

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. 5563 of 1985

Jitendra Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

I N D E X

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Lucknow:

Dated: Oct. 6 1985

(Abdul Lateen),
Advocate,
Counsel for the petitioner.

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preferred against the order of punishment in a Disciplinary and Appeal Rule(DAR) case ordering for reduction from the post of Assistant Station Master to the post of Traffic Signaller, reducing the pay to the lowest order i.e. Rs.300/- fixed in grade Rs.260-430 and debarring the petitioner from any further promotion whatsoever in future permanently. A true copy of the order of rejection of appeal dated 1.7.85 is being filed herewith as Annexure-1 to this petition.

* Annexure-1

2. That the petitioner was appointed in the railways i.e. with the opp. parties and while he was posted at Sitapur Junction Railway Station as Rest Giver Assistant Station Master in grade Rs.425-640 (initial pay Rs.530/-) in the year 1982 the petitioner was directed by the Traffic Inspector, Sitapur on 3.3.1982 to work at Jharekapur Station due to shortage of certain staff on 4.3.1982.

3. That as per roster the petitioner took charge at 16.00 hours in the shift of 16-24 hours on 4.3.82 and performed the assigned duties upto 24 hours.

4. That while the petitioner had taken charge on 4.3.1982 and was performing his duties at the Railway Station Jharekapur the petitioner developed acute pain in the stomach as such he sought permission from the sectional Controller and after sending call to the reliever of the petitioner through the Pointman on duty due to acute pain and there being no medical aid readily available the petitioner left the Station in search of conveyance for Sitapur to arrange for immediate medical aid from Sitapur.

For Seal



5. That due to sheer luck of the petitioner he got lift from a motor cyclist and reached Sitapur at the residence of Dr.L.N.Agarwal at 1.45 a.m. and who after duly examining the petitioner gave the requisite medicines.

6. That the next morning i.e. on 5.3.1982 the petitioner came to know about a collision of 62 DN Passenger Train with the Stabled Load of UP Aishbagh Special.

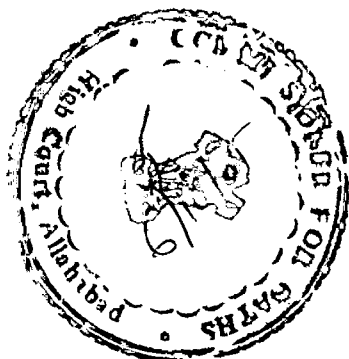
7. That due to above collision of 62 DN passenger Train with Stabled Load UP Aishbagh Special an F.I.R. was lodged by Assistant Station Masger, Sitapur on 5.3.1982 at 2.05 hours and a case was registered under section 101 of the Indian Railways Act against the petitioner.

8. That simultaneously Disciplinary and Appeal Rules(DAR) proceedings relating to the collision were also initiated against the petitioner.

9. That in the criminal case under section 101 Indian Railway Act the petitioner had to arrange for his bail also. The petitioner, was thereafter suspended by the Divisional Safety Officer and on the appeal of the petitioner against the suspension the petitioner was reinstated and posted as RASH/Sitapur.

10. That DAR proceedings were started against the petitioner despite of lodging of FIR under section 101 of Indian Railways Act, the proceedings of DAR

For Seal



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case was finalised in such a haste with prejudged mind that the petitioner was not given even an opportunity to produce his defence witnesses, Sri Ganga Singh, Motor Cyclist, when he was not present on date, to be produced after 2 days.

10(a) That it is also pertinent to mention here that as avered above that the accident due to which the petitioner has been penalised took place on 4/5.3.1982, charge sheet was given to the petitioner and after examining almost about 13 witnesses the case was concluded within a short span of about 3 months and even the application made on behalf of the petitioner for production of one Sri Ganga Singh, Motor Cyclist was ignored and the prayer made by the petitioner for adjournment of the case was rejected only on the ground that it was the duty of the petitioner to produce him within time. It is also worthwhile to mention that even the doctor who had examined the petitioner due to acute colic pain in his stomach had supported the case of the petitioner and it has been admitted by the opposite parties that the petitioner did approach Dr.L.N.Agarwal in the night of 5.3.1982 at 1.15 a.m. and he had examined the petitioner but even then the opposite parties had completely ignored this statement of the doctor and had convicted the petitioner.

For Sm.



(b) That as stated above it is also worthwhile to mention here that although the accident has taken place on 4/5-3-1982 but the enquiry was finalised with a span of 3 months in such a hasty manner that

even the petitioner was not given the opportunity to produce his defence witnesses as it will be revealed from the extract photocopy of the deposition made before the Enquiry Committee, which is being filed herewith as Annexure-2 to this petition.

(c) That it is also worthwhile to mention here that even Dr. L.N.Agrawal had admitted this aspect of the matter and rather supported the case of the petitioner that the petitioner was taken to his residence by a Motor Cyclist which duly supports the contention of the petitioner that the Motor Cyclist, one Sri Ganga Singh was not allowed to be produced by the opposite parties due to certain conspiracy hatched against the petitioner which fact is also supported by the judgement of the learned Munsif Magistrate, Sitapur that the petitioner has unnecessarily been penalised even without affording him any opportunity.

(d) That it may also be pointed out here that the charges levelled against the petitioner as it also comes out from the charge sheet served on the petitioner are almost similar to the charges levelled against the petitioner in the Criminal Case. A true copy of the charge sheet which was served on the petitioner during the course of DAR proceedings is being filed herewith as Annexure-3 to this writ petition.

Annexure-3

11. That it is worthwhile to mention here that while the petitioner was not given even 2 days adjour-



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nment to produce his defence witness i.e. Sri Ganga Singh, most vital witness who gave a lift on his motor cycle to the petitioner and the doctor who was produced before Munsif Magistrate, Sitapur and gave testimony that the pain could have resulted in shock was totally ignored with the totally incorrect and illogical interpretation.

12. That the fact of the petitioners' having left duty at 0.30 hours, was testified by Train Controller, Doctor and Sri Ganga Singh before Munsif Magistrate, Sitapur. Thus the petitioner not even being present within the limits of Jharekapur town, when the accident took place the question of the petitioner's being present at the Station is not only false, baseless and against over whelming evidence as mentioned above but it also speaks of prejudged mind of the Disciplinary Authority to fasten guilt against the petitioner at his sweet will without any cogent material in support thereof.

13. That as stated in the preceding paragraphs the findings of the DAR proceedings are thus patently perverse, based on guess and conjectures and against facts and a case of 'no evidence' to fasten guilt on the petitioner and attempt to exonerate the real culprits. This was what the learned Munsif Magistrate Sitapur observed while acquittting the petitioner honourably and passing strictures against the railway administration. A true copy of the order of the learned Munsif Magistrate, Sitapur is being filed as Annexure-4 to this petition.

Jan 2002



14. That it is also worthwhile to mention here that the fact of Pointman being on duty from 18 hours of 4.3.1982 to 6 hours of 5.3.1982 and the fact of light engine of the goods train having been sent for watering, the trains being late due to late running, it was Pointman's duty to have been vigilant to ward off any mishap.

15. That it is also pointed out here that denial of opportunity to produce the petitioner's defence witness Sri Ganga Singh who gave the petitioner lift at 0.30 hours on motor cycle to Sitapur and who was duly named as defence witness for whom evidence 2 days time was prayed was turned down by the Inquiry Officer which is illegal and because of this entire proceedings and findings are illegal as held by many High Courts. This was also against the rules of DAR framed by the President under article 309 of the Constitution of India.

" Inquiring Authority did not allow the delinquent official to produce defence in accordance with the procedure... reasonable opportunity, inquiry in contravention of of procedure, inquiry illegal, order of dismissal bad (S.P.Gothimal Vs.State of Rajasthan, 1981 SLR)."

16. That it is also pertinent to mention here that as per provisions of DAR, 1968 contained in Brochure on Railway Servants Discipline and Appeal



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Rules, provide specifically that rules of natural justice require that a party should have opportunity of advancing all relevant evidence on which he relies and this evidence should be taken.

17. That it is also pointed out here that despite the procedural irregularities as mentioned in the foregoing paragraphs the petitioner has been awarded the following punishment in the DAR proceedings:-

- a) reduction from the post of ASI to the post of Traffic Signaller.
- b) reducing the pay to the lowest cadre i.e. Rs.300/- fixed.
- c) debarring the petitioner from any promotion whatsoever in future permanently.
- d) denying thus all increments, dearness allowance departmental facility which is against the rules of natural justice.

A photostat copy of the Notice of Imposition of penalty(NIP) is being filed herewith as Annexure-4A to this petition.

Annexure-4A

[Handwritten signature]



18. That in the criminal trial on the same matter on identical charges pertaining to the above

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accident on the report of railway through Assistant Station Master, Sitapur, the learned II Additional Munsif Magistrate, Ist Class Sitapur honourably acquitted the petitioner from all charges. Not only this the learned court passed strictures against the Railways Administration for which the enclosed judgement, Annexure-4 to this petition may kindly be perused.

19. That the Railway Administration did not appeal against it and so the judgement of the learned Munsif Magistrate, Sitapur is final and binding on the Railway Administration.

20. That the petitioner is giving here only English Translation of the judgement, concluding para, and strictures passed.

Page 5 of the Judgement:

" I am of the opinion that the Railway Administration deliberately initiated criminal case against Jitendra Nath Srivastava in Criminal Court on false grounds due to which he suffered financially and mentally."

" It is admitted and has been corroborated by evidence on record that the accused was not on duty at the time of occurrence. The fact of illness of accused has been fully established. For the accident accused Assistant Station Master cannot be held responsible for which responsibility could have been fixed

For Seal



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on the Pointman."

Page 6:

" It is sad and unfortunate that in this case an innocent person was intentionally prosecuted and made an accused, the game being to save the real culprit, in the hope that the accused will be acquitted in criminal case and the real culprit will go unpunished and unharmed."

Page 7:

" The part played by Railway Administration is shameful in trapping an innocent person ~~who~~ to face trial."

" Accused Jitendra Nath Srivastava is not in any circumstances held responsible for the charges levelled against him and he is honourably acquitted."

21. That after this judgement the petitioner submitted under mentioned representation for recalling the Notice of Imposition of Penalty(N.I.P.) and cancelling the same:-

for Smt



(1) DRM(P)	8.8.1983
(2) DRM	29.9.1983
(3) G.M.	1.5.1984

None of the above representations of the petitioner

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have been acknowledged by the railway administration. The true copies of all the above mentioned three representations are being filed herewith as Annexures-5, 6 and 7 to this petition.

Annexures-5
6 and 7.

22. That it is also worthwhile to mention here that the charges in the DAR case and in the criminal trial being identical, witnesses produced being same, the findings of the criminal court have to be honoured legally which is binding on the railway.

23. That the High Courts of India have held this view and in a case Bhagwat Charan Vs. State of U.P. reported in 1973 SLR(Alld.), where facts were similar i.e. the employee was punished and removed after DAR proceedings before conclusion of criminal trial by the Court but was acquitted in criminal case on identical charges, the High Court observed that:-

" I am of the opinion that the impugned order is illegal and must be quashed. The writ petition is accordingly allowed with cost and the order of removal is quashed."

24. That the Railway Administration has not gone in appeal against the orders of acquittal and as such the judgement of the criminal court becomes final and the railway administration is bound by the findings of the criminal court and cannot go behind that.

25. That despite repeated representations made by the petitioner as mentioned above the H.I.P.

Govt. Secy



issued in the case of the petitioner had not been quashed.

