioner to attend the enquiry to be held at Lucknow on 22.12.1984. On 22.1.1984 the petitioner came to know that the respondent No.4 Miss. Meena Shah Enquiry Officer (defence and appeals), Gorakhpur has been appointed

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as Enquiry officer in the matter of the petitioner. The petitioner stated before Enquiry officer that he had not been supplied with the copy of the document relied upon in the charge sheet and also the statement of witnesses and so he demanded that the same may be supplied to him on which the enquiry officer directed on 22.12.1984 that admission and denial of the document etc. may be done after the petitioner has inspected the same. The enquiry officer fixed 3.1.1985 for inspection of documents and at the same time fixed 11.1.1985 for preliminary hearing and recording of evidence as the records were not made available by the department to the enquiry officer. On 24.11.1985 the next date fixed the petitioner could not attend the enquiry due to certain unavoidable circumstances. The enquiry officer, however, proceeded with the enquiry behind the back of the petitioner without ascertaining as to whether petitioner has inspected the documents. On these dates the statements of the prosecution witness were recorded in absence of the petitioner.

8. That the aforesaid enquiry was in violation of rule 8 of the railway servants (Discipline and appeal) Rules 1968 in as much the statement of the

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witnesses were recorded without furnishing the copy of the documents and the statements of witnesses for which the petitioner had applied on 22.12.1984. The petitioner was also not allowed any inspection of the documents before recording the evidences of the prosecution. This attitude of the enquiry officer and the procedure adopted by her was completely illegal and ^{smashed} attitude of undue favour to the prosecution and ~~was~~ was perverse, malafide.

9. That it will not be out of place to mention here that on 10.1.1985 the petitioner moved an application before the Divisional Railway Manager (Commercial) N.E. Railway Lucknow with the allegations that enquiry against the petitioner for loading wagon No.19329, 57782 on 18.12.1981 had already taken place and the petitioner has already been punished and as such since the wagon No.47209 which is the subject matter of dispute in the present enquiry was also loaded on 18.12.1981 in the same transaction and at the same time and such no fresh enquiry could be held in the matter. The petitioner also gave a copy of the application along with chargesheet in respect of wagon No.19329 and 57762 to the enquiry officer.

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~~along~~ along with notice of imposition of penalty.

The true copy of the letter dated 10.1.1985 accompanied with the explanation the petitioner dated 18.2.'82 chargesheet dated 10.2.1982 and notice of imposition of penalty dated 13.9.1982 are filed herewith as

Annexure No.3 Annexure No.3 to this petition.

10. That in the aforesaid application accompanied with the documents as stated above the petitioner brought to the notice of authorities that on 18.12.1981 the aforesaid two wagons were loaded with wheat which could not be booked due to restrictions imposed by the Railway authorities stopping loading of ~~of~~ Broad Gauge wagons. The aforesaid two wagons were also loaded without any forwarding note, without placement in S.No.76 and without any railway receipt. The loading of the wagon in the present enquiry was also loaded without any forwarding note or preparation of any other documents and as such the circumstances being the same and the irregularity if any, in the loading of the present wagon could not form the subject matter of separate enquiry and as such the entire proceedings were vitiated.

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11. That it is material to submit here that in the enquiry initiated in the respect of two wagons namely 19329 and 57762 Shri P.P. Pathak Chief Goods clerk was also charged along with the petitioner and he was also furnished with the petitioner. But ~~the~~ due to clever manoeuvring of Shri Pathak who was friendly to the vigilance staff got himself excluded even though it was his responsibility to allot wagons, instead of being an accused Shri Pathak has been put up as a prosecution witness in the present enquiry.

12. That neither the Divisional Commercial Superintendent nor the enquiry officer paid any heed to the request of the petitioner for dropping enquiry but instead the enquiry officer proceeded with the enquiry in a malafide manner.

13. That as already stated the enquiry officer who was already biased, proceeded to record the statement of witnesses on on 24/25 Jan. 1985 even without ensuring as together documents and statements of witnesses had been made available to the petitioner as whether the department had proceeded to allow the petitioner to inspect the documents. The further by the letter dated 13.2.1985 under

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instructions of the enquiry officer to the Station Superintendent, Gonda to impress upon Divisional Medical Officer Gonda not to allow the petitioner to submit sick report. This further fortifies the allegations and apprehension that the enquiry officer was unduly biased against the petitioner and went out of her way to influence the divisional Medical officer not to issue sick certificate even if the petitioner was on death bed. True copy of the letter is filed

Annexure 4 herewith and is marked as Annexure No.4 to this petition. Not only this, the enquiry officer in her earlier letter dated 30.11.1984 had wrongly written that the petitioner did not ~~attend~~ the enquiry on 18.8.1984, 18.9.1984 and 10.1.1984. None of these letters were received by the petitioner.

14. That on receipt of the said letter dated 13.2.1985 the petitioner ~~left~~ felt very much shocked and personally met Miss. Meena Shah at Lucknow and expressed his anguish and surprise the way in which she was behaving specially in ~~instructing~~ instructing the Divisional Medical officer to act according to her dictates. She was very much infuriated and abused petitioner and also used unparliamentary language by calling the petitioner as a cheat and fraud and also threatened that she

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will see that maximum punishment is inflected on the petitioner.

15. That on 22/23.2.1985 the petitioner appeared before the Enquiry Officer but the enquiry officer was not available and so the matter could not be taken up. Subsequently the petitioner learnt that 20.6.1985 has even fixed for enquiry and on that date the petitioner requested the Enquiry officer to allow to engage defence counsel by the petitioner but the request was refused and she compelled the petitioner to cross examine the witnesses the petitioner so liked failing which she was determined to conclude the enquiry. Besides, the petitioner had produced the written consent of Sri Y. ~~S~~ Shukla, a Railway employee who was willing to defend the petitioner.

16. That on the attitude adopted by the enquiry officer Miss. Meena Shah the petitioner was in great dilemma and in his judgment and descretion proceeded to cross examine the witnesses even though he was not fully confident of proper cross examination. He cross examined Sri P.P.Pathak, Shri M.S.A.Siddique and Sri G.S.Mishra , Sri Uma Newas Singh and Shri Ramayan Rai were not present for cross examination. Miss Meena Shah did not fix any other date for their

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petitioner was again compelled to face enquiry by Miss. Meena Shah. A true copy of the letter No.ID/GS-E/V/58/82 dated 1.10.1985 is annexed

Annexure 8. herewith and are marked as Annexure No.8 to this petition.

18. That as stated earlier the petitioner had demanded the copy of the papers and the statements of the witnesses relied in support of the charges but the same has not been furnished to the petitioner. He was compelled to cross examine the witnesses without knowing as to what were the contents of the documents and what evidence was to be given by the witnesses. In this way the petitioner was greatly prejudiced in his defence. The petitioner has reasons to believe that Miss. Meena Shah did not deliberately supply the copy of the documents and statements of witnesses so that the petitioner may not effectively cross examine the witness with reference to the documents and the circumstances attending thereto. The petitioner believes that Miss. Meena Shah being biased against the petitioner did not afford reasonable opportunity to engage defence counsel and also did not supply the documents.

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cross examination inspite of request made by the petitioner but instead compelled the petitioner to cross examine the witnesses. The petitioner however, was not afforded reasonable and adequate opportunity to defend himself with the aid of defence counsel. Miss Meena Shah thus afforded no reasonable opportunity to cross examine the witnesses with the help of defence counsel which amounts to denial of reasonable opportunity. Shri Uma Niwas Singh and Shri Ramayan Rai were never called for cross examination but on the next date i.e. next date the petitioner was compelled to enter into the witness box even without cross examining Shri U.N. Singh and Ramayan Rai. True copies of the statements of Sri P.P. Pathak and Sri M.S. Siddique and Shri G.S. Mishra are attached herewith and are marked as

Annexure
No.s 5, 6 & 7.

Annexure No. 5, 6 and 7 respectively to this petition.

17. That due to attitude adopted by Miss. Meena Shah the petitioner apprehended in justice from the hands of Miss. Meena Shah and so he moved an application to the disciplinary authority to change the enquiry officer on account of bias but the authorities for the reasons best known to them did not change the enquiry officer and the

[Signature]

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petitioner was again compelled to face enquiry by Miss. Meena Shah. A true copy of the letter No.LD/GS-E/V/58/82 dated 1.10.1985 is annexed

Annexure 8. herewith and are marked as Annexure No.8 to this petition.

18. That as stated earlier the petitioner had demanded the copy of the papers and the statements of the witnesses relied in support of the charges but the same has not been furnished to the petitioner. He was compelled to cross examine the witnesses without knowing as to what were the contents of the documents and what evidence was to be given by the witnesses. In this way the petitioner was greatly prejudiced in his defence. The petitioner has reasons to believe that Miss. Meena Shah did not deliberately supply the copy of the documents and statements of witnesses so that the petitioner may not effectively cross examine the witness with reference to the documents and the circumstances attending thereto. The petitioner believes that Miss. Meena Shah being biased against the petitioner did not afford reasonable opportunity to engage defence counsel and also did not supply the documents.

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19. That the Enquiry officer had shown some of the documents which were relied upon and the petitioner had admitted and some of them were denied but the documents described at Sl.No.1 to 5 were not made available till 30.1.1986, much after cross examination of witnesses on 30.1.1986 some documents were shown to the petitioner. True copies of the proceedings dated 11.1.1985 and 30.1.1986 are filed herewith and are marked as Annexure No.9 to this petition.

Annexure
No.9.

20. That it is material to state here that the petitioner had made an application to the enquiry officer on 11.4.1985 for summoning the following documents in his defence:-

- (1) Area Manager Gonda case file No.T/Rest/ Q/82 dated 10.2.1982.
- (2) Enquiry Report of ACS/GD dated 15.7.82.
on the basis of my representation of 21.5.82.
- (3) Station Superintendent Gonda's report dated 26.12.1982 and DRM/LJN order on it dated 18.7.83.

It is stated that the aforesaid document which were relevant to show that Shri P.P.Pathak Chief Goods clerk and Shri Mohd. Shafi were biased against the petitioner and on departmental enquiry higher

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authorities had found that the petitioner was not guilty but rather Shri Pathak Shri Shafi who were hand in glove and were trying to deliberately harm the petitioner.

21. That in the light of the facts narrated above it is obvious that the petitioner was not afforded reasonable opportunity to defend himself on account of the bias attitude of the enquiry officer.

22. That even though the entire documents were not available to the petitioner yet the petitioner was compelled to submit his defence statement. A true copy of the same is annexed herewith and is Annexure 10 marked as Annexure No.10 to this petition.

23. That Miss. Meena Shah without affording the reasonable opportunity submitted report to the disciplinary authority. The disciplinary authority also did not give any notice or information to the petitioner nor the copy of the report was made available to the petitioner.

24. That the Disciplinary authority before inflecting major penalty of reversion did not give any opportunity to the petitioner to file his objections against the report nor afforded opportunity of

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personal hearing. The punishing authority did not apply its own serious mind but rather inflicted the penalty on the petitioner on the recommendation of Miss. Meena Shah who was duly biased against the petitioner. A true copy of the order dated 25.11.1986

Annexure No.11 is annexed herewith and is marked as Annexure No.11 to this petition.

25. That the petitioner filed an appeal before the senior Divisional Commercial Superintendent the . the appellate authority. A true copy of the Memo

Annexure No.12 of appeal is filed herewith and is marked as Annexure No.12 to this petition.

26. That the appellate authority partly modified the order passed by the Disciplinary authority but the major penalty of reversion was maintained.

A true copy of the order of the Appellate authority

Annexure 13: is annexed herewith and is marked as Annexure No.13 to this petition.

27. That as per allocation of the business on the relevant date i.e.18.12.1981 the duty of the petitioner job was to receive forwarding note, accept the goods and prepared Railway receipt making an entry in (T 80 B) register. The allotment of Wagon was the job of the Chief Goods clerk Shri

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P.P.Pathak. It is after the allotment of wagons that aforesaid goods will be loaded. In the instant case the petitioner was never supplied with the forwarding note and as such there was no question of preparing R.R. or loading goods. There is nothing on the record to suggest that the petitioner permitted the loading of the wagon. The party who was loading wheat in the wagon has not been examined as a prosecution witnesses to prove as under whose order the wagon was being loaded. Since the allotment of wagon was to be done by Sr^h P.P.Pathak. It is to be inferred that the loading might have been done under instruction from Shri P.P.Pathak alone as he was incharge of allotment of wagon. The petitioner in no way can be held to be responsible for the same.

28. That it is relevant to state that on 18.12.1981 Two more wagons loaded with wheat in violation of the restrictions imposed. In respect of wagon No.19329 and 57762 which were got loaded an enquiry was held by the higher authority who found Shri P.P.Pathak guilty and awarded him punishment of stoppage of increments and recovery of Rs.11000/- from his pay. In that proceeding along with Shri P.P.P athak the petitioner was also charged and was awarded punishment of stoppage of pass facility to the petitioner for two months.

29. That the aforesaid two wagons were also loaded on 18.12.1981 and the present Wagon in

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dispute was also being loaded on 18.12.1981.

Admittedly Shri P.P.Pathak who was found guilty was also responsible for getting wagon in question loaded. Like the present wagon no forwarding note or railway receipt had been prepared in respect of aforesaid two wagons and as such the case in respect of all the three wagons was similar in nature and more or less both the enquiries are based on the similar cause of action. It is strange that in respect of two wagons Shri P.P.Pathak who was incharge of the allotting wagon held responsible but in respect of third wagon the petitioner has been held responsible, the finding of the enquiry officer as well as disciplinary and appellate authority are perverse.

30. That on 18.12.1981 at 12.25 hours the loading of the wagon was discovered same allegedly stopped but inspite of that the wagon was loaded with 250 bags. Admittedly the loading had been stopped by Shri P.P.Pathak and vigilance inspector yet it was not stopped. These facts speaks for themselves that the loading was being done with connivance of Shri P.P.Pathak who was incharge of allotment of the wagon. The party who was loading the wagon could have been the best person to show as to under whose order the wagon was being loaded but the prosecution has deliberately withheld the evidence of party which would have gone against the prosecution.

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31. That admittedly the unauthorise loading was discovered at 12.25 hours but it does not appeal reasons to why the vigilance authorities wait till 18hrs.(6 P.M.) this delay also suggests that the vigilance staff itself was not clear as to who is to be charged and subsequently in connivance with the other employees of the station including Shri Uma Niwas Singh the then T.T.E. Conda the petitioner was implicated after due deliberation so that Sri P.P.Pathak may be saved.

32. That the Respondent Nos.2 to 4 have held that the petitioner is guilty of contravening Rule 3 of the Railway Service (Conduct) Rules 1966 which is quoted below.

" 3. General(1) Every Railway servant shall at all times:-

- (i) maintain absolute integrity
- (ii) maintain ~~devotion~~ devotion to duty "and
- (iii) do nothing which is unbecoming of a Railway servant.

33. That it is stated that none of the authorities have held that the petitioner's integrity was doubtful. There is not even whisper much less evidence to establish that the petitioner's integrity was doubtful.

34. That as regards devotion to duty it is stated that petitioner being a clerk on outward duty his

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job was to receive forwarding note, prepare Railway Receipt and assign marks on the goods, but in the instant case the party never produced forwarding note nor the petitioner prepared Railway Receipts nor allotted mark to the goods which were directly being loaded ~~with~~ which was not the concern of the petitioner in as much allotment of wagon was done by the Chief Goods clerk. There is nothing to suggest or prove that the petitioner was not devoted to duty. As regards doing nothing which is unbecoming of a Railway servant it is stated that as stated earlier, the petitioner did nothing and as such there was no question of any guilt on this account.

35. That the enquiry officer being biased submitted report to the Disciplinary authority holding the petitioner alone to be responsible for unauthorised loading.

36. That the petitioner is advised to state that none of the charges have been established and the punishment awarded besides being illegal and arbitrary is very excessive and harsh in the light of the facts and circumstances narrated in this petition.

37. That the petitioner inter alia challenges the impugned order on the following amongst many other Grounds :-

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-1 G R O U N D S :-

1. Because the enquiry officer Meena Shah did not afford reasonable opportunity to the petitioner to defend himself with the aid of defence counsel.
2. Because the procedure adopted by Miss. Meena Shah was illegal and arbitrary which has resulted in great prejudice to the petitioner.
3. Because the copy of the documents and statement of witnesses having not been given to the petitioner before he was forced to cross examine the witness which has resulted in great prejudice to the applicant.
4. Because on denial of opportunity to the petitioner to get the assistance of defence counsel at the time of cross examination of the witnesses. tantamounts to flagrant violation of natural justice.
5. Because the authority below having failed to take notice of the earlier enquiry with regard to two other wagons which were loaded on the same date and similar circumstances has resulted in grave injustice in as much as for the aforesaid two wagons Sri P.P.Pathak was held responsible.
6. Because the punishing authority wrongly referr-ed to change the enquiry officer even



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though it was fully established that Miss Meena Shah was biased against the petitioner.

7. Because the punishing authority as well as appellate authority have failed to apply their mind and therefore, the orders are bad in law.

8. Because contravention of Rules 3 have not been established.

9. Because in any view of the matter the findings recorded are perverse and are bad both in law and on facts and are liable to be quashed.

7. Reliefs sought:

In view of the facts mentioned in para 6 of the above applicant prays for the following reliefs:-

- (A) That this Hon'ble court may kindly quash the orders dated 9.4.1987 and 25.11.1986 along with the charge sheet.
 - (B) That this Hon'ble court may very kindly direct restoration of applicants position with all the benefits as it was on the date of order dated 25.11.1986.
- jh

(C) To award or grant any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(D) to award costs.

8. INTERIM ORDER

That on the facts and circumstances mentioned in paragraph 6 of this petition operation of order dated 25.11.1986 and 9.4.1987 may remain suspended during the pendency of the present petition.

9. Details of the Remedies Exhausted:

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

10. Matter not pending with any other Court.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of Tribunal.

11. Particulars of Bank ~~Draft~~ Draft/ Postal order in respect of Application fee:-

- (i) Name of Bank on which drawn.
 - (ii) Demand Draft No.
- H

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12. Details of Index

An Index containing details of the documents to be relied upon is enclosed.

13. List of Enclosures:

- (1) Annexure No.1 : Copy of letter dt.20.10.1981
 - (2) Annexure No.2: Copy of charge sheet.
 - (3) Annexure No.3: Copy of chargesheet dt. 10.2.1982 and notice of imposition of penalty. dt. 13.9.1982.
 - (4) Annexure No.4: Copy of letter dated 13.2.1985.
 - (5) Annexure No.5: Copy of statement of Sri P.P.Pathak.
 - (6) Annexure No.6: Copy of statement of Sri M.S.Siddique.
 - (7) Annexure No.7: Copy of statement of Sri G.S.Mishra.
 - (8) Annexure No.8: Copy of letter No.LD/CS-E/V/58/82 dated 1.10.1985.
 - (9) Annexure No.9: Copy of proceeding dt. 11.1.1985 and 30.1.1986.
 - (10) Annexure No.10: Copy of Defence statement.
 - (11) Annexure No.11: Copy of order dated 25.11.1986
 - (12) Annexure No.12: Copy of Memo of the appeal.
 - (13) Annexure No.13: Copy of order of the Appellate Authority.
 - (14) Annexure No.14:
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VERIFICATION

I, Harish Chandra Srivastava son of
Sri M.L.Srivastava at present residing at
T 232 A Girja Colony, N.E. Railway, Gonda do hereby
verify that the contents of paragraph Nos.1 to
13 of main paragraph in facts are true to my personal
knowledge and belief and that I have not
suppressed any material facts.

Place: Allahabad.

Dated:

Harish Chandra Srivastava
Signature of the Applicant.

Drawn & Drafted by:

C.P. Srivastava
(C.P.SRIVASTAVA)

Advocate

To,

The Registrar,
Central Administrative Tribunal,
Additional Bench Allahabad.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT ALLAHABAD.

ANNEXURE No. I

IN

Petition No.

Of 1987

Sri H.C.Srivastava

--- Applicant

Versus

Union of India ,Ministry of Railways,New Delhi
and others.

- - - Respondents.

Sr.Md. Shafi

Sri H.C.Srivastava

As per orders of ACS(East) T80

Register will be maintained by Sri P.P.Pathak CGS
with immediate effect. Hence the two T80 Register
have been made over to him today 31.10.81.

Allotment of wagons also will be done By him.(CGC)

Sd/

S.C.I/G.D.

31.10.81.

True copy.

[Signature]

C.T.C.

[Signature]

[Signature]

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDL. BENCH AT ALLAHABAD.

Annexure No. //

In

Petition No.

Of 1987

Sri H.C.Srivastava

- - -Applicant

Versus

Union Of India Ministry of Railways, New Delhi

and others.

- - - Respondents.

Standard form No.5

STANDARD FORM OF CHARGESHEET

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

No.LD/ SS-C/Vig/ 58-82

North Eastern Railway

Dated 23.9.82.

Deivisonal Office Lucknow.

The undersigned proposes to hold an inquiry against Sri H.C.Srivastava, Sr.GC/Gonda under Rule 9 of the Railway Servants(Discipline & Appeal) Rules, 1968. The substance of the imputings of misconduct or mis-behaviour in respect of which the enquiry is proposed to be held throughout in the enclosed statement of articles of charge (Annexure-I) .

A statement of the impaction of misconduct or mis-support of each article of charge is enclosed (App.II) . behaviour in/a list of documents by which and a

list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed

(Annexure III & IV) . Further, copies of documents mentioned in the list of documents as per Annexure III are enclosed.

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2. Sri H.C.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 the office hours within ten days of receipt of this memorandum. For this purpose he should contact undersigned immediately on receipt of this memorandum.

3. Sri H.C.Srivastava is further informed that he may if he so desires, take the assistance of any other railway servant/ an official of Railway Trade Union (who satisfied the requirement of the rule 9(13) of the Railway Servants (D & A) Rules, 1968 and Note 1 and / or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the impuring authority in the event the assisting railway servant(s) or Railway Trade Unon official(s) Sri H.C.Srivastava should obtain an undertaking from the nominee(s) that he (they) is (sre) willing to amist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases (if any, is which the nominee (s) had already undertaken to assist the undertaking should be furnished to the undersigned along with the nomination.

4. Sri H.C.Srivastava is hereby directed to submit to the undersigned written statement of defen ce which should reach the undersigned) within ten days of receipt of this ~~progre~~ memorandum, if he does not require to inspect any documents for the

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proportioning 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.

5. Sri H.C.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.

6. Sri H.C.Srivastava is further informed that if he does not submit his written statement of defence within the period specified in para 2 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 inquiry authority may hold the inquiry ex-parte.

7. The attention of Sri H.C.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

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authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Sri H.C.Srivastava is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the Railway Service (Conduct) Rules, 1966.

8. The receipt of this memorandum may please be acknowledged.

By order and in the name of President

Sd/

J.Lal

Divl. Commr. Supdt.

Lucknow.

Encl.

To

Sri H.C.Srivastava,
Sr.GC/Gonda.

Through : SCI/ Gonda.

TRUE COPY

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Annexure I

Statement of article of charges framed against
Sri H.C.Srivastava, Sr.Goods clerk/ Gonda.

