

PP 8

drawn PP-1 to 7 is not on record.

the
 almost
 10/4/80

उत्तर रेलवे
 Northern Railway

- ① Shri. J.P. Tripathi, Mohd Naseem and Zafar Ali were dismissed from Railway service on 29/6/81 as per Sr. Dos's writings on PP7 and the notice served on them vide S.No. 7 to 20.
- ② The employees have appeared vide S.No. 25 to 27 against the orders of Sr. Dos.
- ③ The appeal which has been preferred within time limit lies to ADRM / optg.

Sr. Dos ADRM / optg
 3/9/81
ADRM / optg

उत्तर रेलवे
Northern Railway

As per orders of Sr.DOS at PP.7 the services of S/Shri Zafar Ali, Mohd. Naseem and J.P. Tripathi were terminated under Para 14(II) of the DAR Rules 1968 on the basis of facts at PP 1 to 6. They appealed against the aforesaid orders of termination and their appeals were rejected vide orders at PP-9.

and Zafar Ali

S/Shri J.P. Tripathi ~~and~~ Mohd Naseem have now preferred a review petition against the above orders passed by ADRM(OP) which are placed at Sl.No. 34³⁵ and 36 respectively. The papers are put up for a decision on the review petition by D.R.M. please.

D.O.S.

25/11/81

CA/DOS
25.11.1981

Sr. DOS

SR/DOS
28/11/81

ADRM(OP)

30/11

D.R.M.

SPD/I

According to latest orders in force does a review petition ~~by~~ lie to the DRM? What are the rules.

HCA

M. Shri with the latest orders in force on the subject

J.D. Chauris

3/12/81

As per latest orders only one review is permissible. Since this is the first review petition ^{in terms of Rules of DAR} ADRM is competent to decide it.

HCA
4/12/81

P.T.O

HCA

Recd on 21/12

PP/12

उत्तर रेलवे
Northern Railway

Ref: DRM's query at PP/11 bottom.

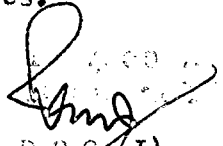
The note of the undersigned at PP/11 in fact covers all the three cases of review as preferred by S/S Zafar Ali, Nohd Naseem and J.P.Tripathi, ex TNCs.

Sr. DCS had recorded a note at PP/7 including all these ex-employees indicating why a proper DAR Enquiry was not feasible in their cases. The appeals of all these three ex-employees were considered and rejected by the ADRM(OP) vide his note at PP/9.

Review petitions submitted by them are at S.Ns. 36, 35 & 34 respectively, for consideration by the DRM.

From the point of view of rules and procedural formalities there are no lacuna in all these three cases.

In complete nothing is
repeated..


D.P.O.(I)
16.12.81

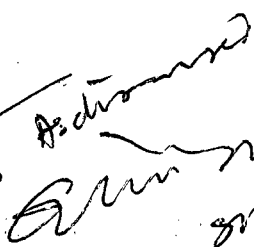
DRM.

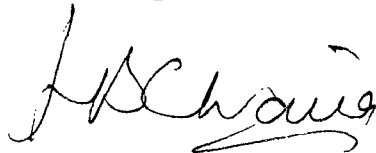
Having gone through the review petition and the orders passed by the appellate authority, I do not find any justification to change the orders of the appellate authority in all these three cases.

ADRM(OP)

DPO/I

Sr DCS


Sr DCS


Sr DCS

16/12/81

21/12/81

Sub: W.P.No. 1362 of 1982 in the
Hon'ble High Court of Judicature
at Allahabad (Lucknow Bench), Lucknow
Jagdamba Prasad Tripathi ex. Train's
Clerk Vs. Union of India & others.

The above-named employee was dismissed from service under Rule 14(ii). His appeal was rejected as also the Review Petition at different DRM's level. He has now filed a Writ Petition in the High Court at Lucknow, which is fixed for admission on 6.5.1982. Parawise comments on the Writ Petition are given at SN 41.

2. In this connection, it may be pointed out that keeping in view the seriousness of the case and the stand taken by the Administration, it may be necessary to engage a Special Counsel to conduct this case at the High Court level and not merely to rely on the services of Railway Advocate.

DRM is requested to kindly approve so that Hqrs. may be approached for this purpose.

Letter to Hqrs. placed at SN 42 may

Kindly be signed, if approved.

D.O.S.
4.5. '82

D.R.M.

approved
signed
DRM

4/5/82

SE 2063

A copy of writ petition received from
Hqrs. Office in the case of Jagdamba
Prasad Tripathi vs Union of India,
wherein they have nominated
an A.A. Bhatia Pky Advocate / pro
in this case.

Put up for perusal & orders of.

DRM

C.A. D.S.
4/5/82

3

PP 16

उत्तर रेलवे
Northern Railway

Ref - Letter from G M/P/ Legal
Cell no 21-460/W P/82
Legal cell (P) or G/X/82
& Sanction letter of
fee of Rs 1100/-

The above letter along with
Sanction letter are placed at
Sl no. 52(a) & 52 for further
orders please.

DOS
DPO RK
3/1/83

Ambr
CA/DOS
19/X/82

CLA

Ref - G M/P/ Legal cell
Letter placed at Sl no.
52 & 52(a).

G M (P) Legal cell letter along with
Sanction letter in favour of S. P. Shukla
Sr Advocate is placed at Sl no 52 & 52(a).
Letter placed at Sl no. 53 is put
up for signature M

DOS

3/1/83

Ambr
CA/DOS
3/1/83

SNc 00

उत्तर रेलवे
Northern Railway

The factual portion needs no vetting pl. It is the Counteraffidavit drafted by the Rly Advocate on the basis of para-wise comments furnished by the Branch concerned that is vetted in the G. M. (P), legal cell, Jp's office and not by the legal cell of the Division. The DOS has offered comments against paras relating to the records in Khari's custody vide SNo 92, 92(a) and 93. The rest of the paras are to be commented upon by the 'P' Branch. These paras relate to Service particulars. This file was delivered to me personally by Shri to ~~SB~~ Br DPO on date of Khimada

SB DPO

13/12/83
h.s. u

Necessary remarks are given in under :-

SNc 93

(1) Facts as given in para 1 are correct except that his apptd letter was issued on 16.1.80

(7) His apptd letter was issued to him in office. Legal matters

RB
DPO
21/12/83

CA/DOS
Recd on
21/12/83

Shri/Smt
RB
vms

(A) In connection with disciplinary action in Para 14(ii) of D&A Rules 1968, three TNCs working in the control namely; S/Sri J.P.Tripathi, Zafar Ali Siddiqui and Mohd. Naseem were dismissed by the disciplinary authority then Sr.D.O.S. as such all the requisite informations asked for by the Railway Advocate should have been provided by the Sr.D.O.S. and not by the D.O.S. who had nothing to say in it. As such the whole case should go through CA/Sr.DOS apprising all the facts. If approved the whole case be transferred to CA/Sr.DOS.

Submitted for orders please.

D.O.S.

CA/DOS

CA/Sr.DOS

Sr.DOS

L.A.
Vide Sl.No.102 and 104 respectively Shri Zafar Ali Siddiqui agrieved party has submitted an application through his Advocate Shri Haider Abbas in the High Court of Judicature at Allahabad Bench Lucknow for granting stay and ordering the Railway administration to pay the salary from the date of his dismissal.

Vide Sl.No.105 the Railway Advocate Sri S.Verma has given a letter to the DRM/LKO to appear the disciplinary authority i.e. Sr.DOS ~~in~~ ~~appx~~ in his chamber or his party whosoever well conversant to the case to draft the affidavit.

Submitted for orders please.

- ① As regards payment to the Employee, L.A. may pl. clarify whether payment has been made or not.
- ② The Affidavit may pl. be drafted on the same lines as Sl.No.41.
- ③ The case has been D.O.S. processed throughout through CA/DOS. Hence the case may continue with him.
- ④ DOS may contact the R.A. and coordinate with him for drafting of the counter-affidavit.
- Def.

2/3/84
1. Submitted for kind perusal

2. Para marked (A) above is relevant

CA/DOS 23/2/84

23/2/84

22

Ref: Suit No.167 of 1984 in the Court of VIII Addl.
Munsif Lucknow Mohd. Naseem TNC Vs Union of India.

The above named employee was dismissed from service under Rule 14(ii) ~~which~~ His appeal was rejected as also the Review Petition at DRM's level. He has now filed a Write Petition in the Court of VIII Addl. Munsif Lucknow which is to be admitted early. Parawise comments on the writ Petition are given at Sl.No.111 and 112.

The Para wise comments prepared vide Sl.No.111 and 112 in favour of Mohd. Naseem Ex Trains Clerk may kindly be got vetted by CLA before it is passed on to the Railway Advocate.

DA DPO(II) may kindly offer remarks on Paras 1 and 2 concerning 'P' Branch.

Put up for further orders please.

DOS

CA/DOS

Sr.DOS

D/o

Para 1:- facts as given in para 1 are correct.
Para 2:- Concerning 'DOS / etc / etc'

Shankar

SR

22/6/84

Sl.No.113.

Ref: Suit No.167 of 1984 in the Court of VIII
Addl. Munsif Lucknow Mohd. Naseem TNC V/S UOI.

The parawise comments of the above named staff is put up at Sl.No.113 for signature, if approved please.

DOS

CA/DOS

Sino 51 Affidavit 11/24

Enrolty in SC By per Report
with Mr. Srinivas Advocate

Senos 9 to 11

21 to 24

Senos 51 to 53

Senos 88 to 91

Senos 96 to 97

These papers
have been taken
out by Mr.
Advocate.

Indy

11/9/85

The whole Case is returned
to CA DOS.

DOS

Indy

8/3/88

As I have been appointed temporarily as C.A. to DOS/LKO,
It will be quite difficult for me to deal the case

Haasem

11-3-88

Senos 124

Letter Recd from CA in the Case
of Mr. Zafar Ali Siddiqui and ex TMC
V/S UOI is placed at Senos 124.

Put up for orders Pl.

DOS

Dos/Control/Confid/81-dt 14-7-8

139

प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGMENT

*एक रजिस्ट्री पत्र/पोस्टकार्ड/पैकेट/पार्सल प्राप्त हुआ
बीमा

क्रमांक/No.

*Received a Registered Letter/Postcard/Packet/Parcel
Insured

पाने वाले का नाम
Addressed to (name)

Shri Ganga Prasad Agarwal
Rtg Advocate, C. Unchakamandi
Allahabad (U.P.)

†बीमे का मूल्य (रुपयों में)
†Insured for Rupees

वितरण की तारीख/Date of delivery.....198 .

*अनावश्यक को काट दिया जाए ।

*Score out the matter not required.

†केवल बीमा वस्तुओं के लिए
†For Insured articles only

ANSHU AGARWAL (G.P.)

पाने वाले के हस्ताक्षर/Signature of addressee

133

Northern Railway

Divl. Rly. Manager's Office
Lucknow.

No.

Dated: 14/7/88

To,

Shri Siddharth Verma,
Rly. Advocate,
C-16, K-Road
Mahanagar Extension,
Lucknow-226 006

Sub: W.P. No. 1362 of 1982 in the High Court Bench
at Lucknow Shri Jagdamba Prasad Tripathi
V/s U.O.I.

.....

The parawise comments are as under for your necessary action:-

Para 1 - Needs no comments.

Para 2 - Admitted.

Para 3 - Admitted.

Para 4 - Needs no comments.

Para 5 - As regards annexure 3 mentioned in para 5 of W.P. it is stated that it is communication of the decision passed by the Reviewing authority on the petitioners review ~~petition~~ petition. It is further state that the petitioners appeal had already been rejected by the appellate authority on 3.11.81. Hence it is denied that the petitioner came to know about the assault on the Dy. CHCs after receiving the decision of the Reviewing Authority.

Para 6 - Denied. The charges levelled against the petitioner has been found correct after enquiry.

Para 7 - The F.I.R. lodged by Sri Mohd. Hasnaian and Sri S.C. Bajpai, the names of the assailant were not mentioned but it was clearly pointed out that the assailants were 3 in number and the confidential enquiries subsequent to the lodging of FIR revealed that Sri Tripathi had actively associated in the assault.

Para 8 - This is a fact that he was known to both but due to his earlier notorious activities and the terror created nobody dared to name him in the FIR directly.

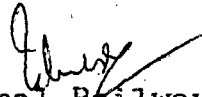
Para- 9 - No comments.

Para 10 - No comments.

Para 11 - It is a fact and all necessary formalities were fulfilled before taking the action under D&AR Rule.

Contd/..2...

- Para 12 - Action was taken after the disciplinary authority was full satisfied with the enquiries and revealat.
- Para 13 - It was not considered necessary keeping in view the interest of the administration and the delicacy of the situation to hold an enquiry.
- Para 14 - As already explained above it was neither possible nor in the interest of the administration to hold any enquiry.
- Para 15 - Denied.
- Para 16 - Denied as stated. Action under 14(ii) does not warrant the issue of any chargesheet or holding of the enquiry. Special power under R.14(ii) was exercised in the petitioner's case for the reason already indicated in the proceeding paragraph.
- Para 17 - No comments.
- Para 18 - Denied.
- Para 19 - Denied. The action was taken after establishing the truth through confidential enquiry.
- Para 20 - It was not considered necessary in the interest of the administration and the material was treated as confidential.
- Para 21 - -do- -do-
- Para 22 - The appeal was considered by the appellate authority and after due consideration keeping in view of the facts of the case, was rejected.
- Para 23 - -do- -do-
- Para 24 - The review was also duly considered by the Reviewing authority and was decided on merits.
- Para 25 - -do- -do-
- Para 26 - No comments.


for Divisional Railway Manager
Northern Railway
Lucknow.

Ref. Ad by Post

(131)

NORTHERN RAILWAY

DIVL.RLY.MANAGER'S OFFICE
LUCKNOW.

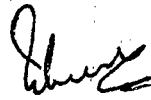
NO.DOS/Control/Confid/81

Dated: 14/7/88

Shri Ganga Prasad Agarwal,
Railway Advocate,
6, Uncha Mandi,
ALLAHABAD.

Sub: W.P. No.1289 in the High Court of Lucknow
Bench Sri Zafar Ali Siddiqui Sr.Trains
clerk V/S Union of India and others.

I am enclosing herewith the parawise comments
regarding the above case for your necessary action please.


Divl. Optg. Supdt-I
Northern Railway, Lucknow.

DA: 2 pages

Ra [C/-Law Supdt for information and taking necessary action
in reference to his letter No.1281-E/Lit/LKO-1983
dated 8.3.88.

14/7/88

Northern Railway

Divl.Rly.Manager's Office
Lucknow.

No.DOS/Control/Confdl/81

Dated: 14/7/88

Shri Ganga Prasad Agarwal,
Rly.Advocate,
6, Uncha Mandi,
ALLAHABAD.

Sub: W.P. No.1289 of 1982 in the High Court of Lucknow
Bench Sri Zafar Ali Siddiqui Sr.Trains Clerk V/s
Union of India and others.

.....

The parawise comments are as under for your necessary
action:-

Para 1 Admitted only that as per entries available in his
S.R. of Sri Jafar Ali he was appointed on completion
of training at Zonal Training School, Chandausi
w.e.f. 20.6.76 to 14.7.76 in terms of G.M.(P)
New Delhi letter No;220-E/84-47(Rectt) dated 15.7.76
posted on temporary trains clerk vide DPO/ALD letter
No.941-E/42/TNC/Prob/76 dated 29.7.76 under CYM/GMC
where he joined and took independent duty on 17.8.76.

Para 2 Denied as stated. The fact is as admitted in para.1

Para 3 Admitted.

Para 4 Admitted.

Para 5 Admitted.

Para 6 Admitted.

/were not mentioned but it was
clearly pointed out
that the assaultants

Para 7 The F.I.R. lodged by Sri Mohd. Hasnain and Sri
S.C. Bajpai the names of the assaultants were 3
in number and the confidential enquiries subsequent
to the lodging of FIR revealed that Sri Zafar Ali
Siddiqui had actively associated in the assault.

Para-8 This is a fact that he was known to both but due to h
his earlier notorious activities and the terror
created no body dared to name him in the FIR directly.

Para 9 No comments.

Para 10 No comments.

Para 11 It is a fact and all necessary formalities were
fulfilled before taking the action under D&AR Rules.

Para 12 Action was taken after the disciplinary authority
was full satisfied with the enquiries and revela-
tions.

Contd./..2

Para 13 In view of the extremely tense situation then prevailing in the Control office there was every possibility of Industrial peace being disturbed by roudy elements if an enquiry was held. In view of this, it was not possible to conduct an enquiry into the matter.

Para 14 As already explained above, it was neither possible nor in the interest of the administration to hold any enquiry.

Para 15 Denied.

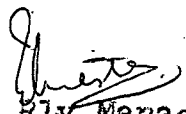
Para 16 Denied as stated. Action under 14(ii) does not warrant the issue of any Chargesheet or holding of the enquiry. Special power under R.14(ii) was exercised in the petitioner's case for the reason already indicated in the proceeding paragraph.

Para 17 No comments.

Para 18 Denied.

Para 19 Denied. The action was taken after establishing the truth through confidential enquiry.

Para 20 It was not considered necessary in the interest of the administration and the material was treated as confidential. All the grounds are baseless have been on no footing hence it is prayed that the writ may kindly be dismissed.


for Divl. Rly. Manager
Lucknow.

उत्तर रेलवे
NORTHERN RAILWAY

128

Dnl. office,
Lucknow

NO: 847-E/11/XKO-82

Dated 12/7-1988

Sh. Bidhasti Verma,
Ry Advocate

C-16, 'H' Road,
Chakamagar Odh.
Lucknow

Sub: W.P. No. 1369 of 1982 in the
Honble High Court (Lucknow
Bench) Lucknow. now
transferred to Central Administrative
Tribunal Circuit Bench at
Lucknow (T.A. No 1036 of 1982)
J.P. Subbarai, S. No. 1109
F.F. 18.7.88

- xxx -

Re
12/7/88

The defence of the above case, in the
Honble High Court (Lucknow Bench) Lucknow, was
also entrusted to you.

Since the case stands transferred to Central
Administrative Tribunal, Circuit Bench at Lucknow,
the defence of the case is again being entrusted
to you.

You are, therefore, requested to please undertake
defence of the case & let this office have your
further requirements in the matter. The case
is fixed for 18.7.88.


P. S. Chandra (dt)
Lucknow

Copy to CA to DO2, DRN, Office XKO in
reference to this office letter of even number dated
28.4.88, 12/5/88 & 6.6.88. He will please
not contact the concerned Ry Advocate at XKO instead
of Sh. P. Agarwal, Ry Advocate/AID, with remarks &
relevant records as already advised.

उत्तर रेलवे
NORTHERN RAILWAY

DOS

(127)

अनारल ११/६१
Genl. ११/६

Dwl. Rly. Manager
Chakraborty

NO: 1281-S/dw/ARO-83

Dated 6-6-1988

The Memo to DOS,
D.A. C's Office,
Chakraborty

Sub: W.P. No. 1259 of 1982 in the
Honble High Court of Judicature
at Allahabad (Chakraborty Bench)
Chakraborty now transferred
to Central Administrative Tribunal,
Allahabad vide Registration
No 1032 of 1987 (T). Rafiq Ali
Siddiqui & TAC vs MOJ &
others.

Please refer to this office letter of
even numbers dated 8-3-88, 20-3-88 & 22-4-88.
In this case, the Sr. D.P.O has passed
the following order:-

File & peramir amul
may be obtained from Sh. Durendi
6/6

The office which had issued
orders under rule 14(ii) will
deal. Assistance may be taken
from Sr. Durendi."

you are, therefore, requested to expedite
the matter along accordingly. Please contact
Sh. Ganga Prasad Agarwal, Rly. Advocate/ALD
with records & peramir comments.

This may please be treated as most urgent.

For Supt.

DOS

126

जी.एल. 19/G.L. 19

जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

Dwdl. Office,
Chucknaw.

NO: 847-E /dlt/dko-02

Dated 6-6-1988

Memo to DOS,
D.R.O's Office,
Chucknaw.

Sub: W.P. No. 1362 of 1982
(T.A. No. 1036 of 1987 (T))
before Central Administrative
Tribunal, Allahabad
S.P. Sinpathi vs U.O.

Please call for the office letters
of even number dated 8-3-88, 12-3-88
22-4-1988 & advise the action
taken in the matter.

This may please be taken as
most urgent

Law Subdt.
Sunder Singh

उत्तर रेलवे/NORTHERN RAILWAY

No 847-E/Int/ARO-02

Dated 22-4-1988

Dist. Office.

Lucknow

Shri Ganga Prasad Agarwal,
Rly Advocate.

6, Lucknow Canteen,
Allahabad.

Sub: TA No 1036 of 1987 (T)
(Writ Petition No 1362 of 1982)
before District Administrative Tribunal,
Allahabad. Jagdamba Pd
Bipat Singh vs Union of India.
S.O. No. F.F. 9-5-1988

- xxx -

In the above case, notice of the
Honble Tribunal, Allahabad fixing 9-5-1988
for hearing have been received in this office.
Since it is a similar case like that of TA
No 1032 of 1987 (T) (Shri Rafiq Ali Siddiqui vs U.O.I.)
the defence of the case is being entrusted to
Accordingly power of attorney of U.O.I. is being
sent herewith. The branch concerned is being
advised to contact you with all relevant records
of the case.

The case is fixed for 9-5-88

For Dist. Rly Manager (Int)
Lucknow

Copy to be sent to DOS/ARO for information. He will
please contact the aforesaid Rly Advocate with records
at once. In this respect please refer to this office letter nos
1981-E/Int/ARO-02 dt 8/3/88 & 12/3/88 also

CA/DOs

124

उत्तर रेलवे/NORTHERN RAILWAY

जी.एल. 19/G.L. 19

जनसंख्या 99-बहा/Genl. 99-Large

NO: 1281-E/alt/ako-1983

Dated 8-3-1988

Dwl. Office,
Lucknow

Sh. S. S. S.