26. That the impugned order dated 1.7.1985 and the order of imposition of penalty is illegal and bad in law.

27. That having no other efficacious and alternative remedy the petitioner beg to file this writ petition on the following amongst other grounds:-

G_R_O_U_N_D_S

- a) Because the opposite party No.2 has not at all considered the judgement passed by the Criminal Court and have rejected the appeal of the petitioner which is totally illegal, wrong, unjust and against the provisions of law and natural justice.
- b) Because the opposite party No.2 has also not considered this aspect of the matter that in the DAR proceedings the relevant witnesses even on the request of the petitioner were not produced and finalising the departmental proceedings in absence of the same is wrong, malacious, arbitrary and against the provisions of law hence liable to be quashed.
- c) Because simultaneously 2 proceedings being initiated against the petitioner, one departmental and the other criminal on identical

charges and same witnesses and the petitioner after being honourably acquitted in the criminal proceedings with the strictures passed against the opposite parties, the opposite parties have become prejudiced in not accepting the appeal, rejecting the same without applying their mind and even without going through the judgement of the learned Munsif Magistrate concerned and such action of the opposite parties is illegal, arbitrary, against the provisions of law and natural justice.

d) Because the judgement of learned Munsif Magistrate honourably acquitting the petitioner was before him, the same having been enclosed by the petitioner alongwith the representation requesting for quashing of punishment as such rejecting the representation/appeal of the petitioner by the opposite party No.2 is illegal, wrong, malacious, against the provisions of law and natural justice.

e) Because the opposite parties on the one hand are punishing the petitioner with the order of reduction from the post which the petitioner was initially holding, reduced the pay to the lowest grade i.e. 300/- and debarred the petitioner from any future promotion permanently denying all increments and dearness allowance etc. in DAR proceedings but on the other hand the criminal

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court had honourably acquitted the petitioner with the findings that the petitioner has falsely been implicated by the opposite parties just for the reason that actual accused should be allowed to go unblamished and strictures were also passed against the opp. parties thus the opp. parties have become prejudiced with the petitioner and rejected the appeal of the petitioner without any rhyme or reason which is unconstitutional, malacious, arbitrary, against the provisions of law and natural justice.

- f) Because the opposite parties while punishing the petitioner on one hand without there being any evidence on record, without affording proper opportunity to the petitioner who was not at all guilty in DAR proceedings as such the proceedings of DAR are totally false, malacious, wrong, arbitrary, unjust, against the provisions of law and natural justice.
- g) Because the opposite parties not allowing the petitioner to produce official in his defence in accordance with the procedure as such no reasonable opportunity was given and the conclusion of the enquiry by way of punishment is against the provisions of law and natural justice hence liable to be quashed.
- h) Because the order does not indicate applic-

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ation of mind on perusal of judgement of learned Munsif Magistrate, Sitapur as such the order is not speaking order.

P_R_A_Y_E_R


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

- i) a writ, order or direction in the nature of certiorari quashing the entire DAR proceedings after summoning the original record from the opposite parties;
- ii) a writ, order or direction in the nature of certiorari quashing the order of Imposition of Penalty, contained in Annexure-4A to this writ petition after summoning the original from the records of the opposite parties;
- iii) a writ, order or direction in the nature of certiorari quashing the order of opposite party No.2 dated 1.7.1985 contained in Annexure-1 to the writ petition after summoning from the opposite parties the original order;
- iv) a writ, order or direction in the nature of mandamus commanding the opposite parties to give all the benefits available to the petitioner right from the beginning i.e. the date

of passing of the order contained in Annexure-
to the writ petition;

v) any other writ, order or direction which this
Hon'ble court deems just and proper in the
circumstances of the case be passed in favour
of the petitioner and against the opposite
parties;

vi) to allow the cost of the petition throughout.


(Abdul Mateen),
Advocate,

Lucknow:

Counsel for the petitioner.

Dated: October 8 1985

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In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

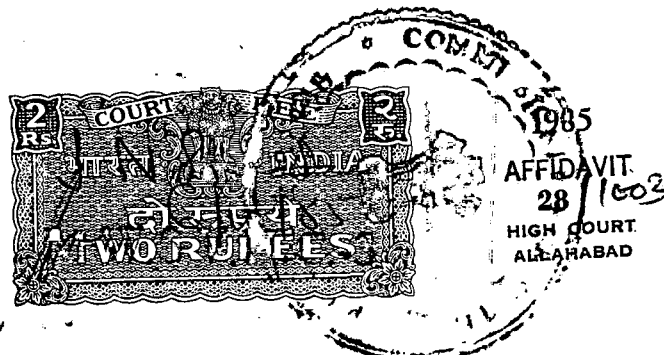
Affidavit
In

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

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Union of India & others .. Opp. parties.



A F F I D A V I T

I, Jitendra Nath Srivastava, aged about 47 years, son of Late Sri Jagdambica Prasad at present working as Traffic Signaller, Sitapur do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner himself in the above noted writ petition as such is fully conversant with the facts of the case.

2. That the contents of paras 1 to 27 of the accompanying writ petition are true to my personal knowledge except the legal averments which are based on legal advice.

3. That Annexures No.1 to of the accompanying writ petition have been compared by me with the origin-



als of the same as such are the true copies of the originals.

Lucknow:

Dated: Oct. 6 1985

Deponent

Verification

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my personal knowledge. No part of it is false and nothing material has been concealed in it so help me God.

Lucknow:

Dated: Oct. 6 1985

Deponent

I identify the deponent who has signed before me.

Advocate.

Solemnly affirmed before me on 6/10/85 at 10.00 a.m./p.m. by the deponent Jitendra Nath Swastava who is identified by Sri Abdul Mateen, Advocate, High Court, Lucknow Bench, Lucknow.

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



Date: _____
No. _____
(Lucknow Bench)
High Court, Allahabad
OATH COMMISSIONER

Signature of Advocate

High Court, Allahabad,
Lucknow Bench

20/1003

6/10/85

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In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

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Annexure No. 1

N.E. Railway

No.7/537/TA/4/82

Dated 1.7.85

From:

To:

Divl.Fly.Manager,
Lucknow.

Shri J.N.Srivastava,
Signaller A-2 through
SS/STP.

Sub: Appeal dated 5.8.1983 of Sri J.N.Srivastava
Sig/STP for restoration on the post of ASM
in scale 425-640.

DRM has considered your appeal and passed
the following orders:-

.....

In this particular case, DRM has already
reviewed the punishment imposed on the employee and
has found the same to be adequate. The review was
done in this on its own motion and at the time of
review, no appeal had been received from the delinquent
employee. As already mentioned, since the case
has been received by the DRM, the appeal of the employee
cannot be considered at this stage.

Sd/-

Divl.Railway Manager(Safety)
Lucknow.



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In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitenara Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure No.2

DAR proceedings against Sri J.N.Srivastava ASM/STP
held at Lucknow city on 9.5.1982 at 12/- hrs.

.....

Present:

1. Sri J.L.Chaba E/O
2. Sri M.H.R.Tahir D/C
3. Sri J.N.Srivastava(Accused)

Accused gave an application requesting
Enquiry Officer to fix 18/5 or some other date after
18/5 as his defence witnesses were out of station.
Because he was unable to produce them on date for
enquiry.

The matter was referred to AOS(G) on phone
who instructed that it was the responsibility of the
accused to arrange attendance of his defence witnesses
and the enquiry cannot be postponed and the proceed-
ings have to be closed within target date. Hence
proceedings started.

Sd/-
DC

Sd/-
I/O 9.5.82

Sd/-
J.N.Srivastava.



In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

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Union of India & others .. Opp. parties.

Annexure No.3

Statement of Article of charges framed against
Sri J.N.Srivastava, Asstt. Station Master, Jharekapur
station son of Shri J.P.Srivastava.

.....

ARTICLE - I.

That on 4.3.1982 while Shri J.N.Srivastava, Asstt.
Station Master/Jharekapur Station was on duty from
16.00 hours, train engine No.2253 YP of 62 Dn
Passenger train colided at 1.36 hours on 5.3.82
with stabled loads of UP Shunting goods on line
No.3 at Jharekapur station due to reception of
62 Dn train on line no.3 already occupied with the
stabled load of UP shunting goods.

He thus violated GR 38, SR 38(3)(b), SR 187(3)
(i), SR 150(1)(b)(i), SR 150(i)(a)(v), SR 150(a)(b)
and SR 187(14)(b) of General and Subsidiary Rules
book edition 1963.

Sd/-
(K.K.Sarkar)
Divisional Safety Officer
N.E.Rly/Lucknow.



१ लङा नऊ, वेन्च १ लङा नऊ

रिट प्रिटोरियन - नं०----- अ. १९८५

जे० ए० श्रीवास्तव ----- पिटोशानर

बनाम

यू.नियम आप, इन्डिया तथा अन्य ----- ऑनजिट पाटीज

अनेकजर नं०-4---

1064/18

जितेन्दु नाथ सिंगलर

सीतापुर पूर्व में रेलवे,

शब्द लगभग----1800/-

नकल आदेशा पारित द्वारा न्यायालय श्रीमान विद्वतीय
अतिरिक्त मुनिसन एवं न्यायिक मैजिस्ट्रेट प्रथम श्रेणी महोदय ,

सीतापुर पनौजदारी वाद संख्या 81 तन 1982ई० धारा-10। रेलवे
अधिनियम थाना जो० आर०पी०सीतापुर तारोछा फैला 26-3-83

उक्तं

40000 00000 10000 20000 30000 40000 50000 60000 70000 80000 90000 100000
 110000 120000 130000 140000 150000 160000 170000 180000 190000 200000

उत्तर प्रदेश राज्य ----- अभिप्रायोजक

बनाम

जितेन्द्र नाथ श्रीवास्तव सहायक स्टेशन मास्टर झरेठापुर रेलवे

लेखान पूर्वोत्तर रेलवे जम्मद सीतापुर -----अभियुक्त

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निष्पत्ति
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वर्तमान अभियोजन थाना जो०आर०पी० जमद सातापुर
की पुलिस द्वारा अभियुक्त के विरुद्ध धारा 101 भारतीय
रेलवे अधिनियम के अन्तर्गत दण्डनीय अपराध करने के विरुद्ध
प्रस्तुत आरोप पत्र पर प्रारम्भ हुआ ।

क्षेत्र में अभियोजन का कथान है कि

दिनांक 4/5-3-1982 की बीती रात में पूर्वोत्तर रेलवे के झरेडापुर
रेलवे स्टेशन पर अभियुक्त सहायक स्टेशन मास्टर के समक्ष में
कार्यरत था । रात्रि को 12-50 को अभियुक्त ने सातापुर से
जंक्शन के सहायक स्टेशन मास्टर को लाइन क्लियर दिया तो
उन्होंने 62 डाउन यात्री गाड़ी रात्रि में । बजे झरेडापुर स्टेशन
को जाने के लिये लाइन क्लियर दिया । झरेडापुर रेलवे स्टेशन
पर लाइन नम्बर 3 पर अ. ऐशाबाग अशाल मालगाड़ी चले रहे
छाड़ी थी और लाइन क्लियर उठा रेलवे लाइन का दिया गया ।
जिसके कारण रात्रि को लगभग 1-45 बजे दोनों गाड़ियों को
टक्कर होजाने से 10-12 लोग घायल होगये घटना का सूचना दी
गयी । अपराध पंजीकृत हुआ विवेचना के पश्चात आरोप पत्र प्रस्तुत
कर अभियुक्त को दण्डित करना चाहा गया ।