That the said Sri H.C.Srivastava Sr.GC/CD while on duty on 18.12.81 dealing with outward loading, inward unloading and removal of delivered consignments of B.G. failed to maintain absolute integrity and devotion to duty and acted in a manner unbecom ing on the part of a railway servant inasmuch as as:-

1. At 12.25 hrs. on 18.12.81 one wagon SE 47209 c.c.22.00 was found under the loading operation of wheat and 81 bags were found already loaded inside the wagon without forwarding note and without registration.
2. Permission by the Dy.R.N.O was necessary in the case of booking of wheat which was not obtained and the loading started against the civil restriction.
3. During his duty hrs. loading of what was found in wagon no.S.E.Cg.47209 without placement in the outward S.N.76.
4. Loading of wheat was permitted by Sri Srivastava in B.G.wagon on 18.12.81 whereas as per phonic message No.cc/12/81 dt.17.12.81 issued by COPS/GKP received through CTNL/Gonda at 10 hrs. on 17.12.81, restriction was imposed as "W/I/E stop BG loading except BJU refinery for four days".
5. At 12.25 hrs. out of two lots of 125 bags wheat each 81 were already found loaded in the wagon and the loading was under operation. At 17 hrs. loading was found completed and no RRs were found to have been issued for any entry was found in the T 80 B.

Handwritten signature/initials.

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6. He made registraion of two lots of wheat (125 bags each lot) in the T-80B for BJU at S.No.75 & 76 at 18 hrs. on 18.12.1981 i.e. after blocking of the same by the Vig. party. Up to this time no F/Notes were available. Thus registration at S.L.No. 75 and 76 were made without forwarding notes. Subsequently he altered the resgistration at S.No.76 and changed the destination from BJU to CPR.

Sri Srivastava thus allowed loading of wheat without forwarding notes, without permission of Dy. RMO, without placement and against civil as well as Railway restrictions with an ulterior motive and with intention to cover up the restriction by issuing the RRs in the back date to which he could not do soe due to blocking of RRs and other documents by the Viglence party.

The above acts on the part of Sri Srivastava tantamount to serious misconduct contravening rule 3(1) (i) (ii) & (iii) of the Rly Services (Conduct) Rules, 1966.

Sd/J.Lal

Divl. Commr. Supdt.

Lucknow.

/ True copy)

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C.T.C.
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Annexure III

List of documents by which the article of charges framed against Sri H.C. Srivastava Sr.GC/GD are proposed to be sustained.

...

1. Joint proceeding drawn at 12.25 hrs. on 18.12.81 (1 sheet) .
2. N.E.R.(m.g.) R.R.No.242668 dt.18.12.81 Foreign B. No.37.
3. N.E.R.(m.g.) R.R.No.357262 -do-Local B.No.103
4. N.E.R.(N.G.) R.R.No.514279-do- Local B.No.3.
5. N.E.R.(B.G.) R.R.No.344410 -do-Foreign B.No.74.
6. T-80B(BG) register of GD.Jn.goods with effect from 21.11.81 to 3.3.82 page no.1 to 5 used rest blank.
8. Statement dt.30.3.82 of Sri H.C.Srivastava GC/GD(6 sheets)
9. Statement dt.1.4.82 of Sri P.P.Pathak GS/GD.
10. Control message No.GC/12/81 by COPS recd. at 10hrs. on 17.12.81 in the goods shed Gonda Jn.(1)
11. XRX message dt.17.12.81 issued by DRM(C) LUN (1)

Sd/ J.Lal

Divl. Comm. Supdt/LUN

Annexure IV.

List of witnesses by whom the article of charges framed against Sri H.C.Srivastava Sr.GC/GD are proposed to be sustained.

1. Sri M.A.Siddique, I.I.Vig.(SS) Rly.Board/NDLS.
2. Sri G.S.Misra, V.I./N.E.R./GKP
3. Sri P.P.Pathak, GS/GD.
4. Sri Ramain Rai I.I.Viv.(SS) Rly.Board/NDLS
5. Sri U.N.Singh TTI/GD now I.I./Rly.Board/NDLS.

Sd/

J.Lal

Divl. Comm. Supdt./LUN.

True copy

C.F.G.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

Annexure No. ///

In

Petition No.

Of 1987

Sri H.C.Srivastava

- - - - Applicant

Versus

Union of India, Ministry of Railway,

New Delhi and others - - - - Respondents.

To

The Divl. Railway Manager (Comml.)
North Eastern Railway,
Lucknow.

Reg: Memorandum No.LD/S^D-G/Vig/58/82

dated 23.9.82 received on 7.9.83.

Sir,

In the above context I have to submit that I have already denied the charges more-over I have stated that on the same allegation of leading of wheat in wagon no.RRG 19329 & CRC 57782 on 18.12.81 against restriction as well as without forwarding note, with out permission of Dy.RMO, Gonda without placement and without granting the R.R. I was served with memorandum and the same was decided against me by awarding the punishment of withholding of passes for the year 1982 by Area Manager / Gonda.

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It will thus be seen that the aforesaid memorandum is illegal unconstitutional and biased and the same allegations have already decided and finalised.

It is therefore, quite incorrect to charge the undersigned in respect of each wagon separately as out of the three wagons i.e. wagons no. RRG 19329 CRO 57762 and SE C 47209 which were loaded I have already been punished in respect of two wagons and with harrassing attitude wagon no. SEC 47209 has been segregated and picked up for ^{insuing} ~~insuing~~ another Major Memorandum which shows extreme high handedness of the ^{Vig} ~~Vig~~ Organisation and ~~which shows~~ reflects misconducts on their part and also lack of investigation theory as thorough investigation to come to the truth should be made covering the whole stretegy made by the deliquent Rly. servant in respect of the guilt and in that way all ancillary and off shoots of the case should have been covered. Had this been done the allegation should have not been made for one wagon alone by ^{Vig} ~~Vig~~ Organisation and the major portion of the allegation which covered ^{two} ~~to~~ more wagons would not have been left by the party of three vigilance Inspectors which establishes the fact that the investigation was just perfunctory and to involve the undersigned unnecessarily with prejudices (which may be well known to them).

With the above fact I request your honour to kindly cancel the memorandum as I have already been punished for same offence by Area Manager/Gonda.

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Yours faithfully,

SI/ H.C.Srivastava

Sr.Goods Clerk/ GD.

Copy to R.O./ Gorakhpur with the request to kindly postpone the enquiry unless definit order are received from the Disciplinary authority i.e.DRM/C/LNJ.

SI/H.C.Srivastava

True copyC.T.C.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

Annexure No.

In

Petition No. _____ of 1987
Sri H.C.Srivastava - - - - Applicant
Versus
Union of India Ministry of Rlys. New Delhi
and others. - - - Respondents.

To

The Area Manager,
N.E.Railway, Gonda.

Reg: Charge memorandum No.

T/Rest/CD/82 Dt.10.2.82.

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

1. That I had no knowledge about the loading of wheat in Wagon No.ERC 19329 and CRC57782 on 18.12.81. Since the allotment of Wagons (Wagon load and small) was in the hands of GS /GD as per ACS(E)/LIN Orders vide SC ⁴1/99 letter No.NIL _{GD} Dt.31.10.81 copy enclosed, hence the managing of loading of wagons under reference is entirely the jurisdiction of GS/GD. My duties on outward to check and weight the goods, to give railway marks and to prepare R.R. provided there is no any restriction regarding the booking. The loading of the goods in the case ^{of smalls by railway hamal is the} observing the aforesaid ^{last phenomena after} formalities. As such I have been wrongly charged for managing irregular loading instead of GS/GD who

[Handwritten signature]

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is directly responsible for the allotment of the wagons.

2. That Goods shed seal is kept by GS/AD under lock and key. Providing seal (Kacha or packer) is done by the instruction of GS/AD.

From the above facts it transpires that the whole ~~affair~~ ^{affair} was managed by GS/AD himself in connivance with the party, because the allotment of wagon for loading was in the hands of GS/AD as well as G/Shed seal was kept by him and baring the se two acts (loading of the Goods and Kachcha seal of wagons) no other more important and preliminary formalities were observed in this case, when caught the GS/AD had maliciously ~~and wrongly~~ ^{and wrongly} thrown away the responsibilities over my head for which I am ~~not~~ ^{not} responsible.

I, therefore, request to your just self to go through into the above facts and exonerate me of the charges, because I have already been more sinned (being placed under suspension since 22.12.81 than the sinner.

Yours faithfully
H.C.SRIVASTAVA

Sr.GD.Ad.

18.2.82

/True copy/

Attest

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Notice of Imposition of penalty under Rule 1707/RI
RI(Except for dismissal) removal, services
Compulsory retirements) (And reduction).

No.T/Rest/CD/82 Office of Area Manager Gonda.

Dated 13.9.82.

To

Shri H.C.Srivastava,
Sr.GG/Gonda.

Through: SS/Gonda.

With reference to your explanation to the
Memorandum No.T/Rest/CD/82 dated 10.2.82 you are
hereby informed that the undersigned has passed the
following orders:-

" As per enquiry report submitted by SC1/GD,
Shri Srivastava is also responsible for
wrong loading.Stop 03 sets of privilege
pass during current year ".

Sd/Illegible
Sd/Area Manager
Gonda.

(To be signed personally by the disc-
iplinary authority)

Copy forwarded to DRM(P) Lucknow for information
and necessary action along with this office
Memorandum dated above.

Instructions .

1. ^{Am} AE appeal against the orders lies to Sr.DOS/LJN,
2. The appeal may be with held by an authority not lower
than the authority from whose order it is preferred
if,
- (a) it is a case in which no appeal lies under the
rules.
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(b) It is not preferred within one month of the date of written the appellant was informed of the orders appeal of against the no reasonable cause is shown for the delay.

(c) It does not comply with the previous of rules 1727 and 1729 of the Ind.Rly. Estab. Code Vol.I.

ACKNOWLEDGEMENT

The Area officer,
Gonda.

I hereby acknowledge receipt of your notice
No.T/Rest/69/82 dated 13.9.82 conveying the
orders passed on my explanation to the Memorandum
No. dated.

Sign.

Desgn.

C.T.C.
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Standard form Memorandum of charge for Imposing
minor penalties.

(Rule 11 of RS(D&A) Rules, 1968.

No. T T/Rest/GD/82 Dated 10.2.82.

MEMORANDUM

Shri H.C.Srivastava S/GC/Gonda design.....

is hereby informed that the undersigned proposed to
take action against him under rule 11 of the Railway
Servants (Discipline Appeal) Rules 1968. A statement
of imputations of misconduct or misbehaviour of notice
of duty on which action is proposed to be taken as
mentioned above, is enclosed.

2. Sri B.C.Srivastava (Sr.GC/Grade is hereby given
an opportunity to ~~the representation~~ take much respec-
dentated as he may wish to make against the proposal,
(The representation, if any, should be submitted to
the undersigned (through the) so as to reach
this office within ten days of receipt of this
memorandum.

3. Shri is failed to submit his represen-
tation within the period specified in para 2, it will
be presumed that he has no representation to make and
orders will be liable to be peace against
Shri

4. The receipt of this Memorandum should be acknowledged
by ~~Sri~~ Sri H.C.Srivastava GC/GD.

Shri H.C.Srivastava GC/GD.

Design.

Through

H.C.Srivastava,
Sr.GC/Gonda. SS/Gonda.

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Charges.

Shri H.C. Srivastava, Sr. G.C./Gonda is charged for neglect of duty and careless working having mal-intention.

Statement of Imputation

While working as Sr. G.C. on outward counter in BG shed/Gonda on 18-12-1981 Sri H.C. Srivastava managed to lead wagon No. EEC 19329 (22.4) and CEC 57782 (22.4 with wheat for booking as smalls when offered by M/S Khyali Ram Lachhman Pd. of Gonda in face of message No. T/221/NE/784 dated 17-12-1981 issued from R DRM (O)/LJM when loading in BG ~~book~~ was restricted and RR could not be issued in Back dates as RR book was under the custody of vigilance party and in order to regularise this. He managed irregular loading Kachha seal was provided. All these amounts neglect of duty, careless working, having mal-intention on part of Sri H.C. Srivastava.

Sd/- Area Manager
Gonda

/True copy/

Handwritten signature: C.T.C.

Annex

IV

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Page

इन दो सेंट्रल रेडीमिनिस्ट्रेटिव ट्रिब्यूनल

एडिसनल बन्ध, इलाहाबाद

बिबीद्वीन

हरिश्चन्द्र श्रीवास्तव

एप्लिकेन्ट

वनाम

यूनिफन आफ इन्डिया जनरल मैनेजर

नार्थ इस्टर्न रेलवे बोर्ड हाउस

नई दिल्ली एवं अन्य

रिस्पान्डेन्ट

पूर्वात्तर रेलवे

पत्र सं. टी/बापन/गोण्डा/85

दिनांक 13-2-1985

स्टेशन अधीक्षक

अ श्री हरिश्चन्द्र श्रीवास्तव

गोण्डा

प्र.मा.वा.गोण्डा

द्वारा-

माल अधीक्षक, गोण्डा

विषय:- श्री हरिश्चन्द्र श्रीवास्तव प्र.मा.वा.गोण्डा की
डी.ए.आर. इन्क्वायरी

उपरोक्त विषय में आपको सूचित किया जाता है

कि आप दिनांक 13-2-1985 को श्री गुप्ता जी/स0वा0भा0

लखनऊ के फोनिक मेसेज के अनुसार आपकी डी.ए.आर.

इन्क्वायरी दिनांक 22/23/2/1985 को लखनऊ में होगी।

समय 10-00 बजे प्रातः

अतः आप उपयुक्त समय पर उपस्थित हो कर डी.ट.आर. इन्क्वारी करा लेवें अन्यथा सक्त्पाटों डिजिजन कर दिया जावेगा ।

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स्टेशन अधीक्षक गोंण्डा
गोंण्डा

प्रतिज्ञाप :- मा.चि.अ./गोंण्डा को सूचना दी प्रेषित कि उक्त कार्यवाही कर्मचारी अपनी डी.ए.आर. / इन्क्वायरी नहीं कराना चाहता है, अतः इन्हें सिक रिपोर्ट न करने दिया जाय । यह इन्क्वायरी आफोसर का आदेश है ।

स्टे.अ./गोंण्डा

सत्य प्रतिज्ञाप

C.F.C.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AND AT ALLAHABAD.

ANNEXURE No. V

IN

PETITION N-O. OF 1987

Sri H.C. Srivastava . . . Applicant

Versusu

Union of India, Ministry of
Railways, New Delhi & others . . . Respondents

LUCKNOW 21-6-1985

STATEMENT OF SHRI P.P. PATHAK, G.S./GONDA (PW-5)

I have seen the RU-D-10 and 11 which are the Control Message dated 17-12-1981 and XXR message also dated 17-12-1981, issued by the C.O.P.S. and FRM/LJN respectively. These have been marked Ex. P-VI and P-VII.

My statement dated 1-4-1982 marked Ex.P-V bears my signature, and is in my handwriting. The statement was given in the Railway Board Office, New Delhi. No. pressure was exercised from any quarter at the time of recording of the statement or earlier. The statement is based on facts.

On 18.12. 1981 we were sitting just outside the Goods Shed at Gonda station around 12.00 noon. S/sri Siddiqui, G.S. Misra and I was sitting and Sri Misra and Siddiqui were checking some records of the

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goods-shed. We saw some bullock carts moving along and the wheat was loaded therein. One man Sri Lakshman Pd. of the firm Khyali Ram Kakhsman Pd., came upto me and asked me how the wagon was being loaded when he was refused earlier. I replied that on account of the restriction imposed on the movement of wheat, no loading could take place. On hearing this that person took the three of us to the loading side. There we saw that 80 bags of wheat had already been loaded in the wagon. There was no indent either in smalls or in full wagon load. When the V.Is. discovered this loading they immediately ordered to stop it. Thereafter we left the scene and came back about an hour and a half. On coming back we saw that the wagon had been loaded with 250 bags. Till 17 hours no forwarding note from the Dy. R. M.O. had been submitted by the party and as such after 17 hours those bags were off-loaded. Thereafter they were indented at Sl. No. 75 and 76 as 'smalls'. The initial entry against Sl. No. 75 and 76 was stamped with and the destinations changed by Shri H.C. Sri Vastava -in T/80-B.

I conclude my statement.

sd/-
(P.P. Pathak)

ON QUESTION BY THE E. O.

1. I am working as CGE since 6-2-1980.
2. The place where we were sitting and the place where was taking place, the distance is of about 100 yards.

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3. I did not see the wheat being loaded and I also did not notice in particular the bullock cart carrying wheat as because due to the Mills of Rice, Dal and Oil, the bullock-carts loaded with oil rice etc. keep on coming.
 4. I had pasted on the Notice Board of the Gonda Shed the information about restriction.
 5. On the date of the incident Sri H.C. Srivastava was the custodian of this T-80-E. register.
 6. The wagon in which the wheat was being loaded had not been allotted by me. On the contrary any requisition submitted by the party for wheat loading, had been turned down by me in view of the restriction.
 7. As per the orders of the A.C.S. conveyed by the then D.C.I. Sri Ywala Pd. on 31-10-1981 I was the custodian of both the T-80 registers. They were kdpt on my table and as I had gone home for lunch Sri Srivastava must have picked them up.
 8. Whenever I get any messages the same are entered in a register specially meant for this purpose.
 9. The register is maintained on day-to-day basis. i.e. the messages received are entered therein and the goods clerk should go through it before starting the booking.
 10. The message I received on 17th December, 1981 and the same I had entered in the register.
 11. The register was accessible.
 12. I have had no heart burning or ill feelings towards the S.P.S.
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LUCKNOW: 22-6-1985

CROSS EXAMINATION OF SHRI P.P. PATHAK (PW-5)
BY THE S.P.S. (CONTINUED FROM PAGE 9 OF THE ROP).

1. If the restriction message is received before 6 A.M. i.e. before opening of the goods shed then it will be operative from the same date but if it is received after 6 A.M. then it comes into effect from the next date.
2. ~~On 17-12-1981~~
~~Ex-P-VI was received at 10.00 hrs. on 17-12-1981~~
2. Ex-P-VI was received at 10.00 hrs. on 17-12-1981 and Ex.P.VII was received at 12.30 hrs. i.e. both were received during the business hours of the goods-shed.
3. On 17-12-1981 as there was no restriction on wheat loading, the same could have been booked-on that date.
4. If a consignment was booked before the restriction order became effective, it can be cleared at any time.
5. The empty wagons are always placed on some line.
6. Whatever loading has to be done is reported to the Control by giving the stock report at 18.00 hrs. each day. This consists of the position of total wagons empty or full, engaged or loaded to be unloaded.
7. The stock report is prepared by the siding Clerk.
8. The supervision of the C.G.C. regarding above as mentioned in item no. 7 is only to the extent of outstanding registration, i.e. how much is to be cleared next day.
9. As regards wagon No. 4709 I cannot say at this distant date without going through the stock report whether this wagon was included in it or not in the stock report of 17-12-1981.
10. Allotment of wagon means which parties are to be-

-5-

wagons for loading.

11. The allotment of wagon was my duty as the C.G.C.
12. I did not allot wagon no. 4709. The party loaded it with the permission of outward Goods Clerk.
13. When the loading was in process it was detected by the V.Is.
14. 80 bags had been loaded when the matter was detected. Sri Lakshman Pd. of Khyali Ram Lakshman Pd. Firm came to me and wanted to know as to how the wagon was being loaded with wheat when the restriction was already in operation and due to this he was refused the permission to load by the C.G.C. i.e. me.
15. 80 bags wheat can be loaded approximately in an hour.
16. I had no knowledge of this loading.
17. I came to know about it when Sri Lakshman Pd. pointed this out to me.
18. Once it was pointed out by Sri Lakshman Pd., S/Sri M.A. Siddiqui and G.S. Misra, V.Is., myself and the S.P.S. went to the loading side.
19. When it was discovered that 80 bags had already been loaded, the stoppage of loading was ordered. Thereafter we went for lunch.
20. As the SPC was with us he was verbally told to stop; the loading.
21. The party was also asked not to load the consignment.
22. In spite of this when we came back at about 15 hrs. we found there were 250 bags loaded in the wagon.
23. The question of party being influential does not arise. It loaded the goods with the permission of the S.P.S.

24. The question of allotment does not arise. I did not allot the wagon.
25. For booking any consignment the indent has to be there in 'Smalls' as well as in full wagon. At the time of indenting of wagon the forwarding note should also be submitted by the party. After obtaining the F/Note, if there is no restriction then the RR will be prepared. Once the RR is prepared the loading can start keeping in view the priority.
26. No RR was made because the forwarding note did not have the permission of the Dy. R.M.O. and the party had been trying to get it.
27. The R.R. cannot be prepared unless the Dy.R.M.O. grants the permission and that is why in the subject case the RR was not prepared.
28. Even in 6 hours of time which was at the disposal of S.P.S., the RR could not have been prepared as because no permission on the F/note was granted by the Dy. R.M.O.
29. It was known later on that the party did not have the permission of the Dy. R.M.O. on 18-12-1981.
30. The matter ~~xxxxxxx~~ was already detected by the V.Is. and he was asked verbally, to stop the loading.
31. The difference between booking and loading is that the booking is done first and loading afterwards.
- ~~EXCERPT~~
32. Booking consists of indenting of wagon, acceptance of F/Note, allotment of wagon, stacking of consignment, weighing and marking of the consignment.
33. After this the process of loading will start in which the consignment will have to be put in the allotted wagon. This procedure will apply to full
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wagon load consignment.

34. For 'smalls' the party will appear with the F/Note, he will be registered in T.80-B, the consignment will be accepted, weighed and marked and after that it will be loaded keeping in view the priority. In this the party will bring the goods alongwith the forwarding note and will be registered. All this till take place simultaneously.
35. The loading will only start after compliance of all the formalities as indicated above as per rules.
36. In the subject case prior to loading no formalities as per rules and as indicated above, were observed.

Question:- Why were the formalities could not be observed ?

Answer :- The loading took place without observing the formalities because the party took permission to load the consignment from the SPS. This was not in my knowledge or I did not grant any approval.

ON QUESTION BY E.O.

Question :- Do you mean to say that the party which was getting the consignment loaded approached the SPS directly for the permission ?

Answer:- Yes.

CROSS EXAMINATION BY S.P.S. CONTINUES

Question:- The consignment was loaded and afterwards it off loaded and kept in the inward goods shed for nearly 4-5 days. Can you say what irregularities took place in this case.

ANSWER:- This was the wheat consignment, the movement of which is controlled by the R.F.C. and till such

time tje Dy. R.M.O. permits it, it cannot be booked. In absence of permission on the F/Note the consignment which was already loaded, was ~~un~~headunloaded. And as such it can be said that the basic irregularity was that without the F/Note being accepted by good clerk, the consignment was loaded in the wagon.

Another irregularity was that the 250 bags which were off-loaded were stocked in the goods shed. Every party is allowed a ceiling limit upto which it can stock bags in its godown. In the subject case the ceiling limit of the party was 500 bags. By stacking 250 bags in the railway goods shed it got a chance to stack 250 bags extra in its private godown and thus the ceiling limit as imposed by the U.P. Govt. exceeded.

(As the matter does not attract any violation of the rules or irregularity from the Railway side, no further discussion in the enquiry has been allowed in this connection.).

37. The irregularity in the subject case attracting the violation of the provisions as laid down by the Railway is that the wheat was loaded against the restriction and without the permission of the Dy. R.M.O.
38. In case of wagon load the loading will be done by the consignor and in case of 'Smalls' it will be done by the administration- i.e. by the Hammals.
39. The Hammals will load the booked consignment. The unbooked consignment as is in the subject case,

was loaded by the party itself.

Question:- The wagons are in the custody of the C.G.C. Their allotment is to be done by him. I have not made out any document in this connection i.e. preparation of RR etc. How do I come in the picture?

Answer :- No wagon was allotted by me in view of the restriction. There was no indent in the 'Smalls' on that day. The message of restriction was duly entered in the register and was also pasted on the notice board and the parties turning up were refused the allotment of ~~XXXXXXXXXXXXXXXXXXXX~~ ~~XXXX~~ wagons in view of the restrictions. Furthermore the party accepted that Sri H.C. Srivastava had permitted the loading. The S.P.S. has also accepted this before the V.Is. on the spot.

Question:- If I permit some people to enter your house and they enter, what will be your action ?