DOs

D.P. Office

Lucknow

Sub: W.P. No. 189 of 1982
in the High Court, A.K.O.
Bench now transferred
to CAT, Allahabad
(Registration No 1032 of 1987 (T))
Sh. Rafiq Ali Siddiqui,
Ex. TMC Versus Union of
India & Others

- xxx -

The above-mentioned writ Petition filed by
Sh. Rafiq Ali Siddiqui, Ex. TMC in the
Honble High Court (Lucknow Bench) Lucknow
against the orders of his dismissal from
Service under rule 14(2) of DPA Rules, 1968
has now been transferred to Central Administrative
Tribunal at Allahabad.

The defence of the case has now been
entrusted to Sh. Ganga Prasad Agarwal, Rly -
Advocate, 6 Lucknow Road, Allahabad.

The Rly Advocate has desired that the
dealing staff should contact him with all
relevant records of the case at once to save
the case from being decided ex parte.

You are requested to contact the aforesaid
Rly Advocate at Allahabad at once with
all relevant records to enable him to take
further action in the matter.

This is most urgent.

Sh. S. S. S.
D.P. Office

122

no.DOS/Control/Confdl/1/81

Divisional Office,
Lucknow.Dt. 5.9.1985

Shri A.K.Srivastava
Railway Advocate, H.No. 227/78
Asthal, Yahiaganj
Lucknow.

Please hand over the file No.DOS/Control/Confdl/1/81 to the
bearer of this letter. The parawise comments in the Case No.
WP No.1289 of 1982 before Honble High Court/LKO Bench, LKO
-Zafar Ali Siddiqui V/S UOI to be sent to Shri Siddharath
Verma, Rly Advocate.

for Divl. Rly Manager
Lucknow

Recd 1985
Subr 1 to 119
9 to 11
24 to 24
51 to 53
88 to 91
96 to 97

with Rly
advocate
Mr. Siddharath
Verma

12/9/85

121

File No. DCS/Control/Confdl/1/81 reg. Suit No.167 of 1984
in the Court of Munsif Magistrate, Lucknow Mohd. Naseem v/S UOI
Page No. 1 to ~~23~~ and PP NO. 1 to 23. *Received*

L 119

G.K. *[Signature]*
Signature and Date.
16/1/88

120

उत्तर रेलवे, NORTHERN RAILWAY
No 1281 E/Lit/Len/1983

Dated 5.8.83

Sent to for D.Os.
D.O's office.
Lucknow.

Divisional office.
Lucknow.

Subj: WP No 1283 of 1982 before
Honble High Court Lucknow bench.
Lec-Prof AB Siddiqui vs U.O.
xxx

Shri Sidhant Verma R/o Advocate, on the
basis of para-wise Comments furnished by
you, has drafted the Counter Affidavit to
be filed in the above noted case. The
affidavit is to be sworn in by APO concerned
you are, therefore, requested to please ~~at~~
link the para-wise Comments with the
Counter affidavit to get it approved by
the APO concerned.
This may please be treated as urgent.


For Dir. Rly. Manager (Rt)
N Rly Uo

Northern Railway

119
Divisional Office,
Lucknow.

No. DOS/Conf dl/Control/81

Dated: 20.12.84

Shri L.P.Shukla,
Sr. Advocate,
C-700, Mahanagar,
Lucknow.

File No. DOS/Control/Conf dl/81 was handed over to you on 10.12.84. Please return the same file and hand over the bearer of this letter as it is needed in Suit No.167 of 1984 in the Court of Munsif Magistrate, Lucknow on date (20.12.84) by Sri A.K.Srivastava, Railway Advocate, 78, Astabal, Yahiaganj, Lucknow.

o/c
(Ashima Singh)
Divisional Optg. Supdt.,
N.Rly/Lucknow

Copy to: Shri A.K.Srivastava, Railway Advocate, 78,
Astabal, Yahiaganj, Lucknow .

File received
22/12/84
Dm
CA/DOS

Northern Railway

718 ~~277~~
Divisional Office
Lucknow.

No.DOS/Control/Confld/I/81

Dated: 24.9.1984

The Sr.Divl.Personnel Officer,
Northern Railway,
Lucknow.

Please find herewith a copy of the judgement given in the case of Stay order of Zafar Ali Siddiqui, wherein Hon'ble High Court has passed the orders to pay the salary w.e.f. 1.7.84 to December '84 whether the work is taken from him or not by the administration.

This is for your necessary action.

Encl.As above.

Ashima Singh
(ASHIMA SINGH)
Divl.Operating Supdt.,
Northern Railway
Lucknow.

*Personally
handed as
to Sr. In-charge*

Intd
28/9/84

112 (276)

जी.एल. 19/G.L. 19

संख्या 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

NO. 1281-F/AMR/XKO-1983

Dated 6-8-1984

The Divisional Operating Super,
NORTH-EAST Railway,
Dibrugarh.

Recd on
21/9/84
Only

Sub: Civil Aise Application
No. 767(W) of 1984 in re.
W.P. No. 1289 of 1982
Shri Rajar Ali Siddiqui
Ex. Secy. Clerk, U.M.O.S
L.H.O.s

— xxx —

Enclosed herewith please find
a true copy of the Honble High Court
Order dated 1-8-1984 in the abovementioned
case. Kindly take necessary
action in respect of payment of salary
regularly with effect from 1-7-1984 till
December, 1984 as directed by the Court.

DA/one

For Divl. Rly. Manager (AMR)

116 275

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH LUCKNOW

C.M.APPLICATION NO. 767 (w) of 1984

In-Re

Writ Petition No. 1289 of 1982

Zafar Ali Siddiqui Petitioner

Vs.

Union of India & others Op-Parties.

APPLICATION FOR STAY

Lucknow Dated 1.8.1984

Hon'ble R.C. Deo Sharma, J.

Heard the learned counsel for the parties.
This petition was admitted on 19.3.82 but the learned
counsel states that the stay application could not
come up for orders. Notice has been ^{accepted} ~~accepted~~ by the
learned counsel for the Union of India on behalf
of the opposite parties. Counter affidavit may be
filed within three weeks. Rejoinder affidavit if any
may be filed within a week thereafter. List thereafter.
In the meantime the opposite parties shall pay to the
petitioner an amount equal to the last salary drawn
by him every month with effect from 1.7.84. The
amount for this month shall be paid by the end of
Aug.84 and for subsequent months by 10th of the
succeeding month. It shall be open to the opposite
parties to take or not to take work from the petitioner.
This stay order shall remain in force till the end
of December, 1984. By that time certain petitions in
which similar question is involved and which are
pending before the Hon'ble Supreme Court are likely
to be disposed of.

Sd. R.C. Deo Sharma



TRUE COPY

Adarsh
26/10/84
Section Officer

Copy Department.
High Court, Lucknow Bench,
LUCKNOW

Blawel
2/8

YOGESH

उत्तर रेलवे/NORTHERN RAILWAY

G.K. Mahani,
APC (W&Gr)

Headquarters Office,
Baroda House,
New Delhi.

DO.No. 145E/C/42837/LC/RB/SSB. Dated: /6 -6-1984.

Dear Shri Chatarjii,

Sub:- Repn. of Shri Jagdamba Prasad Tripathi
Trains Clerk DRM Office, N.Rly. LKO
reg. Rainstatements in his service.

Ref:- Your office DO N. COS/Control/Confid/
81 dated 6.3.1984.

.....

Please call for your office letter cited above and intimate the present position of the court case of Shri Jagdamba Prasad Tripathi which is pending in the High Court.

The Railway Board have also desired that the details of the case indicating the reasons for removal from service of Shri Tripathi may be also furnished to them.

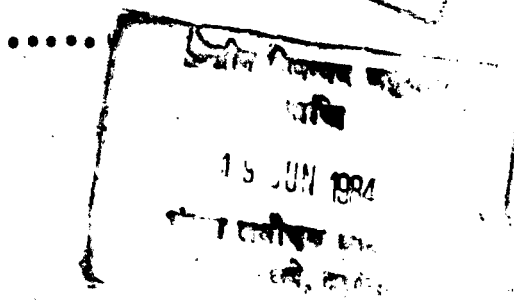
I shall be grate ful if you kindly look into the matter personally and send the requisite information urgently to enable a reply being same to the Railway Board.

Yours Sincerely,

G.K. Mahani
13/6/84
(G.K. Mahani)

Shri S.C. Chaterjee,
DPO/N.Rly.,
Lucknow.

/virender/



Northern Railway

119
Divisional Office,
Lucknow.

No. DCS/Confdl/Control/81

Dated: June 26 '1984

Shri A.K. Srivastava,
227/78, Astabal Ahyiaganj,
~~Alkalapour~~ *Alkalapour*
Lucknow.

Sub: Suit No. 167 of 1984 in the Court of
VIII Addl. Munsif Lucknow Mohd. Naseem
TNC V/S Union of India.

The parawise comments are as under for your necessary
action:-

Para 1- Admitted.

Para 2- *Admitted.*

Para 3- In view of the extremely tense situation then
prevailing in the Control Office there was every
possibility of Industrial peace being disturbed
by roudy elements if an enquiry was held. In view
of this, it was not possible to conduct an enquiry
into the matter.

Para 4: The F.I.R. lodged by Sri Mohd. Hasnain and Sri
S.C. Bajpai the names of the assaultant were not
mentioned but it was clearly pointed out that the
assaultants were three in number and the
confidential enquiries subsequent to the lodging
of FIR revealed that Sri Mohd. Naseem had
actively associated in the assault. This is a fact
that he was known to both but due to this
earlier notorious activities and the terror
created no body dared to name him in the FIR
directly.

Para 5- Admitted.

Para 6- No comments.

Para 7: Denied.

Para 8: Not admitted.

Para 9: No comments.

Para 10: Denied.

Para 11: Denied.

Para 12: In view of the extremely tense situation then
prevailing in the Control Office there was
every possibility of Industrial peace being
disturbed by roudy elements if an enquiry was
held. In view of this, it was not possible to
conduct an enquiry into the matter.

*Recd Comments
26/6/84*

113

: 2 :

Para 13: Denied.

Para 14: Please see Para 12 above.

Para 15: No comments.

Para 16: After thorough consideration of the appeal and seen the circumstances of the occurrence, D.R.M. had taken correct decision in the review appeal hence this is denied.

Para 17: Denied.

Para 18: Admitted or otherwise denied in view of the barred appeal preferred in the Court of law. It is prayed the appeal should be dismissed.

Para 19: (a) to (c) No relief in view of the above.

y
Divisional Optg. Supdt.,
Northern Railway,
Lucknow.

e/c

In the Court of Munsif South, Lucknow.

Reg. Suit No. of 1984.

116

Mohammad Naseem, aged about 23 years, son of late Sri Shamshuddin, r/o 5/4/193, Rath Baveli, Begam Tomb, Faizabad.

... Plaintiff.

Versus

Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.

... Defendant.

Suit for declaration

Valuation .. Rs. 1000/-

C.F. Paid .. Rs. 30/-

The plaintiff above-named begs to state as under :-

1. That the plaintiff's father was employed as a Diesel Driver under the Divisional Railway Manager, Northern Railway, Lucknow and on his death, the plaintiff, on compassionate ground, was appointed as Trains Clerk with effect from 15.1.1980 by the Senior Divisional Personnel officer, Northern Railway, Hazratganj, Lucknow.
2. That during the period, the plaintiff worked sincerely, honestly, diligently and loyally and as such secured for himself an un-blemished records of service.
3. That all of a sudden, the plaintiff was served with an order of his dismissal from service with effect from 29th, June, 1981 passed by the- Senior Divisional Operating Superintendent, Northern Railway, Hazratganj, Lucknow under rule 14(II) of the Railway Servants Discipline & Appeal Rules, 1968 and the said order was passed without any enquiry and affording an opportunity to the plaintiff to set up his defence as provided under the rules of the department.
4. That the charges against the plaintiff were that two Dy. Chief Controllers S/Sri Mohd. Hasnain and S.C. Bajpai were assaulted by three miscreants on 24th June, 1981 while they were coming to perform their duties. It was alleged that the plaintiff pointed out Sri Mohd. Hasnain to the said three miscreants and connived with anti-social elements to get the said Deputy Chief Controllers physically assaulted. It is important to mention here that the said two Dy. Chief Controllers lodged F.I. Rs at Hazratganj Police station, Lucknow in which neither the plaintiff nor any of the said three miscreants named even on doubt.
5. That the self-made reasons not based on any evidence of facts as given by the aforesaid Senior Divisional Operating Superintendent in the order of the plaintiff's dismissal from service for not holding the enquiry as provided under the Discipline & appeal rules 1968 are given as under :-

"The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorder, affecting the vital Railway system. The said employee is apparently present at Lucknow, yet he has

... 2

created such atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him."

6. That there is no iota of evidence on record to prove that there was apprehension of grave disorder on account of plaintiff's mood or he had created any atmosphere of terror. The allegations made in the order and the reasons given therein for not holding the enquiry are arbitrary, imaginary and capricious and as such they are in utter disregard of the departmental rules and principles of Natural Justice.

7. That the Senior Divisional Operating Superintendent, Northern Railway, Lucknow was not competent to pass the order of the plaintiff's dis from service as the appointing authority of the plaintiff was the senior Divisional personnel officer who is an officer of Personnel department.

8. That the order waiving the enquiry is beyond the scope of the powers conferred under rule 14(ii) of the Railway Servants Discipline & Appeal Rules, 1968.

9. That the order of the plaintiff's dismissal from service without following the procedure laid down under the law is in contravention of the Constitutional guarantees provided under Articles 14, 15 and 311.

10. That the action under rule 14(ii) of the Railway Servants Discipline & Appeal Rules, 1968 is a colourable exercise of the powers under the said rules and as such is arbitrary and malafide.

11. That the charges against the plaintiff is vague, based on no evidence and the dismissal on the basis thereof is legally untenable in as much as there was no material to warrant the punishment of dismissal of the plaintiff.

12. That none of the circumstances warrants denial of opportunity to the plaintiff to show cause or to set up his defence and therefore amounts to violation of Natural Justice and constitutional protections to which the plaintiff was entitled.

13. That there being no valid and justified material available before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn by the dismissing authority is based on no evidence and reasons and as such the action is against the provisions of Articles 311(2)(b) of the Constitution of India.

14. That the satisfaction required under rule 14(ii) of the Discipline & Appeal Rules, 1968 is to be based on cogent reasons and not arbitrarily on surmises and conjectures. The order of dismissal from service being contrary to it is illegal, unwarranted and constitutional.

15. That the plaintiff, on receipt of the order of his dismissal from service, preferred an appeal dated 11.8.1981 to the Additional Divl. Railway Manager, Northern Railway, Lucknow as per instruction contained in the said order of dismissal. The said appellate authority, by a letter dated 7.11.81, rejected the said appeal in an arbitrary manner. It may be mentioned that the said authority exercised the powers of appeal without jurisdiction.

16. That thereafter, the plaintiff preferred a review petition dated 19.11.1981 to the divisional Railway Manager, Northern Railway

उत्तर रेलवे NORTHERN RAILWAY

NO 1430-F/uit/ARO-84

Dated 2-6-1984

The Dtl. Operating Supt.

N. Rly, Lucknow

Sub: Suit No. 167 of 1984 in

the Court of VIII ADDL CMJ, Lucknow. Ashraf Naseem,
TAE vs. Ilman of India.

- xxx -

The abovesaid suit has been filed by one Sh. Ashraf Naseem, Ex. Branch Clerk against the order of his dismissal from service passed under rule 14(2) of the DTA Rules, 1968. Enclosed herewith please find a copy of plaint & arrange to depute your competent staff to contact Sh. A.K. Srivastava, 227/78 Astabul Arhiyagay, Lucknow with para-wise comments & all relevant records of the case to assist him in the preparation of written statement to be filed in the Court.

This may please be treated as most urgent.

(Signature)
For Dtl. Rly. Manager
(Lucknow)

Copy to Sh. A.K. Srivastava, 227/78
Astabul Arhiyagay, Lucknow, Lucknow for
information.

Lucknow who also rejected the same in an arbitrary manner vide letter dated 22.12.1981.

17. That the order of the plaintiff's dismissal from service is illegal, unconstitutional and un-enforceable in law.

18. That the plaintiff served notice dated 12.12.1983 under section 80 C.P.C. on the defendant through the registered post.

19. That the cause of action accrued to the plaintiff and against the defendant within the jurisdiction of this Hon'ble court on 29.6.1981 when the order of plaintiff's dismissal from service was passed on 7.11.1981 when his appeal was rejected on 22.12.1981 when his review petition was rejected, on 12.12.1983 when notice under section 80 C.P.C. was given and finally in the 3rd week of February, 1984 when the statutory period of the said notice expired and the defendant did not give any response.

20. That the valuation of the suit for the purposes of court fee and jurisdiction is Rs. 1000/- (the suit being incapable of valuation, the plaintiff gives his own valuation) on which the requisite court fee of Rs. 30/- has been paid.

The plaintiff prays for the following reliefs :-

- (a) A decree declaring that the order dated 29.6.1981 of the plaintiff's dismissal from service including the orders passed on his appeal and review petition all are illegal, unconstitutional, void and un-enforceable in the law be passed in favour of the plaintiff and against the defendant entitling him to all benefits which would have accrued to him had he not been dismissed from service with effect from 29.6.1981.
- (b) Cost of the suit be awarded to the plaintiff against the defendant.
- (c) Any other relief which this Hon'ble court may deem fit and proper in the circumstances of the case be awarded to the plaintiff and against the defendant.

Lucknow:
Dated: 11.4.1984.

Plaintiff.

VERIFICATION

The above-named plaintiff do hereby verify that the contents of paragraphs 1 to 16 and 18 are correct to my personal knowledge and those of paragraphs 17, 19, 20 and relief para are correct to my belief.

Signed and verified this 11 day of April, 1984 in the Civil Court Compound at Lucknow.

Plaintiff.

उत्तर रेलवे/NORTHERN RAILWAY

NISHEETH M. KATARA
DIVL. OPT. G. SUPDT

DIVISIONAL OFFICE
LUCKNOW.

D.O. NO. DOS/Control/Confdl/81

Dated: 6.3.1984

My dear Tekchandani,

Sub: SHRI JAGDAMBA PRASAD TRIPATHI EX
TRAINS CLERK, D.R.M. Office, N.Rly.,
Lucknow.

Ref: Your D.O. No. 145-E/C/42837/SO/EB/SSB
dated 7.1.84 and reminder dated 4.2.
1984.

...

S/Sri Jagdamba Prasad Tripathi, Zafar Ali and Mohd. Naseem
all the three trains clerks were removed from service on
29.6.81 under Para 14(II) of D&AR Rules 1968 for their
serious mis-conduct. Shri J.P. Tripathi and Shri Zafar Ali
had preferred an appeal in the High Court of Judicature at
Allahabad, Lucknow Bench, Lucknow and the cases are pending
consideration of the Hon'ble Court. Mohd. Naseem had not
taken the shelter of court of law.

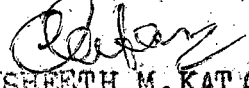
The Parawise comments in respect of S/Sri J.P. Tripathi
and Zafar Ali have already been submitted through the Railway
Advocate.

PARA 2- They neither belongs to SC/ST and are not working on
the daily wages of other source of service in the Railway.

PARA 3- So far as Para 3 of your letter is concerned nothing
has been done in the past from this end.

PARA 4- Copy of the representation of Sri J.P. Tripathi
is enclosed as desired.

Yours sincerely,


(NISHEETH M. KATARA)

Shri S.H. Tekchandani,
A.P.O. (C),
Northern Railway,
Baroda House,
New Delhi.

Encl. As above.

Recd.
Jushoon
6/3/84
Anasupdt
Sri

(732)

102

CA to Secy DCS

106

उत्तर रतने
Ratne Ratne

आपका कार्यालय,
मंडीवा हाउस,
नई दिल्ली।

रक्षा रक्षा दैत न-पागी
रग का० आरि० परि० हिन
आ०शा०ग०संरमा-115ई/सी/42837/सुआओ/आरली/सशशती /मि० 4-2-84,
लिंगश्री रघुराग,

लिखातः श्रीजगदल .रमाद मियात्री सु० प्र० गाडी लिगिक मण्डलरें
पत-पास, कार्यालय वरमण्ड /

उपार्थित लिखात तर सुआग इस कार्यालय आ०शा०ग०संरमाद
गुलाही राज चदिनाल 7-1-84 का अतलितक मरे सोर
गामली सभामन्धान पूर्ण तथा इस कथितक को दिनाग
7-1-84 के साग गाडी गते संलग्जो सहित इस कार्या
की कोल लिखातके जिसरो रेलैत तीर्ड को रिधित शे
अतलित क,साग जा रेंकि /

इसे आतश्यक समझा जायि /

श्री रघुराग
जल्ल कार्यालय अधिकारी
वरमण्ड /

आपका
जे०ए०ए०ए०
(रक्षा रक्षा दैत न-पागी)

जि० मि० मि०
पति
3 FEB 1984
पति पति

From :-

Siddharth Verma,
Railway Advocate,
C-16, K-Road,
Mahanagar Extension,
Lucknow - 226 006.

To :-

The Divisional Railway Manager,
Northern Railway,
Lucknow - 226 001.

Subject :- Writ petition No.1289 of 1982 before High Court Lucknow Bench; Sri Zafar Ali Siddiqui versus Union of India and others.

Reference:- Letter of the General Manager (P)-Legal Cell No.35-LKO/WP/83-Legal Cell dated 19.8.1983.