अभियुक्त ने स्वयं को निन्दित बताया ।

और कहा कि विभागाध्यक्ष अधिकारियों ने उसे झूठा झूठा दिया

अभियोजन में अनेक कथान के समर्थन में साक्षी संख्या-1

मीरूषा कुमार दास गुप्ता साक्षी संख्या-2 राम चन्द्र तिवारी ,

साक्षी संख्या-3 बी०एन० तिवारी साक्षी संख्या-4 राम राज मौर्य

साक्षी संख्या-5 डाक्टर जनमेजय सिंह साक्षी संख्या-6 राम प्रताप

खिवाकर साक्षी संख्या-7 ज्ञानेश चन्द्र भाटनागर साक्षी संख्या-8

कृ०प०उ०--3

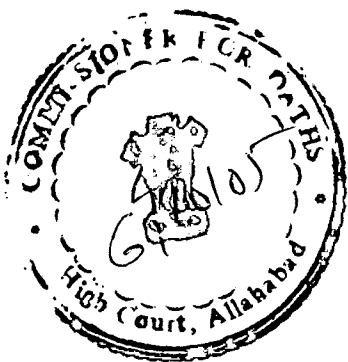


गोसाईं सिंह बीरा व साक्षी संख्या-9 बाबूराम को परीक्षित किया गया । कामजात को स्थिद किया बवाव में साक्षी संख्या-1 गजोधा प्रसाद पाठक साक्षी संख्या-2 डाक्टर लक्ष्मीबासयन साक्षी संख्या-3 गुंगा सिंह तथा साक्षी संख्या-4 राम शंकर परीक्षित हुये ।

निर्दिष्ट दिनांक से अभियुक्त को उद्युती रात्रि 12 बजे समाप्त हो गया और उस समय से प्रातः 8 बजे तक साक्षी संख्या-6 राम प्रताप दिवाकर को उद्युती सहायक स्टेशन मास्टर के मद के दायित्व स्थिति का था । राम प्रताप दिवाकर ने इस उद्युती पर लगभग 1-45 बजे जाना अपनी मुख्य मृच्छा में कहा देर से आने का कारण इस साक्षी ने यह बताया कि वह सोता रहा ।

साक्षी संख्या-3 बी०एन० तिवारी तत्काल अरेडापुर रेलवे स्टेशन पर स्टेशन मास्टर के रूम में कार्यरत थे इसके अनुसार अभियुक्त जितेन्द्र नाथ श्रीवास्तव को उद्युती रात्रि 12 बजे समाप्त हो चुकी थी और इस साक्षी ने यह बताने में असमर्थता व्यक्त की कि अभियुक्त को लापरवाही से कूटिना हुआ या नहीं । इसने यह भी कहा कि वह यह नहीं बता सकता कि अभियुक्त का उद्युती समाप्त होने के पश्चात् दूसरे सहायक स्टेशन मास्टर ने अभियुक्त से कार्यभार ग्रहण किया था या नहीं । जिरह में इस साक्षी ने यह कहा कि स्टेशन का उद्युती डायरी में नम्बर 34 पर लिखा है 12 बजे श्री राम प्रताप दिवाकर सहायक स्टेशन मास्टर को स्टेशन का कार्यभार सौंप कर 12-30 पर नुक्त हुये इस प्रकार इस साक्षी का जिरह से यह स्पष्ट है कि अभियुक्त कूटिना के समय स्टेशन पर कार्यरत नहीं था ।

साक्षी संख्या-3 बी०एन० तिवारी ने यह भी कहा कि दैनिक लिग्नल रजिस्टर में दिनांक 4/5-3-1982 का बीता रात में 62 डाउन यात्री गाड़ी को बाइन किलियर दिये जाने के सम्बन्ध



में कोई प्रवृद्धि नहीं है इस साक्षी के अनुसार ऐसी प्रवृद्धि उसी समय कर दिया जाता है कि जब बाइन किलियर दिया जाता है इस तथ्य से यह बख्त होता है कि अभियुक्त जितेन्द्र नाथ श्रीवास्तव ने ऐसी कोई बाइन किलियर 62 डाउन यात्री गाड़ी को नहा दिया कि जिससे दुर्घटना हुयी। इस तथ्य की पुष्टि साक्षी संख्या 1 गीयूष कुमार दास गुप्ता के इस कथान से होती है कि लाइन किलियर देने वाले व्यक्ति की आवाज वह नहीं पहचान पाये थे क्योंकि वह कोई नया व्यक्ति था।

साक्षी संख्या-3 बी०एन० तिवारा ने यह कहा कि स्टेशन पर गाड़ियों को लेने की ड्यूटी में सहायक स्टेशन मास्टर और प्वाइन्ट्स में की संयुक्त जिम्मेदारी होती है इसका अर्थ यह हुआ कि प्वाइन्ट्स में लाइन किलियर देने में सहायक स्टेशन मास्टर की मदद देता है। साक्षी संख्या-9 बाबूराम दुर्घटना के समय प्वाइन्ट्स में था इसका कथान अभियोजन के अन्य साक्षियों के कथानों से विपरीत है साक्षी संख्या-1 गीयूष कुमार दास गुप्ता ने यह कहा कि दुर्घटना के समय झरेडापुर रेलवे स्टेशन पर ऑटोमेटिक सिग्नल नहीं था जबकि प्वाइन्ट्स में बाबूराम दुर्घटना के समय ऑटोमेटिक सिग्नल की बात कहता है। साक्षी संख्या-7 गोसाई सिंह बोरा जो दुर्घटना ग्रस्त यात्री गाड़ी के ड्राइवर हैं के अनुसार उते प्वाइन्ट्स में ने किसी प्रकार का कोई लाल सिग्नल नहीं दिया जबकि प्वाइन्ट्स में बाबूराम ने यह कहा कि उसने 62 डाउन यात्री गाड़ी को लाल बत्ती दिखाकर रोकने का प्रयास किया था।

मेरे विचार से रेलवे स्टेशन पर हुयी दुर्घटना में रेलवे प्रशासन ने जानबूझ कर विवेचना अधिकारों के समक्ष गलत तथ्य प्रस्तुत किये जिसका परिणाम में एकनिर्देशी व्यक्ति के विरुद्ध विभागीय कार्यवाही हुयी और इस प्रकार रेलवे प्रशासन ने जानबूझ



कर एक निदर्शित व्यक्ति को मानसिक कष्ट दिया ।

मेरे उल्लेखित निष्कर्ष का प्रामाणिक बचाव साक्षी गजोधार प्रसाद पाठक के इस कथाने होता है कि उन्होंने दुर्घटना वाली रात 12-25 पर अभियुक्त को उसकी बीमार होजाने के कारण उद्युती से मुक्त होने को आना दी थी क्योंकि तथ्य स्पष्ट यह साक्षी विभागीय नियंत्रणाक्त था और अभियुक्त इसके नियंत्रण में कार्यरत था । दुर्घटना के समय अभियुक्त उद्युती पर नहीं था यह बात अभियोजन साक्षी गोसाईं सिंह बोरा ने भी कही और बचाव साक्षी राम शांकर जो दुर्घटना प्रत्यक्ष मालगढ़ी के गार्ड है ने भी कही अभियुक्त साक्षी बाबूराम भी अभियुक्त का बीमार होना मानता है । पर सनस्त तथ्य अभियुक्त के कथान का प्रामाणिक करते हैं ।

अभियुक्त उस रात में बीमार हुआ यह बात बचाव साक्षी डाक्टर लक्ष्मी नारायण अग्रवाल तथा गंगा सिंह ने भी भली भाँति पुकार स्थापित का ।

अभियोजन साक्ष्य से यह भली भाँति स्थापित है कि लाइन नम्बर -30 डेड लाइन है और इस पर आने के लिये गाड़ियों को ब्राइन किलियर नहीं दिया जा सकता । इस प्रकार यह नहीं कहा जा सकता है कि अभियुक्त ने गलत लाइन किलियर दिया । क्योंकि लाइन जोड़ना प्रवाइन्टस में का कर्तव्य है दुर्घटना लाइन नं०-3 पर हुआ प्रवाइन्टस में अभियोजन साक्षी बाबूराम है यदि प्रवाइन्टस में ने कोई गलती की तो उसके लिये सहायक स्टेशन मास्टर को दण्डित नहीं किया जा सकता है । यह दूना स्पष्ट है कि इस अभियोजन में एक निदर्शित व्यक्ति को जानबूझ कर



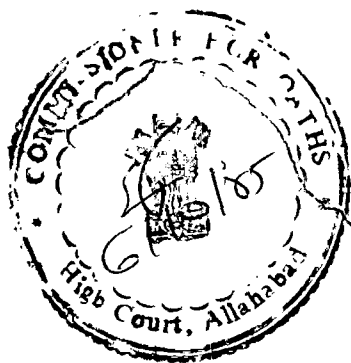
✓

अभियुक्त बनाया गया और वास्तविक दोषी व्यक्ति को बचाने का सपना प्रवास किया गया ।

प्वाइन्टस में बाबूराम ने यह स्वाकार किया है कि उद्युती लगाए जाने के पश्चात् अभियुक्त जितेन्द्र नाथ श्रीवास्तव ने अपने पेट में असहनीय दर्द होने की शिकायत की थी दूधिना गुस्ते मालगाड़ी के गार्ड रामशंकर ने भी अभियुक्त की बीमारी की गृष्टि की है । बचाव साक्षी रामशंकर गार्ड की साक्ष्य से भी यह तथ्य स्थापित है कि अभियुक्त दूधिना के पूर्व ही स्टेशन छोड़कर जा चुका था । स्वयं अभियोजन साक्षी बी०एन०तिवारी द्वारा प्रस्तुत स्टेशन के उद्युती रजिस्टर से इस तथ्य की गृष्टि होती है कि उद्युती राम प्रताप दिवाकर की थी यदि राम प्रताप दिवाकर अपनी उद्युती पर नहीं थे तो प्वाइन्टस में बाबूराम का यह दावा यथा कि इस सम्बन्ध में स्टेशन मास्टर बी०एन०तिवारी को सूचित करता ।

प्वाइन्टस में बाबूराम की साक्ष्य से यह भी स्थापित है कि लाइन किलियर देने वाली चाकियों के गुच्छे का बक्सा स्टेशन पर दूधिना के समय उल्टा हुआ । उद्युती पर नियुक्त साक्षी स्टेशन मास्टर राम प्रताप दिवाकर उद्युती पर दूधिना के समय यदि नहीं थे तो निश्चित रूप से ०२ डाउन यात्री गाड़ी को लाइन किलियर प्वाइन्टस में बाबूराम ने दिया यह तथ्य अभियोजन साक्षी गीयूषा कुमार दास बक्सा के कथन से भी स्थापित है क्योंकि उनके अनुसार लाइन किलियर देने वाले व्यक्ति को आवाज जानी गह्वानी न होकर नहीं था इस प्रकार यह स्पष्ट है कि अभियुक्त जितेन्द्र नाथ श्रीवास्तव ने लाइन किलियर नहीं दिया ।