Question:- disallowed as this is outside the enquiry and has no bearing on the charge.

Answer :- (Shri H.C. Srivastava commented on the service career of Sri Pathak, P.W. No question answer or discussion permitted by the E.O. as it has nothing to do with the charge).

40. I do not have any knowledge or any other case where the wagon was loaded against restriction and later on at the directives of the officers, was unloaded.

41. Irregularities could have been avoided had Sri H.C. Srivastava been vigilant.

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42. The irregularities have been committed by the SPS totally.
43. Had this consignment been booked on 18-12-1981 on proper F/Note then it would have been a case of booking against restriction.
44. Restriction was not honoured when the loading was permitted.
45. The S.P.S. was responsible for booking and loading both.
46. Two other wagons were also loaded on that day against restriction. The matter was reported to the D.T.S./Gonda. Consequently SPS was suspended.
- (As an E.O. I disallow any discussion or any mention of this aspect because the two other wagons loaded on 18-12-1981 do not form part of the charge.).
47. The vigilance Inspectors were already checking the Gonda Goods Shed when this case was detected by them.

QUESTION:-Both of us were called in the Board's Office for giving statement. Can this not have been recorded at Gonda ?

As an E.O. I disallow this question put forth by the SPC to the prosecution witness.

ON QUESTIONS BY E.O.

1. If the restriction is operative and even if with proper permission of the Dy. RMO the consignment is booked, it will be against the restriction. Booking against the restriction is irregular.
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FURTHER CROSS EXAMINATION BY THE S.P.S.

48. Only full wagon load consignments are entered in the SN/76. The TSVs are not entered in SN/76.
49. Whether there was any outstanding registration of this party was pending or not, cannot be commented upon without seeing T.80.
50. In the full wagon load consignment the stacking is permitted for 10 days only. Thereafter either the party removes the goods or pays wharfage from the date of stacking.

RE-EXAMINATION BY E.O.

1. In the subject case the bags had been booked under TSV and have been entered in T.80-B at sl.No. 75 & 76.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH AT ALLAHABAD

ANNEXURE NO. VI

IN

Sri H.C. SrivastavaApplicant

Versus

Union of India, Ministry of
Railways, New Delhi & others Respondents

STATEMENT OF SHRI M.A. SIDDIQUI, I.I. (VIG) RAILWAY
BOARD (P.W-3).

On 18-12-1981 I was conducting check in the goods shed alongwith Sri G.S. Misra, V.I. It was Friday, When I was going to offer prayer (Namaz) I found two bullock-carts were coming from city side and going toward B.G. siding. I inquired from the man sitting on the bullock cart what it was and where it was going. He replied that he was going to load 4 wheat in BG wagon. It immediately attracted my attention- as it was known to me that there was operating restriction for loading in BG wagons for 4 days with effect from 17-12-1981. I returned to the goods shed, took Sri Misra, V.I. Sri Pathak, G.S. and Sri Harish Chandra Srivastava, goods clerk and went to the BG siding. In their presence I found that loading of wheat was being done in wagon No. 4209 GS (belonging to S.E. railway) On counting 81 bags were found already loaded inside the wagon. Immediately proceeding was drawn on which Sri Srivastava has also endorsed that loading TSV. "Forwarding note is still not available. It means that the loading of wheat was being done as a small. After that I went to offer my namaz. After return from Masque I continued to check other items. In the evening I asked the G.S. to

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level crossing I saw 2 bullockcarts loaded with wheat and coming to wards goods shed.

3. I came back as soon as I managed to gather the information from the driver of the bullockcart that the wheat was being taken to the goods shed for loading. On coming back I alongwith Sri G.S. Misra, V.I., P.P. Pathak, G.S. and the S.P.S. drew the joint proceedings marked as Ex-P.IV. After this I left for my prayer at about 12.45 and came back at about 14.30 hours. Later on I checked various items of Rates and Classification and at about 17.00 hours on 18.12.81 itself I started checking of this case again.
 4. The statement of Sri P.P. Pathak, G.S. was recorded in the Railway Board's Office, New Delhi on 1.4.82 by me and Sri Ramayan Rai. The statement of Sri H.C. Srivastava /SPs (Ex-P.III) was also recorded in the Board's office. Statement of Sri Pathak is marked as Ex-P.-V.
 5. The restriction message of 17.12.81 was entered in the register maintained for recording such messages- and it is the duty of each goods clerk to go through that register before the start of his daily work. Whosoever is working in the outward, for him, it is a must. This is because every goods clerk working in the outward has to acquaint himself with the restrictions.
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produce all the RR, local, foreign, MG and BG both. Accordingly all the RRs were closed by me with immediate intention to avoid preparation of the RR in back date by Sri Srivastava to escape from the responsibility of booking against restriction.

On perusal of SK/75 it was noticed that loading of wheat in wagon no. 4709 was permitted by Sri Srivastava but placement of the wagon was not shown in SK/76. As per rules after placement of any wagon in SK/76 loading was to be done.

As Sri Srivastava told that he had allowed loading of wheat as TSV, T/80 B register was also perused and it was noticed that no entry was made by that time. As per rules for small booking the entry in the T/80 B register is to be ~~xxxxxxx~~ made first then the goods may be allowed to be loaded.

At that time loading of wheat was allowed only on production of the forwarding note duly permitted by Dy. R.M.O. In this particular case forwarding note was not produced and ~~therefore~~ reloading of any consignment without forwarding note was irregular. By the above facts it may be seen that Sri Srivastava has allowed of wheat without production of the forwarding restriction and without entry in SK/76 as well as T/80-B register.

After the blocking of T/80-B and other RRs Sri Srivastava made the entry at Sl. No. 75 and 76 for Barauni Jn. for one lot each for 125 bags wheat and subsequently on other dates he changed the destination against one item from Barauni to Chapra. This alteration he has admitted in his written statement dated 30-2-1982 (Ex.P.III).

I include my statement.

[Signature]

CROSS EXAMINATION OF SHRI M.A. SIDDIQUI, T.I.
RAILWAY BOARD (PW-3) BY THE S.P.S (CONTINUED FROM
PAGE 5 OF THE R.O.P.

1. Prior to 18-12-1981 I was checking the goods shed/Gonda for about 2 or 3 days back.
2. During my checking of this 2 or 3 days I found no case meriting any Vigilance angle.
3. On 18-12-1981 when I was going to offer my Namaz I saw two bullock carts coming from city side and were going towards RG siding. On inquiry from the person on the bullock cart it was disclosed that wheat was being carried for loading in the R.G. Wagons. As it was earlier came to my notice that there was restriction in RB wagons I immediately returned to the goods sheed where S/Sri Pathak, G.S. G.S. Misra and H.C. Srivastava were sitting. I requested them to accompany me to RB siding. When we reached in the RB siding I noticed that ~~number~~ of bags of wheat were already loaded in the wagon. A proceeding was immediately drawn in presence of the above mentioned persons. Sri Harish Chandra Srivastava said that the loading was going under small. He also accepted that forwarding note is also not available. In this way the irregularity was noticed.
4. When I was sitting in the goods shed some person was asking to Sri Pathak that how other customers were allowed loading and how he was refused- and Sri Pathak gave some satisfactory reply to that man. Hearing the conversation between Lakshman Pd. and Pathak, I inquired of Sri H.C. Srivastava but he gave ^{about} a round reply and said only loading of paddy is open. Therefore, I did not bother further. After this when I was going to offer my Namaz I noticed the bullock carts coming and then I

detected the case as mentioned in my statement in chief.

5. It is not correct that the S.P.S. Sri P.P. Pathak G.S. Misra and I went to the loading side after being told by a representative of the grain merchants Khyali Ram Lakshman Prasad that wheat was being loaded in a wagon while as their wheat was refused. It is not like this that the case was detected. Had the version of the SPS that on being told by the representative of grain merchant about the loading of wheat, we all went to the loading side to check, being correct, then how can he (SPS) endorsed on Ex.P-IV which is the joint proceedings 'Under loading as TSV-F/Note is still not available.'
6. Sri Uma Niwas Singh, then TTI/GD was not with us when we went to check.
7. Upto 17-12-1981 prior to the receipt of the restriction message, the loading could have been done.
8. Wheat might have been loaded prior to 17-12-1981.
9. So far I recollect there was no marks.
10. I did say that all the formalities should be completed as per rules.
11. It is not correct to say that I ever asked the SPS to contact the party to bring the forwarding note/RR etc.
12. From 12.30 till the time of blocking of the RR I was engaged in checking other records after return from Namaz.
13. It is wrong to say that I reminded the SPS several times to get the forwarding note/RR etc. It was in

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the interest of the SPS himself to complete all the formalities and obtain the forwarding note and issue of the RR. It was not in my interest.

14. RR should have been made on the date after completion of the loading. But in this particular case neither forwarding was available, nor there was any registration nor it was entered in T.80 register as "Smalls". No documentation was made till that date and therefore it is quite incorrect to say that it was already accepted on 17.12. Further it clearly shows that the loading of the wheat was irregularly being done with the connivance of the SPS.
15. The duty of loading was of the SPS and if there was anything otherwise the SPS should have informed or should have endorsed on the proceedings. Unless he was aware of the fact of the loading he would have never mentioned in the proceeding that the loading was under TSV. SPS deliberately fabricated this thing and to conceal the fact mentioned that the loading was being done under TSV. Had the RRs were not blocked by me there was ample change for the SPS to conceal the fact by preparing "To pay" RRs in the back date prior to the imposition of the restriction. By the time the R.R. was closed by me the forwarding note had not been available and as such SPS could not prepare the RR in the back date.
16. It is incorrect that I had blocked the RR on the insistence of the SPS.
17. I do not know for how long the wagon was in the goods shed.

18. I did not see the stock report.
19. The Goods Supervisor does the general supervision. The SPS is free to ask the G.S. about his duties and this is for Sri P.P. Pathak to explain.
20. The SPS was incharge of the loading if he was not so then he should not have signed the joint p-roceeding with the endorsement he made.
21. This is clear pointer that the SPS was incharge of the loading. No other documentation was done by him.
22. Sri Umas Niwas Singh joined us after the proceeding was drawn .
23. Goods booked in "smalls" prior to receipt of the restriction message, can be cleared after the restriction is over or with the permission from the Operating Department. But in this particular case the SPS said that loading was under TSV. In that case too en try should have been made in the T.80 register and forwarding note must have been made available but till the time of check neither entry in the T.80 was made nor forwarding note was available. After blocking the T.80 register the SPS made en try at Sl. No. 75 and 76 for Barauni. Subsequently SPS has also manipulated the Government document and entry at Sl.No. 76 was changed from Bar auni to CPR which is quite irregular.
24. Had the entry be en in SN/76 it would have meant that it was a full load as because i t was n ot known whether i t was a full load or not, SN/86 was checked. Th e wagon No. 4709 was not found any where in it. On being informed by the SPS that the wheat was being loaded as TSV, T-80-B was checked.

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25. I was not keeping an account of the SPS's minute to minute working of his duty hours.
26. I ~~was~~ am not obliged to tell the SPS or any one for that matter what aspects I was checking in the godsshed prior to 18.12.81.
27. Whenever I was asked for any record on 18.12. between 12.30 and 18 hours SPS produced all the records.
28. Even if there is no document like forwarding note/ RR/railway marks on wheat bags no entry in the T.80-B register at Sl.No. 75 and 76. This confirms his remarks already passed on the joint proceeding. This was therefore his duty and accordingly he has made entries after detection by me.
29. I cannot say what all irregularities the SPS committed or did not commit between 12.30 and 18 hours. I am only concerned with the subject case in which the irregularities were detected.
30. What Sri P.P. Pathak did, I am not concerned. I am only concerned with the irregularities which came to my notice when I detected it.
31. There is no change except the destination changed by the SPS from BJU to CPR.
32. I do not know what is the basis of this change as nothing has been indicated in the register.
33. The SCI's letter dated 31-10-1981 was not shown to me either on 18-12-1981 or on 30-3-1982.
34. I do not remember whether there was any registration in T.80 register of M/s Khyali Ram Brijendra Kumar etc.
35. Till such time the Dy. R.M.O. accepted the



forwarding nos. endorsed it, could not have been accepted.

36. Duties of the Dy. R.M.O. are best known to them. What check they exercised regarding movement of wheat, I cannot say.
37. I do not know the difference between the two T.80s.
38. I agree that entry in T.80-B is for priority in clearance of smalls.
39. I deny any such thing that I was instigated by anyone to make out a case against the SPS.
40. Whatever the circumstances had been, if the subject case was detected after the issue of RR etc. I cannot say what line of action would have been adopted. Had the action been as per rules, there would have been no case.
41. The element of loading by mistake is just a plea taken after the detection made by the Vigilance.
42. Ignorance of law is no excuse.
43. Vigilance angle is always involved in a case when rules are not observed particularly in cases of booking and clearance in particular.

Question:- The wheat was being loaded and booked from Gonda goods shed regularly. Only after receipt of registration message the booking was closed. By chance a party unknowingly brought his consignment for booking in "small" on 18-12-1981 i.e. just after 10.00 hrs. of the receipt of the restriction message. What Vigilance angle is involved in this case

Answer:- The SPS accepted that the party brought wheat on 18.12, after 10.00 hrs. As per rules

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the goods working is to be started by any goods clerk after consulting restriction messages as such it was the duty of the SPS to consult the restriction register was he failed. Further till the time of detection by me, no documentation was made. It was a full load consignment and to cover up loading against restriction this was accepted as "small" consignment. This clearly shows that undue favour was shown by the SPS to the party which cannot be without any ulterior motive. The irregularity which creates scope for mal practices is always taken as having Vigilance angle. In this case too the scope for malpractice was created and therefore it has the Vigilance angle.

44. Except for this case I do not remember how many cases of this type I have detected.

45. I do not know when was this consignment cleared. The same may be verified from the T.80 B register.

Question:- Did you recommend my transfer from Gonda after this case.

Answer:- Question disallowed as this has no bearing on the charge.

46. What the Area Manager does in regard to booking, loading and clearance of the goods, is best known to him.

Question:- Could this case not be dealt at the level of the Area Manager?

Question disallowed.

47. I am concerned with this particular wagon. I have no knowledge about the loadings of other wagons.

48. Whatever is not my detection I have no knowledge regarding irregular loading of other wagons.

(The S.P.S. wanted to see the other charge sheets

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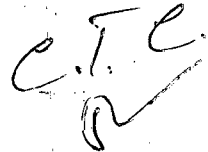
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issued to him regarding other two wagons alleged to have been loaded on 18-12-1981 itself. As the subject case pertains only to wagon 47209, the charge sheet issued to him in connection with other wagons, was not considered necessary by the E.O. for showing it to the SPS or producing it during the enquiry.

sd/-

(M.A. Siddiqui
21-6-1985)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH AT ALLAHABAD

ANNEXURE No. VIII

IN

Sri H.C. Srivastava Applicant

Versus

Union of India, Ministry
of Railways, New Delhi & others..... Respondents

LUCKNOW 24-1-1985

STATEMENT OF SHRI G.S. MISRA, EX.C.V.I (D.W.1).

On 18-12-1981 I alongwith Sri M.A. Siddiqui, I.I.(V) Railway Board and U.N. Singh, T.T.I/Goods went to Gonda Goods Shed at about 12.00 hours. It came to our notice that a CG bagon was being loaded. We went over there and saw some irregularities in regard to the registration of the wagon which was being loaded. On inquiry it was known that the Party had not requisitioned for registration nor submitted form of permission issued from Dy. R.M.O. Hence the matter was inquired into by putting questions from Sri H.C. Srivastava Sr. G.C./Gonda.

I conclude my statement.

ON QUESTION BY E.O.

1. So far as I remember a complete picture of loading of foodgrains was not taken on the date of check. Only one wagon i.e. the subject wagon was checked.
2. There was no indication that there were similar cases of loading of foodgrains in other wagons as well as. If at all they were loaded, they were not in any knowledge i.e. so far I can recollect.
3. The Vigilance check pertained to only one wagon so far as I can recollect.

sd/- Illigible
24-1-1985

Illigible
24-1-1985

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CROSS EXAMINATION OF SHRI G.S. MISRA, P.W.1
by the S.P.S. (CONTINUED FROM PAGE 3 of the ROP)

1. On 18-12-1981 I was checking at Gonda.
 2. I do not remember if on that day any party came where we were checking and sitting.
 3. We were not confined to the goods shed. I was also moving up and down when I saw a wagon being loaded. We, meaning thereby Sri M.A. Siddiqui, Sri H.C. Srivastava, myself, Pathak reached the loading side and spoke to the merchant's representative. A short verbal enquiry was conducted there only at the spot. Thereafter the statement of the S.P.S. was recorded in the goods office.
 4. I do not remember whether there was a complaint or not.
 5. Sri Uma Niwas Singh was at that time T.T.I/Gonda and he was only associated in the check as a witness.
 6. We started the check at around 10.00 clock at Gonda shed.
 7. Whether the bags contained any railway markings or not are best known to Sri Siddiqui because he was the one to have gone inside the wagon. I was standing outside. As such I do not remember whether the railway markings were there or not.
 8. When we saw the loading in the subject case the irregularities were noticed in the following manner:
 - i) The loading was being done against restrictions.
 - ii) There was no F/Note.
 - iii) There was no authority from the Dy.R.M.O. for loading the bags.
 9. If you were not responsible for this loading why did you reply to the questions etc. put to you there and also you did not tell us that Sri P.P. Pathak was responsible.
 10. I am not responsible for this. What duties you were performing and what others were doing, has to be proved by you (SPS.)
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11. I am not bound to disclose where I went after 12.30- and what duties I performed between 12.30 hrs. and 18.30 hrs.
12. Why a particular work was not finished at 12.30 I am not bound to say the reason thereof. Why the joint proceedings were drawn at 12.30 and some others later on, was our discretion.
- sd/- Illegible
13. I do not remember whether the loading was completed or not.
- ~~TRUE COPY~~
14. Generally we have seen that the permission by Dy.RMO. is endorsed on the F/ note itself.
15. So far as I know the requisition is essential in full wagon load as well as in TSV.
16. Consignment booked as small prior to the restriction could have been loaded but in this also permission of the competent authority has to be obtained.
17. The restriction was imposed by the railways and loading of BG wagons.
18. There was no forwarding note, there was no RR.
19. I cannot say whether the consignment after off-loading will have to be stacked in the goods shed or not.
20. The record T.80-B shows that the subject consignment was booked on 22-12-1981 after expiry of the restriction.
21. The T.80-B shows that the SPS accepted the consignment on 18.12. at 18.00 hrs. when the restriction was operative. This should not have been done in face of the restriction. The register also shows that the time of acceptance of consignment has only been given on 18-12-1981 i.e. the date on which we checked the goods shed. On no other date the time has been given.
22. The entries in T.80-B at Sl.No. 75 and 76 were made after closing at 17.00 hrs. by the V.Is.

23. T.80-B is meant for 'Smalls' and clearance thereof with priority.

ON QUESTION BY E.O.

1. There was a verbal confrontation at the site of loading between the merchant's representative and the S.P.S. The merchant's representative was asked as to how and with whose permission the loading was going on and which Commercial clerk they had contacted for getting the bags loaded. The representative's reply was that they were loading 250 wheat bags for BJU and they pointed out towards the S.P.S. that they had his permission to do so.
2. There was no rebuttal from the SPS's side.
3. The proceedings Ex.P-IV drawn is in the handwriting of the SPS and there are his signatures on this. Sri G.S. Misra further stated that he does not remember whether the entire proceeding is in the handwriting of the SPS or not. The said document was also shown to the SPS and he says that the first 3 lines are not in his handwriting but the signature below these lines are his. The same is sidelined 'A'.
4. The endorsement encircled 'B' and initialled on 4 sides by the E.O. is also accepted by the SPS as his endorsement.
5. At no stage the SPS informed either verbally or in writing that he was not involved in getting the bags loaded and it was being done as per the orders of somebody else.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH, ALLAHABAD.

ANNEXTURE NO VIII

IN

PETITION NO. OF 1987

Harish Chandra Srivastava - - - - - Petitioner.

Versus

Union of India through General Manager North
Eastern Railway, Gorakhpur and others. Respondents.

No.ID/SS-C/Vig/58/82 North Eastern Railway

Dated 1.10.1985. Divisional office

Lucknow.

Sri Harish Chandra Srivastava,

Sr. Goods Clerk/Gonda.

Through; S.S./Gonda.

Sub; DAR enquiry into the case against you.

Ref; Your application dt. 11.7.85 alleging

bias against the Enquiry officer.

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In this connection, this office letter of even number dated 29.8.85 delivered to you through SCI/GD on 14.9.85 conveying the orders of DCS/LJN is hereby cancelled.

Your above application alongwith all other connected papers was put up the reviewing authority, ADRM, whose orders are reproduced below for your information:

"I have gone through the case and the enquiry proceedings conducted so far, .A perusal of the enquiry proceedings would indicate that the allegation made by the charged employees of bias against the Enquiry officer Miss Meena Shah is not tenable. Reasonable opportunity was given at every stage to Shri H.C.Srivastava by the Enquiry officer. I therefore do not consider any necessity for change in the nomination of the Enquiry officer".

In view of the above, the enquiry will be processed further by Miss Meena Shah, EO. You are also advised to co-operate with the E.O. in your own interest to get the enquiry completed early.

Please acknowledge receipt.

Sd. Illigible

Divl. Commercial Supdt Lucknow.

True copy

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IX

PETITION No.

Of 1987

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Sri H.C.Srivastava - - - - - Applicant

Union of India , Ministry of Railways, New Delhi
and others. - - - Respondents.

Lucknow 11.1.85

Preliminary hearing.

Admission/ denial regarding authenticity and genuiness of relied upon documents is as under:-

RUD²/₄- 6 (T./80-B(BG) Registe r of 21.11.81 to 3.3.82

Admitted- marked Ex.P-V.

RUD-7- Statement of Sri H.C.Srivastava/SPS dt.18.12.81
admitted marked Ex.P.II.

RUD-8. Statement of Sri H.C.Srivastava /SPS dt.30.3. 82
(in Hindi)-Admitted-marked Ex.P.III.

RUD-9. Not admitted

RUD- 10 . Not admitted

RUD-11. Not admitted.

RUD-1 to 5 are with G.S./Gonda. These are to be obtained. Admission/denial of these will be done on the next date during the course of enquiry.

SS - J. C. Seivasanti
S. P. S.

sd/Illegible

E.O.D.A.

11.1.85.

1 TRUE COPY/

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH, ALLAHABAD.

ANNEXTURE NO IX

IN

PETITION NO.

OF 1987

Harish Chandra Srivastava- - - - - Petitioner.

Versus

Union off India through General Manager North
Eastern Railway Gorakhpur. and others.

-----Respondents.

To,

The E.O.

N.E.Rly.

Gorakhpur.

Respected Madam.

I have inspected the RUDC and taken extract
there of. Kindly also arrange inspection of addl.
documents as prayed earlier to enable me for the
defence.

Yours faithfully

(H.C. SRIVASTAVA)

Sr.G.C. / G.D.

Dt. 30.1.86.

At Gorakhpur.

True copy

C.F.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

ANNEXURE No. X

In

Petition No.

Of 1987

Sri H.C.Srivastava - - - - - Applicant

Versus

Union of India Ministry of Railways, New Delhi
and others.

- - - Respondents.

~~Examination under rule 9(21) of~~

Lucknow: 7.7.86

BAR ACTION AGAINST SHRI H.C.SRIVASTAVA SR.G.C/GD.

Examination of the charged employee under rule 9(21)
of the DAR BY E.EO.