Letter of the Divisional Operating Superintendent, Sri N.M. Katara No.DOS/Control/Confdl/81 dated 22.1.1984, received by me on 7.2.1984.

Dear Sir,

In reference to above mentioned letter of Sri N.M. Katara, Divisional Operating Superintendent, Northern Railway, Lucknow whereby the parawise comments on the above mentioned writ petition were furnished to me, it is requested that an official may be deputed to meet me alongwith all the relevant documents/records who should be fully briefed regarding the facts of the case so that counter ~~xxx~~ affidavit may be drafted.

I have also to inform you that on 18.1.1984, the petitioner, Sri Zafar Ali Siddiqui had moved an application for 'stay order' and prayed that he may be paid his salary since the date of his dismissal.

I may also point out that in almost all the cases pending before the Hon'ble High Court, the Hon'ble Court had directed the Railway Administration to pay the salary of affected employees, subject to certain conditions till the pendency of the writ petitions. Some of these writ petitions are, W.P.No.831/81 Bhagwan Prasad versus Union of India, W.P.No.4882/K.N. Srivastava and others versus Union of India and W.P.No.2259/82 Sri Lawrence Henry versus Union of India.

In view of the above, it is very likely ~~to~~ that in this case also, the Hon'ble Court may direct the Railway Administration to pay the salary of the petitioner on the parity ground.

This is for your information and necessary action.

Siddharth Verma
(Siddharth Verma,
Railway Advocate

6. Sathish
ED
R
18.1.84

Silence

DRM/LKO

KIND ATTENTION : SRI EJAZ AHMAD, CIA

^{Copy of}
This stay application was served on me on 18.1.84.
In this case, ~~neither a copy of the~~ ^{the} ~~parawise~~ ^{parawise} comments were sent to me. This is for your information and necessary action at the earliest

Silence
(S. VERMA)
R.A.
18.1.84

Dr. Dinesh Singh
DSR may kindly
put it to DSO on file.
Sgdn
25/1/84

Read
Parawise
comments
Silence
8.2.84 RA

...

The petitioner prays that he may be granted the relief sought.

He states as under:-

1. The petitioner is a resident of the District of ...
2. He is a ...
3. It would be expedient in the interest of justice that this Hon'ble Court be ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...
10. ...

11. It is respectfully requested that this Hon'ble Court be pleased to grant the operation of the order of dismissal ...

7
2

direct the opposite parties to pay salary to the petitioner
w.e.f. the date of his dismissal.

Dated, Lucknow,
January 16, 1984.

(Haider Abbas)
Advocate,
Counsel for the Petitioner.

17

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LU KHOW BENCH, L U K N O N.

C.M. Application (w) of 1984
In re-writ petition No. 1289 of 1982

102

ZAFAR ALI SIDDIQUI

...

PETITIONER

VERSUS

UNION OF INDIA & OTHERS.

...

OPPOSITE PARTIES

AFFIDAVIT IN SUPPORT OF THE SECOND

APPLICATION FOR GRANT OF STAY

✓ I, ZAFAR ALI SIDDIQUI, aged about 32 years, son of late S. Ali Raza,
✓ resident of House No. 266/73 B, Baghla Halah Beg, Ghatewan,
✓ P.S. Bagan Khola, Lucknow, do hereby solemnly affirm as under:-

- 1) That the deponent is the petitioner in the above noted writ petition as such he is fully conversant with the facts deposed below.
- 2) That on 8.3.1982, the aforesaid writ petition was admitted by Hon'ble Mr. Justice U.C. Srivastava and notices were issued to the opposite parties. On the application for stay bearing C.M. An.No. 3236(w)82, Hon'ble Mr. Justice U.C. Srivastava was pleased to issue notice.
- 3) That notices upon the opposite parties were already served and 8.8.1983 was fixed for attendance and filing counter affidavit.

✓

Although no counter affidavit was filed on behalf of the opposite parties, but the power of Sri Bidharth Verma, Advocate on behalf of the opposite parties was filed.

- 4) That by means of the aforesaid writ petition, the deponent has challenged the order of dismissal passed by the opposite parties under Rule 14(II) of Railway Servants (Discipline and Appeal) Rules 1963.
- 5) That admittedly no opportunity muchless a reasonable opportunity was given to the petitioner-deponent by the opposite parties before passing the order of dismissal.
- 6) That in a similar matter in writ petition No. 4862 of 1981, a Division Bench of this Hon'ble Court stayed the operation of the order, and directed the Union of India to pay the salary to the petitioner, Shri K.N. Srivastava.
- 7) That in writ petition No. 9277 of 1981, Hon'ble Mr. K. C. Agarwala J, Hon'ble H.B. Lal J, in the Hon'ble High Court at Allahabad, allowed the writ petition filed by Sarva Shri Raj Nath Pathak and Bhagwan Singh, Hon'ble Mr. K.C. Agarwala J and Hon'ble Mr. H.B. Lal J in another writ petition

bearing No. 9260 of 1981, allowed the writ petition filed by one Animesh Kumar.

- 8) That the petitioner - deponent has to support his mother and five younger brothers and two sisters who are minors. The entire family after the dismissal of the petitioner-deponent from service is at the verge of starvation.
- 9) That it would be expedient in the interest of justice that this Hon'ble court be graciously pleased to stay the operation of the order of dismissal contained in Annexure-1 and direct the opposite parties to pay the salary to the petitioner-deponent w.e.f. the date of his dismissal.

Dated, Lucknow,
January 16, 1984.

Deponent

VERIFICATION

I, ANIMESH KUMAR, the deponent, do hereby verify that the content of paras 1 to 8 are true to my knowledge and those contained in para 9 are believed by me to be correct.

Signed and verified this 16th day of January, 1984 in the Hon'ble High Court's compound, Lucknow.

Deponent

I identify the deponent above named who has signed before me.

7 Q
E

Advocate.

015115 41557

*Case withdrawn
from one civil judge
Faizabad 95*

Northern Railway

Divisional Office
Lucknow.

No. DOS/Control /Confdl/81

Dated: 11.1.1984

~~S hri S. C. Bajpai, Sr. Verma~~
Railway Advocate,
Subhash Nagar, Mahanagar 16K, C Sector
Lucknow.

Sub: Suit No. 113 of 1983 in the Court of
Civil Judge, Faizabad Mohd. Naseem ex-
Trains Clerk V/ S U.O.I. *decided*

The para wise comments are as under for your information
and necessary action:

Para 1- Facts as given in para 1 are correct except
that his appointment letter was issued on 16.1.1980.

Para 2- Admitted

Para 3- In view of the extremely tense situation then
prevailing in the Control Office there was every
possibility of Industrial peace being disturbed
by roudy elements if an enquiry was held. In view of
this, it was not possible to conduct an enquiry into the
matter.

Para 4- The F.I.R. lodged by Sri Mohd. Hasnain and
Sri S.C. Bajpai the names of the assaultant were not
mentioned but it was clearly pointed out that the assaultants
were three in number and the confidential enquiries
subsequent to the lodging of F.I.R. revealed that
Sri Mohd. Naseem had actively associated in the assault.
This is a fact that he was known to both but due to his
earlier notorious activities and the terror created no body
dared to name him in the FIR directly.

Para 5- No comments.

Para 6:- Admitted

Para 7: His appointment letter was issued to him in Office.
Legal matters.

Para 8- No comments.

Para 9- No comments.

7/c
(Nisheet M. Katara)
Divisional Operating Supdt.,
N.Rly/Lucknow.

Northern Railway

94
Divisional Office,
Lucknow.

No.DOS/Control/Confdl/81

Dated: 22.2. 22.1.1984

Shri Sidharth Verma,
Railway Advocate,
Mahaganagar,
Lucknow.

Sub: W.P.No.1289 of 1982 in the High Court of Lucknow
Bench Sri Zafar Ali Siddiqui Sr.Trains Clerk
V/S Union of India and others.

The parawise comments are as under for your necessary action-

Para 1- Admitted only that as per entries available in his S.R. of Sri Jafar Ali he was appointed on completion of training at Zonal Training School, Chandausi w.e.f. 20.6.76 to 14.7.76 in terms of G.M.(P) New Delhi letter No.22C-E/84-47(Rctt) dated 15.7.76 posted on temporary trains Clerk vide DPO/ALD letter No.941-E/42/TNC/Prob/76 dated 29.7.76 under CYM/GMC where he joined and took independent duty on 17.8.76.

Para -2 Denied as stated. The fact is as admitted in Para 1.

Para 3- Admitted.

Para 4- Admitted.

Para 5- Admitted.

Para 6- Admitted.

Para 7- The F.I.R. lodged by Sri Mohd. Hasnain and Sri S.C.Bajpai the names of the assaultants were not mentioned but it was clearly pointed out that the assaultants were 3 in number and the confidential enquiries subsequent to the lodging of FIR revealed that Sri Zafar Ali Siddiqui had actively associated in the assault.

Para 8- This is a fact that he was known to both but due to his earlier notorious activities and the terror created no body dared to name him in the FIR directly.

Para 9- No comments.

Para 10- No comments

Para 11- It is a fact and all necessary formalities were fulfilled before taking the action under D&AR Rules.

Para 12- Action was taken after the disciplinary authority was full satisfied with the enquiries and revelations.

See Page
no 92 Para 13 to 22

.....2/-

Case has been
in Mohan from
the civil judge
as per C.A. discussion
20/11/84

93

Northern Railway

Divisional Office
Lucknow.

No. DCS/Control/Conf/81

Dated: October 5 '1983

Shri Sri ^{chand} Rastogi,
Railway Advocate,
Subhash Nagar,
Lucknow.

Sub: Suit No. 113 of 1983 in the Court of
Civil Judge Faizabad Mohd. Naseem
ex Trains Clerk V/S U.O.I.

...

The parawise comments are as under for your necessary action-

Para 1- 'P' Branch ~~Admitted~~

Para 2- This should be verified from SR whether he got any
punishment are awarded.

Para 3- In view of the extremely tense situation then
prevailing in the Control Office there was every
possibility of Industrial peace being disturbed
by roudy elements if an enquiry was held. In view
of this, it was not possible to conduct an enquiry
into the matter.

Para 4- The F.I.R. lodged by Sri Mohd. Hashnain and Sri S.C.
Bajpai the names of the assailant were not mentioned but
it was clearly pointed out that the assailants were
3 in number and the confidential enquiries subsequent
to the lodging of FIR revealed that Sri Mohd. Naseem
had actively associated in the assault. This is a fact
that he was known to both but due to his earlier
notorious activities and the terror created no body
dared to name him in the FIR directly.

Para 5. No comments.

Para 6. Admitted

Para 7. 'P' Branch

Para 8 - No comments.

Para 9 - No comments.

(Nishant M. Katara)
Divisional Optg. Supdt
Lucknow.

Northern Railway

Divisional Office
Lucknow.

No. DOS/Control/Conf dl/81

Dated: October 5 '1983

Shri ~~Pradyumn~~ S. Verma
Railway Advocate, ~~15, Ghosia Mandi~~
~~Maharaja~~
Lucknow.

Sub: W.P.No.1289 of 1982 in the High Court
of Lucknow Bench Sri Zafar Ali Siddiqui,
Sr.Trains Clerk V/S Union of India and
others.

The parawise comments are as under for your necessary action-

Para 1- 'P' Branch

Para 2 - 'P' Branch

Para 3- 'P' Branch

Para 4- This should be verified from SR whether he got any
punishment are awarded. 'P' Branch.

Para 5- Admitted.

Para 6- Admitted.

Para 7 - The F.I.R. lodged by Sri Mohd. Hasnaiah and Sri
S.C.Bajpai the names of the assaultants were not mentioned but
it was clearly pointed out that the assaultants were 3 in
number and the confidential enquiries subsequent to the
lodging of FIR revealed that Sri Zafar Ali Siddiqui had
actively associated in the assault.

Para 8 - This is a fact that he was known to both but due to
his earlier notorious activities and the terror created no
body dared to name him in the FIR directly.

Para 9- No comments.

Para 10- No comments.

Para 11- It is a fact and all necessary formalities were
fulfilled before taking the action under D&AR Rules.

Para 12- Action was taken after the disciplinary authority
was full satisfied with the enquiries and revelations.

Para 13- In view of the extremely tense situation then
prevailing in the Control Office there was every
possibility of Industrial peace being disturbed by roudy
elements if an enquiry was held. In view of this, it
was not possible to conduct an enquiry into the
matter.

Para 14 - As already explained above, it was neither possible
nor in the interest of the administration to hold any
enquiry. 2/-

Page 2

927A

- 2 -

Para 15- Denied.

Para 16- Denied as stated. Action under 14(ii) does not warrant the issue of any Chargesheet or holding of the enquiry. Special power under R.14(ii) was exercised in the petitioner's case for the reason already indicated in the proceeding paragraph.

Para 17- No comments.

Para 18- Denied.

Para 19- Denied. The action was taken after establishing the truth through confidential enquiry.

Para 20- It was not considered necessary in the interest of the administration and the material was treated as confidential. All the grounds are baseless have been no footing hence it is prayed that the writ may kindly be dismissed.

For Divl. Railway Manager
Lucknow.

उत्तर रेलवे/NORTHERN RAILWAY

87

NO: 1281-E/amt/dko-1983

Dated 3-8-1983

The Chief Law Assistant
D.R. cis office,
Lucknow

The ~~Chief Law Assistant~~
D.R. cis office,
Lucknow

Received
On 31/8/83
Only

Sub: W.P. No. 1289 of 1982
in the High Court of Lucknow
Bench Sh. Saifur Ali -
Biddique, Ex. Joans, Clerk is
Illman of Indra & others

— xxx —

Enclosed herewith please find a
copy of the abovementioned writ petition
& arrange to furnish para-wise
comments immediately. The name
of the Rly. Advocate shall be communicated
to your office as soon as the nomination is
received from the Headquarters office.

This may please be treated as
urgent.

on/copying

E/ahmada
Chief Law Assistant

हाईकोर्ट इलाहाबाद, लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णांक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १६ ई०

..... सन १६ ई० में

..... प्राथी

..... प्रत्याथी

.....

..... प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुचदमें के सम्बन्ध में

..... के नाम के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक माह सन १६३ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशो और दिन होगी।

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

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक माह सन १६३ को जारी किया गया।

..... के एडवोकेट

तिथि

डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १६५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त लखवाना मिल गया।

लखवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

ZAFAR ALI KHAN.

... PETITIONER.

VERSUS

UNITED ...

... OPP. PARTIES.

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LS DATED:
19 March, 1982.

(HAJDAR ADAMS)
Advocate
(Counsel for the Petitioner.)

Te
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The petitioner above named most respectfully
showeth:-

1. That by means of letter No. 220E/Rectt/66
(Trains) dated- 23.7.1976, the Divisional Personnel
Officer, Northern Railways, Allahabad, informed the
Petitioner that vide General Manager's order No.220E/
64-47/(Rectt) dated-15.7.1976 and 26.6.1976, the
Petitioner was appointed as Trains Clerk in the grade
of Rs.260-400. On 29.7.1976 the Petitioner accepted
the offer of appointment on the terms detailed in
the appointment order. A true Photostat copy of the
said appointment order dated-23.7.1976 communicated
to the petitioner by opposite party No.3 is annexed
with the Affidavit forming part of this Writ Petition
as ANNEXURE NO. 1.

2. That on 29.7.1976 after completing the necessary
training, the Petitioner was appointed temporarily
as Trains Clerk in the grade mentioned above, and
was posted at Chief Yard Master, Juhl, Kanpur. After
a year, the petitioner was transferred from Kanpur to
Lucknow in the office of the Chief Controller, Northern
Railway, Lucknow. He was also confirmed on the said
post.

3. That on 28.9.1978, vide letter No. 241-E/5-4(J)
T.N.C., the Petitioner was promoted as Senior Trains

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original punishment notice dated- 29.6.1981 is annexed with the affidavit forming part of this Writ Petition as ANNEXURE No.2

ANNEXURE-2

That the impugned order of dismissal contained in Annexure No.2 was accompanied with the copy of order dated- 29.6.1981 passed by Opposite Party No.2, indicating the alleged circumstances under which it was not practicable to give any opportunity to the Petitioner before passing the impugned order. A copy of the allegation of charges against the Petitioner was also accompanied with the impugned order. The true copies of the order dated- 29.6.1981 and allegation

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clerk on a higher grade of E.330-560 and was posted under the Chief Controller, Northern Railways, Lucknow.

4. That during the entire tenure of his service, the petitioner worked with utmost sincerity and honesty and to the entire satisfaction of his superior officers.

5. That on 29th June, 1981, vide letter No. DOS/Control/Conf/1/81, issued by Opposite party No.2, the petitioner was served with punishment notice, purporting to be one under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules 1968, by means of which the petitioner was dismissed from the service. The

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of charges against the Petitioner are annexed with the affidavit forming part of this Writ Petition are annexed as ANNEXURE Nos. 3 and 4.

ANNEXURE-3 & 4

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7. That it is pertinent to mention here that from the allegations of charges contained in Annexure No. 4, it is evident that both Sri Mohammad Hasnain and Shri S.C. Bajpai, Deputy Chief Controller, Northern Railway, Lucknow were assaulted by there unidentified persons and the responsibility for making such an assault was wrongly fixed on the Petitioner.

8. That the Petitioner neither assaulted the above named persons nor he was at all involved in any manner in the aforesaid incident.

9. That none of the persons mentioned above in their first information report, which they lodged on the same day in Police Station, Hazratganj, named the Petitioner as one of the miseriant involved in assaulting them. A true copies of the first information report lodged by Sarve Sri Mohammad Hasnain and S.C. Bajpai is annexed with the affidavit forming part of this writ Petition as ANNEXURE Nos. 5 and 6.

ANNEXURE-5 & 6

10. That the Petitioner as well as Shri Mohammad Hasnain and Sri S.C. Bajpai have been working in the same office and were known to each other, there existed

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merely imports a rule of natural justice in enjoying that before taking final action in the matter, the employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play.

14. That in the instant case, no opportunity of any kind was given to the Petitioner before imposing the penalty i.e. dismissal from service. He was neither served with any charge sheet, nor any enquiry whatsoever, was held. He was also not given a show-cause notice before the imposing of the penalty of dismissal as required by the Rule, governing the conditions of the service of the Petitioner as ~~xxxx~~

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12. That the word "Consider" merely connotes that there should be active application of mind by the Disciplinary Authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on a Railway employee. This matter can be objectively determined if the employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said Authority. In the other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter, after hearing the aggrieved person.

13. That the statutory provision referred to above,

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contained in Railway Servants(Discipline and Appeal) Rules 1968, and the order of dismissal of service of the Petitioner was passed in total disregard and contravention of the principles of natural justice.

15. That the Opposite parties were required to consider the circumstances appearing against the Petitioner "objectively" by giving an opportunity of being heard before the imposition of the said penalty.

16. That besides the above, it was perfectly possible and practicable to hold an enquiry against the Petitioner in accordance with Rule 9 to 13 of Railway Servants(Discipline and Appeal) Rules 1968, and the contention of the Opposite party No.2 that it was not reasonably practicable to give the Petitioner an opportunity of making representation in respect of charges was not based on any material whatsoever, indicated in the order. The Opposite party No.2, in a most casual, mechanical and cursory manner, passed the order of dismissal without proper application of mind. The reasons given by the Opposite party No.2, in the dismissal order are imaginary, baseless, and without proper application of the mind. The Opposite party No.2, did not even try to ascertain the truth, if any, in the allegations made against

no reason for the above named two persons to have not named the Petitioner is the first information report, in case, the Petitioner was in any way involved in the said incident. Shri S.C. Bajpai has even stated in the first information report that on seeing the assailants, he could identify them. This leaves no doubt that the Petitioner was not at all involved into the alleged incident.

11. That Rule-14 of the Railway Servants(Discipline and appeal) Rules 1968 is in the following terms:

"14. SPECIAL PROCEDURE IN CERTAIN CASES NOT-WITHSTANDING ANYTHING CONTAINED IN RULES 9 and 13:-

- (i) Where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge or,
- (ii) Where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
- (iii) Where the President is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules:-
the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit provided that the Commission shall be consulted, where such consultation is necessary before any such is made in any case, under this rule."

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the Petitioner and punished the Petitioner arbitrarily and capriciously.

17. That on 17.6.1981, by means of an application, the Petitioner requested the Opposite party No.2 to furnish the Petitioner with all the materials, informations and documentary as well as oral evidence in support of the alleged charges against the Petitioner, so that he may be able to prefer an effective appeal rebutting the charges and allegations, in the appeal to the entire satisfaction of the Appellate Authority, but in vain. A true copy of the application is annexed with the affidavit forming part of this Writ Petition as ANNEXURE NO. 7.

ANNEXURE- 7

18. That on 14.8.81, inspite of all odds i.e. non-supply of the material, documentary and oral evidence, if any, against the Petitioner upon which the charges were based, the Petitioner filed an appeal before the Additional Divisional Railway Manager (Operating), Northern Railways, Hazratganj, Lucknow i.e. Opposite party No.4. By means of the order dated- 7.11.1981, the Opposite party No.4 dismissed the said appeal. The order dated- 7.11.1981 passed by Opposite party No.4 rejecting the said appeal is annexed with the affidavit forming part of this Writ Petitioner as ANNEXURE No. 8.

ANNEXURE - 8.

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19. That on 19.11.1981, the Petitioner preferred a review of the appeal before the Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow, i.e. Opposite party No.6, By means of order date 28.12.81, which was communicated to the Petitioner. On 4.1.1982, the Opposite party No.5 dismissed the said review appeal. The order dated- 22.12.1981 communicated to the Petitioner on 4.1.1982 is annexed with the affidavit forming part of this Writ Petition as ANNEXURE NO. 9.