Jan 2012



अभियुक्त जितेन्द्र नाथ श्रीवास्तव ने लाइन किलियर नहीं दिया यह तथ्य उपरोक्त वणिक्ति विश्लेषण से स्पष्ट है तथापि रेलवे प्रशासन ने अभियुक्त के विरुद्ध प्रथम सूचना रिपोर्ट अंकित करायी और उसके विरुद्ध विभागीय कार्यवाही की निश्चित रूप से यह तथ्य इस बात को और इंगित करता है कि रेलवे प्रशासन के स्थानीय अधिकारियों ने निर्दोष व्यक्ति को झूठा पत्राकर दोषी व्यक्ति को बचाने का एक सकल प्रयास किया उद्देश्य स्पष्ट है कि निर्दोष व्यक्ति छूट ही जायेगा और उसकी आड़ में दोषी व्यक्ति के विरुद्ध कोई कार्यवाही नहीं की हो सकेगी। रेलवे दुर्घटनाओं जैसे महत्वपूर्ण घटना क्रमों में रेलवे प्रशासन का यह कृत्य निन्दनीय है रेलवे प्रशासन से यह अपेक्षा की जाती है कि आविष्कार में इस प्रकार के अपराधों के लिये सही व्यक्ति को बचाने का कोई प्रयास नहीं किया जायेगा।

व्यय अभियोजन के साक्षियों से यह तथ्य स्थापित हो गया कि दुर्घटना के समय अभियुक्त ड्यूटी पर नहीं था विशेषकर तब जब कि दुर्घटना के समय की ड्यूटी अभियोजन साक्षी राम प्रताप दिवाकर की थी जैसा कि इस साक्षी ने स्वयं माना और इस साक्षी द्वारा यह भी स्वीकार करने पर कि उसने अभियुक्त को उसकी ड्यूटी करने के सम्बन्ध में कुछ नहीं कहा था यह तथ्य प्रकट हो जाता है।

उपरोक्त विश्लेषण से स्पष्ट है कि अभियुक्त जितेन्द्र कुशवाहा नाथ श्रीवास्तव वर्तमान दुर्घटना के लिये किसी भी प्रकार उत्तरदायी नहीं है और वह पूर्ण रूप से निर्दोष है रेलवे प्रशासन से अपेक्षा की जाती है कि इस प्रकार के अपराधों के लिये सही व्यक्ति को बचाने का कोई प्रयास नहीं किया जायेगा।

आदेश
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अभियुक्त जितेन्द्र नाथ श्रीवास्तव को धारा 101 भारत का रेलवे अधिनियम के अन्तर्गत दण्डनीय अपराध करने के आरोप से



A/34

29.1/30

-8-

दोषा मुक्त किया जाता है तथा उसके जमानती उन्मोचित किये जाते हैं।

दिनांक: 26-3-1983

ह0४ उभेरा चन्द ४

विदतीय अतिरिक्त मुन्सिफ

एवं

न्यायिक मजिस्ट्रेट प्रथम श्रेणी

सीतापुर

26-3-83

आज यह निर्णय मेरे द्वारा छाले न्यायालय में हस्ताक्षरित दिनांकित एवं उद्घाटित किया गया।

ह0४ उभेरा चन्द ४

विदतीय अतिरिक्त मुन्सिफ

दिनांक-26-3-1983

प्रथम श्रेणी सीतापुर

26-3-83

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सत्य प्रतिलिपि

For Seal



A/35

- 30 -

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

1/31

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure No. 4A

For Seal



Ann - 4 A

NORTH EASTERN RAILWAY

Form No. 3

Orders of imposition of penalty of reduction to lower post/grade/service under Rule 6(VI) of the Railway Servants (DCA) Rules, 1968.

No. T/537/TA/4/82

Dated 28.5.82

To,
Name Shri J.N.Srivastava

11-6-82

Father's name Shri J.P.Srivastava

Designation RG/ASM Department Operating

Ticket No. X Date of appointment 9.12.1959

Station HQ/STP now at ANDM code of pay 425-640

Ref: Memorandum No. even dated 3.4.82.

Sbri J.N. Srivastava, RG/ASM HQ STP now at
(name, designation and office in which he is employed.)

(Under suspension) is informed that the Inquiry Officer ~~has not yet~~ appointed to enquire into the charge (s) against him has ~~not~~ submitted his/their report. A copy of the report of the Inquiry Officer ~~is~~ ~~is~~ enclosed.

2. On a careful consideration of the enquiry report aforesaid, the undersigned agrees with the finding(s) of the Inquiry Officer/Enquiry and holds that the article(s) of charge/is / are proved.

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

5. The undersigned has, therefore, come to the conclusion that the penalty of reduction to a lower post/grade/~~scale~~ may be imposed on Shri J.N. Srivastava Shri J.N. Srivastava is, therefore reduced to the lower post/grade/~~scale~~ of Traffic Signaller in the scale of Rs. 260-4-00 fixing his pay at Rs. 300/- per month ~~consequent to~~ from 1-1-1954

per month ~~on a straight basis~~ without postponing future increments, and permanently deposited in the order enclosed in Annexure 1

6. Under Rule 13 of the Railway Servants (Discipline) Rules, 1968 on appeal against these orders lies to ADRM/LJN provided:-

- 1) the appeal is submitted through proper channel within 65 days from the date of receipt of these orders; and
- ii) the appeal does not contain improper or disrespectful language

5. Please acknowledge receipt of this letter.

DA/Annexure 'A' and
report of enquiry
Officer in 9 pages

Signature (J.N. MENON) 11/1
D.S.O./LJN

Name & Designation of the disciplinary authority.

Copy to O.S./Cadre & Bill disciplin-
- (Traffic) of DDM(P)'s office/LJN &
TI/STP for information and n/a.

* Strike out whichever is not applicable.



A/37 - 32-

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure No. 5

To

The DRM(P),
N.E. Railway,
Lucknow Jn..

Sub: Restoration on the original post of ASH
in scale Rs. 425-640.

Ref: Office letter No. T/537/TA/4/82 dt. 28/5/11.6.82

Sir,

With due respect I beg to lay the following
few lines for your honour's perusal and favourable
orders:-

That vide your above quoted letter, I was
permanently reverted as a Signaller in scale 260-430
and the pay fixed Rs. 300/- per month. After the depart-
mental enquiry of 62 DN collision with stabled load
of UP ASH Spl. on 4/5.3.1982 at JKP.

That DAR proceedings not fully followed by
the enquiry officer as my all defence witnesses were
not examined though I have applied vide my application



dated 18.5.82 at LC.

That the administration also reported the case to GRP/Sitapur through SI/STP vide memo No. nil dated 5/3 at 2.05 hrs. and fixed my responsibility and GRP/STP also filed a case against me u/s 101 IRA before court of law from where I was bailed out.

That GRP/STP pleaded the case in the court of honourable Munsif Magistrate/Sitapur examining all the same prosecution witnesses against me (Also examined DAR E/O) But the Hon'ble Munsif Magistrate decided the case in my favour and gave me free equital from the charges framed against me by the railway and by the GRP/STP also. The copy of the Judgement is attached herewith.

That still I am working on the same post though I have been equited free from all charges leaved against me from the court on 26.3.83 and could not get any further order for my restoration of original post and passing however my days in the financial strengencies.

I, therefore, request your honour kindly to go through the case and withdraw the punishment and back me in my own cadre and also order to pay my all dues which were not given to me from the date of Accident i.e. 4/5.3.82.

For this act of kind favour I shall be ever remain grateful to your honour.

Dated: 5.8.83

Yours faithfully

Encl:-Copy of the court judgement in (Nine) pages both inclusive.

Sd/-
(J.N. Srivastava),
Sig/STP.



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✓35

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure No. 6

MERCY APPEAL.

To

The Divisional Rly. Manager,
N.E. Railway,
LUCKNOW.

Subject:- Restoration on the original post of A.S.L.
in the scale of Rs. 425-640/-

Ref:- Office order No. T/537/TA/4/82, dated 25/5/11.6.82

.....

Respected Sir,

With due respect & humble submission I beg to
say the following few lines for your kind consideration
and favourable orders:-

That vide above letter No. I was permanently
reverted as Signaller in scale Rs. 260-430 fixing pay
@ Rs. 300/- p.m. after the DAR enquiry of 62 Dn. on 4/5.3.82

That in this connection FIR was also lodged
by A.S.L. STP vide memo No. Mil dated 5.3.82 at 2.05
hrs. to GRP/STP and the case registered u/s 101 of I.R.A.

That the case was trialed in the Court of
Law and the Court after examining all the witnesses



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(same as well as in D.A.R. enquiry), decided the case in my favour and gave me free equital from all the charges levied against me.

That still I am working on the same post as yet and got no any order from your honour about my representation although I have also appealed vide my application No.Nil dated 5.8.83 (under Regd.A.D. alongwith the original copy of the court's judgement).

That in these of financial strengencies having six family members studying in higher classes I am facing great hardships also to fulfil the problems.

In view of these facts, I, therefore, request your honour kindly to restore me on my original cadre also order to pay my all dues, which are not given from the date of accident i.e. 4/5.3.82.

In this above kindness I shall ever speak volumes of your generosity and shall be ever grateful.

Yours faithfully,

Sd/-

Dated:
29.9.1983.

(J.N.Srivastava),
Signallar/STP.



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In the Hon'ble High Court of Judicature at Allahabad.
Lucknow Bench, Lucknow.

Writ Petition No. of 1985

Jitendra Nath Srivastava .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure No. 7

To

The General Manager,
N.T.P. Gorakhpur.

THROUGH: PROPER CHANNEL.

Subject: Appeal against order dated 11.6.82 passed by
D.S.C./LJN reducing me to the post of traffic
Signaller with minimum reduced salary and
debarring me from any promotion.

Respected Sir,

With due respect and humble submission I beg
to say the following few lines for your kind consider-
ation and sympathetic orders:-

(1) That I was posted at Sitapur Junction in the
scale of Rs. 425-640 (initial pay Rs. 530/-) as Rest giver
ASM. On 3.3.82 I was ordered by the then T.I. Sitapur
to work at Jharekhpur Station vice shortage on
4.3.82.

(2) That at Jharekhpur I took over at 16 hrs.
in the shift of 16 to 24 on March 4, 1982 and performed
my rightful duties upto 24 hrs. But unfortunately
due to acute pain in my stomach I left station at
0/30 hrs. with the permission of the then Section



TNL after sending call to my reliever ASM through Pointman on duty. After this I came on road in search of conveyance for Sitapur to arrange for my immediate medical aid. With the help of a motor cyclist I came to the residence of Dr. L.N. Agarwal at Sitapur at 1.15 A.M. for my immediate treatment who gave me medicines.

(3) On the next morning I came to know that 62 Dn. passenger collided with the stabled load of UP Aish-bagh Special and I was falsely made responsible for accident. It was also known to me that the case u/s 101 IPC has been registered by GRP Sitapur against me on giving memo by ASM Sitapur on duty dated 5.3.1982.

(4) Because at the time of accident I was not on duty and was falsely implicated in this case hence I took shelter of the court of law and was bailed out from the court.

(5) Thereafter I was suspended by DSO/LJM. After getting the suspension order I represented against the suspension to the authorities on which I was reinstated and posted as R.ASM Sitapur. Thereafter I was transferred to Anand Nagar against a permanent vacancy of ASM.

(6) After revocation of my suspension, D.F. proceedings were started in such a hurried manner that my important defence witness such as Sri Ganga Singh were not heard by Inquiry Officer which resulted in giving arbitrary and prejudicial findings. It would not be out of place to mention here that none of the witnesses tried by the Inquiry Officer



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had gone against me except the pointman on duty.

(7) On the basis of the findings given by the Inquiry Officer I was awarded following multiple punishment by the learned DSO/LJM simultaneously:-

- i) reduction from the post of ASI to the post of Traffic Signaller.
- ii) reducing the pay to the lowest cadre @ Rs.300/- fixed.
- iii) debarring me from any promotion whatsoever in future and
- iv) other departmental facilities also stopped which is not maintainable and against the natural justice.