1. I was on duty on 18.12.81. I had the knowledge of restriction. I may like to mention that I do not receive any restriction messages as the same are received by the CGC or whosoever is the incharge of the goods shed. But I had the knowledge of restriction.
 2. I did not have the knowledge of the fact that the party was busy loading the wagon. When it was pointed out by the V.Is that the wagon was being loaded, then I came to know about the loading operations, which were already on. In other words the party came and started loading the wagon without my knowledge of permission.
 3. On that date i.e. on 18.12.81, no wagon was allotted to any party.
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2.

4. The entries in the T-80/B which is marked PE-I are in my hand in respect to Sl.No.75,76,77,78. The entry at 76, was originally for BJU and later on, changed for CPR, by me. These entries dated 18.12. were made after the bags were unloaded from the wagon, and it was requested by the party that the same should be entered in T-80/B Register, so that they do not loose on priority. BJU has been corrected to CPR on 22.12. at the time of bookingk.

5. At the most, the only thing I could do was to reprimand the party representative for not following rules laid down before loading of a consignment i.e. filling of the forwarding note, weighing, marking and making out the R.R.

6. I associated in the vigilance check.

7. The party concerned on 17.12.81, had come to Shri P.P.Pathak and one Shri Mohd.Shafi. Thereafter it came to me and told me that it had taken the permission of Shri P.P. Pathak and the permission was granted for loading. I also told them that it was okey by me. They did not turn up the same day but came on the next.

8. The party was contacted and called, who in turn, informed that it was trying to obtain the permission of the Dy.R.M.O.

9. RR has got no concern with the loading when it comes to booking in small.

10. At sl.no.76, BJU has been corrected and CPR written instead on 22.12.81.

11. On 18.12.at 18hrs.I made the entires at

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3.

Sl.No.75 and 76. But the change in Sl.No.76 was made on 22.12. according to the change of the distinction by the party itself. None of the columns as shown in the section particulars of despatch have been filled by me.

Examination under rule 9(21) contd.

12. On 18.12.81, everyone including S/Shri P.P.Pathak and U.N.Singh, the then TTI/Gonda, told me to make out the R.R. but I did not.

13. The wagon was under operations of loading and that is why on being asked by the V.Is, I endorsed the same on PE-IV.

14. Prior to 18 hrs. on 18.12.81, the said loading is nowhere in the records of goods shed.

Sd/ Illegible

E.O.

Sd/Illegible
Charged Employee.
7.7.86.

15. The other two wagons were also loaded the same day. The loading was done by some other party. That too was not in my knowledge.

16. At the most, what I could have done was and I would have done was not to issue RR and thus not regularise the irregular loading.

17. I have quoted the example of the punishment awarded to me by the Area Manager, because all the 2 wagons in question are for the same day. For two wagons, I was taken up by the Area Manager and the punishment was of stoppage of passes. Because the Area Manager had issued me a charge sheet for minor penalty. While as just because the third wagon was taken up by the Vigilance. I have been issued a major penalty.

Sd/ H.S.Srivastava 7.7.86 Sd/ E.O.7.7.86

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In the Central Administrative Tribunal
Additional Bench At Allahabad.

Annexure No. X

In

Petition No.

of 1987

Sri H.C. Srivastava

----- Applicant

versus

Union of India,
Ministry of Railways,
New Delhi and others.

----- Respondents.


To,

The Enquiry Officer/D.A.
North Eastern Railway,
Gorakhpur.

Sub:- Memorandum No..LD/SS/C/vic/58/82
dated 23.9.1982

Respected Madam,

In the above context I have to submit that the aforesaid charge sheet dated 23.9.1982 was received by me 7.9.1983. The article of the charges annexed with this charge sheet is that while I was on duty on 18.12.1981 dealing with outward loading, inward unloading and removal of delivered consignments of BG.I failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming on my part in as much as at 12.25 hrs. on 18.12.1981 one wagon no. SE 47209 was found under loading operation of wheat and 81 bags were found already inside the wagon without E/ note and without registration as well as without having necessary permission from Dy. R.O. as per civil restriction. The loading was also found in the aforesaid wagon without placement having



(2)

been ~~sh~~ shown in the outward SN'76. The loading permitted by the undersigned on 18.12.1981 despite restriction imposed for BG loading except BJU refinery for four days vide phonic message no. CC/12/81 dt. 17.12.1981. At 12.25 hrs. 81 bags of wheat were already found loaded and the loading was under operation. At 17.00 hrs. loading was found completed without RRS and any entry in T80B. That I made registration of two lots of wheat of 125 bage each in the T8DB for BJU at S.No. 75 & 76 at 18 hrs. on 18.12.1981 i.e. blocking of the same by the V.I. party upto this time no forwarding notes were available and that subsequently the destination against the registration at S.No. 76 was changed BJU to CPR.

The above charges are totally denied as the same are false and prejudicial as because on the same date i.e. 18.12.81 ~~xx~~ and in the same duty hours alike loading and unloading in wagon no. ERC 49329 and CRC 57782 was found and I was charged for neglect of duty and careless working having mal intention as I managed to load these two wagons with wheat for booking as smalls in face of restriction having been imposed vide message dated 17.12.81 and that too without R.R. as it could not be issued in that date as R.R. books were under the custody of V.I. party and in order to regularise this I managed irregular loading and K/seal was provided (copy of this charge sheet No. T/Rest/GD/82 dated 10.2.82

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(3)

issued by Area Manager/Gonda has already been given to you). The statement of the defence against this charge sheet issued by Area Manager/Gonda was submitted by me on 18.2.1982 (copy enclosed) and on consideration of the defence submitted by me I was awarded with the punishment of stoppage of 3 sets of privilege pass during the year 1982 vide NIP No. T/Rest/GD/82 dated 13.9.1982. I will most humbly request your honour to kindly consider the contents of charge sheet dated 10.2.82 issued by Area Manager/Gonda and the charge sheet No. LD/SS/58/82 dated 23.9.1982 issued by DCS/ LJn. I am sure that if your goodself will give prudent thinking it will be noticed that the duty hours, the date of incidence and the irregularity embodied in both the charge sheet are the same and alike in the nature viz what so ever irregularities are shown in charge sheet dated 10.2.1982 or charge sheet dated 23.9.1982 they all are integral parts of each other company one act of commission of irregular loading without registration and without R.R. without forwarding note available and also against restriction imposed by Rly. and non adherence of civil restrictions. These charges were denied in my defence statement dated 18.2.1982 submitted to Area Manager/Gonda and consideration of which 3 sets of passes were withheld. You will, therefore agree that the second charge sheet dated 23.9.1982 can not stand merely on the ground that out of irregularity having been found in respect of 3 wagons, 2 wagons were dealt with by Area Manager/Gonda in the charge sheet dated 10.2.1982 and one wagon no. SE 47209 was segregated by disintegrating the same from the above lot and subsequently used against me in the charge sheet dated


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(4)

23.9.1982 issued by DCS/ LJN. Therefore, there is no good and sufficient ~~ex~~ reason to issue me a subsequent charge sheetx for the same charge for which I have already been punished by Area Manager/Gonda on 13.9.1982 as charges of both the charge sheet are contiguous to each other having been noticed at a time in same spell of duty of a day. The law of natureal justice does not permit ~~to~~ to impose punishments again and again for one and the same irregularity even brutally.

The undersigned submitted meroy appeal dated 13.6.1983 to DRM/LJN the copy of which is given to you and considering the harrasment caused to me the then DRM passed orders that the undersigned should be put back to conda because there was no case against me but all the troubles were actually caused due to Shri Mohd. shafi against whom the learned DRM desired to initicate DAR proceeding against him. Further it is stated that then SS/Gonda also submitted his report dated 26.12.1982 (copy enclosed) to DRM/LJN while he was at Gonda mentioning that shri Mohd. Shafi should be taken up for the lapses on his part as brought out in the aforesaid report of the then SS/Gonda.

So for the present charges are concerned . I am least responsible for the same as admittedly in the DAR proceeding shri P.P. Pathak GS/ Gonda has said that the allotment of wagons etc. was his duty and accordingly. the punishment for recovery was imposed upon him amounting to Rs. 11000/- for the irregularities which were ~~xxx~~



(5)

atribulable to him in respect of the wagons in question. It therefore shows that Shri P.P. Pathak was responsible for entire irregularities which actually happend on 18.12.1981 in Gonda Goods shed and conniving with the VIs in order to shirk and shift his responsibilities he became an active associate to falsely implicate me as because all the things were arranged by him well within his knowledge and as a supervisor, he should have stopped the loading ~~xx~~ which was if at all considered irregular but how he would have done it when he himself was responsible and instrumental to it. It was his responsibility to get the restriction noted by me which he never did within the intention to falsely implicate me.

During the course of enquiry I have requested your honour to furnish me the copies of additional documents proving involvement of Sri Mohd. Shafi and P.P. Pathak and non- liability on my part but the same have not been supplied. However, your goodself has assure me that my contentions would be accepted as true facts, in absence of those documents.

In the circumstances mentioned above, if proper assessment and evaluation of my conduct will be made, it would become clear that the charge sheet dated 23.9.1982, is illegal, unconstitutional null and ~~xx~~ -----, being ulteriorly brought up by the interested parties and as such, it is liable to be quashed. I may also conclude praying that I should be

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given further ~~farther~~ ample time to submit the written brief if the position as as clarified above does not convince you of my detachment from the charges levelled against me in the aforesaid charge sheet.

Thanking you for the justice.

Yours faithfully,

(H.C. Srivastava)

Sr. G.C. /Gonda.

dt. 26.5.86.

True copy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

Annexure No. X A

In

Petition No.

Of 1987

Sri H.C.Srivastava

--- Applicant

Versus

Union of India Ministry of Railways New Delhi
and others.

--- Respondents.

Report of Enquiry and Findings

Under R.S.(D & A) Rules, 1968.

Case No.LD/SS-C/Vig/58/82 Lucknow Division

Suspect Public Servant: Shri H.C.Srivastava Sr.GC/Gonda

Memorandum of Charge No. LD/SS-C/Vig/58/82 dt.23.9.82

Disciplinary authority:D.C.S./Lucknow

Enquiry officer: Miss Meena Shah

Defence Assistant: Sri Y.N.Shukla ,Sr.S.I.Gonda.

I. The articles of charge against Shri H.C.Srivastava
Sr. GC/Gonda (SPS) is as under:-

That the said Sri H.C.Srivastava, Sr.GC/GD while
on duty on 18.12.81 dealing with outward loading, inward
unloading and removal of delivered consignments of
B.G. failed to maintain absolute integrity and devotion
to duty and acted in a manner unbecoming on the part of
a railway servant in as much as:-

1. At 12.25hrs. on 18.12.81 one Wagon SE 47209 c.c.
22.00 was found under the loading operations of
wheat and 81 bags were found already loaded inside

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the wagon without forwarding Note and without registration.

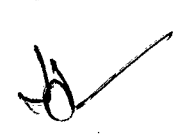
3. During his duty hrs. loading of wheat was found in wagon No. SE cg. 47209 without placement in the outward S.N. 76.

4. Loading of wheat was permitted by Sri Srivastava in B.G. wagon on 18.12.81 whereas as per phonic message No. cc/12/81 dt. 17.12.81 issued by COPS/CKP received through CINL/Gonda at 10Hrs. on 17.12.81, restriction was imposed as "W/I/E stop BG loading except BJU refinery for four days".

5. At 12.25 hrs. out of two lots of 125 bags wheat each 81 were already found loaded in the wagon and the loading was under operation. At 17 hrs. loading was found completed and no RRs were found to have been issued nor any entry was found in the T. SO B.

6. He made registration of two lots of wheat (125 bags each lot) in the T-80 B for BJU at S.No. 75 and 76 at 18 hrs. on 18.12.1981 i.e. after blocking of the same by the Vig. party. Upto this time no F/Notes were available. Thus registration at S.No. 75 and 76 were made without forwarding Notes. Subsequently he altered the registration at S.No. 76 and changed the destination from BJU to CPR.

Sri Srivastava thus allowed loading of wheat without Forwarding Notes, without permission of Dy. RMO, without placement and against civil as well as Railway restrictions with an ulterior motive and with intention to cover up the restriction by issuing the RRs in the back date to which he could not do so due to blocking of RRs and other documents by the Vigilance party.



(3)

The above acts on the part of sri srivastava tantamount to serious misconduct contravening rule 3(1) (i), (ii) & (iii) of the Railway services (Conduct) Rules, 1966.

Statement of imputations is reproduced below:

1. Sri H.C. Srivastava was on duty at the outward Counter of B.G. on 18.12.81 At 12.25 hrs. during the Vig. Check one B.G. Wagon No. S.E. 47209 C.C. 22.00 Was found Under loading operation and 81 bags of wheat were already loaded inside the wagon. A Proceeding was drawn on which Sri srivastava in his own handwriting mentioned "Under loading operation as TSV. F/Notes is still not available" and "125 bags wheat, 125 b/s wheat". During the Period loading of wheat was not permitted without the permission granted by Dy. R.M.O., which was not available at that time ~~XXXXXXXXXX~~ on 17.12.81 restriction for loading of BG wagon was imposed for four days vide phonic message No. CC/ 12/81 by cops/GKP which was received through STNL at 10 hrs. on 17.12.81.
2. on perusal of T 80/Bat 17.25 hrs. it was found that there was no registration in respect of the two lots of TSV wheat as indicated by Sri srivastava at 12.25 hrs. on the joint proceeding. After blocking the same by the Vigilance party the registration was made for two lots of wheat each 125 b/s for Barauni jn. on s. No. 75 and 76 in the T80 B at 18 hrs. Rr Books were already blocked as under to avoid granting of the same in back date to cover up the guilt.

N.E.R. (M.G.)	342558	Book No. 37 Foreign.
"	357262	Book No. 103 Local
" (B.G.)	51429	Book No. 3 Local

" 344410 Book no. 74 Foreign.

3. Sri Srivastava in his written statement dated 18.12.81 has accepted the loading without F/note and without registration in 80 B. He said that the loading was started by the party without his knowledge which is not acceptable because the joint proceeding was drawn at 12.25 hrs. At that time 81 bags were already loaded in the wagon and the loading was under operation which was found completed at 17 hrs. This shows his constant. Further the registration was made without F/note for Barauni Jn. in two lots to which he has also accepted in his statement dt. 18.12.81. He has subsequently changed the destination of S.No. 76 of T-80 B from BJU to CPR by making overwriting which is irregular. In his written statement dt. 30.3.82 Sri Srivastava has accepted the same and said that he understood the destination of both the registrations S.No. 75 & 76 was BJU and therefore he has recorded BJU against them. When the merchant brought the F/Note after the signature of the By . R.M.O., he found that one of the two consignments was for Chupra and therefore he made it CPR by making overwriting. This shows the registration was done by Sri Srivastava on his own accord to favour the party. Thus it will be seen that Sri Srivastava has allowed loading of without registration, without booking and marking and against operating restriction.

The above acts on the part of Sri Srivastava tant amount to serious misconduct contravening Rule 3(1) (i), (ii) and (iii) of Rly. Services (Conduct) Rules, 1966.

II. Orders to Hold enquiry:-

7. DCS/NER/Lucknow. being the disciplinary authority. appointed me to enquire into the charges levelled against

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Shri H.C. Srivastava. sr.CG/DD Bide his letter No.SD/ssC/Vlg 58/82 Dated 21.7.1984(43/Cof the DARCase). A Copy of this letter has also been endorsed to sri Srivastava.

III- Prosecution - Documents and witnesses.

The charges against Shri H.C. Srivastava. are that the said Sri Srivastava. Sr. G.C./GD. while on duty on 18.12.81 dealing with outward loading, inward unloading and removal of delivered consignments of B.G, failed to do duty and acted in a manner unbecoming on the part of a railway servant in as much as:


1. At 12.25 hrs. on 18.12.81 one wagon no 47209 C.C. 22.00 was found under the loading operation of wheat and 81 bags were found already loaded inside the wagon without forwarding note and without registration.

2. Permission by the Dy RMO was necessary in the case of booking of wheat which was not obtained and the leading started against the civil restriction.

3. During his duty hours leading of wheat was found in wagon no. S.E. no 47209 without placement in the outward S.N. 76.

4. Leading of wheat was permitted by Sri Srivastava in R.G. wagon on 18-12-81 whereas as per phonic message no. 00/12/81 issued by COP5/GKP received through CIN/Gonda at 10 hrs on 17-12-1981, restriction was imposed as "N/I/E step 3G leading except RJU refinery for four days."

5. At 12.25 hrs. out of two lots of 125 bags wheat each 81 were already found loaded in the wagon and the leading was under operation. At 17 hrs., leading was found completed and no RRs were found to have been issued nor any entry was found in the T 808.



6. He made registration of two lots of wheat (125 bags each lot) in the T.808 for BJU at S.No. 75 and 76 at 18 hrs. on 18-12-1981 i.e. after blocking of the same by the vigilance party. Up to this time, no. F/ note were available. Thus registration at Sl. No. 75 and 76 were made without forwarding notes. Subsequently he altered the registration at Sl.No. 76 and changed the destination from BJU to CPR.

7. Sri Srivastava thus allowed leading of wheat without forwarding notes without permission of Dy RMO without placement and against civil as well as Railway restrictions with an ulterior motive and with intention to cover up the restriction by leading the RRs in the back date to which he could not do so due to blocking of RRs in the back date to which he could not do so due to blocking of the RRs and other documents by the vigilance party.

The above note on the part of Sri Srivastava tantamounts to serious misconduct contravening Rule 3(1) (i) (ii) and (iii) of the Railway Services (Conduct) Rules, 1966.

To prove the above charges, prosecution has relied upon 11 documents and 5 witnesses. All the documents have either been submitted by the charged employee or proved by the prosecution witnesses during the course of enquiry. All the prosecution witnesses turned up and gave their statement.

IV. Defence case - Documents and witnesses

The charges employee pleaded not guilty at the very outset on the date of preliminary hearing held on 22-12-1984. He has submitted his defence statement after receipt of the above charge memorandum, which is available at C/40 and 41 of the DARS file. After close of the

prosecution case the charged employee was asked to submit his defence statement under rule 9(19) of the DAR which he did vide ROP 23 to 35. The charged employee was examined by the E.O. under rule 9(21) of the DAR vide ROP 36 and 37. After close of the defence case, Sri Srivastava was asked to submit written brief, which he did vide ROP 38 and 39.

V. Appreciation of evidence.

The line of defence taken by Shri H.C. Srivastava in his defence statement dated 26-5-1986 submitted to the E.O. under rule 9(19) of the DAR is :-

(a) That wagon allotment was done by GS/D, Shri P.P. Pathak. Sri P.P. Pathak has been quoted as prosecution witness and he turned up to depose during the course of enquiry.

No doubt the allotment of wagons should have been done by the GS as it was a part of his duty, but here the point in question is whether the subject wagon was allotted by the GS or not. In item 6 of ROP 9, Shri Pathak mentions "the wagon in which the wheat was being loaded, had not been allotted by me." Again on being cross examined by the charged employee, he has replied vide item 12 or ROP 16, that he did not allot the subject wagon. Once again, in ROP 18, he has mentioned that on 18.12, no wagon was allotted by him in view of the restriction. The charged employee has neither challenged this statement nor has he submitted any evidence in support of the fact that the wagon allotment on 18/12 was done by Shri G.S. Pathak. He has

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based his defence on this aspect by trying to drill in that the wagon allotment was the job of the Gs and as because the said wagon was allotted by him, he (the charged employee) is in no way responsible. As mentioned above, the charged employee is only harping on this matter without producing any evidence to substantiate his version. In absence of any evidence produced during the enquiry regarding allotment of the subject wagon by the GS I accept the version of the P.W. Shri Pathak, when he said that he did not allot the wagon. In view of the appreciation of the evidence in the foregoing lines, the defence plea taken by the charged employee is not acceptable to me.

(b) Another defence plea taken by the charged employees is that for wagons 49329 and 57720, the loading was under operation on 18-12-1981 and he was charged for neglect of duty and careless working with malafide intention vide charges-sheet issued on 10-2-1982 by the AM/Gonda. On considering the defence to the said memorandum, he was awarded with the punishment of stoppage of passes and PTOs. While as for the third wagon 47209 which was checked by the Vigilance, a major memorandum has been issued to him on 23-9-1982 by the ICS/LJN. According to the employee, there is no sufficient reason to issue him a subsequent charge sheet for the same charge for which he has been punished by the Area Manager/Gonda. As on E.O. of the subject case, it is not my jurisdiction to comment on the disposal of the charge sheet by the disciplinary authority. It is not my jurisdiction to

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(C) Shri Srivastava in para 5 of his defence statement mentions that Sri Pathak in order to implicate him, did not get the restriction message noted by him. The employee feels that it was the responsibility of Shri Pathak to get the restriction message noted, which he did not do with the intention to falsely implicate him. Here once again I will revert to the dispositions of Shri P.P. Pathak in item 8 and 9 on ROP 9, which say that whenever a restrict-

8 and 9 on ROP 9, which ~~say~~ that whenever a restrict-

ion messages were received, he entered them in the register provided for them and that it is the duty of every Goods Clerk to acquaint himself with the restriction message, if any by going through that book, before starting the days work. I ~~can~~ ^{cent} percent agree with this because it is not possible for the G.S. to run after each Goods Clerks with the restriction message book for noting the restriction messages. It is the duty of the Goods Clerk that when he comes on duty, to see the said book and work accordingly. Moreover, Shri Srivastava can also not take this plea as a line of defence because during the examination under rule 9(21) of the DAR, in item 1 of ROP 36, he owns up to the fact that he had the knowledge of restriction.

In view of the defence pleas as taken in the defence statement dated 26-5-1986, none of them stands its ground are all struck down.

(4) Shri Srivastava in item 2 of ROP 36, mentions that he did not have the knowledge of the loading operations. In other words the party name and started loading the consignment without his knowledge or permission. He came to know about it only when he went to the actual spot alongwith the V.Is. Shri Srivastava was the Goods Clerk incharge and he should have known about each and every loading operation going on in his duty hours. Apart from this, I would also like to point out that on being questioned by the E.O. on ROP 21, Shri G.S. Misra, a prosecution witness, has mentioned that there was a verbal confrontation at the site of loading between the merchant's representative and the charged employee. The merchant's representative, on being questioned had replied that he had contacted the charged employee and had ~~his permission to go ahead with the loading.~~

-11-

and had his permission to go ahead with the loading. Shri Misra also states that there was no rebuttle from the side of the SPS. Although there is no proceedings recorded on this aspect, yet if it was a false statement on the part of Shri Misra, then the charged employee during the course of cross examination, should have thrashed out this point or else in his statement of defence submitted under rule 9(19). He should have produced evidence to refute whatever facts had been mentioned by Shri Misra. It has not been done and Shri Srivastava has gone to the extent of saying in his defence brief submitted under rule 9(22) of the DAR that association of Shri Misra in the check, is a concoction as Sri U.N. Singh in his statement has not mentioned that Shri G.S. Misra was also asked to accompany Shri Siddiqui, V.I. in the check. I also do not accept this plea of Sri Srivastava because on the spot proceedings drawn on that day, Shri Misra's existence is very much proved. PS-IV, is the example. Keeping in view the facts that Shri Misra's statement in item 1 and 2 of ROP21, non-rebuttle of the said deposition of Sri Misra, I am not prepared to believe the fact that Sri Srivastava did not have the knowledge of the loading operations. Notwithstanding of the facts mentioned in the foregoing line, a Goods Clerk on duty and who is also incharge of loading operations, should know the happenings where loading is concerned during his duty hours. As such, this statement of Sri Srivastava that he only came to know about the loading, when he accompanied the V.Is. is not acceptable to me. The evidence discussed

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in the foregoing lines substantiate the charge that the loading was permitted by Shri Srivastava on 18-12-1981, inspite of restrictions and such it was very much within his knowledge.