20. That on 13.7.1981, the Petitioner had filed a Writ Petition against the order of dismissal dated- 28.6.1981 passed by the opposite party No. 2 as contained in Annexure No.2 to the Writ Petition. The said Writ Petition was dismissed summarily only on the ground that the Petitioner had not exhausted the departmental channels. After the dismissal of the appeal and the review appeal, contained in Annexures 8 and 9, having no other alternate and efficacious relief available to the Petitioner, he files this Writ Petition challenging the impugned orders contained in Annexures Nos. 2,3,4,8 and 9 on the following amongst other:

- GROUNDS :-

I. BECAUSE the impugned orders passed by the Opposite parties are hit by Article 311 of the

Contd...10/-

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Constitution of India.

II. ~~BECAUSE~~ the impugned orders have been passed in total disregard and contravention of principles of natural justice.

III. ~~BECAUSE~~ Rule 1A of the Railway Servants (discipline and Appeal) Rules 1968 postulates consideration of all aspects and circumstances the case, after giving an opportunity to the delinquent before passing the order of dismissal.

IV. ~~BECAUSE~~ the impugned orders have been passed without giving any opportunity to the Petitioner to show cause against the charges.

V. ~~BECAUSE~~ the impugned orders are bad hit by principles of natural justice, fair play and equity in as much as the Petitioner was not at all heard and the circumstances of the case were not objectively considered in keeping with sense of justice and fair play.

VI. ~~BECAUSE~~ the order of dismissal was passed without following the procedure prescribed in Rule 9 to 13 of Railway Servants (Discipline and Appeal) Rules 1968.

VII. ~~BECAUSE~~ the contention of the opposite parties that it was not reasonably practicable to hold an enquiry is arbitrary and based on

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were passed without proper application of mind and the same is not in accordance with the Rules governing the conditions of the service of the Petitioner, but is merely a colourable exercise of power.

VIII. BECAUSE there existed no material on the record. On the basis of which the Opposite Parties could have come to the conclusion that the holding of enquiry was not reasonably practicable.

IX. BECAUSE as the material documents and the evidence upon which the charge was based were not furnished inspite of requests, the petitioner was prejudiced and he could not make an effective appeal or representation.

X. BECAUSE no opportunity or show cause notice was given to the Petitioner before passing the impugned orders.

XI. BECAUSE the satisfaction of the Disciplinary Authority under Rule 14 (11) and Article 311(2)(b) of the Constitution of India postulates an objective satisfaction and consideration which should be based on some cogent and reliable material.

XII. BECAUSE the exercise of the power under Rule 14(11) and Article 311(2)(b) of the Constitution of India to the Opposite parties was wholly unwarranted

which amounts to colourable exercise and abuse of power.

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XIII. BECAUSE at any rate, the impugned orders are bad on both facts and law and are against the equities and merit of the case as well as against the principles of natural justice .

P R A Y E R.

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

- (a) issue a writ in the nature of certiorari quashing the impugned orders contained in Annexures No 2,3,4,5 and 9 to this writ petition.
- (b) issue a writ in the nature of mandamus commanding the opposite parties to treat the Petitioner in service w.e.f. 29th June, 1981 with all the amenities, benefits, salary increments and seniority etc.
- (c) issue any other writ direction or order which this Hon'ble Court deem fit and proper considering the facts and circumstances of the case.
- (d) the costs of the writ petition be awarded to the Petitioner against the Opposite parties.
- (e) the fourteen days notice may kindly be w

Lucknow: Dated:
19 March, 1982.

(HAIDER ABBAS
Advocate
Counsel for the Petiti

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NO. _____ OF 1982

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ZAFAR ALI SIDDIQUI.

... PETITIONER.

VERSUS

UNION OF INDIA & OTHERS.

... OP. PARTIES.

A F F I D A V I T

I, Zafar Ali Siddiqui, aged about 30 years
Son of Late Sri Ali Raza, resident of House No.266/
736, Baghia Habib Beg, Bhadewan, P.S. Bazar Khala,
Lucknow, do hereby solemnly affirm and state on oath
as under:-

1. That the deponent is the Petitioner in this
Writ Petition is fully conversant with the facts
deposed below.

2. That the contents of paras 1 to 20 of the
Writ Petition are true to my personal knowledge.

3. That the Annexures No. 2,3,4,8 and 9 are
original, Annexures No. 5,6 and 7 are the true copies

Contd..2/-

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of the original which have been compared by the Deponent and found to be true and Annexure No. 1 is the photostat copy of the original.

LUCKNOW :DATED:

DEPONENT.

10 March, 1982.

Verification

I, the deponent named above do hereby verify that the contents of paragraphs 1 to 3 of this Affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed, So help me God.

LUCKNOW:DATED:

DEPONENT.

19 March, 1982.

I identify the deponent above named who has signed this affidavit before me.

Advocate.

Solemnly affirmed before me on
at a.m./p.m. by
the deponent who has been identified by
Shri
Clerk to Sri
Advocate, High Court, Allahabad

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

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ZAFAR ALI SIDDIQI

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UNION OF INDIA AND OTHERS

Annexure 1

69

NORTHERN RAILWAY

No. 220E/RecH/66 (Trans)

Dist. Supt. Office
Allahabad.

Dated. 28.7.76

Name श्री जफर अलीS/O. Shri श्री अली रजा

Address:

(कामागामि)(Ref Encls) No. 220E/84-47/
(RecH) 15.7.76 &
26.6.76.Reg:- TEMPORARY APPOINTMENT.

Nature of Appointment:-

ट्रेनिंग

Grade:-

Rs. 260-400 (Rs.)

Rate of pay per mensem:-

Rs. 260/-

1. I am prepared to offer you a post in grade and on rate of pay specified above plus usual D.A. subject to your passing the prescribed medical examination by an authorised Medical Officer of this Railway and (for subordinate staff only) production of your original certificate and satisfactory proof in support of age such as birth or Matriculation Certificate etc.

2. It must be clearly understood that the appointment is terminable on 14 days notice on either side, if the period of service rendered by you is less than 3 years and on completion of three years one month notice on either side. You have no option to leave service by paying 14 days/one month's pay in lieu of notice to the Administration. If you leave service without giving requisite notice suitable action will be initiated against you. No such notice will be required on return to duty of the absence in whose place you may be engaged in which case your services will automatically terminate from the date the former resumes duty. Also no such notice will be required if the termination of service is due to your mental or physical incapability or to your removal or dismissal for serious misconduct.

3. You will not be eligible for any pension of any benefit, under the State Railway P.F. or Gratuity Rules or to any absence allowance beyond those admissible to temporary employees under the rules in force from time to time during such temporary service.

4. You will be held responsible for the charge and care of Govt. money, goods and all other property that may be entrusted to you.

5. You will be required to take oath of allegiance to the Indian Republic in the form prescribed below and fill in the declaration regarding marriage:-

"I Zafar Ali swear solemnly affirm that I will be faithful and bear true allegiance to Indian to the Constitution of India as by law established that I will carry out the duties of my office loyally, honestly and with impartiality. SO HELP ME GOD."

Signature of the candidate.

p.t.o.

HIGH
IN THE HON'BLE/COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NO. OF 1982.

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ZAFAR ALI SIDDIQUI.

... PETITIONER.

VERSUS

UNION OF INDIA & OTHERS.

... OPPOSITE PARTIES.

ANNEXURE NO.2

PUNISHMENT NOTICE

DOS/Control/Conf/1/81

Place of Issue- Divisional Officer
Northern Railway
Lucknow.

Dated: June 29, 1981.

To,

Shri Zafar Ali Siddiqui
Sr. Trains Clerk, under C.R.C.,
N. Railway, Lucknow.

Thro: Chief Controller/N.Rly/Lucknow.

WHEREAS Shri Zafar Ali Siddiqui Desig. Sr. Trains Clerk/LKO is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of of general public, any further retention of Shri Zafar Ali Siddiqui, Designation Sr. Trains Clerk in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline and Appeal Rules, 1963.

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NOW, therefore, in exercise of the powers conferred by Rule 14(11) of Railway Servants. Discipline and Appeal Rules, 1968 the undersigned hereby dismisses the said Shri Zafar Ali Siddiqui Designation Sr.Trains Clerk from service with effect from 29.6.1981.

Sd./-
(Baldev Singh)
Sr.Divl.Optg.Supt.,
N.Railway, Lucknow.

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Under Rule 18 of Railway Servants Discipline and Appeal Rules, 1968, an appeal against these orders lies to A.D.R.M.(OP)/ N.Rly/Lucknow provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.
2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NO. OF 1982.

66

ZAFAR ALI SIDDIQUI.

... PETITIONER.

VERSUS

UNION OF INDIA & OTHERS.

... OPPOSITE PARTIES

ANNEXURE NO. 3

O R D E R

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri Zafar Ali Siddiqui, Senior Trains Clerk/Northern Railway/Lucknow, who was appointed under the orders of Senior Divisional Personnel Officer, a Junior-Administrative Grade Officer, am fully satisfied that Shri Zafar Ali Siddiqui, Sr. TNC is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

THEREFORE, under the circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause(2) of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause(2), Proviso(b) of the said clause, I order dismissal of Shri Zafar Ali

65

Siddiqui, Sr. Trains Clerk/Lucknow, from service with effect from 29th June, 1981 afternoon.

Sd./-

(BALDEV SINGH)
Senior Divisional Operating Superin-
tendent, Northern Railway,
Lucknow.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NO. _____ OF 1982.

64

ZAFAR ALI SIDDIQUI.

... PETITIONER.

VERSUS

UNION OF INDIA & OTHERS.

... OPP. PARTIES.

ANNEXURE NO. 4

ANNEXURE

ANNEXURE INDICATING CHARGES AGAINST SHRI ZAFAR ALI SIDDIQUI, SENIOR TRAINS CLERK/NORTHERN RLY./LUCKNOW.

On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controller, N.Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller, N.Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trains Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault.

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has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway Servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966.

Sd./-
(Baldev Singh)
29/6

Sr. Divisional Optg. Supdt.,
Northern Railway, Lucknow.

TRUE COPY.

श्री वि. बालेखुत सार्व कोर्ट आफ मुदीमर ऐट इलाहाबाद

ਰਿਟ ਪੀਟਿਸ਼ਨ ਨੰ.

BTG 62

पक्षर और सिंह की

पिटिशन

4415

पुनियन बाप नित्यत बादि ।

.....सप्तमः पादः

SECRET

ସିଂହ ଓଡ଼ିଆ

॥ १२४ ॥ श्रीगणेशाय नमः ॥

बनाए लहरीत सिन्धी भाषी

94 95

धानाच्यना महोदय, कौत्वाली खरबाब, लखनऊ ।

मिथेवन है कि आज दिनांक २४-६-६१ को मैं अपनी हिस्ट्री करने ढीठ कर ० दफा १३० १० । कायलिय का रहा था । करीब १०-०० को रात कायलिय के दक्षिण दरवाजे से अन्दर हुआ यह ही दो लड़कों ने पुकार कर कहा भैरू देते बाकी । भैरू जै ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई चाकियों से मारने लगे । मे जाफिस की ओर शोर मचाते हुए भागा तो सामने से एक तीसरे जादमी ने अपने हाथ में ली हुई चाकी से मारना शुरू कर दिया । तीसरा जादमी वहीं पर था । इसी मार-पीट के दौरान मेरा सफ़ेद का फाले रंग का छिन्ट का हाथ छेड़ कर नीचे गिर गया जिसमें २ तीन पेन, बरमा, जाफिस की चाबी, जाफिस के कुछ कागजात थे । भैरू शोर मचाने पर वे लोग मेरा गिरा हुआ पर्स लेकर भाग गए । मेरे शरीर पर चोटें बाढ़ है जिनकी डाक्टरों जांच करा कर डाक्टरों रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही की जाये ।

नोट: मैं यह प्रमाणित करता हूँ कि नवल
लक्ष्मीर बाड़ी बिक ग्याहिर खपारखः
जकिंत किया गया । लक्ष्मीर सलग्न
एक-०५१०७२० है ।
हो राम सरस्वर शुक्ला
२५-६-८३

प्राची
मोहम्मद हसन
पुत्र स्व० श्री शम्भुलाल हसन
मैदा, धाना बाला बाजार
हम नि० लखनऊ २४-६-६१
हस्तक श्री पी० ए० सुख मुन्ना

[illegible]

इन वि बानीकुत हाई कोर्ट बाफ कुडी केवर रेट बलाहावाद
लकनऊ वेन्च, लकनऊ ।

रिट रिटिशन नं०

बाफ ८२

अफार क्ली सिद्दीकी

-----रिटिशनर

बनाय

अफिन बाफ अफिदवा बावि ।

-----कोम्पार्टीप

अनेकर नं० ६

सी० नं० ७५५ ३०७

३०६।३२२ बावि०पी०सी०

नकल तहरीर हिन्दी बादी

सेवा के

थानाअथवा फौजदर, कोल्हाली अकराज, लकनऊ ।

निवेदन है कि मैं लगभग २५मई १९५३ की रात में अपने घर से अपने
कारिगार का रहा था । उस में विमान समा के सामने से पास ही रहा था
धीरे से तीन व्यक्ति जो कारिगार पर सवार थे सामने जाकर मेरी कारिगार
से अपनी कारिगार लहानी हाथी, लेकिन कारिगार लहनी नहीं । फौरन वे
सामने जाकर हाथियां लेकर मुझे मारने लगे । मेरे दोनों हाथों में चीट
बाई और कारिगार मेरे हाथों से छूट गई और मैं बचान के लिए और
मगाने लगा । उसी बीच एक लहना मेरी कारिगार लेकर भाग गया ।
कारिगार के शिर्षक में मेरा एक फौला टंगा था । उसमें एक काला पतल का
जिन्स का रुबंद और कुछ पैर थे । एक जीन्स थी, एक रूबंद फाड़न,
एक दकल की बाजी, चीन्स, पाद, तथा डूब की शीशी थी । वह फौला
भी हाथ में बला गया । मेरे शरीर मगाने पर कुछ लोगो ने भी शोर मचाया
जिनमें मोहम्मद नईम भी थे और वे झूले गेट से विमान समा के बाहर
निकल कर भागे । और मुझे स्टूट पर बिठाकर तालमाग की तरफ गए
पर उनका कोई पता नहीं चला सामने जाने पर पहचान सकता हूँ । लिखित
रिपोर्ट दाखिल करता हूँ । उचित कार्यवाही करने की प्रार्थना करे ।

प्राणी

पर का पता:

सलीम चन्द बाजपेई

६६।१५ बिलवापुर बाव लकनऊ

२४-६-८३

सलीम चन्द बाजपेई
हिन्दी चीफ कन्ट्रोलर
टी०आर०एम बाफि०, उ०००
लकनऊ ।

नोट- मैं यह प्रमाणित करता हूँ कि नकल तहरीर बादी कि लहना
अफार: अफिन सिद्धा गया ।

अथ-अतिरिक्त

LUCKNOW BENCH, LUCKNOW

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WRIT PETITION NO. OF 1982

ZAFAR ALI SIDDIQUI.

... PETITIONER.

VERSUS.

UNION OF INDIA & OTHERS.

... OPP. PARTIES.

ANNEXURE NO. 7

The Senior Divisional Operating Supdt.,
Northern Railway,
Lucknow.

SUB: Representation for reasonable opportunity for preferring an appeal against your Order No. DOS/Control/Conf/I/81 dated- 29.6.1981 dismissing the applicant from service v.e.f. 29.6.1981 A.E.

.....

Respected Sir,

Most respectfully, the applicant acknowledges to have received your order cited above dismissing him from service with effect from 29.6.1981 in purported exercise of the powers conferred by Rule 14(11) of the Railway Servants Discipline and Appeal Rules, 1968 read with Article 311 (1), Clause (2), proviso(b) of the Constitution of India. Alongwith the said order, the applicant has also been given an Annexure indicating the so called charges on the basis of which the said order of his dismissal from service has been passed. This annexure has been supplied with the said order to enable the applicant to know what specific charges against him are and on what basis the authority exercised its power under Rule 14 (11) of the R.S.(DAA) Rules, 1968, so that an effective appeal rebutting the entire charges and allegations could be filed for justice by him.

2. That in accordance with the instructions contained in the said order of dismissal, the applicant has a right to prefer an appeal to the Additional Divl.-Railway Manager(OP)/N. Railway, Lucknow under rule 13 of the Railway Servants Discipline and Appeal Rules, 1960. Since this is an appealable order, the applicant has a right to ~~ask~~ claim for the opportunities, which are necessary and expedient for preferring an appeal.

3. That under the law and rules, the order giving rise to applicant's dismissal from service ought to have been issued with duly and properly constituted charge definite and distinct in nature alongwith all evidence oral and documentary that have been relied upon to arrive at a final decision that :-

- (i) the applicant was in such a mood that if notice was given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (ii) the applicant was apparently present at Lucknow yet he had created such an atmosphere of terror that it was not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

4. That apart from the above, it is pointed out that the charge of assault causing grievous injuries to Shri S.C. Bajpai, Deputy Chief Controller, Lucknow does not indicate the time and exact place of occurrence when and where he was allegedly assaulted. The more so, no evidence, if any coming on the records and relied upon has been given in the annexure or order in support of the alleged connivance with anti-social elements in getting Shri Muzamil and Shri Bajpai physically assaulted. These materials and informations ought to have been shown in the order/annexure to enable the applicant to rebut the charges and allegations in the appeal.

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5. That it has also not been made clear in the said list of charges (Annexure) annexed with the order of dismissal from service as to how the applicant was the Master Mind and also no evidence to this effect has been shown therein which gave you personal satisfaction to exercise the powers conferred by Rule 14(11) of the Railway Servants Discipline and Appeal Rules, 1968. This under the law and rules, was a must to be shown in the said order/annexure for the said purpose.

6. That the order of dismissal from service is also not accompanied by the copies of the reports of S/Shri Mohd. Hussain and S... Bajpai, if any submitted to the Railway Administration, F.I.Rs, if any lodged by them at the Police Station in respect of the alleged assault, Medical Reports, if any got by them in respect of the alleged assault and grievous injuries and the statements of witnesses, if any recorded by the Railway Administration which led your honour to exercise the powers conferred by Rule 14 (11) of the R.S.(D&A) Rules, 1968, which ought to have been supplied to the applicant to prefer an appeal and to rebut the charges and allegations.

7. That for reasons stated in the aforesaid paras, the applicant is handicapped to prefer an effective appeal against the order of his dismissal from service. It is submitted that if the opportunities as pointed out in the aforesaid paras are not made available to him, he will suffer serious prejudice, which will amount to denial of opportunity of defence even at the stage of appeal and the entire actions shall be in utter disregard of the departmental rules and violation of the principles laid down by Hon'ble Supreme Court and High Courts of India in various cases adjudicated by the

Cont

8. That the applicant respectfully submits that the entire charges/allegations are false, fabricated and he has falsely been implicated and got punished under a deep rooted conspiracy and plan hatched by the interested persons and the order of his dismissal from service has been passed on no evidence valid in law, but on presumption, supposition and false and un-trustworthy informations which act is arbitrary in nature.

The facts mentioned above (para 8) can be established to a greater extent in the appeal provided the applicant is afforded the opportunity as hereunder prayed:-

In view of the facts and circumstances stated above, it is respectfully prayed that your honour may be pleased to consider this representation with a judicious view in that the contents of paras 3 to 6 may be taken into consideration and the applicant be furnished with the materials/informations claimed therein, so that he may be able to prefer an effective appeal rebutting the charges and allegations, in the appeal to the entire satisfaction of the appellate authority.

It is hoped that the materials/informations as claimed by the applicant would be supplied to him within a reasonable time keeping in view the limitation for filing the appeal.

Thanking you.

Yours faithfully

TRUE COPY

न दि वानिपुस्ताई कोर्ट आफ बुडीनेर रेट लाहावार

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लानका येन्व, लानका

रिट पिटिशन नं० जाफ ८२

जाफर अली सिद्दीकी

-----पिटिशनर

वनाम

प्रतिपक्ष जाफर अहमद आदि ।

-----जवाबदात्री

--

जमा नं० ४

उत्तर रेलवे

प्रमुख कार्यालय

लानका दिनांक : २२ ७-१२-८८

यत्र संख्या : सी.सी.३

DOJ/Control/Conf/I/81.

श्री -

Zafar Ali Siddiqui

Mr. Trains Clerk

द्वारा

दिनांक: २२-१२-८१

विषय- एवं नोटिस संख्या

निमित्त के

DOJ/Control/Conf/I/81.

द्वारा

Dismissal from service की सूचना

or DOJ/Lko.

सन्दर्भ: जाफरी दिनांक २२-१२-८१ की अपील ।

रेल वर्कर्स' अनुशासन एवं अपील नियम १९६८ के नियम

२२.२ के अनुसार अपील अधिकारी

लानका

ने

DOJ (C)/N.aly. द्वारा

उपरोक्त जाफरी के पिछले जाफरी की यह अपील पर ध्यानपूर्वक

विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है ।

।क। अनुशासन प्राधिकारी के निष्कर्षी निर्णयों के उद्देश्य के अनुसार

प्रमाणित है ।

लगा

।ख। आरोपित यह -

" I have gone through the appeal of Shri Zafar Ali.

I find that in his 12 page long appeal, he has

not given any real and valid reasons for his appeal.

levelled against him. & He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and appeal is rejected.

ॐ श्री गणेशाय नमः

सहायक कार्यालय अधिकारी, लखनऊ ।

प्रतिनिधि प्रमुख तथा वाचस्पति कार्यालयी हेतु ।

१- सम्बन्धित लिखित कार्यालय विभाग ।

२-

सत्य-प्रतिनिधि

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NO. _____ OF 1982

(55)

ZAFAR ALI SIDDIQUI.