(8) On the other hand GRP Sitapur also submitted a charge-sheet against me in the Court of II Addl. Munsif Judicial Magistrate 1st Class Sitapur wherein I was trailed. The Hon'ble Court honourably acquitted me on 26.3.83 of the charges passing strictures against the Railway Administration disbelieving the allegations and charges, against me, the Court also observed that the real culprits were shielded and no punishment of any kind was awarded to them. (Copy of judgement enclosed).

(9) After the above Courts Judgement and waiting the further order from Railway Administration for about 4 months I made an appeal to DRI/LJM for restoring me on my original post on 5.8.83 and 29.9.1983. But unfortunately no response or

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hearing was given so far. Hence this appeal is being preferred to your honour.

(10) It is strange enough to mention here that the same prosecution witnesses produced before the Inquiry Officer were also produced by the GRP Sitapur before the court. The learned Magistrate honourably acquitted me on the basis of same statements given by them before the Inquiry Officer.

(11) It will also not be out of point to mention here that the judgement passed by the learned Magistrate was not appealed by the Railway Administration or by the G.I.P. Now the judgement has become final in the eyes of law.

(12) In the light of above facts it is therefore, prayed that your honour may kindly set aside the orders passed by the DSO/LJM and be kind enough to order that I may again be put back to my substantive post of A.S.I. alongwith the salary, promotion and the emoluments which were available to me prior to my reduction.

Dated:

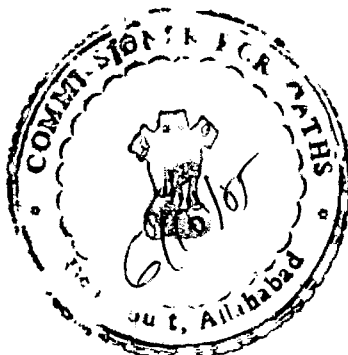
Yours faithfully,

Sd/-

(J.N.Srivastava),
Traffic Signaller,
Sitapur Junction,
SITAPUR.

Enclosures:

1. Photo copy of the order passed by DSO/LJM.
2. Copy of the judgement passed by Sri Umesh Chandra, Addl.



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45 - 40 -

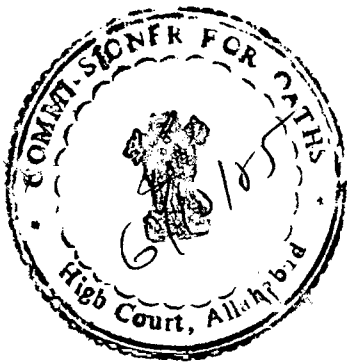
- 5 -

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Munsif & Judicial Magistrate
1st Class, Sitapur.

3. Translation in English of
the judgement.
4. Adn. copy sent direct.

Jan. 2nd



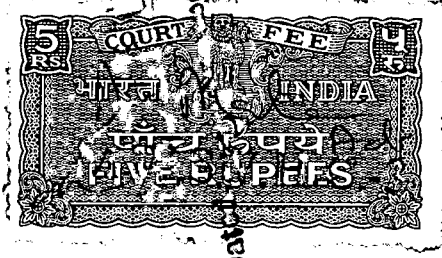
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In the Honorable High Court of Judicature
At Allahabad Lucknow Bench.

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J. N. Swastana

बनाम

Union of India & others

ऊपर लिखे मुकदमा में अपनी ओर से श्री **ABDUL MATEEN, Advocate**
RAVI SRIVASTAVA
152, Ghasyari Mandi, LUCKNOW-226001.

महोदय,

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं
इस मुकदमा में वकील महोदय स्वयं अथवा अन्व वकील द्वारा जो कुछ पैरवी
व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या
हमारी ओर डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या
इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने
हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकदमा उठावें या कोई रुपया
जमा करें या हमारी या विपक्षी (फरोकसानी) का दाखिल किया हुआ रुपया
अपने या अपने हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें
वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है
और होगी इसलिये यह वफालत नामा लिख दिया कि प्रमाण रहे और
समय पर काम आवे ।

J. N. Swastana

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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Accepted

Counsel For.....

Amate
Petitioner

Accepted
Ravi Swastana Adv.

A/47

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT -

BENCH: LUCKNOW.

T.A. NO. 1855 OF 87 (T).

J.N. Srivastava, Applicant.

Versus:

Union of India & Others Respondents.

WRITTEN-STATEMENT ON BEHALF OF RESPONDENTS.

I, V.K. Tiwari, aged about 37 years, son of
Sri J.K. Tiwari, resident of Officers' Railway Colony,
Bandar Bagh, Lucknow - working as Sr. Divisional Safety
Officer, in the Office of Divisional Railway Manager,
N.E. Railway, Lucknow, do hereby solemnly affirm and
states as under :-

1. That the deponent is working as Senior Divisional
Safety Officer, N.E. Railway, Lucknow and he has
received the copy of the writ-petition and has
read and understood its contents thereof. He
has been duly authorised to sign and verify the
written statement on behalf of the respondents.

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2. That the contents of paragraph 1 of the petition are not disputed.
3. That in reply to the contents of paragraph 2 of the petition, it is admitted that the applicant was posted at Sitapur Railway Station as Rest Given Asstt. Station Master at the relevant time and that he was in the grade of Rs. 425 - 640 and that he performed duties ^{on} ~~on~~ 4-3-1982 at Jharekha-
pur Rai-lway Station as Rest Given Asstt. Station Master. The rest of the contents of the para under
reply are not within the knowledge of the deponent and hence they are denied.
4. That the contents of paragraph 3 of the petition are admitted. It may, however, be added that since relief of the applicant did not relieve him just at 24 hours of 4-3-1982, he continued
his duties as Asstt. Station Master ^{thereafter even} ~~after~~ 24 hours in the early hours of 5-3-1982.
5. That the contents of paragraph 4 of the petition are mere concoctions for the purpose of the case. They are wholly wrong and are denied. It is
^{→ Sitapur} submitted that as per Train Register of Jharekha-
pur Railway Station, the applicant at ~~at~~ of
~~5-3-1982~~ granted Line clear for 62 Dn. Passenger Train to Sitapur Station and negligently arranged

V. Tewari
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its reception on Line No. 3 at Jharekhapur, which Line No. 3 was already occupied by ~~stabled~~ ^{Up-} loads of ~~xxxx~~ Shunting Goods Train. That Up-Shunting Goods Train was received by the applicant on Line No. 3 of Jharekhapur Railway Station at 20.20 hours of 4-3-1982. The Engine of that goods train was sent to Sitapur for watering at 21.10 hours leaving the load consisting of 60 wagons on the said Line No. 3. Since the reception of 62 Dn. Passenger Train was made negligently by the applicant, when the engine No. 2253 of 62 Dn. Passenger Train entered on Line No. 3, it collided with the ~~stabled~~ load of the said Goods Train at about 1.36 hours of 5-3-1982. As a result of this impact, wagons No. 29518 etc. derailed by 2-wheels and the cow-catcher of the Train Engine of 62 Dn. Pass. Train telescoped into the said wagons. As a result of the said collision 15 passengers and 2 Railway Staff of the said 62 Dn. Passenger Trains were sustained injuries. The applicant after the said accident ran away and so Sri Baboo Ram, Pointman on duty, went to residence of the Station Master and informed him of the said accident. The residence of the Station Master, Jharekhapur is quite near to the Railway Station building and the applicant before leaving the

Station, in any case, should have informed the Station Master. It is stranged that the applicant while suffering from his alleged ^{acute} ~~accused~~ pain could walk for more than 2 furlongs to reach the road, but, he could not go to the quarter of the Station Master and tell him of his alleged accute pain and to relieve him from his duties. It is also submitted that the section controlling ^{or} ~~the~~ of trains has nothing to do with the staff arrangement of the Railway Station. At the relevant hours of the night, it was the Station Master alone, who could be available to the applicant and in no case the applicant as alleged by him could leave the Station without being relieved.

6. That in reply to the contents of paragraph 5 of the petition, it is submitted that in view of the entries of ~~the~~ Line clear for 62 En. Passenger ^{of Sitapur Railway Station} ~~Train~~ ^{5.3.82} in the Train Register, the presence of the applicant upto the time of the said accident at ^{at Jheretapur} 1.36 hours of 5-3-1982 is proved beyond doubt, and the story of his ^{leaving} ~~bearing~~ the station in an alleged emergency of his alleged accute pain and reaching Sitapur with the help of a Motor-Cyclist at 1.45 a.m. of 5-3-1982 is only a cock and bull story. It is strange that the applicant could run ~~400 metres~~ to reach the road, but he was -

B. Tewari

unable to inform the Station Master, who was in his residence nearby the Railway Station.

7. That the contents of paragraph 6 of the petition are wrong and are denied in view of the records of the Railway Station of Jharekhpur.

8. That the contents of paragraphs 7, 8 and 9 of the petition are admitted. However, it is pointed out that in the order of the ^{revocation of suspension or the reinstatement} re-improvement ~~it~~ ^{petitioner} was specifically mentioned that the applicant would not be allowed to perform duties ~~on~~ main line section and was ordered to be utilized on branch line only.

9. That in reply to the contents of paragraph 10 of the petition, it is submitted that inspite of F.I.R. against the applicant under section 101 of the Indian Railways Act, the departmental proceedings could be initiated against the applicant under rules. And, accordingly, the departmental proceedings were initiated against the applicant with respect to his callous negligence resulting in the collusion of Passenger Train accident. It is denied that the departmental proceedings were finalized in haste and with a prejudiced mind.

There had been as many as 8 sittings for the said

2. *[Signature]*
अधिकारी,
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departmental proceedings as 23-4-1982, 24-4-1982, 26-4-1982, 27-4-1982, 4-5-1982, 7-5-1982, 8-5-'82 and 9-5-1982 and the applicant was given full opportunity for his defence and to produce any witness in his defence. The Railway Board have prescribed a Time Schedule according to which, the target period for finalising disciplinary proceedings is 202 days. The Board have observed that it should be generally possible the Railway Administration to finalize the disciplinary proceedings within the target period of 202 days. A photostat copy of the Report of the Enquiry Officer is annexed and marked as Annexure No. RA11.

10. That in reply to the contents of paragraph 10 (a) of the petition, it is denied that the opposite-parties ever admitted that the applicant ever approached to Dr. L.N. Agarwal in the night of 5-3-1982 at 1.15 hours in connection with his alleged treatment. Moreover, Dr. L.N. Agarwal was disbelieved by the Enquiry Officer as he was totally shattered in his cross-examination to prove the certificate given to the applicant. As regards production of one Shri Ganga Singh, Motor Cyclist, the applicant failed to produce him before the Enquiry Officer during the said enquiry, with respect to the allegation, that the departmental enquiry was completed during the span of 3 months, it is submitted that it was

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done according to rules and, however, such -
enquiries can not be delayed, in view of their
own importance in public interest. The applicant
adopted dilatory tactics during the said depart-
mental proceedings, which were not ~~appreciated~~ appre-
ciated by the Enquiry Officer. The rest of the
contents of the para under reply need no comments.

11. That the allegations of the applicant as made in
paragraph 10 (b) of the petition that the depart-
mental enquiry was made in such a hasty manner
that the petitioner could not produce his defence
witnesses is wholly wrong and is denied. It is
submitted that it was the duty of the applicant
to produce his witnesses and if he failed to do
so, the Enquiry could not be held-up. The said
annexure No. 2, to the writ-petition is with respect
to the date of sitting on 9-5-1982 - ~~xxxx~~ that is -
of the last and 8th. date of hearing. The alle-
gations of the applicant are denied.