(e) The loading should not have been in the first place allowed in face of the restriction. Even if there was no restriction the loading should not have been permitted without the forwarding notes and also without the proper registration and allotment of wagon. A perusal of PE-IV, will show that the loading was on at about 12.30 hrs. without forwarding notes, while as according to T-80 B register, the registration of wagons has been shown as 18 hrs. This is all documented and does not need any further discussion.

(f) Keeping in view the totality of the evidence, discussed in the foregoing paras, Shri Srivastava is found guilty of allowing loading of wheat without forwarding notes, without proper registration and placement of wagons and against the restriction. Thus he is responsible for contravening the Service Conduct Rule 3(1) (i). As there is no negligence of duty/~~Rule~~ the charge is not established for contravening Service conduct Rule 3(1) (ii). It is unbecoming on the part of the Railway employee to indulge in such activities and as such the charges are also established for contravening rule 3(1) (iii).

Sd/-
(Miss Meena Shah)
Enquiry Officer /HQ.

TRUE COPY

[Signature]

C.T.C.
[Signature]

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH AT ALLAHABAD.

Annexure No. XI

In

Petition No.

Of 1987

Sri H.C.Srivastava - - - - - Applicant

Versus

Union of India, Ministry of Rlys. New Delhi and others.

--- Respondents.

NORTH EASTERN RAILWAY

NOTICE OF IMPOSITION OF PENALTY OF REDUCTION TO THE
LOWER STAGE/GRADE/POST UNDER RULE 6(vi) OF PART III
OF THE RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES 1968

No.LD/SS-C/Vig./58/82

Divisional office

Dated November 25th 1986.

Lucknow.

Name : Shri H.C.Srivastava

Father's name : Sri M.L. Srivastava

Designation : Sr.G.C./Gonda

Department : Commercial

Date of appointment : 27.2.1963

Scale of pay : 330-560/1200-2040

Station : Gonda.

Miss Meena Shah, ECDA, who was appointed as
E.O. to hold a DAR inquiry in connection with the
charge memo of even number dated 23.9.1982 issued
to you, has submitted her report of enquiry.
A copy of the same is enclosed herewith.

2.

1. On going through the report of the Enquiry officer in detail, I have to make the following observations:

Allotment of wagon is primarily the job of Goods Supdt. and it is his responsibility to ensure that wagon allotment is in accordance with the procedures laid down especially when any restriction is imposed. In this particular case wagon No. ~~SE 47209~~ SE 47209 was found being loaded with wheat at time when restriction was imposed only a day earlier. Shri H.C. Srivastava was at that time working in the outward and was responsible to supervise the loading. He certainly failed to detect loading of wheat in wagon no. SE 47209 against restriction. It is surprising that loading was allowed in face of such restriction. It could either be deliberate mischief on the part of goods clerk or sheer ignorance of the restriction message which was received in the goods shed only on the previous day. The system of ensuring that restriction messages are passed on to all the concerned Goods clerks, was also not sound. The restriction message noted in the register by proper signature as acknowledgement ^{by Goods Supdt. Should be got noted by each of the Goods Clerk who is} The benefit of doubt may be given to Shri Srivastava on this issue only. He, however, should not have allowed loading operation to commence before collecting the forwarding note from the party and ensuring that the permission of Dy.R.M.O. has been obtained for loading wheat and also before ensuring that the wagon has been allotted to the party by the Goods Supdt.

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2. Shri Srivastava certainly is responsible for these negligence on his part. I am, therefore, of the opinion that Shri Srivastava performed his duty on 18.12.81 in the most negligent manner and has acted in a way unbecoming of a railway servant. He is, therefore, reverted from the post of Sr.GC to the post of Goods clerk in grade 260-430 on a pay of Rs.260/- for a period of 5 years with loss of seniority.

3. Under Rule 18 of the Railway Servants (DSA) Rules, 1968, an appeal against these orders lies to the Senior Divisional Commercial Supdt./N.E.Railway /Lucknow provided:-

i) The appeal is submitted through proper channel within 45 days of receipt of these orders;

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

4. Please acknowledge receipt of this order.

Dt/ EO's report &
in 7 pages.

Sd/U.K.Singh

(U.K.SINGH)

Divisional Comm. Supdt.

N.E.Rly/ Lucknow.

/ True copy ¼

JA

C.T.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALAHAABAD.

Annexure No. XII

IN

Petition No. _____ Of 1937

Sri H.C.Srivastava - - - - - Applicant

Versus

Union of India, Ministry of Railway,
New Delhi and others - - - - - Respondents.

To,

The Sr.Commercial Superintendent,
North Eastern Railway,
Lucknow.

Sir,

Sub:- Appeal against the penalty of reduction
from post of Sr.G.C.to G.C. on pay of
Rs.260/- initial recruitment grade for
a period of 5 years with loss of
seniority.

...

Ref: Notice of imposition of penalty no.

LD/SS-Vig/58/62 dated 25.11.1936

delivered to me on 9.12.1936

In reference to the above notice of imposition
of penalty I most humbly and respectfully beg to submit
my appeal as under for favour of your benign honour's
judicious consideration and kind orders.

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1. That I was served with a memorandum No.LD/SS-Viz/ 52/82 dated 23.9.1982 for the following article of charges.

That the said Shri R.C.Srivastava Sr.GC/Gonda while on duty on 18.12.1981 dealing with out-ward loading, inward unloading and removal of delivered consignments of BG failed to maintain absolute integrity and devotion to duty and acted in a manner un-becoming on the part of a Railway servant in as much as:-

1. At 12.25 hrs. on 18.12.1981 one wagon SE47205 CC2200 was found under the loading operation of wheat and wage were found already loaded inside the wagon without forwarding note and without registration.
 2. Permission by Dy.RMO was necessary in the case of booking of wheat which was not obtained and the loading started against the civil restriction.
 3. During his duty by loading of what was found in wagon no.SECg47209 without placement in the outward S.R.76.
 4. Loading of wheat was permitted by Sri Srivastava in BG wagon on 18.12.1981 whereas as per phonic message no.CC/12/81 dated 17.12.1981 issued by COPS/GKP received through CTNL/Gonda at 10hrs.on 17.12.1984 restriction was imposed as "WIE stop BG loading except BHU refinery for four days."
- JH

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5. At 12.25 hrs. out of two lots of 125 bags wheat each 81 were already found loaded in the wagon and the loading was under operation at 17 hrs. loading was found completed and No RHs were found to have been issued nor any entry was found in the TBO-B.

6. He made registration of two lots of wheat (125 bags) each lot) in the TSO-B for BHU at S.No.75 and 76 at 18 hrs. on 18.12.1981 i.e. after blocking of the same by the vigilance party. Upto this time no F/Notes were available. Thus registration at S.No.75 & 76 were made without forwarding notes. Subsequently he altered the registration at S.No.76 and changed the destination from BHU to CPR.

Shri Srivastava thus allowed loading of wheat without forwarding notes, without permission of Dy.EMO without placement and against civil as well Railway restriction with an ulterior motive and with intention to cover up the restriction by issuing the RHs in the back date to which he could not do so due to blocking of RHs and other documents by the vigilance party.

The above acts on the part of Srivastava tantamount to serious misconduct contravening rule 3(1) (i), (ii) and (iii) of Railway service conduct rules 1966.

2. That a DAR enquiry was conducted and during the process of DAR, I represented against the bias attitude exhibited to me by the E.O. to the DRM(C) LJM as also to the E.O. but no action to change the E.O. was taken although the status of the nominated

[Signature]

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E.O. is quasi judicial. These bonafide representations of mine resulted in the prejudiced E.O.'s writing the enquiry report against me although according to the very rules of the Railway, as also on the basis of the official record I do not at all come in picture.

3. That with due respect I also beg to point out that the E.O. happened to be a direct subordinate of Chief vigilance officer and the case having been reported by the Vigilance made her leaned towards vigilance.

Denial of reasonable facilities and opportunities.

1. According to the extent orders, as envisaged in the R.S.(DA) Rules 1968 there is a specific provision of defence helper and infullment to these provisions I deposited the consent of my nominated defence couns 1 Shri Y.N.Shukla, SWI/ Gonda but when he did not turn up on the date of enquiry obviously not having been spared by the Administration or the letter of the E.O. not having reached the defence counsel's controlling officer, my defence counsel could not attend the enquiry but instead of providing me reasonable opportunity and fixing some other date I was forced to go ahead with the DAR proceeding otherwise exparte action would be taken against me. Thus under these various and intimidations I had to remain during DAR enquiry sittings.

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2. That documents most relevant for the purpose of defence and available with the administration were not provided to me purposefully although this was admissible as per to me ministry's office memorandum no. O.M.No.F/30/61-AVD dated 25.8.61 circulated by Railay Board under no. E(D&A)61RG6-45 dated 10.10.1961 by CPO/N.E. Railway as well in compliance of supreme court's judgment in case of Khem Chand vs. Union of India (A.I.R. 1968 S.C.300). Thus I was denied the reasonable facility and opportunity of providing me documents despite repeated requests.

3. That with due respect I beg to point out that from the enquiry report it would be apparent that the E.O. either deliberately overlooked bonafide aspects and evidences on record or did not know the basic elementary principle of commercial working and it has pained me beyond measure that my worthy DCS fully in the know of the rules and the system of working invogue of G/shed at Gonda shockenal whaton themere finiding of the E.O. and imposed on me a such a harsh punishment when to meet the ends of justice and fair play and also to maintain the sanctity of Adminstrations orders I deserved grant of scot free exonoration.

4. That according to the destribution of work I became extreme busy in my outward booking and removal of already delivered consignments by others and also unloading, Sari P.P. Pathak was the only supervisor in the G/shed who us d to see the position of wagons and check whether loading was being done according to this allotment and registration

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and after the issue of RRs and also to check whether unloading was being done correctly and also entered in the register indicating placement and release of Inward wagons.

5. That the ACS(E) and passed orders as given in writing by SCI/Gonda on 31.10.1981 which read as under:-

1. Shri Mohd. Shafi
2. Shri R.C. Srivastava

As per order of ACS(E) T&O register will be maintained by Shri P.P. Pathak, CGC with immediate effect hence the two T&O registers have been made ~~after~~ over to him today 31.1.81. Allotment of wagons also will be done by him (C&C).

Sd/
SCI/GD
31.10.81

Thus from the above it will be apparent that maintenance of the T&O register and allotment of wagon were in the duty of Shri P.P. Pathak, CGC on 13.12.81 and note on me.

6. That my duties on 13.12.81 were quite clear as I was assigned duty of outward booking and removal and unloading of BO consignment.

7. That as provided under the extent orders before issuing Railway receipt i.e. permitting the party to get his consignment booked and loaded the following mandatory requisite had to be complied with.

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8. According to the mandatory extent orders the restriction messages were being received by Shri P.P.Pathak the only supervisor and he used to enter the same in restriction message register or in case of urgency to get the restriction message noted on the very message by all the GCs or else in the register by all the Goods staff to enable them to know the regidly comply. On 14.12.81 when I came on duty in the morning no restriction message was got noted by me or other goods staff nor made known and this message was received by Shri P.P.Pathak at 12.30 hrs. on 13.12.81 but he did not enter the same in restriction message nor got it noted by goods and staff including my self.

9. That the booking could only have been done by me after obtaining all requisite ~~xxx~~ papers and formalities and satisfying all packing condition and taking into view restriction if any. On 13.12.81 no such consignment came to me duly executed in the forwarding note and so the question of my ~~xxxxxxxxxxxx~~ booking the subject consignment did not at all arise.

10. That in the articles of charge vide item 1 it has been alleged that at about 1/25 hrs. on 13.12.81 one wagon no. SE47209 was found under loading operation of wheat without forwarding note and without registration and vide item 2 it has been alleged that permission by Dy.RMOs permission was necessary in the booking of wheat which was not obtained Sir, when the party did not bring the forwarding note as also the consignment the question

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of obtaining Dy. RMOS permission esides the registration duty devolved on the CGC as per circular cited above so the question of registration and procaring permission of Dy. RMO did not at all arise against me vide item 3 it has been indicated that without placement of wagon and entry in S.N. 76 loading of wheat was found in the wagon. ~~and~~ Sir, allotment of wagon was the duty of the CGC and only after allotment the question of placement of wagon and its entry in S.N. 76 could arise and as such I do not stand liable for this.

11, That vide item 4 it has been alleged that loading was permitted by me on 18.12.81 where as, as per the phonic message no. CC/12/81 dated 17.12.81 issued by COP ~~SS~~/GKP received through CTNL/Gonda at 10 hrs. on 17.12.1981 restriction was imposed to stop BG loading for 4 days except BJU refinery, where from this has been incorporated in the articles of charge against me is not obvious. Sir, maintenance of restriction message register was the exclusively duty of CGC and no such message was recorded by the CGC on 17.12.81 in the aintained by him however as per the records taken after the receipt of the memorandum it was found that the CGC received the message on 18.12.81 at 12.30 hrs. so now about the above message has been alleged against me is not obvious, rather it is a forced derivation against me. Because the allotment of wagon was not done so the allegation of myself having permitted loading of wheat did not at all arise. The CGC who allotted wagons could only permit without my knowledge and the question

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1. In case of wagon load consignment the registration was a must and the C&C was the only person to do registration and allotment of wagons.
2. The staff dealing without-ward booking would see the consignment tendered comply with all the requisite of packing conditions, the forwarding note tendered an agreement between the party and Railway has been correctly filled in and signed and the G.C. on duty at out ward booking would then issue and marking on the consignment and hand over the RR to the party. Besides the placement and release of wagon showing against the entry made in outward S.N.76.
3. That in cases of smalls the party will bring his consignment along with forwarding note and get his consignment booked. The GC working on outward counter will book his consignment and hand over RR to him. The loading by Railway Men will be done after the empty wagon is available at goods shed and proper allotment by GS is done. Thus the loading of consignments booked in small by Railway Men is the last phenomena.
4. In case of wagon load consignment after having been provided allotment and TSO by CGC, the placement etc. were since noted and party signature taken.
5. That on 18.12.1931 I was working at the outward booking and Shri Pateshwari Pd. Pathak was working as CGC at Gonda station and registration of wagon and supervision of the entire G/shed rested solely on him.

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8. According to the mandatory extent orders the restriction messages were being received by Shri P.P.Pathak the only supervisor and he used to enter the same in restriction message register or in case of urgency to get the restriction message noted on the very message by all the GCs or else in the register by all the Goods staff to enable them to know the regidly comply. On 14.12.81 when I came on duty in the morning no restriction message was got noted by me or other goods staff nor made known and this message was received by Shri P.P.Pathak at 12.30 hrs. on 13.12.81 but he did not enter the same in restriction message nor got it noted by goods and staff including my self.

9. That the booking could only have been done by me after obtaining all requisite ~~xxx~~ papers and formalities and satisfying all packing condition and taking into view restriction if any. On 13.12.81 no such consignment came to me duly executed in the forwarding note and so the question of my ~~arrangingxxx~~ booking the subject consignment did not at all arise.

10. That in the articles of charge vide item 1 it has been alleged that at about 1/25 hrs. on 13.12.81 one wagon no. SE47209 was found under loading operation of wheat without forwarding note and without registration and vide item 2 it has been alleged that permission by Dy.RMOs permission was necessary in the booking of wheat which was not obtained Sir, when the party did not bring the forwarding note as also the consignment the question

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of obtaining Dy. RMOS permission esides the registration duty devolved on the CGC as per circular cited above so the question of registration and procaring permission of Dy. RMO did not at all arise against me vide item 3 it has been indicated that without placement of wagon and entry in S.N. 76 loading of wheat was found in the wagon. ~~and~~ Sir, allotment of wagon was the duty of the CGC and only after allotment the question of placement of wagon and its entry in S.N. 76 could arise and as such I do not stand liable for this.

11, That vide item 4 it has been alleged that loading was permitted by me on 18.12.81 where as, as per the phonic message no. CC/12/81 dated 17.12.81 issued by COP S/GKP received through CTNL/Gonda at 10 hrs. on 17.12.1981 restriction was imposed to stop BG loading for 4 days except BJU refinery, where from this has been incorporated in the articles of charge against me is not obvious. Sir, maintenance of restriction message register was the exclusively duty of CGC and no such message was recorded by the CGC on 17.12.81 in the aintained by him however as per the records taken after the receipt of the memorandum it was found that the CGC received the message on 18.12.81 at 12.30 hrs. so now about the above message has been alleged against me is not obvious, rather it is a forced derivation against me. Because the allotment of wagon was not done so the allegation of myself having permitted loading of wheat did not at all arise. The CGC who allotted wagons could only permit without my knowledge and the question

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of having permitted by me did not at all arise.

Sir, the only person to state in this regard was the party who has ~~not~~ where alleged as such in writing obviously because he neither came to me nor permitted by me and so this charge does not at All establish against me.

12. Vide item 5 of the charge it has been stated that at 12.25 hrs on 18.12.81 two lots of 125 bags wheat each 81 bags were found loaded and at 17 hrs. loading was found completed and no RRs were issued nor any entry was found in T30 ~~xxxxxxxxxx~~ -B. Sir, the consignments were not booked by me and T30 was the job of CGC. At about ~~in~~ 12.30 hrs. when myself, CGC were called at the point of loading by the V.I. it could only then come to my knowledge about loading operation and prior to that I had no knowledge and in the proceeding made out in the which loading operation by the party was indicated the CGC signed and I also signed and the VIs also and the party was told by the CGC myself and the VI to the party not to continue loading and also to unload, forbidden and ther after I came back become busy in ~~my~~ my work and at 17 hrs. when again called I went at the place where CGC was already present and the VIs and at that time above position came to my knowledge and on question to the parties representative gy the VIs and the CGC they did not allege any thing against me. Besides the party was so daring that although forbidden at 12.25 hrs. by the VI, CGC and myself and others even then they dared loading and two lots of 250 bags wheat loaded as found at 17 hrs. for which myself a petty Sr. CHC can not in anyway stand blame worthy.

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13. That vide ~~the~~ items it was seen alleged that registration of two lots of wheat 125 bags each lot in the TAO-B for BJU at S.No.75 and 76 were made after blocking by the V1 at 18 hrs. Upto this time no forwarding notice were available thus registration at S.No.75 & 76 were made without forwarding note and subsequently I altered the registration at s.no.76 and ~~engaged~~ changed the destination from BJU to CPR as per forwarding note. Sir, this reveals the lack of commercial knowledge by ~~me~~ the VI. It was not a registration but only entry in TAO-B to item 76 the destination at BJU but when brought for stocking after 4 days indicated in the forwarding note as CPR instead of BJU and so it was then corrected from BJU to CPR. Sir, in this connection I beg to point out that the RRs in this regard were prepared by Sri K.M.Misra Sr.GC and not by myself.

14. Sir, according to the extent system of working and order the smalls when tendered were booked simultaneous to the bringin of the consignment and in this case due to restriction it was booked by Sri K.N.Misra, Sr.GC after the expiry of the restriction.

15. That it is further significant to point out that the VIs were checking good shed since 5- or 6 days before 18.12.61 and on 18.12.61 also they were continuing so sir, can it be believed that I would venture as alleged against me? The obvious reply would be in the negative this charge is thus aforesaid derivation made out by the vigilance.

16. That the CGC Sri P.P.Pathak is very well known for his frauds and defalcations and due to these

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he had been given forced retirement. His saying that loading was permitted by me is totally false and without any authentic record by the party or evidence of the party. In this connection it is worth while pointing out that myself and CGC Sri P.P. Pathak were charge sheeted earlier and penalty for recovery of 11000/- was imposed on Shri P.P. Pathak besides stoppage of increment for two years and myself awarded penalty of stoppage of passag by the A.M./ Gonda and original memorandum and original NIP issued against me were handed over to the E.O. who conducted this DAR enquiry. Because the relevant case file prayed for by me to be procured from Area manager/ GD by the E.O. was not procured and hence I had to submit the originals as aforesaid.

17. That a man cannot be punished twice for the same charge and allegation I had already undergone, the punishment as stated above in this case and again awarded another such a ~~large~~ harsh punishment which is thus a double job-parade and so legally vitiated and not maintainable.

18. Thus it would be apparent that I did not allow loading of wheat so the question of forwarding note, per mission of Dy.R.M.O. without placement, restriction did not at all arise against me. Since the consignment was of small not wagon load so the question of placement did not arise against me.

18. That in the seventh para I have been alleged for ulterior motive but there is no evidence to testify this bogus allegation. I may point out that the

[Signature]

party M/s Khyali Ram Brijendra Kumar happened to be the nearest relation of Shri R.S.P. Kedia, UFTS/GKP and so the party loaded without permission and beside this party has not given any thing in writing against me. This party ventured further loading on that date.

19. That the E.O. already biased against me in her terms to write against me has mentioned me as Goods clerk in charge which is totally false, as at Gonda Shri P.P. Pathak CGC was the only supervisor, and incharge and all the good clerks under him were Sr.G.C. and there were Sr.GCs senior to me also and so it would be totally incorrect to mention me as goods clerk incharge.

20. That the E.O. has mentioned in the enquiry report that the charge contravening rule 3(1)(ii) (failure to maintain devotion to duty) as not proved and 3(1)(i) (failure to maintain absolute integrity) rule 3(1)(iii) (Do nothin which is unbecoming of a railway servant) as proved. Sir, when failure to maintain devotion to duty is not proved so the finding vide (3(1)(i) and ~~4x~~ 3(1)(iii) do not stand at all against me as there is no evidence against my integrity nor doing any thin gwhic his unbecoming of railway servant. Sir, when I did not book the consignme ment so the allegation levelled against me do not at all arise.

21. That during the DAR enquiry Shri P.P. Pathak CGC then working as CG II has clearly admitted that allotment of wagon and maintenance of T30 register were his duty. He has also admitted that maintenance of restriction message register was his duty as

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and as per the extent orders any restriction message received by the CGC was required to be got noted by all the CGs and which continued except in this case because this restriction message was not entered by him in the restriction message register received by him at 12.30 hrs. nor got noted by us on the restriction message egen, however, this occasion to see and enquire could have arisen when the party would have come to enquire could have arisen when the party would have come to me on 18.12.31 with the forwarding note and the consignment but the party did not come to me so no RR was issued by me. I may also point out that at 12.25 hrs. when the VI checked and explained the position there was no allegation forth coming against me and at 17 hrs. at the prompting of others efforts were made to concoct a case against me without any iota of truth.

22. That as indicated above your honour will be satisfied that I do not stand liable for the articles of charges and the statement of imputations and to meet the ends of justice and fair play I deserve grant of scot free exoneration.

Prayer

In the circumstances I am sanguine your honour will be pleased to set aside the penalty appealed against and be pleased to grant me scot free exoneration and for this judicious, sympathetic and kind gestures I shall always remain indebted. I also beg to be heard in person, duly assisted by defence counsel. With best regards,

c.t.c.
Dated 12.1.87 Yours faithfully,
Sd/H.C. Srivastava Goods clerk
/ True copy/ Gonda.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD

Annexure No. XIII

IN

Sri H.C. Srivastava applicant

Versus

Union of India Ministry of
Railways, New Delhi & others

..... Respondents

N.E. Railway

Confidential

No. LD/SSEC/Vig./SA/82

Office of the
Divisional Rly. Manager/
Comml. HR
Lucknow dated 09-4-1987

Shri H.C. Srivastava
GC/GD Through SCI/GD.

Sub: Your appeal dated 12-1-1987 against
the penalty of reduction from the post
of Sr. GC to GC pay of Rs. 280- initial
recruitment grade for a period of 5
years with loss of seniority.

~~In response to your appeal~~

In response to your above appeal and person
al hearing on 2-5-1987, the undersigned has passed
the following orders :-

"I have carefully gone through the enquiry
proceedings and enquiry report of the Inquiry
Officer, observations of the disciplinary authority
(DCS) and the appeal of the appellant. I have
also heard Shri H.C. Srivastava (appellant) in
person alongwith his defence counsel.