... PETITIONER

VERSUS.

UNION OF INDIA & OTHERS.

... OPP. PARTIES.

ANNEXURE NO. 9

Northern Railway

Registered A/D

No. DOB/Control/Confdl/1/81
Dated: 22.12.81

Divisional Office,
Lucknow.

Shri Zafar Ali Siddiqui,
Ex Sr. Trains Clerk

Sub:Penalty Notice No. DOB/Control/Confdl/1/81 dated 29.6.1981.

Ref: Your review appeal dated-19.11.1981.

...

Review petition has been considered by the reviewing authority D.R.M./Lucknow and he has passed the following orders:-

"Having gone through the review petition and the orders passed by the appellate authority, I do not find any justification to change the orders of the appellate authority in all these three cases".

Sd./- Illegible
For Divl. Railway Manager
Northern Railway
Lucknow.

Northern Railway

Divisional Office,
Lucknow.

No.DOS/Control/Conf/I/81

Dated: October '1982

Shri C.A.Basir,
Railway Advocate,
152, Ghasiani Mandi,
Lucknow.

Sub: W.P.NO. 1362 of 1982 in the High Court
bench at Lucknow Shri Jagdamba Prasad Tripathi
V/S U.O.I.

Ref: General Manager(P) Legal Cell, N.Rly, Baroda-
House, New Delhi letter No. 21-LKQ/WP/82-
Legal Cell(P) dated 23.9.82 addressed to this
office and copy to you.

..

The parasise comments are as under for your necessary action-

Para 1- Needs no comments

Para 2- Admitted.

Para 3- Admitted

Para 4- Needs no comments.

Para 5- As regards annexure 3 mentioned in Para 5 of W.P. it is stated that it is communication of the decision passed by the Reviewing authority on the petitioners review petiton. It is further state that the petitioners appeal had already been rejected by the appellate authority on 3.11.81. Hence it is denied that the petitioner came to know about the assault on the Dy CHCs after receiving the decision of the Reviewing Authority.

Para 6- Denied. The charges levelled against the petitioner has been found correct after enquiry.

Para 7- The F.I.R. lodged by Sri Mohd. Hasnaian and Sri S.C. Bajpai, the names of the assaulant were not mentioned but it was clearly pointed out that the assaulants were 3 in number and the confidential enquiries subsequent to the lodging of FIR revealed that Sri Tripathi had actively associated in the assault.

Para 8- This is a fact that he was known to both but due to his earlier notorious activities and the terror created, no body dared to name him in the FIR directly.

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- Para 9- No comments.
- Para 10- No comments.
- Para 11- It is a fact and all necessary formalities were fulfilled before taking the action under D&AR Rules.
- Para 12- Action was taken after the disciplinary authority was full satisfied with the enquiries and revelations.
- Para 13- It was not considered necessary keeping in view the interest of the administration and the delicacy of the situation to hold an enquiry.
- Para 14- As already explained above it was neither possible nor in the interest of the administration to hold any enquiry.
- Para 15- Denied.
- Para 16- Denied as stated. Action under 14(11) does not warrant the issue of any chargesheet or holding of the enquiry. Special power under R.14(11) was exercised in the petitioner's case for the reason already indicated in the proceeding paragraph.
- Para 17- No comments.
- Para 18- Denied.
- Para 19- Denied. The action was taken after establishing the truth through confidential enquiry.
- Para 20- It was not considered necessary in the interest of the administration and the material was treated as confidential.
- Para 21- -do- -do-
- Para 22- The appeal was considered by the appellate authority and after due consideration keeping in view of the facts of the case, was rejected.
- Para 23- -do- -do-
- Para 24- The review was also duly considered by the Reviewing authority and was decided on merits.
- Para 25- -do- -do-
- Para 26- No comments.

[Signature]
19/8/82
For Divisional Railway Manager,
Northern Railway,
Lucknow.

NORTHERN RAILWAY

NO. DOS/Control/Confdl/81

h.8
REGISTERED A.D.
Divisional Office,
Lucknow.

Dated: 14.9.1982

Shri C.A.Bashir,
Railway Advocate,
152, Ghasiani Mandi,
Lucknow.

Sub: W.P.No.1362 of 1982 in the High Court
bench at Lucknow Shri Jagdamba Prasad
Tripathi, V/S U.O.I.

Ref: G.M.(P)/NDLS letter No. 21-LKO/WP/82-
Legal Cell(P) dated 28.4.82. ~~28.4.82~~
28.4.82. ..

The Headquarters office has referred the matter to the
Railway Board for obtaining sanction for the enegagement of
Sri L.P.Shukla as Special Counsel to defend the case on
behalf of the railway administration. The matter is being
pursued vigorously but the reply is still awaited.

It has been advised by the Headquarters office that meanwhile
you may be requested to watch the interest of the railway
administration and ensure that no adverse orders are passed
by the High Court.

It is therefore, requested that you may kindly keep in
touch with the day-to-day progress of the case in the
high-court and take all the possible steps to safe guard the
interest of the administration. The requirements in the
case, if any, may please be intimated to this Office.

gic
Shree
(Nisheth M.Katara)
for Divisional Railway Manager
Lucknow.

49

264

जी०एल० 19/G.L. 19
जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

Headquarters Office,
Baroda House, New Delhi.

No.21-LKO/WP/82-Legal Cell(P). Dated:23-9-1982

The Divl. Railway Manager,
Northern Railway,
LKO.

Sub:- W.P.No.1362 of 1982 in the High Court bench at LKO.
Shri Jagdamba Prasad Tripathi V/S U.O.I.

...

Shri C.A. Basir, Railway Advocate, Lucknow has
complained vide his letter dated.15.7.82 that para-wise ~~xx~~
remarks in this writ petition has not so far been sent ~~xxx~~

to him by you for preparing the Counter Affidavit. Please
arrange to furnish the same to him at once to enable him
to prepare the Counter-affidavit and file in the Court in
time.

P. Chand
for General Manager (P)
Legal Cell.

Copy to Shri C.A. Basir, Railway Advocate, 152, Chasiani
Mandi, Lucknow for information.

...

P.T.O.

857
1. Cell
120
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46

Confidential

Northern Railway

Divisional Office,
Lucknow.

NISHEETH M. KATARA
DI VL. OPTG. SUPDT.

Dated: August 13 '1982

D.O.NO: DOS/Control/Conf dl/1/81

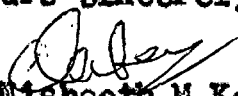
My dear Singh,

Sub: WP NO. 1362 of 1982 in the High-
Court Bench at Lucknow Shri Jagdamba
Prasad Tripathi, V/S U.O.I.

Ref: G.M.(P) Legal Cell letter No. 21-LKO/
WP/82. Legal Cell(P) of 1.6.82.

Please refer to this office letter of even no. dated 15.7. 1982 and communicate to this office at the earliest the sanction for the engagement of Shri L.P. Shukla as Special counsel to defend the case on behalf of the Railway administration. In case if it is felt that the sanction of the Railway Board is not expected at an early date, Shri L.P. Shukla may be engaged pending sanction of the competent authority under intimation to this office so that the factual position may be briefed to him to enable him to draft the Counter-affidavit for being sworn and filed in the High Court which is already much delayed.

Yours sincerely, .


(Nisheet M. Katara)

Shri Ram Singh,
Asstt. Personnel Officer/G
Northern Railway,
Baroda House,
New Delhi.

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उत्तर रेलवे/NORTHERN RAILWAY

G.Keswani,
A.P.O.(G).

Headquarters Office,
Bareda House,
New Delhi.

D.O.NO.21-LKO/WP/82/Legal Cell(P). dated. 4/9/1982.

Dear Shri M. Katara,

Sub:- W.P.NO. 1362 of 1982 in the High Court
Bench at Lucknow Shri Jagdamba Prasad
Tripathi, V/s Union of India.

Ref:- Your D.O.No.DOS/Control/Confdl/21,
Dated. 13/8/1982. *Se no. 46*

The matter has since been referred to the
Railway Board for obtaining their sanction for the
engagement of Shri L.P.Shukla as special Advocate
on his legal fee of Rs. 1100/-. The Board's decision
is still awaited. The matter is however being pursued
vigorously. In the meantime, Shri C.A.Basir, conducting
Railway Advocate may be requested to take all
precautions to defend the Railway Administration vehemently.

Yours sincerely,

G.Keswani
(G.Keswani)

Shri Nisheet M.Katara,
Divl.Optg.Supt.,
N.Railway,
Lucknow.

/JSINGH.

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Northern Railway

Divisional Office,
Lucknow.

NO: DOS/Control/Confdl/1/81 Dated: 15.7.1982

The General Manager(P),
Legal Cell,
Northern Railway,
Baroda House,
New Delhi.

Sub: WP NO.1362 of 1982 in the High Court,
Bench at Lucknow Shri Jagdamba Prasad
Tripathi, V/S U.O.I.

Ref: Your letter No. 21-LKO/WP/82.Legal Cell(P)
dated 14.6.1982.

...

As desired Shri L.P.Shukla Railway Advocate was contacted.
The matter was discussed with him and he is prepared to
contest the case on behalf of the Railway Administration
as Special counsel on special fee Rs. 1100/- for the entire
case. Sanction for the engagement of Shri L.P.Shukla may
kindly be communicated to this office at the earliest.

Qatar
(Nisheeth M.Katara)
for Divl.Railway Manager,
Lucknow.

Q/c

उत्तर रेलवे NORTHERN RAILWAY

Headquarters Office,
Baroda House, New Delhi

NO.21-LKO/MP/82-Legal Cell(P) Dated. 16-6-1982

Shri Siddharth Verma,
Railway Advocate,
6-16, K-Road, Mahanagar Extn.
Lucknow.

17 JUN 1982

Sub:- W.P. no.1362 of 1982 in the High Court
bench at Lucknow. Shri Jagdamba Prasad
Tripathi V/S U.O.I

Ref:- Your letter NO.MP-1362/82-MR dated 4.6.82

With reference to your above quoted letter, it is to advise you that above case has already been entrusted to Shri C.A.Bashir, R.A. Lucknow vide this office letter of even number dated 28.4.82 and the same is being conducted by him. You are therefore, requested to please withdraw yourself from the conduct of this case.

Pendur
For General Manager(P)
Legal Cell.

Copy to the Divl. Railway Manager, N.Rly. Lucknow
for information.

1. Record added
July 82
पुनर्वि 157 अ. 11- (44)

जी.एल. 19/G.L. 19
जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

No. 21-LKO/WP/82. Legal Cell (P)

The DRM/N.Rly.,
Lucknow.

Headquarters Office,
Baroda House, New Delhi.
Dated: / -5-1982

SUB:- WP No. 1362 of 1982 in the High Court ~~at Lucknow~~,
Bench at Lucknow Shri Jagdamba Prasad Tripathi, V/S.
U.O.I.

REF:- Your letter No. DOS/Control/Conf/1/81 dated. -5-1982.

Since Shri L.P. Shukla Sr. Advocate, has already been engaged to contest the writ Petition filed by Sh. Santosh Kumar and others by ACME(W)CH, LKO as a special Advocate, the aforesaid Writ/Petition has also been proposed to be contested by him.

You are, therefore, requested to please obtain the terms and conditions from Shri L.P. Shukla for his engagement and communicate to this office at early date so that the matter may be referred to the Board for obtaining their sanction to engage him as special Advocate.

Sr. L. P. Shukla, Advocate
is prepared to contest the case
as a Special Counsel on SPL
fee of Rs 1100/- for the entire case.

Dehanda
for General Manager (P)
Legal Cell.

G. Dhanda
1.1.157/10
CCA.

उत्तर रेलवे
Northern Railway

Headquarters Office,
Baroda House, N. Delhi.

No.21-LKO/WP/82-Legal Cell(P) Dated 28-4-1982.

Shri C.A. Bashir,
Railway Advocate,
152, Ghasiani Mandi,
Lucknow.

Sub :- W.P. No.1362 of 1982 in the High Court
bench at Lucknow Shri Jagdamba Prasad,
Tripathi, V/s U. Q. I.

The above named filed writ petition in the High
Court bench at Lucknow challenging his removal from
service which is fixed for hearing on 6-5-1982. You
are hereby nominated to undertake the defence of the
case on behalf of Rly. Adm. A.P.A. of the U. Q. I.
and copy of W.P. is enclosed. Please defend the case
on behalf of the U. Q. I. The branch concerned is being
asked to furnish your parawise remarks to enable you
to draft the C.A. to be filed in the Court in time.

You are requested to please appear in the court
on 6.5.1982 and defend the case vigorously.

for General Manager(F)
Legal Cell.

DA/As above.

Copy to the Divl. Rly. Manager, N.Rly. Lucknow.
He will please depute his staff concerned with
parawise remarks and relevent records to contact
H.A. to enable him to draft C.A. for being sworn and filed
in the court. *Ref 6-5-82, as this is an important
case under Rule 14 K of O.A.C. 1964.*

Shri Dwivedi

①

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW

WRIT PETITION No. of 1982

Jagdamba Prasad Tripathi, aged about 40 years,
S/o Late Sh. S.P. Tripathi, resident of 253/110,
Saryu Miwas, Nandan Mahal Road, Lucknow

-----Petitioner

VERSUS

1. Union of India through the General Manager,
Northern Rly. Baroda House,
New Delhi.
2. Senior Divisional Operating Superintendent,
Northern Railway, Hazratganj, Lucknow
3. Additional Divisional Railway Manager,
Northern Railway, Hazratganj, Lucknow
4. Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow.

-----OPPOSITE PARTIES.

WRIT PETITION UNDER ARTICLE 226 of CONSTITUTION OF INDIA

The above named petitioner most respectfully
begs to submit as under:-

1. That the present writ petition is directed
against the order dt. 20.6.81 passed by the Opposite
Party No.2 dismissing the petitioner from service, exercising
the powers conferred under Rule 14 (ii) of the Railway
Servants (Discipline & Appeal) Rules 1968, order dt. 7.11.81
passed by the Opposite Party No. 3 rejecting petitioner's
appeal dt. 11.8.81 and the order dt. 22.12.81 passed by
opposite party no.4 rejecting petitioner's review petition
A true copy of the impugned orders dt. 20.6.81.

7.11.81 and 22.12.81 are filed herewith as Annexure-Nos. 1, 2 and 3 respectively to this writ petition.

2. That the petitioner was appointed as Trains Clerk by the Divisional Personnel Officer, N. Railway, Allahabad vide order dt. 2.2.77 in the pay scale of Rs 260-400

3. That the petitioner has been holding the post of Trains Clerk and working in the Central Room of N.Rly. Divisional Railway Manager's office at Lucknow

4. That the petitioner, on 29.6.81 to his utter surprise, received the impugned order passed by Opposite Party No. 2, dismissing him from the service. The impugned order of dismissal was accompanied with the copy of order dt. 29.6.81 passed by Opposite party no.2 indicating circumstances under which it was not practicable for him to offer any opportunity to the petitioner before the passing of the impugned order. A copy of the allegation of charges was also accompanied with the impugned order.

5. That the petitioner from the allegation of charges contained in Annexure No.3, came to know that Sh. Mohd. Husnain, Deputy Controller, Northern Rly. Lucknow and Sh. S.C. Bajpai, Deputy Chief Controller N.Rly.Lucknow were assaulted by 3 unknown persons for which the opposite party no.2 has put the responsibility on the petitioner.

6. That it is respectfully submitted that the petitioner has neither assaulted Sri Mohd.Husnain or Sh S.C. Bajpai nor he had any hand in the aforesaid

: 3 :

incident and the allegations accompanied with Annexure No. 1 relating to the petitioner are false and the petitioner emphatically deny the same.

7. That the petitioner has been working and sitting in the control Room in the DRM Office at Hazratganj, Lucknow where Sri Mohd. Husnain and Sri S.C. Bajpai have been sitting but none of them in their First Information Report which they lodged on the same day with the Police Station Hazratganj, have named the petitioner as one of the miscreant involved in assaulting them. A true copy of the F.I.R. lodged by Sri Mohd. Husnain and Sri S.C. Bajpai with the P.S. Hazratganj, Lucknow are filed herewith as Annexure Nos 4 and 5 respectively to this writ petition.

8. That the petitioner was very well known to Sri Mohd. Husnain and Sri S.C. Bajpai and there was no reason for them to have not disclosed the name of the petitioner in case he was in any way involved in assaulting them.

9. That the petitioner is a Rly. Servant and is governed by the Provisionsof Railway Servants (Discipline & Appeal) Rules 1968 (hereinafter referred to as R ules)

10. That Rule 14 of the R ules provided the circumstances under which the Disciplinary Authority may impose the penalty without adopting the procedure laid down in Rule 9 to 13 of the Rules.

11. ~~xxxxrule 14 of the Rules provides the cir-~~
~~xxxxcircumstances under which the Disciplinary Authority may impose~~
That sub Rule (ii) of R Rule 14 empowers the Disciplinary
~~the Authority to impose the penalty without~~
adopting the procudre laid down in Rule 9 to 13 where

he is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the Rules.

12. That the satisfaction of the disciplinary authority under Rule 14 (ii) (in an objective satisfaction of the authority concerned which should be based on some cogent and reliable material after giving an opportunity to the person concerned)

13. That no opportunity of any kind was given to the petitioner before passing the order contained in Annexure No. 1

14. That besides the above it was perfectly practicable to hold the enquiry in accordance with Rules 9 to 13 of the Rules and the opinion of the opposite party No. 2 that it was not reasonably practicable to give the petitioner an opportunity of making representation in respect of charges, was not based on any material whatsoever indicating in the order.

15. That the reasons given by the opposite party No. 2 in his order contained in Annexure No. 2 are all imaginary, baseless and without any enquiry about the truth of allegations levelled against the petitioner.

16. That the petitioner was neither served with any chargesheet nor any enquiry whatsoever was held by the opposite party no. 2 as provided in Rule 9 to 13 of the Rules and the impugned order contained in Annexure no. 1 has been passed in disregard of the mandatory provisions laid down in the aforesaid Rules.

17. That the opposite party no. 2 did not even

on 17.11.1981 preferred a review petition before the opposite party NO.4 on various grounds but that too vide order dated 22.12.81 was rejected by opposite party NO.4 arbitrarily without considering the same. The true copy of order dated 22.12.81 already forms part as Annexure NO.3 to this writ petition.

25. That the orders contained in Annexures NO.s 2 and 3 are wholly cryptic and non-speaking and have been passed without considering and deciding the entire pleas taken by the petitioner.

26. That it is respectfully submitted that earlier the petitioner had challenged the validity of the impugned order dated 29.6.81 (Annexure NO.1) directly in this Hon'ble High Court on 13.7.1981 by filing writ petition but the same was dismissed in limine on the ground that the petitioner has the alternative remedy by way of appeal.

27. That feeling aggrieved with the impugned orders contained in Annexure NOs. 1, 2 and 3 the petitioner prefers this writ petition on the following amongst the other:

GR OUNDS

(1) Because the impugned order contained in Annexure NO.1 dismissing the petitioner from service has been passed without adopting the procedure prescribed in Rule 9 to 13 of the Railway Servants (Discipline and Appeal) Rules 1968.

(ii) Because the opinion of opposite party NO.2

that it was not reasonably practicable to hold the enquiry as laid down in Rule 9 to 12 of the Rules is arbitrary, based on imagination, capricious and is a device to punish the petitioner in the colourable exercise of powers.

(iii) Because there was no material circumstantial evidence on the basis of which the opposite party No. 2 could have come to the conclusion that the holding of enquiry was not reasonably practicable.

(iv) Because the petitioner was not given any opportunity whatsoever before taking a decision under Rule 14(ii) of the Rules and Article 311 (2) b of the Constitution of India.

(v) Because no opportunity or show-cause notice was given to the petitioner before passing the impugned order contained in Annexure No.1.

(vi) Because the satisfaction of the disciplinary authority under Rule 14(ii) and Article 311(2)b of the Constitution of India is an objective satisfaction of the authority concerned which should be based on some cogent and reliable material after giving an opportunity to the person concerned.

(vii) Because the exercise of powers under Rule 14(ii) and Article 311(2)b of the Constitution of India, under the facts and circumstances of the case was wholly unwarranted amounting to abuse of powers conferred on the authority concerned.

(viii) Because the opposite party No. 2 totally lost sight of the very relevant fact that he

उत्तर रेलवे
Northern Railway

- 9 -

by Sri Mohd. Hasnain and Sri S.C. Bajpai in no way indicate the involvement of the petitioner in the alleged incident of assault.

(ix) Because the impugned orders contained in Annexures Nos. 2 and 3 are cryptic and non-speaking and have been passed without deciding the plea taken by the petitioner.

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

(a) issue writ, direction or order in the nature of certiorary quashing the impugned orders dated 29.6.81, 7.11.81 and 22.12.81 passed by opposite parties Nos. 2, 3 and 4, and contained in Annexure Nos. 1, 2 and 3 to this writ petition.

(b) Issue writ, direction or order in the nature of mandamus commanding the opposite parties to treat the petitioner still in service with all benefits of salary, seniority and increments etc.

(c) 14 days notice may kindly be waived.

LUCKNOW:

(R.C.Saxena)
Advocate

Counsel for the Petitioner.

DATED: March 22, 1982.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1982.

Jagdamba Prasad Tripathi

.... Petitioner.

Versus

Union of India and another

.... Opposite Parties

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA

A F F I D A V I T

I, Jagdamba Prasad Tripathi, aged about 29 years, son of late Sri S.P.Tripathi, Resident of 253/110, Saryu Niwas, Nandan Mahal Road, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the petitioner in the above ~~XXXXXXXXXXXXXXXXXXXX~~ noted writ petition and he is fully conversant with the facts deposed to hereunder.
2. That the contents of paras 1 to 26 of the writ petition are true to my own knowledge except bracketed portions of para 12 and 17.
3. That the Annexure Nos. 1 to 7 are the true copies

उत्तर रेलवे
Northern Railway

- 112

and the deponent has compared them with their originals.