12. That in reply to the contents of paragraph 10 (c)
of the petition, it is submitted that the findings
of the Enquiry Officer ^{are} of an earlier date ~~on~~ and
were based on the statement of witnesses recorded
by him and cross-examined by the applicant. As
such the judgement of the Court of Learned Munsif

Magistrate, Sitapur, made much ^{later} ~~on~~ 26-3-1983
अधिकारी,
रामगढ़

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can not undo ~~or~~ effect or nullify the findings of the Enquiry Officer. It may also be submitted that the purposes of a departmental enquiry and that of ~~six~~ criminal proceedings against an accused are different, and a criminal case may fail for any reason whatsoever.

13. That with respect to the contents of paragraph 10 (d) of the petition, it is submitted that the departmental charge memorandum was given to the applicant for violation of general and subsidiary rules, while the applicant was prosecuted by the Police under section 101 of the Indian Railways Act.
14. That with respect to the contents of paragraph 11 of the petition, it is submitted that they are with the respect to findings of the Enquiry Officer, which will speak for itself. However, the allegations of the petitioner are not just and proper.
15. That with respect to the contents of paragraph 12 of the petition, it is submitted that the Enquiry Officer was concerned with the statements of witnesses made before him and not by what the witnesses would say before the learned Munsif -

Magistrate, Sitapur and what would be his - findings in future. It may also be pointed out that none of the witnesses except the Doctor, who was not believed, supported the case of the applicant in the departmental enquiry and the applicant could not make out his case of defence by cross examination of the witnesses.

16. That in reply to the contents of paragraph 13 of the petition, it is submitted that it is with respect to the judgement of the learned Munsif Magistrate, Sitapur which will speak for itself. It is, however, submitted that proceedings in the Criminal Court may fail on technical grounds as for want of proof, while no such infirmity can vitiate departmental inquiry.

17. That with respect to the contents of paragraph 14 of the petition, it is submitted that for giving and taking Line clear of Trafn, it is the duty of the Station Master/ Asstt. Station Master on duty and not of the points-man.

18. That the contents of paragraph 15 of the petition, as stated are wrong and are denied. The applicant was given full opportunity of his defence and if he failed to produce one Sri Ganga Singh, for that the Enquiry Officer was not responsible or that

for Enquiry Officer,

can not in any way vitiate the enquiry. The ruling cited does not apply to the instant case.

19. That with respect to the contents of paragraph 16 of the petition, it is submitted that the applicant was afforded full opportunity of his defence as required under Discipline and Appeal Rules, 1968 and the enquiry has been conducted according to rules.
20. That in reply to the contents of paragraph 17 of the petition, it is submitted that there has not been any irregularity in the departmental enquiry as alleged by him. It is also denied that the applicant has been permanently debarred for any promotion and that he ^{has} also been denied increments etc., as alleged by him in (c) and (d) of the said paragraph 17 of the petition. The petitioner has been debarred for his promotion as Asstt. Station Master only and not from ~~the~~ the promotion in his own cadre of Traffic Signaller.
21. That with respect to the contents of paragraph 18 of the petition, it is submitted that the judgement of the learned Munsif Magistrate, Sitapur will speak for itself. However, it may be pointed out that the judgement does not in any

12/11/2014 way effect the findings of the Enquiry Officer,

made on the basis of the statements of witnesses produced before him and given much earlier than the judgement of the learned Munsif Magistrate.

It is respectfully submitted that this Hon'ble Central Administrative Tribunal/Allahabad has held in Case of Bhagwan Chaubey Versus: Union of India (1987) 4 ATC 153 as under :-

" The scope of inquiry in a criminal trial is to determine whether an offence against law of the land has taken place and if so, to punish the person who has been guilty of that offence. The scope of a departmental inquiry is to determine, whether a public servant has committed a ~~misconduct~~ misconduct or delinquency, and, even if the same constitutes from one point of view a crime, to consider the question, whether the delinquent - deserves to be retained in public service or to be ^{removed} ~~re-se-~~ rved or to be reduced in rank or otherwise suitably dealt with for the delinquency concerned. In a departmental proceedings, unlike in a criminal ^{trial} ~~trial~~, the Inquiry Officer is not bound by technical rules of evidence. The degree of proof which is necessary to record an order of conviction is different from that necessary to record a commission of delinquency."

23. That with respect to the contents of paragraph 20 of the petition, it is submitted that the judgement of the Learned Munsif Magistrate, Sitapur will speak for itself.

12/11/2020
म. प्र. म. वि. अ. अधिकारी,
म. प्र. म. वि. अ. कार्यालय

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and Appeal Rules, 1968 against the order of dated 11th. June, 1982 within a period of - 45 days.

It is further submitted that the petitioner did not file an appeal under rule 18 of the Discipline and Appeal Rules, 1968 within the stipulated time.

It is further submitted that the Divisional Railway Manager, N.E. railway, has exercised the power under rule 25 of the ~~D.A.R.~~ ^{Discipline and Appeal Rules, 1968} rule to review the order dated 11-6-1982 suo-moto and found that the order passed by the Competent Authority - imposing the penalty of reversion to the petitioner was adequate.

It is further submitted that the petitioner has filed the writ-petition in the Hon'ble High Court against the decision taken by the Reviewing Authority dated 1-7-1985.

25. That in reply to the contents of paragraph 22 of the petition, it is stated that there is no legal bar from taking decision by the department in pursuance of the Disciplinary Proceedings - initiated against the petitioner.

26. That in reply to the contents of paragraphs 23 and 24 of the petitioner, it is submitted that

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आपका
लक्ष्य

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the reference of the case referred in the para under reply is not applicable on the facts and circumstances of the ^{instant} ~~above~~ said case.

27. That in reply to the contents of paragraph 25 of the petition, it is submitted that the orders of punishment has not been quashed by the - authorities, nor it deserves to be quashed in view of the grave charges which were proved against the applicant.

28. That the contents of paragraph 26 of the petition are denied. The impugned order dated: 1-7-1985 is not the order of imposition of penalty, but it is an order passed by the Divisional Railway Manager, N.E. Railway, Lucknow as the alleged appeal dated 5-8-1983 of the applicant, which was manifestly barred by time. The said order is quite legal and valid.

29. That there are no valid and legal grounds for interference in the order of punishment by this Hon'ble Tribunal, as alleged under paragraph 27 of the petition and the applicant is not entitled for the reliefs claimed.

Contd....15...



अधिकारी,
लखनऊ

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30. That the petition is devoid of merits and is liable to be dismissed.

Lucknow, Dated:

January 22, 1989.


प्रवर DEPONENT अधिकारी,
मुद्रांतर सेलवे, लखनऊ

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paragraphs 1 of this written-statement are true to my personal knowledge and those of paragraphs 2 to 15, 17, 18, 19, 20, 24 and 25 are based on records which are believed to be true and that of paragraphs 16, 21, 22, 23, 25, 26, 28, 30 are based on legal advice. No part of it is false and nothing material has been concealed.

So help me God.

Lucknow, Dated:

January 22, 1989.


प्रवरी,
DEPONENT. अधिकारी

I, personally know and identify the deponent, who has signed before me.

Advocate.

Solemnly affirmed before me on
at a.m./p.m. by the above named deponent,
who has been identified by Sri
Advocate, Lucknow.

I have satisfied myself by examining to the deponent that he fully understnads the contents of this affidavit which have been read over and explained to him by me.

CATH COMMISSIONER.

J.N. Srivastava v/s Union of India

History and Notes.

Page I

Brief Description of DAR Enquiry case against
Shri J.N. Srivastava R/G ASM STP in a collision case A
between 62 BN and stalled load on 5-3-82 at 62
Tharakhapur Station.

xxx

Undesignated was nominated as Enquiry officer by
DOS/AgN on 16.4.82 and simultaneously the enquiry
was held at LC on 23/4, 24/4, at STP on 26/4, 27/4,
at LC on 4/5, at STP on 7/5, 8/5 and at LC on 9/5/82.

The charges against Shri J.N. Srivastava, R/G ASM
STP were as follows:-

That on 4.3.82 while Shri J.N. Srivastava,
ASM/TKP station was on duty from 16.00,
train engine No. 2253/Y.P of 62 DN passenger
train collided at 1.36 hours on 5.3.82 with
stalled load of up shunting goods on line
No. 3 at Tharakhapur station due to reception
of 62 DN train on line no. 3 already occupied
by with the stalled load of up shunting goods.

He thus violated GR 38, SR 38(3)(h), SR 187
(3)(i), SR 150(1)(h)(i), SR 150(1)(a)(v),
SR 150(a)(h) and SR 187(14)(h) of General and
Subsidiary Rules Book Edition 1963.

Statement of imputation of misconduct in
support of the articles of charges framed against
Shri J.N. Srivastava, ASM/TKP station, Son of
Shri J.P. Srivastava.

On 4.3.82 Shri J.N. Srivastava was on
duty at Tharakhapur station from 16.00 hrs
and during his duty hour of shunting
goods train was recd on line no. 3
(Tharakhapur station) at 20.20 hours and

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stabled as its engine was sent to Sirapur Page II A
station for watering at 21.10 hours leaving the head ⁶³
consisting of 60 wagons on line No. 3 at
JKF station.

Crossing of 62DN passenger and 53 up passenger
trains was arranged at Tharakhapur and 62DN
passenger train to be received first at station.
Accordingly 62DN passenger train worked by engine
No. 225¹ arrived at 0.47 hours and left at 1.00 hours
i.e. about 4 hours late against its schedule departure
21.01 hours.

As per arrangement of crossing to receive
first the signals for reception of 62DN passenger
were in lowered position at JKF station. At
about 1.36 hours on 5-3-82 the train 62DN passenger
entered on line No. 3 and its engine collided
with stabled loads, which leads to his gross
negligence and serious misconduct on
his part in discharge of duty. He thus
violated GR 38, SR 38(3)(b), SR 187(3)(i),
SR 150(1)(4)(i), SR 150(1)(a)(v), SR 150(a)(b)
and SR 187(14)(b) of General and Subsidiary
Rules, book edition 1963.

The proceedings were completed on 9.5.82
at Lucknow city. Written defence arguments
of the charged employee were submitted by
his Defence Counsel to the E.O. on 11.5.82.
Summarising the statements recorded, the
following staff were examined and charged
employee was assisted by his D.C. Shri H. H. T. Singh
Quaid/AS/H.

Per C-1

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हजार मंजूर है, अधिकारी,
मुहूर्त देवे, बलवत्

Prosecution Witnesses

1. Shri Ram Shanker guard/ASH of up shooting guns
2. " Wajabat Hussain guard 62DN (Lucknow)
3. " V.N. Srivastava ASM/HA
4. " P.K. Dass Gupta ASM/STP
5. " R.R.P. Singh S.I/STP
6. " G.S. Bora Driver 62DN (C.B shed)
7. " Babu Ram pointman Tharakhapur
8. " R.P. Dinakar I/R ASM Tharakhapur

Defence Witnesses

1. Dr L.N. Agarwal M.B.B.S private Medical practitioner of STP.

N.B:- Other 4 D/W as enumerated by the charged employee in his application dated 14.6.82 could not be examined as he could not produce them on the dates of enquiry fixed at STP and Lucknow city.