I find no reason to disagree with the observations of the disciplinary authority with regard to the negligence and failure on the part of Shri H.C. Srivastava. I feel the punishment given by the disciplinary authority is little more than he deserved. I reduce the punishment, already given i.e. reversion as Goods Clerks in grade of Rs. 975-1540 at pay Rs. 975/- for a period of 5 years with loss of seniority, to a period of only two years.

Sd/- Jainarain
Sr. Divl. Comml. Supdt.
Lucknow.

N10

Copy to:-

- 1) APC/II in office for information and necessary action. The reduction in punishment has been recorded in the 'B' of this employee.
- 2) GM(Vig.)/GKP with ref: to his No. Vig./LJN/82/169.

Sr. Divl. Comml. Supdt./LJN
NE Railway.

_____ c.f.e.
P

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A136

Central Administrative Tribunal Allah.

अभिभाषक पत्र (वकालतनामा)

~~हाईकोर्ट आफ जूडीकेचर ऐट इलाहाबाद~~

Claim Petition. सन १९८७

Harish Chandra Siswaslang

वादी प्रतिवादी

अपीलान्ट

बनाम

Union of Indigo Lovers

वादी प्रतिवादी

रेस्पान्डेन्ट

मैं/हम कि Harish Chandra Siswaslang & Co

c/o M. L. Siswaslang P/O T 232 A Girja Colony

N. E. Railway Gonda.

उपरोक्त प्रकरण में मैं/हम अपनी ओर के पक्ष समर्थन के हेतु

श्री चन्द्रमा प्रसाद श्रीवास्तव एडवोकेट हाईकोर्ट, चैम्बर नं० ५

३५ हाशिमपुर रोड, (चर्च लेन) इलाहाबाद

को कानूनी/निश्चित शुल्क (मेहनताना) नियत करके अपना अभिभाषक वकील (वकील) नियुक्त करता हूँ/करते हैं और (यह स्वीकार करता हूँ/करते हैं कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जीदावा) प्रतिवाद-पत्र (बयान तहरीरी), वाद स्वीकार पत्र, निवाद-पत्र पुनरवलोकन एवं पुनर्निर्णय प्रार्थना पत्र (दरखास्त), शापथिक कथन (हलफनामा) प्रवर्तन पत्र (दरखास्त इजराय), मूजवात अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि एवं लेखादि की प्रतिलिपियां अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक पुष्टीकरण करें और आवश्यक सवाल जबाब करें और लेखादि की प्रतिलिपियां एवं हमारे प्राप्यधन को अपने हस्ताक्षरी पावती देकर प्राप्त करें हमारे ओर से किसी को मध्य पत्र तथा साक्षी (गवाह) मानें और उससे सम्बन्धित प्रार्थना पत्र प्रस्तुत करें तथा उसका समर्थन करें, तथा तस्दीक करें, वाद पत्र उठावें छोड़ें अथवा समझौता करें, तथा मुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना पत्र दाखिल करके उसका समर्थन करें, अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री के भरपाई होने के समय एक स्वतः या संयुक्त करें आवश्यकता होने पर अन्य किसी वकील महोदय को वकील करें।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भाँति हमको/मुझको सर्वथा स्वीकार होगा अगर मैं/हम कानूनी निश्चित शुल्क उक्त सज्जन को न दूँ/दें तो उनको अधिकार होगा कि वह हमारी ओर से मुकदमा की पैरवी न करें। उपरोक्त दशा में सज्जन का कोई उत्तरदायित्व न रहेगा।

अतएव अभिभाषक पत्र लिख दिया कि प्रमाण रूप से समय पर काम आये।

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स्वीकृत है

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD.

Registration No.418 of 1987

Harish Chandra Srivastava.....Petitioner

Versus

Union of India.....Respondents

Written Statement on behalf of the
Respondents Nos.1,2 and 3.

1. That the contents of paragraphs Nos.1 and 2 of the application need no reply.
2. That the contents of paragraph No.3 of the application needs no reply.
3. That the contents of paragraph No.4 of the application are admitted.
4. That the contents of paragraph No.5 of the application are also admitted.
5. That with regard to the contents of paragraph

No.6(1) of the application are admitted to the extent

Ins. 34 20/10
Divisional Comm. Social Superintendence
N. E. Rly. Lucknow

[Signature]

*Recd Copy
PP. Clerk
Is C.P. Srivastava
Advocate
2/9/87*

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2.

that the petitioner was appointed as Goods Clerk (Rs.110-200) by Divisional Personnel Officer). It is wrong to allege that applicant was appointed by Divisional (Commercial) Superintendent. The applicant was transferred to N.E. Railway Junction vide D.P.O. Jodhpur notice No.729-E/4/52 GCS/47 dated 19.8.1967. The applicant was confirmed and promoted as Senior Goods Clerk in the year 1980. The statement that service record of the applicant is unblaimshed is incorrect. The applicant has been awarded a Censor thrice and his increment has been withheld 11 times.

6. That the contents of paragraph No.6(2) of the application are admitted.

7. That with regard to the contents of paragraph No.6(3), the applicant on 30.10.1981 was working in outward Section of the Goods Office at Gonda and was responsible to supervisor the loading of the Goods alongwith accepting the goods for booking.

My
30-10-81
Divisional Commercial Superintendent
N. E. Rly. Lucknow
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8. That with regard to the contents of paragraph No.6(4) of the application, it is admitted that the checking of the wagon should have been done by the Chief Goods Clerk Sri P.P. Pathak. In this particular case, wagon No.SE-47209 was found being loaded with wheat at the time when there was a restriction imposed for booking and loading of wheat. It may be further stated here that wagon No.SE-47209 was found being loaded with the connivance of the applicant there not being any placement order (allotment order) Sri H.C. Srivastava at that time ^{was} working in outward and was responsible to supervise the loading. The loading of wheat in wagon No.SE-47209 against restriction orders shows ^{in negligence} ~~mis-~~chief on the part of Sri H.C. Srivastava for gaining undue profit.

9. That the contents of paragraph No.6(5) of the application are admitted.

10. That with regard to the contents of paragraph No.6(6) of the application, it is stated that the

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applicant made request for inspection of the documents relied upon in the charge-sheet vide application dated 15.9.1983, the applicant was allowed to inspect the documents by orders passed by Divisional Commercial Superintendent N.E. Railway, Lucknow dated 31.12.1983. The true copies of the application dated 15.9.1983 and the order dated 31.12.1983 permitting the applicant to inspect the record are being annexed herewith and are marked as Annexures '1' & '2' to this reply.

11. That the contents of paragraph No.6(7) of the application are emphatically denied. The notice for appointing Miss Meena Shah as Enquiry Officer was sent to the applicant through Sr. Commercial Inspector on 21.7.1984. Thereafter 3 dates of enquiry i.e. 18.8.1984, 18.9.1984 and 1.10.1984 were fixed and due notices were sent to the applicant vide letter No.LD/SS-C/Vig/58/82, dated 24.7.1984, 3.9.1984 and 18.9.1984 respectively. The notices were duly received by the applicant. On none of the aforesaid dates

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Divisional Commercial Superintendent
N. E. Rly. Lucknow

the applicant appeared before the Enquiry Officer nor

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sent any intimation regarding his inability to attend the enquiry. On enquiry, it was found that the applicant was absconding from duty inasmuch as the applicant neither intimated his inability to attend the enquiry nor attended the enquiry on the date fixed. The Enquiry Officer vide letter dated 30.11.1984 fixed 22.12.1984 to proceed ex-parte in the case. On 22.12.1984 the applicant attended enquiry but requested for a copy of Enquiry Officer's nomination orders and also requested for 15 days time for inspection and demanded extracts of relied upon documents. In spite of the fact that applicant's request for inspection of the documents was already granted as back as 31.12.1983 by Divisional Commercial Superintendent, the Enquiry Officer, to do justice in the case, again permitted the applicant to inspect documents by order before 7.1.1985. The allegation that the applicant was permitted by Enquiry Officer to inspect relied upon documents by 3.1.1985 is incorrect. By order dated 22.12.1984, itself

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the Enquiry Officer fixed 11.1.1985 in the case for preliminary hearing, 24.1.1985 and 25.1.1985 for prosecution evidence. The applicant attended enquiry on 11.1.1985 but failed to appear on 24.1.1985 as already fixed inasmuch as the applicant did not appear on 24.1.1985 inspite of the fact that the date was already fixed nor sent any intimation for his inability to attend on this date. Statements of P.Ws Sri G.S. Mishra, U.N. Singh, M.A. Siddiqui and Ramayan Rai were recorded. It is further wrong to allege that the records were not made available to the applicant for inspection. The applicant himself failed to present himself for inspection of the record. The true copies of letter dated 30.11.1984 fixed ⁱⁿ 22.12.1984 by Enquiry Officer, ^{and} a true copy ⁱⁿ of the application dated 22.12.84 filed by applicant praying for inspection of record and copy of the order passed by the Enquiry Officer on the application itself dated 22.12.1984 are being annexed herewith and are marked as Annexures '3' & '4'

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303-24 20/10 this reply.
Divisional Commercial Superintendant
N. E. Rly, Lucknow

7.

12. That in reply to the contents of paragraph No.6(8) of the application are denied. The applicant was permitted to inspect the documents and to take extract, ⁱⁿ vide letter dated 31.12.1983 and again on 22.12.1984 (Annexures '2' & '4'). The applicant himself failed to inspect the documents and take extract for adopting delaying tactics.

13. That the contents of paragraph No.6(9) and (10) of the application are not admitted. The application dated 10.1.1985 was filed by the applicant only to delay the enquiry proceedings. The charges in respect of loading of wheat in smalls in wagon No.19329 and 57782 are quite different, separate and independent than charges relating to loading of wheat in wagon No.47209 and the allegation that applicant is being punished twice for the same charge is totally wrong and incorrect. During preventive check conducted by Investigating Inspectors of Vigilance Special Squad at Gonda, the loading of wagon no.47209 (wheat was found under operation of loading on 18.12.1981 without

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forwarding Note and without registration. Permission by the Dy. R.M.O. was necessary in the case of booking of wheat which was not obtained and loading was permitted against the Civil restriction by Shri Srivestava. A Charge Memorandum dated 23.9.1932 was accordingly given to him and after providing him full reasonable opportunity, he was reverted from the post of Sr. G.C. to the post of Goods Clerk (260-430) on a pay of Rs.260/- for a period of 5 years under loss of seniority. On appeal, period of reversion was reduced to 2 years. A true copy of the charges pertaining to wagon No.19329 and 57782 is being annexed to this reply are being annexed herewith and are marked as Annexure '5' to this reply.

14. That the contents of paragraph No.6(11) of the application are denied. It is admitted that Sri P.P. Pathak, Chief Goods Clerk was punished in respect of Enquiry regarding loading of wagon No.19239 and 57782.

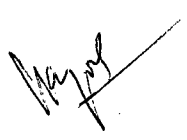
Rest allegations are denied.

May 28 1932
DIVISIONAL COMMERCIAL SUPERINTENDENT
S. Aly. Enquiry

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15. That the contents of paragraph No.6(12) of the application are emphatically denied. The applicant was afforded sufficient opportunity to defend his case. There was no question of proceeding enquiry in a mala-fide manner against the applicant in respect of loading of wheat in wagon No.47209, irregularity with regard to which was deducted by Investigating Inspector of Vigilance Special Squad during the preventive check. It is apparent from the charges that the charges against the applicant were serious in nature.

16. That the contents of paragraph No.6(13) of the application are not admitted. The petitioner deliberately did not inspect the documents as permitted by orders dated 31.12.1983 and 22.12.1984 and failed to appear before Enquiry Officer on 24.1.1985 and 25.1.1985. The applicant also did not send any intimation regarding his inability to attend the enquiry on 24.1.1985. Accordingly statement of prosecution witnesses were recorded. There is no letter dated 13.2.85



10.

on the record and it is for the applicant to prove the letter dated 13.2.1985 by producing of original of the letter in the Court. It is wrong to allege that the Enquiry Officer was biased against the applicant in any manner. The applicant was given fullest opportunity to defend his case and he all the time avoided the enquiry. It is wrong to allege that the Enquiry Officer at no time impressed upon the Divisional Medical Officer, Gonda not be allow the applicant to report sick. However, it is admitted that in view of the fact that the applicant has avoided enquiry, the matter was brought to the notice of Sr. Divisional Commercial Superintendent and as such Station Superintendent Gonda was directed by Assistant Commercial Superintendent to inform the applicant about the date fixed in the case, i.e. 22/23.9.1985, and to appear in the enquiry. It is wrong to allege that the applicant was not informed of the dates fixed for enquiry i.e. 18.8.1984^{18.8.84^h} and 1.10.1984 (wrongly written

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as 10.1.1984 in application). The applicant deliberately been not appeared on the aforesaid dates and appeared when the Enquiry Officer by her letter dated 30.11.1984 decided ^{to} ~~be~~ proceed exparte in the enquiry.

17. That the contents of paragraph No.6(14) of the application does not relate to the answering respondent as such need no reply from them. There is no evidence on record to prove that the applicant however ~~not~~ ^{not} Enquiry Officer when the incident took place as alleged in paragraph under reply.

18. That the contents of paragraph No.6(15) of the application are denied. 22.2.1985 and 23.2.1985 were fixed for recording evidence of remaining prosecution witnesses and cross examination of all the P.Ws. by applicant. The applicant did not appear before Enquiry Officer either on 22.2.1985 ^{on on} and 23.2.1985. The applicant attended enquiries on 11.3.1985 at his own ^{record} to inform that he was spared from Gonda to attend the enquiry on 22.2.1985 but could not attend as he fell ill and was

12.

date for enquiry was fixed on 10.5.1985 and not 20.6.1985 as alleged. The applicant did not appear in enquiry even on 10.5.1985, ^hafter 10.5.1985, 21.6.1985 and 22.6.1985 were fixed but on 21.6.1985 Sri Srivastava attended enquiry but instead of cross examining the witnesses, he requested for relied upon documents and their inspection and the request was disallowed by the Enquiry Officer in view of the fact that he was already ^htwice given opportunity ^hto inspect the record. The true copies of the application dated 11.3.1986 and the copy of application 21.6.1985 are being annexed herewith and are marked as Annexures '6' & '7' to this reply. It is apparent from letter dated 21.6.1985 that the applicant never asked for change of the defence counsel but had asked for inspection of the record which prayer was rejected by Enquiry Officer.

19. That the contents of paragraph No.6(16) of the application are not admitted. It is submitted that the enquiry was first started on 18.8.1984. The applicant did not attend and neither sent any intimation.

DIVISIONAL Commercial Superintendent:

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Next date was fixed on 1.10.1984. He did not turn up nor sent any information. Next chance was given for 22.12.1984. The applicant represented himself but said that he has not inspected the Relied Upon Documents 3.1.85 was fixed for inspection of documents 11.1.1985 for preliminary hearing, 24.1.1985 and 25.1.1985 for evidence of prosecution witnesses.

On 11.1.1985 the applicant turned up. Admission/Denial of relied upon documents was completed on 24.1.1985 and 25.1.1985. The applicant did not turn up, nor sent any intimation. After availing so many chances the applicant on 21.6.85 submitted an application asking for supply of copies of relied upon documents. The nomination of defence counsel, the consent of which was given on 29.5.85 was submitted on 21.6.1985 by applicant. On 10.5.85 the petitioner had asked for ^{one} the week's time for submission of the name of the defence counsel which

he did not do.

Also

14.

In view of so many chances having been afforded to the petitioner he was asked by Enquiry Officer to cross examine the P.Ws. At this stage he volunteered to cross examine the P.W. Sri M.A. Siddiquie and Sri P.P. Pathak and Sri G.S. Mishra. The other P.Ws. did not turn up. Hence prosecution case was closed. Rest allegations are denied. The applicant was asked to give statement inasmuch as the other prosecution witnesses did not turn up for cross examination. The statement of the witnesses who did not turn up for cross examination has not been relied upon while recording finding against the applicant or imposing punishment upon him. The statement of the applicant was directed to be taken on 11.7.1985 after cross examining the evidence of prosecution on 22.6.1985.

20. That the contents of paragraph No. 6(17) of the application are not admitted in the manner in which they have been mentioned. The application filed

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by the applicant dated 11.7.1985 to change Enquiry Officer on account of alleged biased was considered by the competent authority namely A.D.R.M. who after careful consideration of the enquiry proceedings found that the allegation of bias were baseless and rejected the application of the applicant.

21. That the contents of paragraph No.6(18) of the application are denied. Although the applicant was directed to inspect the relied upon documents and obtain copy thereof ^{in two} on earlier occasions by enquiry officer, the enquiry officer to give one more opportunity to the applicant by permitted the applicant to obtain copies of relied upon documents from Enquiry Officer.

^{in reply to}
22. That the contents of paragraph No.6(19) of the application, it is admitted by the applicant himself that some of documents were inspected by him on 11.1.1985 with regard to which there is no proceeding before Enquiry Officer on 30.1.1986. However, on

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30.1.1986 the applicant gave an application for supply of certain additional documents. On the application dated 30.1.1986 the applicant was directed by Enquiry Officer by letter dated 2.5.1986 to inspect and take extracts of all the available additional documents as desired by application dated 30.1.1986. The documents had to be inspected and an extract taken by the applicant by 12.5.1986. A true copy of the letter dated 2.5.1986 sent to applicant by Enquiry Officer is being annexed herewith and is marked as Annexure '8' to this reply.

23. That the contents of paragraph Nos.6(20) of the application are not admitted. The documents as mentioned in paragraph under reply were asked for by the applicant by application dated 11.3.1986 and not dated 11.4.1986 as alleged. The documents as asked by letter dated 11.3.1986 were not relevant documents for the purposes of case and hence the application was rejected by the Enquiry Officer. It

Mr 534278
Divisional Commercial Superintendent
N. B. Rly, Lucknow

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17.

is wrong to allege that any person particularly Sri P.P. Pathak or Sri Mohd. Shafi were biased against the petitioner.

24. That the contents of paragraph No.6(21) of the application are emphatically denied. The applicant was afforded reasonable opportunity to defend himself.

25. That the contents of paragraph No.6(22) of the application are denied. The applicant was given a copy of the Enquiry Officer's Report alongwith the notice of imposition of penalty dated 25.11.86 (Annexure No.11 to the application).

27. That the contents of paragraph No.6(24) of the application are not admitted. The applicant is not entitled to file any objection against the report of the Enquiry Officer. The report of the Enquiry Officer was considered by Disciplinary Authority before awarding punishment. It is wrong to allege that disciplinary authority did not apply its own mind.

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18.

28. That the contents of paragraph No.6(25) of the application is not denied.

29. That the contents of paragraph No.6(26) of the application are not admitted.

30. That with regard to the contents of paragraph No.6(27) of the application, only this much is admitted that the petitioner on 18.12.1981 was working in the outward counter i.e. to receive forwarding note to accept the goods and prepare Railway Receipts. The wagons No.47209 was found being loaded on 12.2.85 and was found completed at 17.00 hrs. The loading was being done with the consent of the applicant there being no placement order. The applicant failed to detect loading of wheat bags in the wagon without forwarding note and without placement order of the wagons was deliberate ^{negligence} ~~mis-chieve~~ on the part of the applicant. It is apparent from the Enquiry Officer's Report that registration of the wagons was done by the applicant

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In 5-24-2010
Divisional Commercial Superintendent
N. E. Rly, Lucknow

on his own accord to favour the party. The Enquiry

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Officer after considering the entire evidence has recorded in the finding that the applicant had allowed loading of wheat bags in wagon No. SE-~~4~~47209 without forwarding note, without permission by Dy. R.M.O. without registration, without booking and against the operating restrictions.

31. That the contents of paragraph No.6(28) of the application are admitted.

32. That the contents of paragraph No.6(29) of the application are mis-conceived as well as irrelevant.

The applicant has been held responsible for loading of other two wagons No. ER~~2~~-19329 and CRC 57782. The applicant has further been found to be guilty with regard to the loading of wheat in wagon No. SE-47209.

The applicant has been punished in the present case for his lapses only. It is wrong to allege that the finding of the Enquiry Officer, Disciplinary Authority

and appellate authority are perverse in any manner.

33. That the contents of paragraph Nos. ⁶(30) and 6 (31) of the application are denied. The Enquiry Officer after holding detailed enquiry and giving full opportunity to the applicant to defend his case and consider the entire evidence brought on the record has recorded in the finding that the wagon No. SE-47209 was being loaded with wheat bags without forwarding notes and Railway receipts and placement order against the restriction in connivance with the applicant.

34. That the contents of paragraph No. 6(32) of the application are not denied.

35. That the contents of paragraph Nos. 6(33) of the application are denied. The applicant has been punished inasmuch as he was found guilty of serious negligence, mis-conduct.

36. That the contents of paragraph No. 6(34) of the application are denied. The correct facts in this regard have already been mentioned in preceeding paragraph as such needs no reply.

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21.

37. That the contents of paragraph No.6(35) of the application are denied. It is wrong to allege that the Enquiry Officer was biased against the applicant in any manner.

38. That the contents of paragraph No.6(36) of the application are denied.

39. That the contents of paragraph No.6(37) of the application are denied. There are no grounds for challenging the impugned orders.

40. That the contents of paragraph No.7 of the application are denied, the applicant is not entitled for any relief.

41. That with regard to the contents of paragraph No.8 of the application, the interim relief has already been rejected by this Hon'ble Tribunal by order dated 23.6.1987 and as such need no reply.

42. That the contents of paragraph No.9 of the application are denied.

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43. That the contents of paragraph Nos. 10, 11, 12 and 13 of the application need no reply.

I, O. P. Gupta son of Shri. Ram Bhajan Gupta
aged about 52 years, working as Di. Col. Comm. Supd.
in the office of DRM, NER, Lucknow R/O S. D.
Bandar Bagh Rly Colony ^{Lucknow} do hereby verify that
the contents of paras 1 to 43 are ~~true~~ ^{39 are based on records believed} on legal advice
to be true and paras 40 to 43 are based on legal advice
and that I have not suppressed any material fact.

Place: Lucknow

Date: 11.8.87

^{May}
In 5-57-210
Signature of the Applicant.
Divisional Commercial Superintendant
N. B. Rly, Lucknow
Signature of the Advocate.

May

A15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD.

Annexure (p)

IN

Registration No. 418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava--- - - - - Applicant

Versus

Union of India and others--- - - - - Opposite-Parties.

To,

The DRM(c)
N.E. Railway
Lucknow.

Through : The Station Master
Munderwa.

Reg: Charge memorandum No. LD/SS-C/Vig/58/82 Dt. 23/9/82
received by me on 7.8.83.

With due regards I beg to say that the allegations brought out against me vide above charge memorandum are not correct and I totally deny them.

Further I beg to submit that copies of documents as mentioned in annexure-III have not been given to me to enable me to throw mere light on the allegations to prove that they are not correct.

7/8/83
भारत सरकार
लोकसचिव, नया दिल्ली

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-2-

Therefore it is requested to kindly
allow me to inspect and to take extracts of the
above documents by which the article of charges
are framed against me along with my defence
council and oblige.

Your's faithfully

Harish Chandra Srivastava,
Sr.GC/AND.

Dt: 15.9.83

True Copy.

....

म.प्र.स.प्र.स.
अध्यक्ष बाणेश्वर अर्वाचार्य
मुंबई, महाराष्ट्र

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD.

....

Annexure (2)

IN

Registration No. 418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava-----Applicant.

Versus.

Union of India and others-----Opposite Parties.

N.E. Rly.

Divisional Officer

Lucknow.

No.LD/SS-C/Vig./58/82

Dated: 31.12.83

Sri H.C. Srivastava,

Sr. GC/MND.

Through : SCI/ GIP (W)

Ref: Your applications dt. 15.9.83.