Lucknow:

Dated: March 22, 1982.

DEPONENT.

VERIFICATION.

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

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

Lucknow:

DEPONENT.

Dated: March 22, 1982.

I identify the deponent who has signed before me.

(R.C.Saxena)
Advocate

Solemnly affirmed before me on March 22, 1982 at a.m./p.m.
by Sri Jagdamba Prasad Tripathi, the deponent, who is
identified by Sri R.C.Saxena, Advocate, High Court,
Lucknow Bench, Lucknow.

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

उत्तर रेलवे
Northern Railway

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. OF 1982.

Jagdamba Prasad Tripathi ... Petitioner.
Versus
Union of India and another ... Opp. Parties.

ANNEXURE NO.1

PUNISHMENT NOTICE

DOS/Control/Conf/1/81

Place of Issue-Divisional Office,
Northern Railway,
Lucknow.

Dated: June 29, 1981.

To,

Shri J.P.Tripathi,
Trains Clerk, under
Thro:- CMO/N.Railway, Lucknow.
Chief Controller/N.R./Lucknow.

WHEREAS Shri J.P.Tripathi, Trains Clerk/
Lucknow is responsible for the grave charges listed in
the Annexure.

2. WHEREAS in the interest of Railway and also
of General public, any further retention of Sri J.P.
Tripathi, Trains Clerk in railway service is considered
undesirable.

3. WHEREAS it is considered that the circumstances
of the case are such that it is not reasonably practicable
to hold an enquiry in the manner provided in Railway
Servants Discipline & Appeal Rules, 1968.

Now, therefore, in exercise of the powers
conferred by Rule 14(ii) of Railway Servants Discipline
and Appeal Rules, 1968 the undersigned hereby dismisses
the said Sri J.P.Tripathi, Trains Clerk from service

उत्तर रेलवे
Northern Railway

with effect from 29.6.81 afternoon.

Sd/-
(Baldev Singh)
Sr.Divl.Optg. Suptt.;
N.Railway, Lucknow.

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to A.D.R.M.(OP/N.Rly/Lucknow provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.

2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

TRUE COPY

उत्तर रेलवे
Northern Railway

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

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi

... Petitioner.

Versus

Union of India and another

... Opp. Parties.

ANNEXURE NO.1 Contd.

ORDER

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri J.P. Tripathi Trains Clerk, Northern Railway, Lucknow, who was appointed under the orders of Divisional Personnel Officer, a Senior Scale Officer, am fully satisfied that Shri J.P. Tripathi is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him. Therefore, under these circumstances, it is not reasonably practicable to give him an opportunity of making representation under article 311(i) Clause 2 of the Constitution of India. Therefore, with the powers vested in me under Article 311(i), Clause (2), Proviso (b) of the said clause, I order dismissal of Sri J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow from service with effect from 29th June, 1981 afternoon.

Sd/- Baldev Singh
27/6

Senior Divisional Opd. Supt.,
Northern Railway,
Lucknow.

TRUE COPY

उत्तर रेलवे
(Northern Railway)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi	..	Petitioner.
Versus		
Union of India and another	..	Opp. Parties.

...

Annexure No.1 Contd.

ANNEXURE INDICATING CHARGES AGAINST SHRI J.P. TRIPATHI
TRAINS CLERK/NORTHERN RAILWAY/LUCKNOW.

...

On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controller/N.Rly./Lucknow was coming from his residence for performing his duty in 9.00 hrs. to 8.00 hrs shift, at about 22.00 hrs. at the near gate of DRM Office, he was given a cell from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller/N. ly/Lucknow was doing to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by the persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri J.P. Tripathi, Trains Clerk/Lucknow had earlier

.../-

उत्तर रेलवे
Northern Railway

-:16:-

planned to beat up Shri Hasnain and had threatened him to his effect. He master minded the entire episode and connéved with anti-social elements in getting Shri Hasnain and Sh. Bajpai physically assaulted.

Shri J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of Railway servant thereby violated Rule 3(1)(i) & (iii) of railway Services Conduct Rules, 1966.

Sd/-
(Baldev Singh)
Sr.Divl.Opg.Supdt./N.Rly.
Lucknow.

TRUE COPY

उत्तर रेलवे
(Northern Railway)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW
WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi ... Petitioner.
Versus
Union of India and another ... Opp. Parties.

ANNEXURE NO.2

Shri J.P. Tripathi,
Ex.Trains Clerk.

" I have gone through the appeal of Sh. J.P. Tripathi. I find that in his 12 page long appeal he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind.

उत्तर रेलवे
(Northern Railway)

-:18:-

judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and his appeal is rejected".

Sd/-

उत्तर रेलवे
Northern Railway

-:19:-

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW
WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi ... Petitioner.
Versus
Union of India and another ... Opp. Parties.

...

ANNEXURE NO.3

No.DOS/Control/Confdl/1/81
Dated: 22.12.1981

Divisional Office,
Lucknow.

Shri J.P.Tripathi
Ex.Trains Clerk

Sub: Penalty Notice No.DOS/Central/Confdl/1/81
of 29.6.81.

Ref: Your review appeal dated 17.11.1981.

...

Review petition has been considered by the reviewing
authority DRM/Lucknow and he has passed the following order:-

"Having gone through the review petition and the
orders passed by the appellate authority, I do not
find any justification to change the orders of the
appellate authority in all these three cases".

Sd/-
for Divl.Rly.Manager,
Northern Railway,
Lucknow.

TRUE COPY.

इन दि आ नरेबुल हा ईकोर्ट आफ जूडिकेवर एट इला हा बाद
(लखनऊ बेंच) : लखनऊ

रिट पिटीशन नं० आफ 1982

जमनाथा प्रसाद त्रिपाठी पिटीशनर
बनाम
यूनियन आफ इण्डिया एण्ड ऐनदर अपोजादी

युनेजर नं० 4

पी०नं० 759378

379/323 आ ई०पी०सी ०

नकल तहरीर हिन्दी वादी

सेवा में,

शाब्बाथ महीदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि आज दिनांक 24.6.81 को मैं अपनी इगुटी करने
डी०आ २०एम०(३०रे०) कार्यालय जा रहा था करीब 10.00 बजे रात का कार्यालय
के दक्षिण दरवाजे से अन्दर घुसा जैसे ही दो लड़कों ने पुकार कर कहा मेरे पैसे
देते जाओ, मैंने जैसे ही पीछे मुड़कर देखा उब लोगों ने अपने हाथों में ली हुई
हाकियों से मारने लगे मैं आफिस की ओर शोर मचाते हुए भागा तो सामने से
एक तीसरे आदमी ने अपने हाथों में ली हुई हाकी से मारना शुरू कर दिया
तीसरा आदमी वहीं पर था । इसी मारपीट के दौरान मेरा समझे का काले रंग
का हेण्ड बैग हाथ से छूट कर नीचे गिर गया जिसमें छ (तीन) पेन, चश्मा, आफिस
की चाबी, आफिस के कुछ कागजात जो मेरे शोर मचाते पर वे लोग मेरा गिरा
हुआ पर्स लेकर भाग गये मेरे शरीर पर चोटें आयी हैं जिनकी डाक्टरों जांच
करवाकर डाक्टरों रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही
की जाय ।

नोट:- मैं यह प्रमाणित करता हूँ

कि नकल तहरीर वादी चिह्न लगाकर
अक्षरशः अंकित किया गया तहरीर
संलग्न एक०आ ई०आ २० है ।

ह० राम सरवर शुक्ला
25.6.81

प्राणी

मोहम्मद हसन
पुत्र स्व० श्री शमशुल हसन
मदेवा, शाबा साला बाजार
उप०नि०लहा न० 24.6.81
लेखक श्री पी०के०मुफ्ता,
ट्रे०आ परेडिस, 30रे० लखनऊ

सत्य, प्रतिलिपि

इस दि आबरेबुल हाई कोर्ट आफ जुडीकेवर ऐट इला हाबा द

(तखनऊ बेदा) : तखनऊ

रिट पिटीशन नं० आ फ 1982

लग्नाथ प्रसाद त्रिपाठी

बनाम

यूनियन आफ इण्डिया एण्ड ऐनदर

अनेजर नं० 5

पिटीशनर

अपोपार्टीज

नकल तहरीर हिन्दी वाली

पी० नं० 759377

379/323 वाई०पी०सी०

सेवा में.

शानाथप्रसाद महोदय, कोतवाली हजरतगंज लखनऊ ।

विवेदन है कि मैं लगभग 11.30 बजे रात में अपने घर से अपने भ
आफिस जा रहा था, जब मैं विधान सभा के सामने से पास हो रहा था तब
तीव्र शक्ति जो साइकिल पर सवार थे सामने आकर मेरी साइकिल से अपनी
साइकिल लड़ाई वाली, लेकिन साइकिल लड़ी नहीं। फौरन वे सामने आकर हाकिया
लेकर मुझे मारने लगे, मेरे दोनों हाथोंमें चोटें आईं और साइकिल मेरे हाथों से
छूट गई और मैं बाव के लिए शोर मचाते लया इसी त्त एक लड़का मेरी
साइकिल लेकर भाग गया साइकिल के हैंडिल में मेरा एक ओला टंगा था, उसमें एक
काला पर्चा था जिसमें दो रूपसे और कुछ पैसे थे, एक जीम्मी थी, एक रंगीन साइल
एक दफ्तर की चाभी, चीनी, चाय तथा दूध की शीशी थी वह ओला भी साथ में चला
गया। मेरे शोर मचाते पर कुछ लोगों ने भी शोर मचाया जिनमें मोहम्मद नईम
भी थे और वे दूसरे गेट से विधान सभा के बाहर निकल कर आये और मुझे रकूटर
पर बिठाकर लालबाग की तरफ गये पर उनका कोई पता नहीं चला सामने आने
पर पहिचान सकता हूँ। लिखित रिपोर्ट दाखिल करता हूँ। उचित कार्यवाही करने
की कृपा करें।

प्राथी

सतीश चन्द्र वाजपेयी

हिण्टी वी फ कंट्रोलर

डी०आर०एम० आफिसर, उ०रे०

घर का पता

सतीश चन्द्र वाजपेयी

66/155, कितवा पुर बास, लखनऊ

24.6.81

नोट:- मैं यह प्रमाणित करता हूँ कि नकल तहरीर पढ़ी चिक लगकर अक्षरशः अंकित
किया गया।

सत्य प्रतिलिपि

उत्तर रेलवे
Northern Railway

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

(LUCKNOW BENCH) : LUCKNOW:

WRIT PETITION NO. OF 1982

Jagdasba Prasad Tripathi ... Petitioner.

Versus

Union of India and another ... Opp. Parties.

ANNEXURE NO.6

The Senior Divisional Operating Supdt.,
Northern Railway,
Lucknow.

Sub: Representation for reasonable opportunity
for preferring an appeal against your
Order No. DOE/Control/Conf/L/81 dated
29.6.1981 dismissing the applicant from
service w.e.f. 29.6.1981 A.N.

Respected Sir,

Most respectfully, the applicant acknowledges
to have received your order cited above dismissing him
from service with effect from 29.6.1981 A.N. in purported
exercise of the powers conferred by Rule 14(ii) of the
Railway Servants Discipline & Appeal Rules, 1968 read
with Article 311 (1), Clause (2), proviso (b) of the
Constitution of India. Alongwith the said order, the
applicant has also been given an Annexure indicating the
so called charges on the basis of which the said order
of his dismissal from service has been passed. This
annexure has been supplied with the said order to enable
the applicant to know what specific charges against him
are and on what basis the authority exercised its powers
under Rule 14(ii) of the R.S. (D&A) Rules, 1968, so
that an effective appeal rebutting the entire charges and
allegations could be filed for justice by him.

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2. That in accordance with the instructions contained in the said order of dismissal, the applicant has a right to prefer an appeal to the Additional Divl. Railway Manager(OP)/N. Railway, Lucknow under rule 18 of the Railway Servants Discipline & Appeal Rules, 1968. Since this is an appealable order, the applicant has a right to claim for the opportunities, which are necessary and expedient for preferring an appeal.

3. That under law and rules, the order giving rise to applicant's dismissal from service ought to have been issued with duly and properly constituted charge definite and distinct in nature alongwith all evidence oral and documentary that have been relied upon to arrive at a final decision that:-

(i) the applicant was in such a mood that if notice was given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.

(ii) the applicant was apparently present at Lucknow yet he had created such an atmosphere of terror that it was not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

4. That apart from the above, it is pointed out that the charge of assault causing grievous injuries to Shri S.C. Bajpai, Deputy Chief Controller, Lucknow does not indicate the time and exact place of occurrence when and where he was alleged assaulted. The more so, no evidence, if any coming on the records and relied upon, has been shown in the Annexure or Order in support of the alleged connivance with anti-social elements in getting Shri Husnain and Shri Bajpai physically assaulted. These materials and informations ought to have been shown in the Order/Annexure to enable the applicant to rebut the charges and allegations in the appeal.

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5. That it has also not been made clear in the said list of charges (Annexure) annexed with the order of dismissal from service as to how the applicant was the Master Mind and also no evidence to this effect has been shown therein which gave you personal satisfaction to - exercise the powers conferred by Rule 14(ii) of the Railway Servants Discipline & Appeal Rules, 1968. This under the law and rules, was a must to be shown in the said order/annexure for the said purpose.

6. That the order of dismissal from service is also not accompanied by the copies of the reports of S/Shri Mohd. Husnain and S.C. Bapai, if any submitted to the Railway Administration, F.I.Rs. if any lodged by them at the Police Station in respect of the alleged assault, Medical Reports, if any got by them in respect of the alleged assault and grievous injuries and the statement of witnesses, if any recorded by the Railway Administration which led your honour to exercise the powers conferred by Rule 14 (ii) of the R.S. (D&A) Rules, 1968, which ought to have been supplied to the applicant to prefer an appeal and to rebut the charges and allegations.

7. That for reasons stated in the aforesaid paras, the applicant is handicapped to prefer an effective appeal against the order of his dismissal from service. It is submitted that if the opportunities as pointed out in the aforesaid paras are not made available to him, he will suffer serious prejudice, which will amount to denial of opportunity of defence even at the stage of appeal and the entire actions shall be in utter disregard of the departmental rules and violation of the principles laid down by Hon'ble Supreme Court and High Courts of India in various cases adjudicated by them.

8. That the applicant respectfully submits that

the entire charges/allegations are false, fabricated and he has falsely been implicated and got punished under a deep rocted conspiracy and plan hatched by the interested persons and the order of his dismissal from service has been passed on no evidence valid in law, but on presumption, supposition and false and un-trust worthy informations which act is arbitrary in nature.

The facts mentioned above (para 8) can be established to a greater extent in the appeal provided the applicant is afforded the opportunity as here under prayed:-

In view of the facts and circumstances stated above, it is respectfully prayed that your honour may be pleased to consider this representation with a judicious view in that the contents of paras 3 to 6 may be taken into consideration and the applicant be furnished with the materials/informations claimed therein, so that he may be able to prefer an effective appeal rebutting the charges and allegations in the appeal to the entire satisfaction of the appellate authority.

It is hoped that the materials/informations as claimed by the applicant would be supplied to him within a reasonable time keeping in view the limitation for filing the appeal.

Thanking you,

Yours faithfully,
Sd/-
(JALDAMBA PRASAD)
TRIPATHI
House No. 253/110,
Saryu Niwas,
Nandan Mahal Road,
LKO (Ex. Trains Clerk).

Dt. 17.7.81

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi PETITIONER
VS
Union of India & others Opp. Parties,

ANNEXURE NO. 7.

The Addl. Divl. Railway Manager (OP),
Northern Railway,
Hazratganj,
LUCKNOW.

Through: The proper channel:

Appeal under rule 18 of the Ry. Servants
Discipline & Appeal Rules, 1968 against order
No. DOS/Control/Conf./I/81 dt. 29.6.81 passed
by the Sr. DOS/LKO dismissing the appellant
from service with effect from 29.6.81.

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1. That for the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DOS/LKO, in purported exercise of the powers conferred by rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.81 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant:-

REASONS FOR NOT HOLDING THE ENQUIRY.

*The above employee is in such a mood that

if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system, the same employee is apparently present at LKO yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him....".

2. That since the dismissing authority, while pressing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with the enquiry, which was necessary to be held under rule 9 and 10 of the D&A Rules, 1968, it is expedient in the interest of justice that your honour may make a legal and judicious assessment of the order passed, in the light of the following issues involved in the case:-

- (a) Whether the reasons given by the learned Sr. DOS/LKO-the dismissing authority for not holding the enquiry and adducing evidence as required under rule 9 and 10 of the D&A Rules, 1968 are based on objective reasons as required under rule 14 (ii) of the said Rules or the powers have been exercised in an arbitrary manner.
- (b) Whether the finding of the dismissing authority are merited and warranted by the evidence on the records or based on surmises and conjectures.
- (c) Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUED.

Issue(a)

3. That as regards issued (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied himself

that it was not reasonably practicable to hold enquiry as required under rule 9 & 10 of the D & A Rules, 1968 in the case giving an opportunity to the appellant to rebut the charges. Now your honour, in the ends of justice, has to consider whether the reasons given by the said authority are based on objective satisfaction, which is the necessary and legal requirement to exercise the power conferred by rule 14(ii) of the D & A Rules, 1968.

(ii) From the records and the documents supplied to the appellant alongwith the order of dismissal your honour will observe that no evidence oral or documentary is available to justify the contention of the dismissing authority in respect of the appellant's mood creating an apprehension of grave disorders affecting the vital rly. system as alleged against him. It may be mentioned that on receipt of the order of dismissal, the appellant, vide representation dt. 18.7.81, had made in respect of the appellant's mood which satisfied him not to conduct the enquiry as required by the departmental rules. Despite many efforts and approaches, the said authority could not furnish the said necessary requirements to the appellants, which fact goes to establish that no material other than the charge and allegation was available with the dismissing authority for his personal satisfaction to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968.

(iii). The dismissing authority further failed to furnish the evidence oral or documentary, if any available with him, in support of its contention that the appellant created terror and due to which it was not reasonably practicable to hold the enquiry and to give him an

opportunity to rebut the charge. Despite specific request made vide application dated 18.7.1981, the said authority mentioned complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except, the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1960.

(iv) In absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Shri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controller/ LKO and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations, and then to pass order under rule 14 (ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controllers/ LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising its powers under rule 14(ii) of the D&A Rules, 1968 dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

V. No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under

rule 14(ii) of the D&A Rules, 1968 are in sufficient compliance of the said rules.

From the discussions made above, it is established as under:-

- (a) The dismissal order passed under rule 14 (ii) is not based on the objective satisfaction of the dismissing authority.
- (b) The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hasnain and S.C. Bajpai Dy. Controllers and not any other material or concrete evidence which was necessary to be taken into account to exercise powers under rule 14(ii) of the D&A Rules 1968.
- (c) The dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d) The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e) The dismissing authority has misused the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f) The findings of the dismissing authority is not supported by any evidence available on the records in the lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai Dy. Controller/LKO at the Police Station, Hazratganj.

4. That as regards issue (b) it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the

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said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controller/LKO which are false and untrustworthy specially in view of the FIRs which they had lodged at the Police Station, Hazratganj LKO soon after the alleged occurrence. A few examples are given below for your judicious consideration:-

- (i) It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd. Hasnain, Deputy Controller from the back and asked for the payment of money on the day of alleged occurrence. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.
- (ii) Contrary to above, Shri Mohd. Hasnain, Dy. Chief Controller/LKO, in his F.I.R lodged at the Police Station, Hazratganj LKO has not at all mentioned the name of the applicant. A true copy of the report (FI) lodged by the said Shri Hasnain is filed herewith as Annexure II to this appeal for your kind perusal.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the last lines of his report (FIR) had made a request to the S.O. Police Station, Hazratganj, Lucknow to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R at the Police Station is itself indicative of his intention to get the offenders

punished. Despite this inclination, he does not mention the name of the miscreants in his report/FIR. Thus it is proved beyond doubt that he himself did not see the appellant either on the spot or any where else having the common intention of assaulting him. Had it been a fact, Shri Hasnain would have surely given the name of the appellant in his report/FIR to the police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii) Shri Hasnain, in his report/FIR lodged at the police station, Hazratganj/LZO. has clearly mentioned that during the course of 'Mar Pust' his leather bag containing his pen, gogle, office key and some official records fallen down and one of the miscreants picked it up and fled away.

(iv) Nothing of the sort as mentioned above has been shown in the charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given if it was based on fact. Similarly nothing is available in the record show as to how the duplicate key was arranged. The

appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Husnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

- (v) Shri S. C. Bajpai, Bajpai, Deputy Chief Contm-ller, Lucknow, in his report/FIR dated 24-6-1981 lodged at the Police Station, Hazratganj, Lucknow has stated that he can identify the miscreants if they are produced before him. This facts, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bajpai would have surely given the name of the appellant in his report/FIR.

It is a matter of surprise that the dismissing authority clearly mentioned the name of the appellant in his charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore are false and after thought.

- (vi) Shri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his bag which was hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a black purse and in that there were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the police Station, Hazratganj, Lucknow is being filed herewith as Annexure 'III' to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal

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S.C. Rajpal, Deputy Chief Controller at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of justice to hold an enquiry in terms of the Departmental rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry in terms of Railway Board's letter NO.E-65-RCG-20 dated 4/2/1956 should have been held in accordance with the Principle of Natural Justice and no material, in terms of Railway Board's letter NO.E(D&A)62EC-6-3 dated 27/7/1963 should have been relied upon without giving an opportunity to the appellant to rebut the same.