Discussion of evidence

The defence counsel of the charged employee Shri T.N. Srivastava in his defence arguments dated 11.5.82 has briefly emphasised on Page Number 3, 4 that Shri Srivastava had left Bareilly at 0730 for Entapur by road due to severe stomach pain on the presumption that his relief (in coming A.S.M.) will take over charge who

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was due for duty at 24/ Hrs on 4/3/82.
he has referred to the answers of P/W
Sri Ram Shanker Guard to question Number
4, 9, 12 at page No 3 that after the accident
he did not see A.S.M. and Pointsmen.
It is a fact that after the accident Sri J. N.
Srivastava A.S.M. told Sri Balu Ram Pointsmen
to call A.S.M. That Sri B. N. Tewari and
as soon as Pointsmen went to the quarter
of S.M., Sri Srivastava left the station to save
himself from the annoyance of passengers
who might have beaten him severely.
It is therefore possible when Sri Ram -
Shanker guard of all shunting goods reached
after the accident he found that neither
A.S.M. nor Pointsmen were present at the
station. Sri Ram Shanker had also
denied the argument of D/C that Sri
Srivastava had sent Pointsmen Sri Balu
Ram to call his relief Sri R. P. Diwalekar A.S.M.
at 0/30 Hrs in his answer to question
No 8 on page No 3. The point raised by
D/C that charged Employee was seen by
above P/W at 0/30 Hrs and he was ready
to leave for Sitapur is quite true as he wanted.
Because he could not leave the station
without properly making over charge -
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to his relief who was present in his quarters at stone's throw distance from S.M.'s office. Had he himself shouted during night, his voice would have been audible in railway quarters.

The Point of D/C that P/W Sri Wajadhat Hussain also did not find any staff on duty at the Station after the accident, also carries no weight because A.S.M. Shri Srivastya had run away and Sri Balu Ram Pointman had gone to call Sri B.N. Tewari Station Master.

But both the above P/W's had admitted in their statements that they had seen Sri Balu Ram Pointman after the accident but not Sri T.N. Srivastya A.S.M., the charged employee.

It is correct that charged employee had completed the diary and made an entry that charge was made over to Sri R.P. Dewakar A.S.M. at 0730 hrs but actually the charge was not taken over by Sri Dewakar who did not turn up on duty. The charged employee also did not call him from the quarter knowingly because he was to go to S.T. & his head quarter by 530 which was running late and to gain favour of Sri Dewakar he allowed him to sleep for some time more.

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V. Tewari

In the mean-while he gave permission to approach for 62 Down and 53 but without making ^{a fresh} entry in T.S.R. or crossing any private Number because he had already drawn a line below entries pertaining to his duty and thereby to avoid his responsibility. He also operated the panel and arranged the reception of 62 DN on line No 3. Though he had made an entry in Station diary that the line No 3 was blocked but he failed to ~~be~~ note this fact in T.S.R. which he himself admitted in answer to question No 8 on page No 37. He also failed to use stop plugs. Had he used stop plugs, the route would not have been changed and the accident would have been avoided.

The point of the D/C that P/W Sri V.N. Srivastava A.S.M./H A and P/W Sri P.K. Dass Gupta A.S.M./SIF did not recognise the voice of Sri T.N. Srivastava on phone is also not correct. In fact they did not feel the necessity to recognise his voice but they obtained the permission to approach from S.M. on duty. Both the above P/Ws have admitted this fact in ~~their~~ answers to question No 7 on page 9 and 12 respectively.

More over Sri Balu Ram Puri, S.M. on duty was an eye witness and he can be relied upon that he saw in his presence Sri T.N. Srivastava gave line clear to 62 DN, operated line verification Box and also panel for

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[Signature]
[Stamp]

reception of 62 DN. Sri Ram Shanker guard had already gone to his Brake Van at 0/30 Hrs (vide Page No 2) and there ^{were} no other passengers waiting for 62 DN and 53 up. as both trains were running late. Therefore Balu Ram Poinzman was the only eye witness on duty and his statement can not be brushed aside.

After the accident Sri Srivastva left the Station but Sri Balu Ram Poinzman remained present and called Sri B. N. Tewari S.M / J.K.P.

The point of D/C that P/W Sri G. S. Bora Driver of 62 DN did not see Sri Balu Ram Poinzman is also not correct. Because Sri Bora had stated in answer to question No 2 on Page No 20 that he did not go to S.M's office after the accident.

The contention of D/C that Sri Srivastva attended a private medical practitioner of Sitapur Dr. L. N. Agarwal at 1/15 Hrs can't be relied upon because Dr. Agarwal had stated in answer to question No 6, P. on page No 30, 31 that usually he did not keep either the record of the patients who attended at his residence or noted the time. But he put the time on the prescription of Sri Srivastva when he particularly insisted upon without considering the implications.

Reasons for findings

The theory put up by the charged Employee that he felt severe stomach pain and left Station at 0/30 Hrs after completing his diary

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and got medical aid from a private Doctor Sri Agarwal at Sitalpur is ~~not~~ ^{im}improbable due to the following reasons:-

1. He did not mention the above fact to Sri Balu Ram Panta man on duty.
 2. He failed to call Sri R.P. Dewaker A.S.M. his relief from his quarter.
 3. He failed to intimate S.M./T.K.P. Sri B.N. Tewari who was present in his quarter.
 4. He failed to use stop plugs and also failed to block the panel and hand over key either to A.S.M. or S.M. personally.
 5. He failed to note the fact in station diary that he was leaving the station due to emergency.
 6. He also failed to inform T.N.L. on duty.
 7. He failed to obtain sick memo either from S.M. T.K.P. or S.M. S.T.P.
 8. He also failed to report to Railway Doctor at Sitalpur.
 9. He also failed to intimate S.M. S.T.P. that he was under the treatment of a private Doctor.
 10. Moreover Dr. L.N. Agarwal also stated in his statement that the disease was not fatal. How Sri Srivastava could travel on foot for a long distance upto Sitalpur Road when he failed to evince his relief Sri Dewaker A.S.M. personally who was present in his quarter quite near to S.M.'s office.
- a. The authorised person to give line clear is S.M. on duty, then in the absence of S.M. T.N. Srivastava A.S.M. who could give line clear and arrange reception of 62 DN.

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Page IX A70

(a) Sri Ram Shankar guard of up
Shunting goods had already gone to his
B/van at 0730 HRS in the presence of Sri
Srivastava.

(b) Sri R.P. Dewaker in coming A.S.M. did not
turn up on duty.

(c) Sri Balu Ram Pointman was not qualified
and also ~~not~~ was not conversant with the
working of Block Instrument and Panel.
This fact has been admitted by P/Ws Sri
V.N. Srivastava Asmtt A and Sri P.K. Datta Gupta
Asmtt/STP and charged employee himself
in answer to question numbers 10, 8, 23 on
Page No 10, 12, 43, respectively that there was
no such case when line clear was granted
or Panel was operated by Pointman on duty.

(d) The possibility of some outsider is incoceivable
as there was no passenger on the platform.

Though Sri T.N. Srivastava did not make
an entry in T.S.R. pertaining to 62 DM dead there
was none else except charged employee who
could grant line clear and arrange reception
of 62 DM. But in the process he forgot that
the line No 3 was already blocked because
he did not use stop plugs. After the
accident he fabricated a ~~false~~ story
taking advantage of the fact that he did not
make an entry in T.S.R. after 0730 HRS.

Findings The charged employee Sri T.N. Srivastava while
working as A.S.M./TKP on 4/3/82 has been
found responsible for violation of G.R. 30, SR 30,
(3) (b), SR 101 (3) (1), SR 150 (1) (b) (i), SR 150
(1) (a) (v), SR 150 (a) (b) and SR 107 (14) (b) by G4SR
with addition 1963.

Dated 14.5.82

T1/ASH, Enquiry Officer

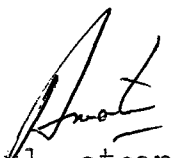
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proper in the circumstances of the case be passed in favour of the petitioner and against the opposite parties.

Wherefore, it is prayed that this Hon'ble Court may graciously be pleased to stay the further operation of the order of punishment dated 11.6.82 contained in Annexure No. to this writ petition till the pendency of the petition or any other order which this Hon'ble Court deems just and proper in the circumstances of the case be passed in favour of the petitioner and against the opposite parties.


(Abdul Lateen),
Advocate,
Counsel for the petitioner

Lucknow:

Dated: Oct. 6 1985

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In the Hon'ble Central Administrative Tribunal,
ALLAHABAD
LUCKNOW BENCH, LUCKNOW.

T.A.No. 1955 of 1987 (T).

J.N.Srivastava .. Applicant.

V/s

Union of India & Others .. Opp. party.

WRITTEN ARGUMENTS.

Writ Petition No. 5563 of 1985 was filed by the applicant in the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow, in 1985 and it was admitted by the Hon'ble High Court against the order of the Divisional Railway Manager, N.E.Railway, Lucknow, dated 1-7-85 rejecting the appeal of the applicant dated 5-8-83 against the order of imposition of penalty of permanent reduction to the post of Traffic Signaller in scale of Rsay Rs. 260-400 fixing the pay of the applicant Rs. 300.00 per month and debarring the applicant from any promotion whatsoever in future permanently and denying him increment, dearness allowance, other departmental facilities, etc.

2. Copy of the applicant's application dated 5-8-83 to the Divisional Railway Manager, N.E.Railway, Lucknow, for the restoration of the applicant on his original post of A.S.M. in scale Rs. 425-640 (Annexure-5, page 30-31 of the petition), followed by another application dated 29-9-83

(Annexure-6, page 32-33 of the petition) and the order of the Divisional Railway Manager dated 1-7-85 (Annexure-1, page 19, of the petition) may kindly be perused. The applicant preferred an appeal to the General Manager, N.E. Railway, Gorakhpur, (Annexure-7, page 34-38, of the petition, but no reply was received from the General Manager.

3. Briefly, the facts of the case are as under. While the applicant was posted as Rest Giver Asstt Station Master in grade Rs.425-640 in the year 1982, he was controlled by the Traffic Inspector/Sitapur. On 3.3.1982 the Traffic Inspector directed the applicant to work at Jharekapur station due to shortage of certain staff on 4-3-82.

3.1 As per roster the applicant took charge at Jharekhapur and was working there in the shift duty from 16 to 00 hrs on 4-3-82. While working in this shift duty, the applicant developed some stomach pain. As such he took permission on the Control Phone from the Sectional Train Controller and thereafter after sending a call to the Reliever of the applicant through the Pointsman on duty, due to acute pain and there being no medical aid readily available, the applicant left the station in search of conveyance for Sitapur for getting immediate medical aid. Luckily the applicant got a lift from a motor-cyclist and reached Sitapur at 1.45 hours in the night and approached Dr. Agarwal at his residence who gave necessary

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medicine. The next day the applicant learnt that an accident took place at Jharekhapur and for this train accident which took place in the absence of the applicant, the applicant was taken up departmentally vide charge memorandum for major penalty (Annexure-3, page 21 of the petition) and the Railway administration also lodged first information report with Govt. Railway Police at Sitapur. As a result of this Criminal Case No. 81 of 1982 under Section 101 of the Indian Railways Act in Re U.P. State v/s J.N. Srivastava ^{was} put up in the court of Munsif Magistrate, Sitapur. The applicant was honourably acquitted by the Hon'ble Court of Munsif Magistrate with strictures against the Railway administration vide Annexure-4, page 22-28, of the petition. The Railway administration did not prefer any appeal against the order of the Hon'ble Munsif Magistrate acquitting the applicant honourably and passing strictures against the Railway administration. No appeal was preferred either by the Railway administration or by the Police Department for getting the strictures, passed by the Hon'ble Munsif Magistrate, expunged. The strictures passed by the Hon'ble Court of Munsif Magistrate/Sitapur may kindly be perused (at page 7 of Annexure-4) at page 27 of the petition.