In ref. to your above applications, you/are hereby permitted to inspect/take extracts of all documents as listed in ann.III to the chargememo issued to you in the office of GM (Vigilance) Gorakhpur on any working day.

महोदय श्री
प्रादेशिक विभाग
लखनऊ

Please, therefore, inspect the documents and submit your defence within 10 days time failing it will be presumed that you have no defence to offer and the case will be decided on its merit.

Please acknowledge receipt.

Sd./-

(J. Lal)

Divl. Commr./Supdt./LW

NW.

Copy to G.M./Vig./Gup in ref. to his case no.82/169 for info. and n/action. Names of EO to be nominated in this case may please be intimated early to avoid delay.

Sd./-

O/C Divl. Commr. Supdt.

Lucknow.

7/3/34
अपडल वापिस अर्थात्
प्रतिवेद लेखी, नरहर

TRUE COPY

163

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD.

Annexure (3)

IN

Registration No.418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava- - - - -Applicant.

Versus

Union of India and others- - - - -Opposite parties.

.....

N.E. Rly.

Office of the General Manager,
Gorakhpur.

Dated-30.11.84

No.LD/BS-C/Vig/58/82

Shri H.C. Srivastava,
Sr. G.C./Munderwa.

Sub:- DAR enquiry against Shri H.C.Srivastava,
Sr. G.C.

....

Ref:- Charge memorandum of even No. dt.23.9.82
issued against you by DGS/Lucknow.

....

Three dates of enquiry i.e. 18.8.84, 18.9.84
and 1.10.84 in the above case were fixed and due notices
were sent to you vide letters of even No. dated 24.7.84,

अपकल वाकिज्य अधीक्षक
पुणेचेर रेकॉर्ड, लखनऊ

3.9.84 and 18.9.84. On none of these dates you appeared before the enquiry nor sent any intimation regarding your inability to attend the enquiry.

DGS/Lucknow vide his letter of even No. dated 29.9.84 has informed that you are absconding from duty.

Under the circumstances I have decided to hold enquiry ex-parte and have fixed 22.12.84 as the next date of enquiry for recording of evidence of witnesses to be held in the Officers Rest House at Lucknow.

You are, therefore, required to attend the enquiry on the date and place fixed at 10.30 hours.

Sd./-

30.11.84
(Miss Meena Shah)

Enquiry Officer/DA.

Copy to D.C.S./Lucknow alongwith 3 copies of the above notice (one for being pasted at the last place of Sri H.C. Srivastava's place of working in presence of two supervisors and a certificate to this effect be sent to the undersigned. The other copy may be sent to his home address under registered cover ack. due and the 3rd copy be sent to his temporary place of residence. All the above formalities may please be completed and this office informed accordingly so that ex-parte proceedings be started against the charged employee.

Encl:-3

O/C
Sd./-Illegible
30.11.

Sd./-
Enquiry Officer/DA
30.11.84

अध्यापक विभाग
लखनऊ

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD.

....

Annexure (2)

IN

Registration No.418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava- - - - -Applicant.

Versus.

Union of India and others- - - - -Opposite parties.

To,

The Enquiry Officer
N.E. Railway
Gorakhpur at (LKO)

Madam,

Reg: LD/SS-C/Vig/58/82Dt. 23.9.82

As I have not received any notice for fixing
enquiry officer in this case as well for inspection of
documents so for I may very kindly be allowed 15 days
time for inspecting and taking the copy of R.V.D. with
my defence counsel and oblige.

Yours faithfully

Sd./- Harish Chandra Srivastava
Sr. SG/GD
Dt. 22.12.84

Mr. S. S. 27
अपक्षल वाकिज्य नृपुनल
पुनोत्तर देलवे. ललललल

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166

- 2 -

1. Request allowed.
2. Inspection of documents must be completed by or before 7.1.85.
3. 11.1.85 is fixed for P.H. at L.K.O.
4. 24.1.85 & 25.1.85 fixed for P.E.

Sd./- Illegible

22.12.84

In-5-3
अध्यक्ष वरिष्ठ
पुणेसर नेमवे. नि. ३

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD.

.....

Annexure (5)

IN .

Registration No. 418 of 1987

(District Gorakhpur).

Harish Chandra Srivastava- - - - -App-licant.

Versus.

Union of India and others- - - - -Opposite-Parties.

...

Charges

Shri H.C. Srivastava, Sr. GC/Gonda is charged for neglect of duty and careless working having mal intention.

Statement of While working as Sr. GC on outward counter Imputation
~~xxxxxx~~

in BG Shed/ Gonda on 18/12/81 Sri H.C. Srivastava managed to lead wagon No. ERC 19329 (22.4) and CRC 57782 (22.4) with wheat for booking as smalls when offered by M/s. Khayali Ram Lachhman Pd. of Gonda inface of message No.T/221/NE/784 of 17.12.81 issued from DRM(O) LUN when leading loading in BG wons was restricted and RR could not be issued in back dates as RR

24.5.2024
अपडल नमिन्तय
पुनोत्तर

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B91
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- 2 -

back was under the custody of

2.

Vigilance party and in order to regularise this managed irregular leading Kachha Seal was provided.

3.

All these amounts neglect of duty, careless working having mal intention on part of Sri H.C. Srivastava.

Sd./-

Area Manager

Gonda.

TRUE COPY

In 5-24
अपक्षल वाणिज्यिक
प्रबोधिद गेनले. लःवतः

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH.

Annexure (6)

IN

Registration No. 418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava-- - - - - Applicant

Versus

Union of India and others-- - - - - Opposite-Parties.

To,

The Enquiry Officer,
N.E.Railway,
GORAKHPUR.

Madam,

Reg: LD/SS/Vig/58/82 Enquiry fixed

on 22/85 & 23.2.85

2

at Lucknow.

In connection with the above enquiry I was spared from Gonda but suddenly I felt ill and I was under the treatment of DMO of ASPT. The sick certificate was handed over to ^{G.S.}~~SSC~~/Gonda on 22.2.85.

Now I have been spared by ^{G.S.}~~SSC~~/Cd. to see you at Gorakhpur accordingly I am present here today I was also present on 6/3/85 at Gorakhpur in your Office.

In-7.27
27/2/85
मध्यमल वाणिज्य प्रशासक
पुणेकर रेलवे, लखनऊ

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170

-2-

Therefore it is prayed to kindly fix
an other Date for cross examination of PWS
who have been examined in my absence. My defence
counsel will be Sri R.S.Awasthi SWI/LJN whose
consent will be submitted shortly along with
the records to be inspected, by me shortly.

Your's faithfully

H.C.Srivastava

Dt: 11/3/85

SrGC/GD
at Gorakhpur.

True Copy:

.....

Ms. 234
मध्यम वर्ग के निवासी
पुर्वोत्तर रेलवे, कलकत्ता

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171

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
A T ALLAHABAD

.....
Annexure (7)

IN

Registration No. 418 of 1987
(District Gorakhpur)

Harish Chandra Srivastava- - - - -Applicant.

Versus

Union of India and others- - - - -Opposite-Parties.

....

The Enquiry Officer
N.E. Railway
Gorakhpur
at Lucknow.

Reg: Case No. LD/SS-C/Vig/58/82

Madam,

While submitting the consent of Sri Y.N. Shukla
SWI/GD to function as defence counsel in my case I would
request you to kindly arrange the supply of copies of
R.W. documents as per rules & also manage for inspection
of the relevent document alongwith my defence counsel.

Thanking you.

Yours faithfully

Sd./-Harish Chandra Srivastava
Sr. GD/GD
Dt. 21.6.85
at LJN.

dis -
Request ~~also~~ allowed
in view of so many chances
already having been given to him
He can cross examine the PWS if he so wants today.

Sd./- Illegible
21.6.85 E.O.

In 1.7.85
अवगत बाधित
पुनर्निर्देश देकर

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALIAHABAD.

ANNEXURE (8)

IN

Registration No. 418 of 1987

(District Gorakhpur)

Harish Chandra Srivastava-- -- -- Applicant

Versus

Union of India and others-- -- -- Opposite-Parties.

N.E.Railway

Confidential

Office of G.N.(Whig lance)
Gorakhpur:

No. 2/13/Mg/DAR/EODA/Pt.I Dated 1.5.1986

2

Shri H.C.Srivastava
Sr.G.C.
GONDA.

Sub: DAR action against Shri H.C.Srivastava
Sr.GC/Gonda.

You can inspect and take extracts of the available
additional documents^{on} 12.5.86 at Officers' Rest House.
Lucknow. You are also required to submit your defence
statement under rule 9(19) at Lucknow on 19.5.86.

Sd/-
ENQUIRY OFFICER/HQ.

7m-3274
अपडल वारिज्य
मुसोचर देवे, लखनऊ

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-2-

Copy to GS/Gonda for information. He is requested to spare Shri H.C.Srivastava, Sr. CC/GD, so as to enable him to inspect the documents on 12.5.86 and to submit defence statement under rule 9(19) at Lucknow on 13.5.1986.

Copy to DSC/NE Railway Lucknow for information and necessary action.

Copy to ~~xxx~~ Sr. DPD/N.E. Railway Lucknow. The Defence Counsel of Shri Srivastava is Y.N. Shukla, Sr. WGI/Gonda. He is requested to spare Shri Y.N. Shukla, Sr. W.C./Gonda- for the above purpose on 12.5.1986 and 19.5.1986.

Sd/- Illegible
ENQUIRY OFFICER/HQ

7/11/86
Divisional Commercial Superintendent
N. E. Rly, Lucknow

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD.

REGISTRATION NO. 418 of 1987

Harish Chandra Srivastava ..

..Applicant

Versus

Union of India & others ..

.. Respondents.

Written reply on behalf of Mps. Meena Sah
opposite party no.4

1. That the answering opposite party by this written reply is filing reply only to those paragraphs, which concern the answering opposite party.
2. That the contents of paragraph 13 of application are denied. The facts mentioned in paragraph under reply are totally baseless and fabricated with the intention to malign the Enquiry Officer. The statements of prosecution witnesses were recorded on 24.1.1985 and 25.1.1985 and the copies of these statements were made available to him on 11.3.1985 because on

Handwritten signature
जांच अधिकारी (न्यायिकता)
इंजीनियर रेलवे
गोरखपुर

Handwritten signature

24.1.1985 and 25.1.1985, the charged employee had remained absent from the enquiry without any intimation even though he was in the knowledge of these dates on 11.1.1985, as has been recorded in the order sheet which bears his signatures as well. The absence on 24.1.1985 and 25.1.1985 also appeared to be intentional because on 11.1.1985, the petitioner submitted a copy of a letter addressed to D.R.M. (Commercial) Lucknow, requesting the Enquiry Officer to postpone the enquiry till definite orders were received from the Divisional Railway Manager N.E. Railway Lucknow. In the said letter the petitioner has stated that the subject charge sheet is illegal, unconstitutional and biased. No cognizance of this letter was taken by the Enquiry Officer and it was decided to proceed with the inquiry as it is not the jurisdiction of the E.O. to question the authority of the Disciplinary Authority regarding issue of the charge sheet and as to why the charges have been levelled against any person.

Forwarded
सांच अधिकारी (सतकता)
इवीस रेलवे
गोरखपुर

Myself

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- 3 -

Moreover the Enquiry Officer had no orders to postpone or stop the proceedings of the enquiry either from the Disciplinary Authority or any other competent authority empowered to pass such orders. There is no provision in DAR 1968 for any charged employee to ask the Enquiry Officer to stop the proceedings because in the opinion of the charged employee's, the charges are biased etc. This will go to show that the employee was adopting the deleying tactics and avoiding the enquiry. The allegation about impressing upon the Doctor not to issue sick certificate to the petitioner is totally false as no such letter has ever been issued to any Doctor by the Enquiry Officer. Moreover, it is not even the jurisdiction of the Enquiry Officer to get into any such correspondence with any medical authority. So far as the receipt of the notice for attending the enquiry is concerned, it is the job of the Enquiry Officer to issue such notices and have them despatched to the charged employee, his immediate supervisor Controlling Officer etc which has been done in this case.

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जाच अधिकारी (सतकना)
हार्डकर रेलवे
नोरहपूर

[Handwritten signature]

It is the job of the Supervisor/Disciplinary authority to have the notices served for the enquiry purposes. It is further pointed out that on 18.8.1984, 18.9.84 and 1.10.1984, when the petitioner did not turn up and it was presumed that he did not get the notice even then it has no effect on the case because two further chance were given and the first step of the enquiry proceeding i.e. preliminary hearing was conducted on 11.1.1985, which the petitioner attended. After 1.10.84, 22.12.84, was fixed when the petitioner attended and requested for time on account of various reasons. As a result of this 11.1.1985 was fixed for preliminary hearing.

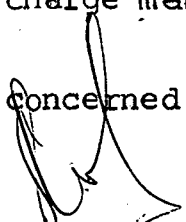
3. That the contents of paragraph 14 of the application are denied. As already mentioned in the preceding paragraph, there has been no letter dated 13.2.85 or any date for that to any of the medical authorities. As such it is absolutely false baseless and misconceived to say that on receipt of that letter, the applicant met the undersigned and faced a flow of abusive and

Amel

[Signature]
मुख्य कार्य (सिस्टम)
नवीन रेलवे
नोरपूर

unparliamentary language from her alongwith the threat of maximum punishment. In this connection, it is submitted that the quantum of punishment, letting off of the charged employee by the Disciplinary Authority when the charges are proved by the Enquiry Officer or even if the charges are not proved, holding him guilty and thereby not agreeing with the report of the Enquiry is the prerogative of the disciplinary authority. As such the question of the Enquiry Officer's infiltrating in the zone of the disciplinary authority, does not arise.

4. That the contents of paragraph 18 of the application are denied. The allegation that he was not allowed, the copies of papers demanded by him is totally incorrect, false and baseless too. Joint proceedings drawn on 18.12.81, were shown to the applicant. He could have taken the extract if he so desired. The relied upon documents from 2 to 5 as mentioned in the charge memorandum, could be seen by the charged employee concerned on any date upto 4.7.1985 as these were to be



जॉच अधिकारी (संवेकता)
इंजीनर रेलवे
गोरखपुर

collected from Station Supdt./Gonda, i.e. place of his duty. As regards other documents (additional), the relevance thereof was ~~considered~~ and dis-allowed by the Enquiry Officer, ^{as} they were considered irrelevant for the subject case. The applicant did not inspect the documents till 15.11.85 (even after nearly 4 months) hence it was decided not to give any further chance on this account. As far as the question of making him available the copies of statements of prosecution witnesses is concerned, the matter has already been replied in the preceding para wherein it has been mentioned that the same have been made available to him under his clear signatures. The cross examination of S/Shri M.A.Siddiqui was done on 21-6-85, and that of S/Shri P.P.Pathak and G.S.Misra, on 22.6.1985. The copies of statments recorded on 24.1.1985 and 25.1.1985 were given to the applicant on 11.3.1985 as on 24.1.1985 & 25.1.1985 he absented himself from the enquiry and as such it is false to mention that he had to cross examine in absence of their statements etc. The petitioner had also moved an application of bias against the Enquiry

मान अधिकारी (सितकता)
द्वारा रेलवे
नोरखपर

Officer. The case was remitted back to the Enquiry Officer by the appropriate Reviewing Authority by turning down the application of bias of the applicant.

I Miss Meena Shah aged about 50 yrs
D/O E.A. Shah working as Enquiry Officer
in the office of General Manager (Vig.) N.E. Railway
Gorakhpur do hereby verify that the contents of paragraph
nos 1 of this written reply are true to my personal
knowledge, and those ^पparas from 2 to 4 are based on
records which are believed to be true. ^{No} Part of it is
false and nothing has been concealed in it. So help her God.

Verified this 20th day of November, 1987.

Dated:

20/11/87

(Signature of the Dependent) (संतकता)

Place:

Gorakhpur

(Signature of the counsel)

वर्गोत्तर रेलवे
गोरखपुर

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Sh
20/12/88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD.

REGISTRATION NO.418 of 1987

Harish Chandra Srivastava - - - - -Applicant

Versus

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

Rejoinder statement on behalf of

Harish Chandra Srivastava,

Applicant.

1. That the written statement filed on behalf of the Respondents nos.1,2 and 3 (hereinafter referred to as the written statement) have been read over and explained to the deponent and he has fully understood the same.

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2. That the contents of paras nos.1,2,3 and 4 of the written statement filed on behalf of the respondents nos.1,2 and 3 (hereinafter referred to as the written statement) need no reply.

3. That the contents of para no.5 of the written statement are denied in the form stated and that of para no.6(1) of the application are reiterated. The denial regarding the appointment of the applicant is wrong. The applicant was selected as Goods Clerk by the Railway Service Commission, Northern Railway, Allahabad in 1962. After selection the names of the selected candidates for the posts of the Goods clerk including that of the applicant was approved by the Chief Commercial Superintendent, Northern Railway, Hd.Qrs.Office, Baroda House, New Delhi, which was communicated to various

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Divisional Commercial Superintendents of the Northern Railway and thereafter the selected candidates including the applicant for the posts of Goods Clerk were appointed in various Divisions of the Northern Railway. On mutual transfer the applicant joined the Northern Eastern Railway (hereinafter referred to as N.E.Rly.), therefore, the notice dated 19.8.1967 of the Divl. Personnel Officer, Jodhpur is not the appointment letter of the applicant as goods clerk. It is relevant to state here that the appointing authority of the goods clerk in N.E.Rly. is also the Chief Commercial Superintendent, N.E.Rly. Gorakhpur. The alleged punishment was by way of harassment of the applicant only after 1981 when the applicant was implicated falsely in the present case, out of which, this present application has arisen.

4. That the contents of para no. 6x of the written statement need no reply.

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-4-

5. That the contents of para no.7 of the written statement are denied in the form stated and that of para no.6(3) of the application are reiterated. It is incorrect to say that the applicant was responsible to supervise the loading of the goods alongwith accepting the goods for booking. As stated in para no.6(3) of the application, the duty of the applicant was to see goods for booking alongwith forwarding note for preparation of the Railway receipt.

6. That the contents of para no.8 of the written statement are denied in the form stated and that of para no.6(4) of the application are reiterated. It is false to allege that the wagon No.SB-47209 was found being loaded with the connivance of the applicant. As stated earlier the applicant was not responsible to supervise loading. It is also incorrect to

*Not Attested
Subscribed
for.*

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allege that the loading of wheat in the
aforesaid wagon was against restriction showed
negligence on the part of the applicant for
gaining undue profit. It is stated that the
applicant had nothing to do with the loading
of wheat in the aforesaid wagon and in fact
he was neither loading nor he was supervising
loading of the wheat in the aforesaid wagon. The
allegation that there was negligence on the part
of the applicant for gaining undue profit is
totally false, baseless and without any foundation.
The applicant has not gained any undue profit,
at any time during the entire period of his
service nor he gained any undue profit regarding
the loading of wheat in the aforesaid wagon.

Alleged
Sumit
for

7. That in reply to the contents of para no.9
of the written statement and that of para no.6(5)
of the application are reiterated.

✓

-6-

8. That the contents of para no.10 of the written statement are denied in the form stated and that of para no.6(6) of the application are reiterated. The alleged letter of the Divl. Comml. Superintendent, N.E.Rly. Lucknow dated 31.12.1983 was neither served on the applicant nor he received the same. It is relevant to state that it has not been stated that the alleged letter dated 31.12.1983 was either served or sent to the applicant. Therefore, the same is of no consequence and is liable to be ignored.

9. That the contents of para no.11 of the written statement are denied and that of para no.6(7) of the application are reiterated. It is incorrect to say that the notice for appointing Miss.Meena Shah as Enquiry Officer was sent to the applicant through Sr. Commercial Inspector on 21.7.1984. The applicant did not receive any such letter neither any copy

Attended
Fixed
Jm

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of any such letter has been annexed or filed in the present case. It is also incorrect to say that thereafter 3 dates of Enquiry i.e. 18.8.1984, 18.9.1984 and 1.10.1984 were fixed and due notices were sent to the applicant by the letter No. LD/SS-C/ ^{sig.} 24./58/82 dated 24.7.1984, 3.9.1984 and 18.9.1984.

The applicant did not receive any notice regarding any of the dates of hearing mentioned in paragraph under reply. The applicant also did not receive the aforesaid letter. Moreover, one letter cannot bear 3 different dates. It is false to state that the notices were duly received by the applicant. It is relevant to state that it has not been stated as to who had sent those notices and the letter and by what mode. Moreover, it has also not been stated as to on what date the said notices were received by the applicant nor those notices bearing the endorsement or receipt of the applicant have been filed alongwith the written statement or otherwise. As the applicant was not

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informed of any of the aforesaid dates and therefore, there was no question of appearing before the Enquiry Officer or sending intimation regarding his inability to attend the Enquiry. It is false to state that on enquiry it was found that the applicant was absconding from duty. It has not been stated as to who made enquiry and how and from whom. These allegations have been made only for the purpose of the case. The applicant was regularly attending his duties in the office during those days and the allegation of absconding is totally false, baseless and without any foundation. So far as ex parte order is concerned, it is relevant to state that the last date of alleged hearing as stated in para no.11 of the written statement was 1.10.1984 but no order for ex parte proceedings alleged to have been passed on that date. Therefore, the alleged letter dated 30.11.1984 fixing 22.12.1984 for proceedings ex parte in the case is wholly

Attested
Signature
Am.

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illegal, arbitrary and unfair. It is incorrect to say that the Inspection of the document was permitted to be done before 7.1.1985. This was to be done on 3.1.1985. It is relevant to state that all the relevant records were not made available for inspection by the applicant either on 3.1.1985 or thereafter except that only a few documents were made available on 11.1.1985. It is incorrect to say that the applicant did not send any intimation for his inability to attend the enquiry. On 24.1.1985 the applicant was ill and was under treatment of the Divl. Medical Officer, N.E.Rly. Gonda and the certificate issued by him regarding his illness on 24.1.1985 was duly handed over by the applicant to his controlling authority on 20.1.1985 from which, ~~date~~ the applicant had fallen ill. It may be stated that the controlling authority, Sri Rama Kant, Goods Superintendent, N.E.Rly. Gonda duly informed the Enquiry Officer about the illness and it is also relevant to state that the Enquiry Officer telephoned the aforesaid Sri Rama Kant on 24.1.1985 to know as to why the applicant did not go to attend the enquiry on that date and in reply the aforesaid Sri Rama Kant clearly told the Enquiry Officer that the applicant was ill and had sent the certificate

Testified
Sri Rama Kant
Am.

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-10-

of the Divl. Medical Officer, N.E.Rly.
in support of his illness from 20.1.1985.
It is also relevant to state that knowing
full well that the applicant was ill and
was unable to attend the Enquiry on 24.1.1985
the Enquiry Officer wrongly recorded the
statement of 3 prosecution witnesses
mentioned in paragraph under reply. It is
false to state that the applicant himself
failed to present himself for inspection
of the record and this falsehood
will be clearly established from Annexure-9
to the application wherein the Enquiry
Officer clearly stated that relied upon
documents nos. 1 to 5 were with the Goods
Superintendent Gonda and these were to be
obtained.



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-41-

9. That the contents of paragraph no.12 of the written Statement are false and denied and that of paragraph no.6(8) of the application are reiterated. The correct facts have already been stated in the preceding paragraph.