From the above, it is established that it was a fit case to be dealt with under the Principles of Natural Justice. The dismissing authority, by exercising its powers under rule 14(ii), has misused the powers in an arbitrary manner and it is fit case of discrimination which violates the provision of Article 14 of the Constitution of India.

6. That in view of the discussions made above under issues (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and inoperative in law and the departmental rules on the following amongst other grounds.

GROUND S.

(a) because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of article 31(2)(b) of the Constitution of India.

(b) because there being no sufficient compliance of rule 34(ii) of the D&A Rules, 1968, the order of dismissal is without jurisdiction.

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(c) Because the satisfaction required under rule 14(ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.

(d) Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.

(e) Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.

Authority:- AIR 1964 SC 364, AIR 1965 SC 247 and AIR 1958 SC 300.

(f) Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.

Authority:- 1969 Labour & Industrial Cases 896.

(g) Because the dismissing authority, despite application dated 18/7/1981 moved by the appellant, did not supply the necessary documents and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority:- Railway Board's letter NO.E(D&A)61RG-47, dated 29/1/63.

(h) Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority:- AIR 1964 SC 364 and AIR 1965 SC 247.

(i) Because the order of dismissal from service having been passed by the Sr.DCS/LKO by using his personal knowledge which the said s/Shri Mohd. Hussain and S.C. Bajpai, Dy. Chief Controllers have not mentioned in their reports/FIRs lodged at the Police station, Hazratganj.

the action is illegal and inoperative in law.

Authority: AIR 1958 SC 88

(j) Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority: AIR 1958 SC 300 and AIR 1962 SC 779.

(k) Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/files of the said S/Shri Mohd. Kausain and S.C. Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority: 1969 Labour & Industrial cases 773.

(l) The order of dismissal having been passed on a mere conjectures and suspicion and a mere belief the action is illegal and unconstitutional.

(m) Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Kausain and S.C. Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed without of a great favouritism to the said persons.

(n) Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. Kausain and S.C. Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

Prayer.

In the name of justice, humanity and man kind,
it is respectfully prayed that your honour may be
pleased to consider this appeal with a judicious view
and to meet the ends of justice, the order of appellant's
dismissal from service may be set aside and the appellant
may be reinstated in service with retrospective effect.

It is further prayed that the appellant be given
an opportunity of personal hearing to substantiate the
facts stated in this appeal.

It is hoped that due justice would given to the
appellant at a very early date,

Thanking you.

Yours faithfully,

Sd/-
(J.P. Tripathi)
Ex. Trainee Clerk.

Dated 11.8.1981.

.....

TRUE - COPY

H.S. CHATTA

S No 42

CONFIDENTIAL

D.O.No.DOS/Control/Conf/I/81 Dt. May '82.

My dear Bhandari,

Sub: WP No.1362 of 1982 in the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) Lucknow- Jagdamba Pd. Tripathi ex. Trains Clerk Vs. Union of India & others.

The above named employee was involved in the assault on Dy.Chief Controllers, Sh.SC Bajpai and Sh.M.Husnain. He was dismissed from service under Rule 14(ii) by the Sr DOS. His appeal was rejected at the level of ADRM. The Review Petition submitted by him to the undersigned was also considered and rejected. He has now filed a Writ Petition in the High Court of Judicature at Allahabad(Lucknow Bench) at Lucknow, which is fixed for admission on 6th May, 1982.

Keeping in view the seriousness of the case and the stand taken by the Administration, it is considered essential that we should engage a Special Lawyer to conduct this case at the level of High Court, sanction for which may kindly be arranged and intimated early.

Yours sincerely,

Shri MS Bhandari, (H.S. CHATTA)
Chief Personnel Officer(IR),
Northern Railway,
Baroda House,
NEW DELHI.

sent High
Mr. Husnain
vice optg Pr.
- 20/5/82

(41)

जी.एल. 19/G.L. 19
जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

No. DOS/Control/Conf/I/81

Divisional Office,
Lucknow: Dt. 4-5-82.

19/X

The Divl. Rly. Manager (Litigation),
N.Rly., Lucknow.

Sub: W.P. No. 1362 of 1982 in the
Hon'ble High Court of Judicature
at Allahabad (Lucknow Bench)
Lucknow Jagdamba Prasad Tripathi
Ex. Trains Clerk Vs. Union of
India & othe rs.

Ref: Your No. 847-E/Lit/LKO-82 dated
17-4-82.

The parawise comments are as under:

- Para 1 No comments required.
- Para 2 Comments may be provided by Establishment Branch as to the veracity of the statement of the petitioner.
- Para 3 True.
- Para 4 No comments required.
- Para 5 So far as annexure 3 is concerned, it pertains to the decision on the review petition which was conveyed to the petitioner after his appeal has already been rejected by the appellate authority on 3-11-81. Hence it is incorrect to say that the petitioner came to know about the assault on the Dy.CHCs after receiving the decision of the Reviewing authority.
- Para 6 He was involved in the incidence and hence the charges have been correctly framed against him.
- Para 7 Confidential enquiries subsequent to the lodging of FIR revealed that Shri Tripathi had actively associated in the assault.
- Para 8 This is a fact that he was known to both but due to his earlier notorious activities and the terror created, nobody

(2)

dared to name him in the FIR directly.

Para 9 No comments

Para 10. No comments.

Para 11 It is a fact and all necessary formalities were fulfilled before taking the action under D&AR Rules.

Para 12 Action was taken after the disciplinary authority was fully satisfied with the enquiries and revelations.

Para 13 It was not considered necessary keeping in view the interest of the administration and the delicacy of the situation.

Para 14 As already explained above it was neither possible nor in the interest of the administration to hold any enquiry.

Para 15 It has no ray of truth.

Para 16 No. It is not correct as action under 14(ii) does not warrant the issue of any chargesheet or holding of the enquiry.

Para 17 No comments

Para 18 No true.

Para 19 The action was taken by establishing the truth.

Para 20 It was not considered necessary in the interest of the administration and as the material was treated as confidential.

Para 21 -do-

Para 22 The appeal was considered by the appellate authority and after due consideration keeping in view of the facts of the case, was rejected.

Para 23 -do-

Para 24 The review was also duly considered by the Reviewing authority and was decided on merits.

Para 25
Para 26 No comments. -do-

Para 27 (1) to (1x) Remarks already given us.

Please treat it as M.A. 100/100

(Signature)
100/100

(41)

उत्तर रेलवे/NORTHERN RAILWAY

No. DOS/Control/Conf/I/81

Divisional Office,
Lucknow: Dt. 4-5-82.

19/X

The Divl. Rly. Manager (Litigation),
N.Rly., Lucknow.

Sub: W.P. No. 1362 of 1982 in the
Hon'ble High Court of Judicature
at Allahabad (Lucknow Bench)
Lucknow Jagdamba Prasad Tripathi
Ex. Trains Clerk Vs. Union of
India & othe rs.

..

Ref: Your No. 847-E/Lit/LKO-82 dated
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(2)

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Para 19 The action was taken by establishing the truth.

Para 20 It was not considered necessary in the interest of the administration and as the material was treated as confidential.

Para 21 -do-

Para 22 The appeal was considered by the appellate authority and after due consideration keeping in view of the facts of the case, was rejected.

Para 23 -do-

Para 24 The review was also duly considered by the reviewing authority and was decided on merits.

Para 25 No comments. -do-

Para 26 No comments. -do-

Para 27 (i) to (ix) Remarks already given us.

Please treat it as not urgent
(N.M. KATARA)
DPS/LMO.

1/ keep on
1/5/82
mm

(40)

उत्तर रेलवे/NORTHERN RAILWAY

Pl. see letter no. 12
and arrange to send our man
to meet the person
Dated 17-4-1982
S.N. 12
das not
me.
RB
21/4

NO: 847-E/ant/ako-89

The Divl. Rly. Manager.
(Calcutta)
Lucknow

The Supdt (Trains)
DRM's Office, N. Rly.,
Lucknow

S.N. 12
Doris nlt
Gueled with me.

Sub: W.P. No. 1362 of 1989 in
the Honble High Court of
Judicature at Allahabad
(Lucknow Bench) Lucknow
Jagdamba Prasad Sinpathi
Ex. Trains Clerk
vs. Union of India & others

- xxx -

A copy of writ Petition filed by Shri Jagdamba -
Prasad Sinpathi, Ex. Trains Clerk against his dismissal
from service under rule 14 (ii) of the Rly. Servants Dismissal
& Appeal Rules, 1968 is being sent herewith for
offering comments to the Railway Advocate whose
name will be communicated to you as soon as
the same is received from the Headquarters office

Please prepare para-wise comments &
deliver ^{the same} to the Railway Advocate.

DA/Copy 2
v. 8

E. Ahmad
For Divided Rly. Manager
(Calcutta)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. /362 OF 1982

JAGDAMBA PRASAD TRIPATHI

...

PETITIONER.

VERSUS

UNION OF INDIA & ANOTHER

...

OPPOSITE PARTIES.

: I N D E X :

SL.NO.	DESCRIPTION OF PAPERS	PAGE NUMBERS
1.	Writ Petition under Article 226 of Constitution of India.	1 - 9
2.	A F F I D A V I T	10 - 11
3.	ANNEXURE NO. 1 (Petitioner's dismissal order dated 29.6.1981)	12 - 16
4.	ANNEXURE NO. 2 (Order dated 7.11.1981 passed by the opposite party No. 3)	17 - 18
5.	ANNEXURE NO. 3 (Order dated 22.12.1981 passed by the opposite party No. 4)	19 - --
6.	ANNEXURE NO. 4 (F.I.R. lodged by Sri Mohd.Hasnain)	20 - --
7.	ANNEXURE NO. 5 (F.I.R. lodged by Sri S.C.Bajpai)	21 -- --
8.	ANNEXURE NO. 6 (Application dated 17.7.1981)	22 - 25
9.	ANNEXURE NO. 7 (Appeal dated 11.8.1981)	26 - 38

LUCKNOW:

DATED: MARCH 22, 1982.

(R.C. SAXENA)
ADVOCATE,

COUNSEL FOR PETITIONER.

Tr
[Handwritten signature]

R 1420
L 18
24/4/82

हाई कोर्ट इलाहाबाद, लखनऊ बेंच लखनऊ
(अध्याय १२, नियम १ और ७)

दीनी विभाग

प्रार्थनांक (मुतफरिफ) प्रार्थना सं० सन् १९..... ई०

स० सन् १९..... ई० में।

Jagdamba Prasad Tripathi

प्रार्थी

Union of India & others

प्रत्यार्थी

The Divisional Railway Manager

Northern Railway

Allahabad

Lucknow

प्रत्यार्थी

चूँकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त लिखे मुकदमें के सम्बन्ध में
..... लिये प्रार्थना-पत्र दिया है अतः आपको आदेश दिया जाता है कि
आप दिनांक माह सन् १९..... ई० को या उससे
पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न मंजूर कर लिया जाय उक्त प्रार्थना
पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट
या ऐसे व्यक्ति द्वारा जो आपकी ओर से कार्य करने के लिए कानून अधिकृत हों, उपस्थित न होंगे
तो इस प्रार्थना-पत्र की सुनवाई और निर्णय आपको अनुपस्थित में हो जायगा।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक माह
सन् १९..... को जारी किया गया।

..... के एडवोकेट

तिथि



सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के अधीन प्राप्त तलबाना
भिल गया।

तलबाना पाने वाले क्लर्क के हस्ताक्षर

Jagdamba Prasad Tripathi, aged about 29 years,
S/o Late Sri S.P. Tripathi, resident of 253/110,
Saryu Niwas, Nandan Mahal Road, Lucknow.

--- PETITIONER.

VERSUS

1. Union of India through the General Manager,
Northern Railway, ~~Baroda~~ Baroda House,
New Delhi.
2. Senior Divisional Operating Superintendent,
Northern Railway, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager, (5)
Northern Railway, Hazratganj, Lucknow.
4. Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow.

--- OPPOSITE PARTIES.

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA

The above named petitioner most respectfully
begs to submit as under:-

1. That the present writ petition is directed
against the order dated 20.6.1981 passed by the Opposite
Party No. 2 dismissing the petitioner from service,
exercising the powers conferred under Rule 1(11) of
the Railway Servants (Discipline & Appeal) Rules 1968,
order dated 7.11.1981 passed by the Opposite Party No. 3
rejecting petitioner's appeal dated 1.8.81 and the
order dated 22.12.81 passed by opposite party No. 4
rejecting petitioner's review petition dated 17.11.1981.
A true copy of the impugned order's dated 20.6.81,

(5)

incident and the allegations accompanied with Annexure No. 1 relating to the petitioner are false and the petitioner emphetically deny the same.

7. That the petitioner has been working and sitting in the control Room in the D.R.M. Office at Hazratganj, Lucknow where Sri Mohd. Husnain and Sri S.C. Bajpai have been sitting but none of them in their First Information Report which they lodged on the same day with the Police Station Hazratganj, have named the petitioner as one of the miscreant involved in assaulting them. A true copy of the F.I.R. lodged by Sri Mohd. Husnain and Sri S.C. Bajpai with the P.S. Hazratganj, Lucknow, are filed herewith as Annexure Nos. 4 and 5 respectively to this writ petition.

8. That the petitioner was very well known to Sri Mohd. Husnain and Sri S.C. Bajpai and there was no reason for them to have not disclosed the name of the petitioner in case he was in any way involved in assaulting them.

9. That the petitioner is a Railway Servant and is governed by the Provisions of Railway Servants (Discipline & Appeal) Rules 1968 (hereinafter referred to as Rules).

10. That Rule 14 of the Rules provides the circumstances under which the Disciplinary Authority may impose the penalty without adopting the procedure laid down in Rule 9 to 13 of the Rules.

11. That Sub-Rule (11) of Rule 14 empowers the Disciplinary Authority to impose the penalty without adopting the procedure laid down in Rule 9 to 13 where

he is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the Rules.

12. That the satisfaction of the disciplinary Authority under Rule 14 (ii) (in an objective satisfaction of the authority concerned which should be based on some cogent and reliable material after giving an opportunity to the person concerned).

13. That no opportunity of any kind was given to the petitioner before ~~passing~~ passing the order contained in Annexure No. 1.

14. That besides the above it was perfectly practicable to hold the enquiry in accordance with Rules 9 to 13 of the Rules and the opinion of the opposite party No. 2 that it was not reasonably practicable to give the petitioner an opportunity of making representation in respect of charges, was not based on any material whatsoever indicated in the order.

15. That the reasons given by the opposite party No. 2 in his order contained in Annexure No. 2 are all imaginary, baseless and without any enquiry about the truth of allegations levelled against the petitioner.

16. That the petitioner was neither served with any chargesheet nor any enquiry whatsoever was held by the opposite party No. 2 as provided in Rule 9 to 13 of the Rules and the impugned order contained in Annexure No. 1 has been passed in disregard of the mandatory provisions laid down in the aforesaid Rules.

17. That the opposite party No. 2 did not even

issue any show-cause notice before imposing the penalty of dismissal which is the mandatory requirement of Rule 14 of the Rules. The opposite party No. 2 was required to consider the circumstances appearing against the petitioner (objectively by giving an opportunity of hearing to the petitioner).

18. That the decision of the opposite party No.2 that it was not reasonably practicable to hold the enquiry is arbitrary and capricious based on imagination and is a colourable exercise of powers.

19. That the opposite party No. 2 even did not try to ascertain the truth, if any, in the allegations made against the petitioner shown in Annexure No. 1 and punished the petitioner arbitrarily.

20. That the opposite party No. 2 in the impugned order contained in Annexure No. 1 did not disclose the reasons and the material on which the orders are based as such the petitioner vide his application dated 17.7.81 specifically requested the opposite party No.2 to supply all relevant material/information on the basis of which the impugned order contained in Annexure No. 1 was passed. The petitioner also stated in his application that the supply of relevant material/information was necessary with a view to enable the petitioner to file a effective appeal against the order of punishment. A true copy of the petitioner's application dated 17.7.1981 given to opposite party No. 2 is filed herewith as Annexure No. 6 to this writ petition.

21. That the opposite party No. 2 despite petitioner's specific request vide Annexure No. 6, did not furnish any document/information or material

8

to enable the petitioner to file effective appeal. No orders on the petitioner's application were ever passed/communicated to the petitioner.

22. That the petitioner, any how, preferred an appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules 1968 on 11.8.1981 to opposite party No.3 challenging the impugned order dated 29.6.81 (Annexure No. 1) on xxx various facts and grounds and specifically requested the opposite party No. 3 to consider:-

- (a) Whether the reasons given by the learned Sr.DOS/LKO the dismissing authority for not holding the enquiry and adducing evidence as required under rules 9 and 10 of the Discipline & Appeal Rules, 1968 are based on objective reasons as required under rule 14(ii) of the said Rules or the powers have been exercised in an/ arbitrary manner.
- (b) Whether the findings of the dismissing authority are meritted and warranted by the evidence on the records or based on surmises and conjectures.
- (c) Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the ~~appkexnrx~~ appellant.

A true copy of the Appeal dated 11.8.1981 submitted to the opposite party No. 3 is filed herewith as Annexure No. 7 to this writ petition.

23. That the opposite party No. 3 without considering the facts, grounds and pleas taken by the petitioner in his appeal rejected the same vide order dated 7.11.1981, a true copy of which already forms part as Annexure No. 2 to this writ petition.

24. That ~~the~~ feeling aggrieved the petitioner under Rule 25 of the Discipline & Appeal Rules 1968

on 17.11.1981 preferred a review petition before the opposite party No. 4 on various grounds but that too vide order dated 22.12.81 was rejected by opposite party No. 4 arbitrarily without considering the same. The true copy of order dated 22.12.81 already forms part as Annexure No. 3 to this writ petition.

25. That the orders contained in Annexures Nos. 2 and 3 are wholly cryptic and non-speaking and have been passed without considering and deciding the entire pleas taken by the petitioner.

26. That it is respectfully submitted that earlier the petitioner had challenged the validity of the impugned order dated 29.6.81 (Annexure No.1) directly in this Hon'ble High Court on 13.7.1981 by filing writ petition but the same was dismissed in limine on the ground that the petitioner has the alternative remedy by way of appeal.

27. That feeling aggrieved with the impugned orders contained in Annexure Nos. 1, 2 and 3 the petitioner prefers this writ petition on the following amongst the other:

:::G_R_O_U_N_D_S:::

(i) Because the impugned order contained in Annexure No. 1 dismissing the petitioner from service has been passed without adopting the procedure prescribed in Rule 9 to 13 of the Railway Servants (Discipline and Appeal) Rules 1968.

(ii) Because the opinion of opposite party No. 2

that it was not reasonably practicable to hold the enquiry as laid down in Rule 9 to 13 of the Rules is arbitrary, based on imagination, capricious and is a device to punish the petitioner in the colourable exercise of powers.

(iii) Because there was no material of rational value on the basis of which the opposite party No. 2 could have come to the conclusion that the holding of enquiry was not reasonably practicable.

(iv) Because the petitioner was not given any opportunity whatsoever before taking a decision under Rule 14 (ii) of the Rules and Article 311 (2)b of the Constitution of India.

(v) Because no opportunity or show-cause notice was given to the petitioner before passing the impugned order contained in Annexure No. 1.

(vi) Because the satisfaction of the disciplinary authority under Rule 14(ii) and Article 311(2)b of the Constitution of India is an objective satisfaction of the authority concerned which should be based on some cogent and reliable material after giving an opportunity to the person concerned.

(vii) Because the exercise of powers under Rule 14(ii) and Article 311(2)b of the Constitution of India, under the facts and circumstances of the case was wholly unwarranted amounting to abuse of powers conferred on the authority concerned.

(viii) Because the opposite party No. 2 totally lost sight to the very relevant fact that the F.I.R. lodged

(11)

by Sri Mohd. Hasnain and Sri S.C. Bajpai in no way indicate the involvement of the petitioner in the alleged incident of assault.

(ix) Because the impugned orders contained in Annexures Nos. 2 and 3 are cripitic and non-speaking and have been passed without deciding the pleas taken by the petitioner.

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

(a) issue writ, direction or order in the nature of certiorary quashing the impugned orders dated 29.6.81, 7.11.81 and 22.12.81 passed by opposite parties Nos. 2, 3 and 4, and contained in Annexure Nos. 1, 2 and 3 to this writ petition.

(b) issue writ, direction or order in the nature of mandamus commanding the opposite parties to treat the petitioner still in service with all benefits of salary, seniority and increments etc.

(c) 14 days notice may kindly be waived.

LUCKNOW:

DATED: March 22, 1982.

(R.C. Saxena)
Advocate,
Counsel for the Petitioner.

-10-

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi ... Petitioner.

Versus

Union of India and another ... Opposite Parties.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

A F F I D A V I T

I, Jagdamba Prasad Tripathi, aged about 29 years, son of late Sri S.P. Tripathi, Resident of 253/110, Saryu Niwas, Nandan Mahal Road, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the above noted writ petition and he is fully conversant with the facts deposed to hereunder.
2. That the contents of paras 1 to 26 of the writ petition are true to my own knowledge except bracketed portions of paras 12 and 17.
3. That the Annexure Nos. 1 to 7 are the true copies

13

and the deponent has compared them with their originals.

Lucknow:

Dated: March 22, 1982.

DEPONENT.

VERIFICATION

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

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

Lucknow:

Dated: March 22, 1982.

DEPONENT.

I identify the deponent who has signed before me.

(R.C. Saxena)
ADVOCATE.

Solemnly affirmed before me on March 22, 1982, at a.m./p.m. by Sri Jagdamba Prasad Tripathi, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Lucknow Bench, Lucknow.

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

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi

... Petitioner.