3.2 The English version of some of these strictures passed by the hon'ble Munsif Magistrate are given below :

Para 5 of the Judgement:

"I am of the opinion that the Railway

administration deliberately initiated criminal case against Jitendra Nath Srivastava in Criminal Court on false grounds due to which he suffered financially and mentally."

"It is admitted and has been corroborated by evidence on record that the accused was not on duty at the time of occurrence. The fact of illness of accused has been fully established. For the accident accused AsSTT Station Master cannot be held responsible for which responsibility could have been fixed on the Pointsman."

Para 6 :

"It is sad and unfortunate that in this case an innocent person was intentionally prosecuted and made an accused, the game being to save the real culprit, in the hope that the accused will be acquitted in criminal case and the real culprit will go unpunished and unharmed."

Para 7 :

"The part played by Railway Administration is shameful in trapping an innocent person to face trial."

"Accused Jitendra Nath Srivastava is not in any circumstances held responsible for the charges levelled against him and he is honourably acquitted."

4. It may be stated here that the witnesses in both the proceedings i.e. D.A.R. proceedings and the criminal proceedings were common. The decision in the D.A.R. case was taken earlier in which the above mentioned punishment was imposed and honourable acquittal from the court of Munsif Magistrate took place later. The applicant, therefore, prayed for quashing the punishment as the judgement of the hon'ble Munsif Magistrate passed not only honourably acquittal of the applicant but also serious strictures against the Railway administration, but no credence was given ~~by~~ the Railway authorities. Even the Divisional Railway Manager did not mention of the judgement of the hon'ble court, while disposing of the applicant's appeal. This shows lack of application of mind and total disregard of the honourable acquittal passed by the learned Munsif Magistrate. Non filing of appeal or getting the strictures expunged amounts to criminal 'resjudicata' as held by the Hon'ble Supreme Court in a number of judgements given below. This displays not only lack of application of mind by the Divisional Railway Manager but also ~~not~~ ^{honourable} a speaking order as after/acquittal of the applicant there was no way out legally in terms of Hon'ble Supreme Court, High Courts and Central Administrative Tribunals' decisions, ^{but} to quash the punishment imposed. But sadly there is no mention of the grounds for maintaining the punishment imposed or the

date when the review of punishment imposed took place because the punishment was imposed in 1983 and the review of the same was done in 1985, that is, after three years. The prayer of the applicant was for quashing the order of punishment passed in view of the applicant's honourable acquittal for the same charges by the Hon'ble court of Munsif Magistrate. But there is no mention of honourable court's judgement and the ground for maintaining the punishment by the reviewing authority in his review orders. His orders are, therefore, a nullity.

5. The undermentuoned points, it is submitted, are to be considered in this case :-

- (i) Whether it was correct for the Rail-way Administration to start D.A.R. proceedings and simultaneously to start criminal proceedings on the identical facts with the same witnesses and to virtually expedite D.A.R. proceedings without waiting for the result of the criminal case trial.
- (ii) Whether the punishment imposed on the applicant in D.A.R. proceedings, challenged in this case, prior to the decision of the Criminal Case Trial in which the applicant was honourably acquitted and serious strictures were also passed against the Railway Administration, can stand particularly when

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the Hon'ble court's judgement was accepted as no appeal was filed against the acquittal and for getting the strictures expunged. Under the circumstances, the point for decision is whether the punishment imposed in DAR proceedings can stand.

(iii) Whether the D.A.R. enquiry could be held by the Traffic Inspector who is directly under the Divisional Safety Officer, a member of the Preliminary Enquiry Committee holding the applicant guilty.

(iv) Whether reasonable facilities were extended to the applicant in this case.

(v) Whether the order of 'Reversion' is valid.

Issues No. (i) & (ii) above.

6. On issues No. (i) and (ii) above, your Lordship, may like to peruse the following:

- (1) Bhagwat Charan V/s State of U.P. & others, 1973 (2) SLR 238.
- (2) R.P. Kapoor V/s Union of India, AIR 1964 Supreme Court 786.

Hon'ble Mr. Justice Wanchoo, Chief Justice, Supreme Court, speaking for the Supreme Court in case R.P. Kapoor V/s Union of India, AIR 1964 Supreme Court 786, observed, "If the

trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal, proceedings may follow where the acquittal is other than honourable." These observations were followed by Hon'ble G.C. ^{Mathur} ~~Das~~, Judge of the Allahabad High Court in the case of Bhagwati Charan V/s State of Uttar Pradesh & others, 1973 (2) SLR 238, when he observed, "Departmental proceedings on the basis of the same charges are not expedient if the person has been honourably acquitted by the criminal court." In this case, Hon'ble Mr. Justice G.C. ^{Mathur} ~~Das~~ quashed the proceedings of D.A.R. and in pursuance of the honourable acquittal allowed the writ petition giving the petitioner duty.

7. Hon'ble Mr. Justice Bhagwati, Judge of the Supreme Court, speaking for the Supreme Court in the case of Pritam Singh & others v/s State of Punjab, AIR 56 Supreme Court 415, quoted the following observations of Lord Mac Dar Amoli in Samba Sivam V/s Public Prosecutor Malaya, 1950 AC 458, "The effect of verdict of acquittal pronounced by the competent court on lawful charge and after lawful trial is not completed, stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and classified for all subsequent proceedings between the parties to the adjudication mixing resjudicata pro veritate accipiture is no less applicable to criminal than the

civil proceedings."

8. The view taken in another case in Re. Kundan Lal V/s Delhi Administration & others, 1976 LIC 811, and A.P.Naidu V/s General Manager, Central Railway, Secunderabad, 1982 LIC 1920, is as under :-

"The above survey of judicial opinion seems to preponderating preference for the middle view which is that where there is substantial acquittal of the accused in the criminal case, there should not be departmental proceedings against him in respect of the same charge on the same facts unless there are present condition like acquittal being on technical grounds or establishing conduct which would make it unworthy of the said officer to continue in office etc."

9. R.J. Diwakar V/s Union of India
1985(1) SLR 214.

Constitution of India - Article 226
and 311 - Double jeopardy to the departmental enquiry - Acquitted on merits in criminal proceedings - Subsequent departmental proceedings against him based on the same charges initiated - Order of removal passed against him - Order illegal - Quashed under Article 226.

10. Sheikh Kasim V/s Supdt. of Post
Offices, Delhi in AIR 1965 Madras 502.

"Where the acquittal is substantial

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on merits and identical facts and charges, it will not be proper for the disciplinary tribunal to record finding of guilt and to punish thereon. This is the basic principle of jurisprudence and I cannot see that it makes any difference ~~what~~ the departmental authorities act before the criminal proceedings or after it. This court in exercise of the jurisdiction under Article 226 of the Constitution would be justified in striking down the action based on ~~such~~ findings as not in consonance with the principle of 'natural justice' otherwise grave anomalies might follow it." Stressed in 1952-1 Madras Law Journal 35 = AIR 1952 Madras 833."

11. K.Dube V/s Bharat Cocin Coal,
AIR 1988 Supreme Court 2118.

"Disciplinary action has to be stayed till the criminal case is over."

12. Rajendra Kumar Paul V/s Union of
India, 1976(2) SLR Calcutta 295.

"Article 311 - Disciplinary proceedings - Honourable acquittal in criminal trial - charge sheet issued under the same allegations and charges as in criminal proceedings - Disciplinary proceedings not possible - Punishment of D.A.R. quashed."

(Contd...11)

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Issues No. (iii) and (iv) above.

13. In this case the Divisional Safety Officer was the main officer who was the Chairman of the Preliminary Enquiry Committee and the disciplinary authority also. The person who was appointed Enquiry Officer was directly under the Divisional Safety Officer. It has been held in ^{a recent accident} ~~an expedient~~ case, viz., in ^{Re} Amiruddin V/s Divisional Superintendent, South Central Railway & others, 1975 Services Law Cases 69, by Mr. Justice Jagan Nath Seth, ^{Shetty} the then Judge of the Karnataka ^{High Court} and now Judge of the Hon'ble Supreme Court, "Enquiry Officer in such cases could not have taken independent attitude in his conclusions. He was subordinate to the Officer who conducted inter-departmental enquiry and a person who at back and call of the General Manager, he [&] should not have discarded the finding of the joint enquiry committee to the effect that the petitioner was guilty of the charges. He should have done so at his own peril. In this state of affairs and on an overall consideration of the facts and the attending circumstances of the case it appears that the apprehension of the petitioner, i.e., the case was prejudicial approach of the Enquiry Officer, was reasonable and it was sufficient to quash the impugned order." The fact of denial of reasonable facilities has been given in detail in the writ petition and the rejoinder, displaying the prejudicial attitude of the Enquiry Officer inasmuch as even the evidence desired was not

permitted to be produced, Namely, the motor-cyclist who was an outsider and gave the applicant lift on his motor cycle from Jharekapur to Sitapur on the fateful night of the date of accident for which he was held responsible and punished in the departmental proceedings. The orders for not permitting to produce this witness in the D.A.R. enquiry proceedings were though dictated by the Enquiry Officer but in proxy by Asstt. Operating Supdt (G). How can such an officer be expected to do justice when he lacks to exercise his independent decision based on judicious considerations?

Issue No. (v) above

14. In this connection, it is ~~On the issue of examination, it is~~ worthwhile to refer to Railway Board's letter No. E(D&A) 70/RG -6/5 dt. 2-5-70 (N.R. 5017) which lays down, "It is obligatory to examine all the witnesses produced by the Railway servant and it could not be correct to refuse examination of such witnesses ~~the~~ on any account." Annexure-2 at page 20 of the petition may be seen. It shows the blatant prejudicial mind displayed by the Enquiry Officer at the behest of A.O.S.(G) in refusing even two days time to produce the defence witnesses before the Enquiry Officer.

Issue No. (iv) above.


15. The post of Signaller to which the applicant has been reduced, not being in line

of the officer, i.e. feeder service, the same is illegal. This was decided in Re Vijai Kumar Pandey V/s Union of India by the Hon'ble Central Administrative Tribunal, Allahabad, (1988 U.P. Lab 5). In para 9 of this judgement, the Hon'ble Central Administrative Tribunal observed, "According to these guidelines, the reduction to a lower post in case of a direct recruit can be possible if the duties of the lower post are the same to those performed by an officer in the higher post. The duties of A.S.M. on which the applicant was working were higher than those of a Signaller.

^{dr}Nayaz Singh, V/s Union of India & others,
AIR 1986 CAT 184.

On the basis of the foregoing submissions, it is most respectfully prayed that the Hon'ble Court may be pleased to quash the orders of punishment imposed in this case.

Lucknow :


(C.A. Basir)
Advocate,
Counsel for the Applicant.

Dated 14th May, 1989.

Before ^{the} Honble Central Administrative Tribunal
Lucknow

CR 28

TAN 1955 of 487 (T)

J. N. Sinha

vs

Union of India

petition

opposite party

Applicant most respectfully states

Under:-
1. That the above said case fixed
for today for hearing.

2. That the Counselor respondent,
is not well hence he is
unable to attend this Honble
Court today.

3. That it will be in the interest of justice
to adjourn the case to some other
date.

Prayer

Wherefore it is most respectfully
prayed that this Honble Court
may kindly adjourn the above
said case to some other date.

Date 7-11-89

Chander
Counselor Respondent