10. That the contents of paragraph no.13 of the Written Statement are denied in the form stated and that of paragraphs nos. 6(9) and 6(10) of the application are reiterated. It is incorrect to say that the application dated 10.1.1985 was filed by the applicant only to delay the enquiry proceedings. It is incorrect to say that charges regarding wagon nos. 19329 and 57782 are different than charges relating to wagon no.47209. This allegation is also vague. Moreover, permission is needed for booking and not for loading. The charge relates to loading and not booking. The applicant was not any way responsible for loading and therefore the charge against the applicant

*Alleged
for D.O.
Am.*

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is totally baseless and incorrect and the applicant can not be held guilty on such a charge. Again the Enquiry Officer in his report has clearly held that it was the duty of the Goods Superintendent to allot wagons and the goods Superintendent P.P.Pathak was punished for allotment and loading of the wagon nos. 19329 and 57782 with recovery of Rs.11,000/- and stoppage of increments for three years. The loading being on the same day and on the same spell of duty it can not therefore be said that the applicant is guilty of loading or allotment of wagon no. ⁴⁷²⁰⁹~~57782~~. It is absolutely incorrect to say that loading was permitted against the civil restrictions by the applicant. It was ~~in~~ ~~not~~ not the duty of the applicant to obtain the permission of the Deputy R.M.O. Moreover, that question does not arise as there is ~~xxx~~ no allegation that the goods in question were booked. The charge Memorandum dated 23.9.1982

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was given only after goods Superintendent P.P. Pathak was punished, for aforesaid 2 wagons. Under the aforesaid circumstances, it is absolutely improbable that 2 wagons will be allotted and loaded by Goods Superintendent, Sri P.P. Pathak against Civil restrictions, but third wagon on the same date and during the same spell of duty will be loaded and allotted by the applicant although it is not his duty either to load or to allot any wagon. It is absolutely incorrect to say that the applicant was reverted after giving full opportunity.

11. That the contents of paragraph no.14 of the Written Statement in the form stated are denied and that of contents of paragraph no.6(11) of the application are reiterated. Sri P.P. Pathak, Chief Goods Clerk was punished for both loading and allotting wagons nos. 19239 and 57782.

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13. That the contents of paragraph no.15 of the Written statement are denied and that those of contents of paragraph no.6(12) of the application are reiterated. It is incorrect to say that the applicant was afforded sufficient opportunity to defend his case. It is also incorrect to say that there was no question of proceeding enquiry in a malafide manner against the applicant in respect of loading of wheat in wagon no.47209. The applicant was falsely implicated by Vigilance Special Squad regarding loading of wheat in wagon no.47209. The applicant neither loaded nor allotted the said wagons nor he was present there at the spot at the time of alleged loading or allotment nor he had any knowledge about loading or allotment of the said wagons. The charge against the applicant is absolutely incorrect and baseless which was prepared on the basis of Vigilance report about which the applicant has already stated above.

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Moreover, it is relevant to state that the action against the applicant was mala fide inasmuch as whereas P.P.Pathak was not reverted regarding allotment and loading of wheat in wagon no.19239 and 57782, the applicant has been reverted for the alleged charges regarding wagon no.47209 although admittedly it was not his duty regarding loading or allotment of any wagon. Admittedly the allotment and loading of wagon are the duties of the Goods ~~Ex~~ Superintendent, Sri P.P.Pathak.

14. That the contents of paragraph no.16 of the Written statement are denied and that those of contents of paragraph no.6(13) of the application are reiterated. It is false to state that the applicant had been inspected the documents. The correct facts in this regard have already been stated in the preceding paragraph. It is also incorrect to say that the applicant did not sent any intimation regarding his inability to attend

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enquiry on 24.1.1985. It is incorrect to say that accordingly statement of prosecution witnesses were recorded. It is false to state that there is no letter dated 13.2.1985 on the record. The applicant will produce the original of the said letter at the time of argument in the Court. It is incorrect to say that the Enquiry Officer was not biased against the applicant. It is incorrect to say that the applicant was given fullest opportunity to defend his case. It is incorrect to say that the applicant avoided the enquiry at ~~xx~~ any time. It is false to state that the Enquiry Officer had no time impressed upon the Divisional Medical Officer, Gonda not to allow the applicant to report sick. These ~~g~~ false allegations have been made for the purpose of the case. Moreover, O.P. Gupta, Divisional Commercial Superintendent, N.E. Railway, Lucknow can not make this allegation as the matter related to the order of the Enquiry Officer which

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was communicated to the Station Superintendent, N.E. Railway, Gonda. Moreover this has been verified on the basis of record without attaching any document in support of their allegation alongwith the Written Statement. It is incorrect to say that the applicant has avoided the enquiry. The direction of Station Superintendent was given by the Enquiry Officer and the allegation to the contrary are incorrect and no document in support of the allegations has been filed alongwith the Written Statement. It is reiterated that the applicant was not informed of the alleged enquiry dates 18.3.1984, 18.9.1984, and 1.10.1984. It is false to state that the applicant deliberately have not appeared on the aforesaid dates and appeared when the Enquiry Officer by a letter dated 30.11.1984 decided to proceed ex-parte in the Enquiry. So far as the letter dated 30.11.1984 is concerned the detailed and correct facts have been stated in the preceding paragraph.

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15. That the contents of paragraph no.17 of the Written statement are denied and that those of contents of paragraph no.6(14) of the application are reiterated. There could not be any evidence on record to the facts stated in paragraph no.6(14) of the application and the allegations in this regard is totally absurd.

16. That the contents of paragraph no.18 of the Written Statement are denied and that those of contents of paragraph no.6(15) of the application are reiterated. It is incorrect to say that 22/23.2.1985 were fixed for recording the evidence of remaining prosecution witnesses and cross examination of all the prosecution witnesses by the applicant, the applicant did want to appear on both the aforesaid dates, before the Enquiry Officer but she was not available on both these dates. It is incorrect to say that the applicant did not appear before the Enquiry Officer either

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on 22.2.1985 or on 23.2.1985. It is incorrect to say that ~~there~~ had there been any enquiry on that date the remaining prosecution witnesses would have been examined as it has been alleged that those dates were fixed for examination of the remaining prosecution witnesses but no prosecution witnesses was examined either on 22.2.1985 or on 23.2.1985 which will clearly show that there was no enquiry and the Enquiry Officer was not available. It may be stated that 11.3.1985 was not the date fixed for enquiry. The applicant after receiving the Memo dated 5.3.1985 from Goods Superintendent, N.E. Railway, Gonda went to Gorakhpur to meet the Enquiry Officer. A true copy of the said Memo is being attached herewith and is marked as Annexure 'I' to this reply.

The applicant did not attend the enquiry on 22.2.1985, the applicant was under the ^{treatment} ~~term~~ of Divisional Medical Officer, Aish Bagh, Lucknow

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~~is~~ from 24.2.1985 to 4.3.1985 and not from 22.2.1985.

A photostat copy ~~existing~~ of the certificate of the Divisional Medical Officer, Aish Bagh, Lucknow in this regard is being annexed herewith and is marked as Annexure 'II' to this reply. The allegations that the applicant did not attend the enquiry on 22.2.1985 ~~is~~ has he fell ill and was under the treatment of Divisional Medical Officer, Aish Bagh Lucknow is totally imaginary, baseless and without any foundation and has been falsely alleged ~~is~~ for the purpose of the case. The applicant has no information about the alleged date of enquiry on 10.5.1985. There was no question of attending the enquiry on 10.5.1985 when the applicant was not even informed about it and he did not no about it. On 21.6.1985 the applicant submitted his consent of his defence counsel vide his letter dated 21.6.1985 which is Annexure-7 to the Written Statement, and the Enquiry Officer was duty bound to allow the cross examination of

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prosecution witnesses by the defence counsel but by her order dated 21.6.1985 she ~~was~~ ordered that the applicant should cross examine the prosecution witnesses if he so wanted on that very date i.e. on 21.6.1985. This was clearly illegal as the applicant was denied his right of representing himself through a defence counsel which included cross examination of prosecution witnesses by the defence counsel. Therefore, the applicant was compelled to cross examine ~~3 witnesses~~ 3 prosecution witnesses which was neither full nor effective.

It is incorrect to say that the applicant did not cross examination the prosecution witnesses. So far as the request for inspection of documents are concerned the order of Enquiry Officer is also wholly illegal, the detailed facts about which have been given in the preceding paragraph. The effect was that documents were with the with the

Goods Superintendent at Gonda and not with the
which will be clear from the certificate issued by the
Goods Super. M. B. Rly Gonda, a photo stat- copy of which is annexed
Enquiry Officer or at Lucknow / Annexure -7 to the I.A.
to this office

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Written Statement does not relate to change of defence counsel, but when the applicant submitted his consent to the defence counsel it was the duty of the Enquiry Officer to fix a date for cross examination by the defence counsel on some other date on which the defence counsel could have been spared for attending the enquiry to defend the applicant.

17. That the contents of paragraph no.19 of the Written statement in the form state are denied and in reply thereof the contents of paragraph no.6(16) of the application are reiterated. The correct facts regarding the allegations made in the paragraph under reply have already been stated in the preceding paragraphs and the allegations to the contrary are all wrong and denied. It is incorrect to say that the applicant volunteered to cross examine prosecution witnesses. The prosecution was bound to produce 2 prosecution witnesses for

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cross examination and ~~not~~ in failure ~~xxxx~~ to do so the enquiry has been vitiated. It is not sufficient that their cross examination was not relied upon in the findings.

13. That the contents of paragraph no.20 of the ~~Written~~ Statement are denied and that those of contents of paragraph no.6(17) of the application are reiterated. The A. D. R. M. illegally rejected the application dated 11.7.1985. Moreover, the Enquiry Officer should not proceed with the enquiry when the applicant expressed his apprehension that he would not get justice from her as he was biased. It is incorrect to say that the facts of biased were baseless.

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19. That the contents of paragraph no.21 of Written Statement are denied and that those of contents of paragraph no.6(18) of the application are reiterated. The applicant was permitted to inspect the documents only on 30.1.1986, when the

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entire prosecution case was closed, the applicant was seriously prejudiced and handicapped in preparing his defence and in ~~xxx~~ cross examining the prosecution witnesses in the absence of these documents. Therefore, it is clear that the applicant was not given full and proper opportunity to defend himself and the entire enquiry proceedings were vitiated.

20. That the contents of paragraph no.22 of the Written Statement are denied in the form stated and that those of contents of paragraph no.6(19) of the application are reiterated. It is relevant to state that in the letter dated 1.5.1986 which is Annexure-8 to the Written statement the Enquiry Officer has directed the applicant to submit his written statement under Rule 9(19) at Lucknow on 19.5.1986 which is utterly illegal inasmuch as the case of the prosecution had already

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been closed much before that date and the order of the Enquiry Officer asking the applicant to submit his defence statement thereafter is a mere empty formality which clearly shows that the entire enquiry proceedings were merely a farce and the phasad for punishing the applicant by hook or crook.

21. That the contents of paragraph no.23 of the Written statement are denied and in reply thereof the contents of paragraph no.6(20) of the application are reiterated. ^{Inspite of} The order of the Enquiry Officer dated 1.5.1986, the documents ~~WERE~~ mentioned at serial no.2 and 3 were not sent by the office of the Divisional Commercial Superintendent, N. E. Railway, Lucknow and so far as Sr. No.1 is concerned the case file of another case was sent the number of which is T/Rest/GD/81 dated 18.8.1981 thus the applicant was deprived of the full and proper opportunity

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to inspect the documents which were ~~relevant~~
relevant even according to the Enquiry Officer.

It is also stated that these documents were
in favour of the applicant and therefore the same
were not sent for inspection by the applicant.

22. That the contents of paragraph no.24
of the Written Statement are denied and that
those of contents of paragraph no.6(21) of the
application are reiterated.

23. That the contents of paragraph no.25
of the Written Statement are denied in the
form stated and that those of contents of
paragraph no.6(22) of the reiterated. Paragraph
6(22) does not mentioned enquiry report.

24. That the contents of paragraph no.27
of the Written Statement are denied and in reply
thereof the contents of paragraph no.6(24) of
the application are reiterated. It is quite

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obvious that the Disciplinary Authority did not apply his mind to the facts and circumstances of the ~~case~~ allegations to the contrary is wrong.

25. That ~~the contents~~ in reply to the contents of paragraph no.28 of the Written Statement are denied and in that those of contents of paragraph no.6(25) of the application are reiterated.

26. That the contents of paragraph no.~~28~~ 29 of the Written Statement are denied and in reply thereof the contents of paragraph no.6(26) of the application are reiterated.

27. That the contents of paragraph no.30 of the Written Statement are denied and in reply thereof the contents of paragraph no.6(27) of the application are reiterated. It is false to state that the loading was being done with the consent of the applicant. There is nothing like Placement Order. This is contrary to the charge

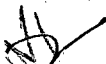
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against the applicant. Rest of the allegations are also contrary to the charge ~~fixing~~ against the applicant. There was no question of applicant's failure to deduct loading as loading was not his duty. There was no question of negligence on the part of the applicant as loading was not of his duty. The enquiry report that registration of the wagon was done by the applicant on his own accord to favour the party is totally perverse and contrary to the charge. The finding of the Enquiry Officer that the applicant allotting and loading without forward note without permission of Deputy R.M.O. without registration without booking and against the operative restrictions are all baseless and perverse.

28. That in reply to the contents of paragraph no.31 of the Written Statement the contents of paragraph no.6(28) of the application are reiterated.



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29. That the contents of paragraph no.32 of the written statement are denied and that those of contents of paragraph no.6(29) of the application are reiterated.

30. That the contents of paragraph no.33 of the written statement are denied and that those of contents of paragraph no.6(30) ^{and 6(31)} of the application are reiterated. It is false to state that ~~when~~ ^{done in} the loading was ~~not~~ connivance with the applicant, moreover this is contrary to the ^{Charge} ~~charge~~.

31. That in reply to the contents of paragraph no.34 of the written statement the contents of paragraph no.6(32) of the application are reiterated.

32. That the contents of paragraph no.35 of the Written s tatement are denied and that those of contents of paragraph no.6(33) of the application are reiterated.

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33. That the contents of paragraph no.36 of the Written Statement are denied and that those of contents of paragraph no.6(34) of the application are reiterated.

34. That the contents of paragraph no.37 of the Written Statement are denied and that those of contents of paragraph no.6(35) of the application are reiterated.

35. That the contents of paragraph no.38 of the Written Statement are denied and that those of contents of paragraph no.6(36) of the application are reiterated.

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36. That the contents of paragraph no.39 of the Written Statement are denied and that those of contents of paragraph no.6(37) of the application are reiterated.

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37. That the contents of paragraph no.40 of the Written Statement are denied and that those of contents of paragraph no.7 of the application are reiterated.

38. That the contents of paragraph no.41 of the Written Statement are matters of record.

39. That the contents of paragraph no.42 of the Written Statement are denied and that those of contents of paragraph no.9 of the application are reiterated.

Verification

I, Harish Chandra Srivastava son of Sri M. L. Srivastava, at present residing at ~~Tx322x~~ T.232-A, Girja Colony, N. E. Railway, Gonda do hereby verify that the contents of paragraphs nos. 1 to 39 of this

Harish Chandra Srivastava
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reply are true to my own knowledge and belief
and that I have not suppressed any material
facts.

Harish Chandra Seivastav
Signature of the Applicant.

Place: Allahabad

Dated : 21-1-88.

Signature of the Advocate.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD.

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ANNEXURE-(2)

IN

Misc. Expedite Application No.

of 1988

IN

Registration No. 418

of 1987.

Harish Chandra Srivastava

-----Applicants.

Versus.

Union of India,

and others.-----Opposite-Parties.

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Annexure ①

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No. 10
N. E. - H.

प्रेषी Class	कोड Code	पं० H.	पि० M.	दिनांक Date
1/2/2020	From G.E./C.D.	5/3/2020	By	(Official Office Stamp)

सेवा में तो

Shree 40 (Continuation of G.O. No. 1044)

07/26/85 *** Please attend Miss Mearns
 Club & CRP inquiring Officer in connection
 with your SAR of 24/2/85. Call to SS
 at 1111-1111/1111/1111 on 2/2/85. All copies

RECD. FROM	SENT TO	SENT TO	SENT TO	SENT TO	Signature of Sender
RECD. FROM	SENT TO	SENT TO	SENT TO	SENT TO	Signature of Sender

Is this telegram necessary?

Is this telegram necessary? If so, make

इस संदेश को प्रागे पच्छिमान पर लिखें

Carry forward this message on reverse

NORTH EASTERN RAILWAY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD.

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ANNEXURE (2)

IN

Misc. Expedite Application No. 418 of 1987

In

Registration No. 418 of 1987

Harish Chandra Srivastava

----- Applicants.

Versus.

Union of India

and others.-----Opposite-Parties.

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Annexure II

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Reg:- Issue of Duplicate Rmc
For the period 24/2/85 to 4/3/85

Sir,

The original certificate of
the above period has been misplaced
in the office and my period has
not yet been regularised.

Therefore it is requested
to kindly issue a duplicate
certificate & delige

Yours faithfully

D. C. Sivasankar
Secretary

Dt 8/1/88

सहायक प्रमुख, आर.टी.सी. म.ए. रेलवे अश्वमेध गुरुकुल, अश्वमेध
महोदय दि० 24-2-85 से 04-3-85 तक लीक न की
गया दि० 05-3-85 को दे दिया गया।
म/ 16 नं० म/384 ई/

अश्वमेध
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8/1/88
म. ए. रेलवे अश्वमेध गुरुकुल
अश्वमेध

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Annexure II A.

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The following RR Books made over to
19/1/85
VI/GAR in connection with vigilance

Enquiry NO LD-SS/58/32 Dt. 9/1/81

Taken by
Wilson on 19/1/85 Clerk Ward RR

RR 514251 To 514300 used

344401 To 344450 "

357251 To 357300 "

342551 To 342600 "

Issued from 18/1/81.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL

BENCH ALLAHABAD

.....

REGISTRATION NO.418 of 1987

Harish Chandra Srivastava - - - - Applicant.

Versus.

Union of India and others - - - -Opp.Parties.

Rejoinder of the applicant to
the reply of Miss Meena Sah,
Respondent no.4 is as below :-

1. That the contents of the paragraph
no.1 of the reply needs no reply.
2. That the contents of paragraph no.2
of the reply are denied and that those of
contents of paragraph no.6(13) of the application
are reiterated. It is incorrect to say that

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*Recd
v. K. Goel
clerk to
Kamal Ahmad
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that the facts stated in paragraph no.6(13) of the ~~applic~~ ~~replies~~ application are baseless and fabricated with the intention ~~of~~ to malign the Enquiry Officer. It is incorrect to say that the applicant remain absent on 24.1.1985 and 25.1.1985 without any intimation. Details facts in this regard have been given in the application and in the Rejoinder of the Written Statement of Sri O.P.Gupta. It is incorrect to say that the absence on 24.1.1985 and 25.1.1985 were intentional. It is incorrect to say that it was not the jurisdiction of the Enquiry Officer to decide the matter mentioned by the applicant in his application dated 11.1.1985. There is no question of anybody giving any order ^{to} ~~of~~ the Enquiry Officer for stopping the proceedings, the Enquiry Officer is competent to do so if the facts and circumstances of the same are brought to the notice of the Enquiry Officer. It is incorrect to say that

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there is no question of any provision in D.A.R. in this regard. It was the duty of the Enquiry Officer to do so as the letter in question which is Annexure-3 to the application fully justify the same. It is incorrect to say that the applicant was adopting delaying tactics and avoiding the enquiry. The Station Superintendent, N.E.Railway, Gonda in his letter dated 13.2.1985 clearly stated that it was the order of the Enquiry Officer. Under the circumstances either Station Superintendent, N.E.Railway, Gonda is telling lies or the Enquiry Officer is telling lies. It is therefore, absolutely necessary that both the Station Superintendent, N.E. Railway Gonda, Sri T.P.Pandey who is still working as Station Superintendent, N.E.Railway, Gonda and the Enquiry Officer Miss Meena Shah who is now also working as Enquiry Officer as Defence and Appeal N.E.Railway, Gorakhpur be summoned



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to present themselves for cross examination so that truth may be found out. The falsity of Miss Meena Shah's allegations in the paragraph under reply will also be established from the facts that these allegations have been sworn on the basis of record although the same relate to her personally. The allegations regarding the sending of notices are also incorrect inasmuch as it is the duty of the Enquiry Officer to ensure whether the notices were duly served on the delinquent and she is not entitled to proceed if report of service did not reach to her. It is incorrect to say that notices were sent to the applicant's immediate Supervisor controlling Officer or to the applicant. No chance is relevant unless notice is ^{Served} ~~service~~. The allegations in this regard is wholly misconceived.

3. That the contents of paragraph no.3 of the reply are denied and that those of contents

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of paragraph no.6(14) of the application are reiterated. It is incorrect to say that there had been no letter dated 13.2.1985 or any date for that too any of the medical authorities.

It is false to say that ~~xx~~ as such it is absolutely false, baseless and mis-conceived to say that on receipt of the letter the applicant ~~xxxx~~ met the Enquiry Officer and faced a flow of abusive and unparliamentary language from her alongwith threat of maximum punishment. Regarding the allegations ~~xx~~ the Disciplinary Authorities duty it is stated that Disciplinary Authorities is to give punishment on the basis of finding given by the Enquiry Officer. The allegations to the contrary are all wrong. The allegations under paragraph no.3 of the Rejoinder pertains personally to the Enquiry Officer Miss Meena Shah but the same have been denied on the basis of record. This shows that Miss Meena Shah

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has filed a patelty false reply and she is liable to be dealt with in accordance with law.

4. That the contents of paragraph no.4 of the reply are denied and that those of contents of paragraph no.6(18) of the application are reiterated. So far as not allowing the copies of the papers is concerned the denial of the same is totally false which will be clearly established from Annexure-9 of the application, which is the order of the Enquiry Officer herself in which it was clearly stated that relied upon documents 1 to 5 were with Goods Superintendent, Gonda these were to be obtained. Admission/denial of these would be done on the next date during the course of enquiry. It was the duty ~~of~~ to get these documents before she started and proceeded with the enquiry. It was only after the

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prosecution case was closed with some of the documents were allowed to be inspected by the applicant. There was no question of inspecting 18 inspection to join proceedings but inspecting the relied upon documents 1 to 5 which were not made available to the applicant till the prosecution case was closed. It is incorrect to say that the relied upon documents number 2 to 5 could be sent by the applicant concerned on any date upto 4.7.1985 as these were to be collected from Station Superintendent, Gonda i.e. place of his duty. There was no question of inspecting all documents in Gonda as the documents could be inspected only with the permission of the Enquiry Officer. It is incorrect to say that other documents were irrelevant. These allegations will be falsified by her own letter dated 1.5.1986 which is Annexure-8 to the Written Statement of O.P.Gupta. The applicant

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inspected only those documents when the inspection of the same was allowed. There was no delay on the part of the applicant in this regard and the inspection of the documents was not denied on that ground. Moreover, ~~x~~ it can not be denied particularly when these documents were made available after the closing of prosecution case. Regarding cross examination of the prosecution witnesses ~~it~~ details facts have been stated in the Rejoinder to the written Statement of O.P.Gupta the same are not repeated here, and will be relied upon at the time of arguments. The applicant has not stated in the paragraph no.6(18) that he had the cross examination in the absence of the statement of the prosecution witnesses. The request for change of the Enquiry Officer on the ground

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of biased is illegally rejected. Moreover, it is relevant to state that most of the allegations in paragraph no.6(16) of the application pertains personally to Enquiry Officer, Miss Meena Shah but she gave the reply which has been sworn on the basis of record which is absurd and which establishes that the allegations are all wrong and false and she has not taken any responsibility for the same.

VERIFICATION

I, Harish Chandra Srivastava son of Sri M.L.Srivastava at present residing at T.232-A Girja Colony, N.E.Railway, Gonda do hereby verify that the contents of paragraphs nos. 1 to 4 of this Rejoinder are true to my own knowledge, and ~~make~~ belief that I have not suppressed any material facts.

Harish Chandra Srivastava
Signature of the applicant.

Place : Allahabad.

Dated : 21-1-88 .

Signature of the Counsel

Harish