Versus

Union of India and another

... Opp. Parties.

ANNEXURE NO. 1

PUNISHMENT NOTICE

DOS/Control/Conf/1/81

Place of Issue-Divisional Office,
Northern Railway,
Lucknow.

Dated: June 29, 1981.

To,

Thro:- Shri J.P. Tripathi,
Trains Clerk, under
CMO/N.Railway, Lucknow.
Chief Controller/N.R./Lucknow.

WHEREAS Shri J.P. Tripathi, Trains Clerk/
Lucknow is responsible for the grave charges listed in
the Annexure.

2. WHEREAS in the interest of Railway and also
of general public, any further retention of Sri J.P.
Tripathi, Trains Clerk in railway service is considered
undesirable.

3. WHEREAS it is considered that the circumstances
of the case are such that it is not reasonably practicable
to hold an enquiry in the manner provided in Railway
Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers
conferred by Rule 14(11) of Railway Servants Discipline
and Appeal Rules, 1968 the undersigned hereby dismisses
the said Sri J.P. Tripathi, Trains Clerk from service

with effect from 29.6.81 afternoon.

Sd/-

(Baldev Singh)
Sr. Divl. Optg. Supdt.,
N.Railway, Lucknow.

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to A.D.R.N. (OP)/N.Rly/Lucknow provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.

2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi ... Petitioner.
Versus
Union of India and another ... Opp. Parties.

ANNEXURE NO. 1 contd.

ORDER

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/ remove from service Shri J.P. Tripathi Trains Clerk, Northern Railway, Lucknow, who was appointed under the orders of Divisional Personnel Officer, a Senior Scale Officer, am fully satisfied that Shri J.P. Tripathi is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him. Therefore, under these circumstances, it is not reasonably practicable to give him an opportunity of making representation under article 311(1) Clause 2 of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause (2), proviso (b) of the said clause, I order dismissal of Sri J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow from service with effect from 29th June, 1981 afternoon.

Sd/- Baldev Singh
29/6

Senior Divisional Optrd. Supdt.,
Northern Railway,
Lucknow.

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi

... Petitioner.

Versus

Union of India and another

... Opp. Parties.

ANNEXURE NO. 1 Contd.

ANNEXURE INDICATING CHARGES AGAINST SHRI J.P. TRIPATHI,
TRAINS CLERK/NORTHERN RAILWAY/LUCKNOW.

On 24.6.81, while Shri Mohd. Hasnain, Deputy
Chief Controller/N.Rly/Lucknow was coming from his
residence for performing his duty in 9.00 hrs. to 8.00 hrs.

shift, at about 22.00 hrs. at the rear gate of DM Office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controllor/N.Rly/Lucknow was doing to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri J.P. Tripathi, Trains Clerk/Lucknow had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(i) & (iii) of Railway Services Conduct Rules, 1966.

Sd/-

(BALDEV SINGH)

Senior Divisional Operating Supdt.,
Northern Railway, Lucknow.

...

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi

... Petitioner.

Versus

Union of India and another

... Opp. Parties.

ANNEXURE NO. 2

उत्तर रेलवे
मुख्य कार्यालय
लखनऊ दिनांक 7-11-1981

संज्ञा DOS/Control/Conf/1/81

श्री J.P. Tripathi,
Ex. Trains Clerk.
द्वारा

विषय:- ईड नोटिस संज्ञा DOS/Control/Conf/1/81 दिनांक 29-6-1981
निमित्त ईड
द्वारा Dismissal from service
Sr.DOS/LKO

संज्ञा- आपकी दिनांक 11-8-1981 की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम 1968 के नियम
22(2) के अनुसार अपील अधिकारी ADM(O)/N. Rly. लखनऊ
ने Sr. DOS/ LKO. द्वारा
उपरोक्त अधिका के विरुद्ध आपके द्वारा की गई अपील पर ध्यानपूर्वक
विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है ।

(क) अनुशासन अधिकारी के निष्कर्ष अधिकारियों के समक्ष के अनुसार प्रमाणित
है । तथा

(ख) आरोपित ईड

" I have gone through the appeal of Shri J.P. Tripathi. I find that in his 12 page long appeal he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind

judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and his appeal is rejected. "

3d/-

(बी.के. यतडोबा)

सहायक कार्मिक अधिकारी/लहनाड

इतिहास सुचनार्थ तथा आन्तरिक कार्यवाही हेतु ।

1- सम्बन्धित लिपिक कार्यालय विभाग

2-

सब इतिहास

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi ... Petitioner.
o Versus
Union of India and another ... Opp. Parties.

ANNEXURE NO. 3

Northern Railway

No.DOS/Control/Confdl/1/81
Dated: 22.12.1981

Divisional Office,
Lucknow.

Shri J.P. Tripathi
Ex Trains Clerk

Sub: Penalty Notice No. DOS/Control/
Confdl/1/81 of 29.6.81.

Ref: Your review appeal dated 17.11.1981.

....

Review petition has been considered by the reviewing
authority D.R.M./Lucknow and he has passed the following
orders:-

" Having gone through the review petition and the
orders passed by the appellate authority, I do not
find any justification to change the orders of the
appellate authority in all these three cases".

Sd/-
For Divl. Railway Manager,
Northern Railway,
Lucknow.

.....

TRUE COPY

इन दि नानोबुस हार्बोर्ट आफ फुडीकेरा स्ट इलाहाबाद
(समनज बेच) : समनज

रिट पिटीशन नं० काफ 1982

जगन्नाथ प्रसाद बिपाठी पिटीशनर
बनाम
यूनियन आफ इण्डिया स्पेड स्पेनर अपी०पार्टीज

इन्जेक्टर नं० 4

पी०नं० 759378
379/323आई०पी०सी०

मुकल तहरीर हिन्दी बादी

सेवा में,

मानाध्या महीदय, कीलवाली बजारलगाव, समनज।

निवेदन है कि आज दिनांक 24-6-81 को मैं अपनी लकड़ी करने की०गार०स्प०(ब०रे०) कार्यालय का रहा था करीब 10-00 बजे रात कार्यालय के दक्षिण दरवाजे से अन्दर घुसा जैसे ही दो लकड़ों ने पुकार कर कहा मेरे घेरे देते जाओ, मैंने जैसे ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई बाँकियों से मारने लगे मैं बाँकिस की ओर ओर मचाते हुए भागा तो सामने से एक तीसरे आदमी ने अपने हाथ में ली हुयी बाँकी से मारना शुरू कर दिया तीसरा आदमी वहीं पर था। इसी मारपीट के दौरान मेरा चमड़े का काले रंग का बेल्ट बेल्ट हाथ से छूट कर नीचे गिर गया जिसमें 3 तीन पैन, चप्पा, बाँकिस की चाबी, बाँकिस के कुछ कागजात थे मेरे ओर मचाने पर वे लोग मेरा गिरा हुआ पर्स लेकर भाग गये मेरे शरीर पर चोटें आयी हैं जिनकी डाक्टरों जाँच कराकर डाक्टरों रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ। उचित कार्रवाई की जाय।

नोट:- मैं यह प्रमाणित करता हूँ

कि मुकल तहरीर बादी चिठ लगाकर
आरतः बाँकिस किया गया तहरीर
समन स्प०आई०गार० है।
आ०राम सरबार मुकल
25-6-81

प्राणी

मोहम्मद हसनैन
पुत्र आ०बी समनस हसनैन
भेदका, थाना बसगाव जिलाबाजार
उप०न०समनज 24-6-81
लेख श्री पी०के०गुप्ता,
द०बापरेन्द्र, उ०रे०समनज

सत्य प्रतिलिपि

इन दि बानोबुल हार्ड कोर्ट आफ जूडी केचर स्ट इलाहाबाद
(लमनउ बेन) : लमनउ

रिट पिटीशन नं० बाप 1982

जगन्नाथ प्रसाद त्रिपाठी

...

... पिटीशनर

बनाम

युनिघन आफ इण्डिया स्पष्ट रेनबेदर

... बपो०पार्टीज

बनेंजर नं० 5

मुकल सुबरीग बिन्दी बादी

पी० नं० 759377

379/323बाई०पी०सी०

सेवा में

धानाध्या महीदय, कोतवाली इजरतगज, लमनउ।

निवेदन है कि मैं लगभग 11-30 बजे रात में अपने घर से अपने

साथियों जा रहा था, जब मैं किशन सभा के सामने से पास हो रहा था पीछे से
तीन व्यक्ति जो साइकिल पर सवार थे सामने आकर मेरी साइकिल से अपनी
साइकिल लड़ानी चाही, लेकिन साइकिल लड़ी नहीं। औरन्ने सामने आकर साइकिलों
लेकर मुझे मारने लगे, मेरे दोनों हाथों में जोटें बाई बाई साइकिल मेरे हाथों से
हट गयी और मैं अचानक के लिए और मचाने लगा। इसी बीच एक लड़का मेरी
साइकिल लेकर भाग गया। साइकिल के हेलमेट में मेरा एक चोला टंगा था, उसमें एक

काला पर्स या जिसमें दो रुपये और कुछ पैसे थे, एक जीपी थी, एक रंगीन साठून,
एक दफ्तर की चाबी, चीनी, चाय, तथा दूध की सीसी थी वह जोला भी साथ में चला
गया। मेरे सौर मचाने पर कुछ लोगों ने भी सौर मचाया जिनमें मोहम्मद नर्सन
भी थे, और वे दूसरे गेट से विधान सभा के बाहर निकल कर जाये। और मुझे खुद
पर बिठाकर सालबागकी तरफ गये पर उनका कोई पता नहीं चला सामने जाने
पर पहिचान सकता हूँ। लिखित रिपोर्ट दायित्व करता हूँ। उचित कार्यवाही करने
की कृपा करें।

प्रार्थी

सतीश चन्द्र बाजपेयी
डिप्टी चीफ कन्स्टेबल
डी०आर०एम० बाक्सर, ३०१०,
लखनऊ

घर का पता

सतीश चन्द्र बाजपेयी,
66/15, कितवापुर भास, लखनऊ।
24-6-81

नोट:- मैं यह प्रमाणित करता हूँ कि नकल तबरीर बादी चिक लगाकर आरक्षक अधिकृत
दिया गया।

मुख्य प्रतिलिपि

24

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO. OF 1982

Jagdamba Prasad Tripathi ... Petitioner.

Versus

Union of India and another ... Opp. Parties.

ANNEXURE NO. 5

The Senior Divisional Operating Supdt.,
Northern Railway,
Lucknow.

Sub: Representation for reasonable opportunity
for preferring an appeal against your
Order No. DOS/Control/Conf/I/81 dated
29.6.1981 dismissing the applicant from
service w.e.f. 29.6.1981 A.N.

Respected Sir,

Most respectfully, the applicant acknowledges to have received your order cited above dismissing him from service with effect from 29.6.1981 A.N. in purported exercise of the powers conferred by Rule 14 (ii) of the Railway Servants Discipline & Appeal Rules, 1968 read with Article 311 (1), Clause (2), Proviso (b) of the Constitution of India. Alongwith the said order, the applicant has also been given an Annexure indicating the so called charges on the basis of which the said order of his dismissal from service has been passed. This annexure has been supplied with the said order to enable the applicant to know what specific charges against him are and on what basis the authority exercised its powers under Rule 14 (ii) of the R.S. (D. & A.) Rules, 1968, so that an effective appeal rebutting the entire charges and allegations could be filed for justice by him.

25

2. That in accordance with the instructions contained in the said order of dismissal, the applicant has a right to prefer an appeal to the Additional Divl. Railway Manager (OP)/N. Railway, Lucknow under rule 18 of the Railway Servants Discipline & Appeal Rules, 1968. Since this is an appealable order, the applicant has a right to claim for the opportunities, which are necessary and expedient for preferring an appeal.

3. That under law and rules, the order giving rise to applicant's dismissal from service ought to have been issued with duly and properly constituted charge definite and distinct in nature alongwith all evidence oral and documentary that have been relied upon to arrive at a final decision that:-

(i) the applicant was in such a mood that if notice was given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.

(ii) the applicant was apparently present at Lucknow yet he had created such an atmosphere terror that it was not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

4. That apart from the above, it is pointed out that the charge of assault causing grievous injuries to Shri S.C. Bajpai, Deputy Chief Controller, Lucknow does not indicate the time and exact place of occurrence when and where he was alleged assaulted. The more so, no evidence, if any coming on the records and relied upon, has been shown in the Annexure or Order in support of the alleged connivence with anti-social elements in getting Shri Husnain and Shri Bajpai physically assaulted. These materials and informations ought to have been shown in the Order/Annexure to enable the applicant to rebut the charges and allegations in the appeal.

(26)

5. That it has also not been made clear in the said list of charges (Annexure) annexed with the order of dismissal from service as to how the applicant was the Master Mind and also ~~as~~ no evidence to this effect has been shown therein which gave you personal satisfaction to - exercise the powers conferred by Rule 14 (ii) of the Railway Servants Discipline & Appeal Rules, 1968. This under the law and rules, was a must to be shown in the said order/annexure for the said purpose.

6. That the order of dismissal from service is also not accompanied by the copies of the reports of S/Shri Mohd. Husnain and S.C. Bajpai, if any submitted to the railway Administration, F.I.Rs. if any lodged by them at the Police Station in respect of the alleged assault, Medical Reports, if any got by them in respect of the alleged assault and grievous injuries and the statement of witnesses, if any recorded by the Railway Administration which led your honour to exercise the powers conferred by Rule 14 (ii) of the R.S. (L&A) Rules, 1968, which ought to have been supplied to the applicant to prefer an appeal and to rebut the charges and allegations.

7. That for reasons stated in the aforesaid paras, the applicant is handicapped to prefer an effective appeal against the order of his dismissal from service. It is submitted that if the opportunities as pointed out in the aforesaid paras are not made available to him, he will suffer serious prejudice, which will amount to denial of opportunity of defence even at the stage of appeal and the entire actions shall be in utter disregard of the departmental rules and violation of the principles laid down by Hon'ble Supreme Court and High Courts of India in various cases adjudicated by them.

8. That the applicant respectfully submits that

the entire charges/allegations are false, fabricated and he has falsely been implicated and got punished under a deep rooted conspiracy and plan hatched by the interested persons and the order of his dismissal from service has been passed on no evidence valid in law, but on presumption, supposition and false and un-trust worthy informations which act is arbitrary in nature.

The facts mentioned above (para 8) can be established to a greater extent in the appeal provided the applicant is afforded the opportunity as hereunder prayed:-

In view of the facts and circumstances stated above, it is respectfully prayed that your honour may be pleased to consider this representation with a judicious view in that the contents of paras 3 to 6 may be taken into consideration and the applicant be furnished with the materials/informations claimed therein, so that he may be able to prefer an effective appeal rebutting the charges and allegations in the appeal to the entire satisfaction of the appellate authority.

It is hoped that the materials/informations as claimed by the applicant would be supplied to him within a reasonable time keeping in view the limitation for filing the appeal.

Thanking you,

Yours faithfully,

Sd/-

(JAGDAMBA PRASAD
TRIPATHI)

House No. 253/110,
Saryu Niwas,
Nadan Mahal Road,
Lucknow.

(Ex.Trains Clerk)

Dt. 17th July, 1981.

.....

TRUE COPY

28

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

WRIT PETITION NO. OF 1982.

Jagdamba Prasad Tripathi ... Petitioner.
Versus
Union of India and another ... Opp. parties.

ANNEXURE NO. 7

The Addl. Divl. Railway Manager (OP),
Northern Railway,
Hazratganj,
Lucknow.

Through: The proper channel.

Appeal under rule 18 of the Railway Servants
Discipline & Appeal Rules, 1968 against order
No. DOS/Control/Conf/I/81 dated 29.6.1981
passed by the Sr.DOS/LKO dismissing the appe-
llant from service with effect from 29.6.1981.

....

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1. That for the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DOS/LKO, in purported exercise of the powers conferred by rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.1981 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant:-

REASONS FOR NOT HOLDING THE ENQUIRY.

"The above employee is in such a mood that

if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him....".

2. That since the dismissing authority, while passing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with the enquiry, which was necessary to be held under rule 9 and 10 of the D&A Rules, 1968, it is expedient in the interest of justice that your honour may make a legal and judicious assessment of the order passed, in the light of the following issues involved in the case:-

- (a). Whether the reasons given by the learned Sr. DOS/LKO-the dismissing authority for not holding the enquiry and adducing evidence as required under rule 9 and 10 of the D & A Rules, 1963 are based on objective reasons as required under rule 14- (11) of the said Rules or the powers have been exercised in an arbitrary manner.
- (b). Whether the finding of the dismissing authority are merited and warranted by the evidence on the records or based on surmises and conjectures.
- (c). Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUES:

Issue (a).

3. That as regards issue (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied himself

opportunity to rebut the charge. Despite specific request made vide application dated 18.7.1981, the said authority maintained complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968.

(iv). In absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Shri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controller/ LKO and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations, and then to pass order under rule 14 (ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controllers/ LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising its powers under rule 14 (ii) of the D&A Rules, 1968, dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

(v). No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under

rule 14 (ii) of the D&A Rules, 1968 are in sufficient compliance of the said rules.

From the discussions made above, it is established as under:-

- (a). The dismissal order passed under rule 14 (ii) is not based on the objective satisfaction of the dismissing authority.
- (b). The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controllers and not any other material or concrete evidence which was necessary to be taken into account to exercise powers under rule 14(ii) of the D&A Rules, 1968.
- (c). The dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d). The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e). The dismissing authority has mis-used the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f). The findings of the dismissing authority is not supported by any evidence available on the records in the F.I.Rs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO at the Police Station, Hazratganj, Lucknow.

4. That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO, which are false and un-trustworthy specially in view of the F.I.Rs

punished. Despite this inclination, he does not mention the name of the miscreants in his report/FIR. Thus it is proved beyond doubt that he himself did not see the appellant either on the spot or any where else having the common intention of assaulting him. Had it been a fact, Shri Hasnain would have surely given the name of the appellant in his report/FIR to the police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii). Shri Hasnain, in his report/FIR lodged at the police Station, Hazratganj/LKO, has clearly mentioned that during the course of 'Mar Peet' his leather bag containing his pen, gogle, office key and some official records fallen down and one of the miscreants picked it up and fled away.

(iv). Nothing of the sort as mentioned above has been shown in the charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given if it was based on fact. Similarly nothing is available in the record to show as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

(35)

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hasnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

(v) Shri S.C. Bajpai, Bajpai, Deputy Chief Controller, Lucknow, in his report/FIR dated 24.5.81 lodged at the Police Station, Hazratganj, Lucknow has stated that he can identify the miscreants if they are produced before him. This facts, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bajpai would have surely given the name of the appellant in his report/FIR.

It is a matter of surprise that the dismissing authority clearly mentioned the name of the appellant in his charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore are false and after thought.

(vi) Shri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his gm bag which was hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a ~~box~~ black purse and in that there ~~was~~ were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the Police Station, Hazratganj, Lucknow is being filed herewith as Annexure III to this appeal.

It may be mentioned that the charges
the appellant alongwith the order of

contain the aforesaid articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charge, therefore, shows that Shri Bajpai had no definite case. No other document shows the loss of Office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the Official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14(11), dropped the enquiry and deprived of the appellant from making defence purposely and deliberately with a view to save Shri Bajpai from facing a confronted enquiry and thereby has favoured the said Shri Bajpai arbitrarily and in violation of the principles of Natural Justice.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bajpai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its powers under rule 14(11) in an arbitrary manner and favoured the said Shri Bajpai in total disregard of the departmental rules and the principles of Natural Justice.

The whole discussions on issue (h), therefore, lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not meritted and warranted by the evidence on the record and the appellant has been punished merely on doubt, suspicion, surmises and conjectures.

5. That as regards issue (c), it is respectfully submitted that in face of the major contradictions in reports/FIRs lodged by the said S/Shri Mond. "

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(c) Because the satisfaction required under rule 14(ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.

(d) Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.

(e) Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.

Authority: AIR 1964 SC 364, AIR 1965 SC 247 and AIR 1958 SC 300.

(f) Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.

Authority: 1969 Labour & Industrial Cases 896.

(g) Because the dismissing authority, despite application dated 18.7.1981 moved by the appellant, did not supply the necessary documents and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority: Railway Board's letter No. E(D&A) 61RG-47 dated 29.1.1963.

(h) Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

(i) Because the order of dismissal from service having been passed by the Sr.DCS/LKO by using his personal knowledge which the said S/Shri Mohd. Husnain and S.C. Bajpai, Dy., Chief Controllers have not mentioned in reports/FIRs lodged at the Police Station, Ha

the action is illegal and inoperative in law.

Authority: AIR 1968 SC 86.

(j) Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority: AIR 1958 SC 300 and AIR 1963 SC 779.

(k) Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRs of the said S/Shri Mohd. Hasnain and S.C. Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority: 1969 Labour & Industrial cases 773.

(l) The order of dismissal having been passed on a mere conjunctures and suspicion and a mere belief the action is illegal and unconstitutional.

(m) Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to except S/Shri Mohd. Hasnain and S.C. Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed without of a great favouritism to the said persons.

(n) Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. Hasnain and S.C. Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deleberate.

उत्तर रेलवे
Northern Railway

39
Registered AD

No. DOS/Control/Confdl/1/81
Dated: 22.12.1981

Divisional Office,
Lucknow.

Shri J.P. Tripathi
Ex Trains Clerk

Sub: Penalty Notice No. DOS/Control/Confdl/
1/81 of 29.6.81.

Ref: Your review appeal dated 17.11.1981.

...

Review petition has been considered by the reviewing authority
D.R.M./Lucknow and he has passed the following orders:-

" Having gone through the review petition and the
orders passed by the appellate authority, I do not
find any justification to change the orders of the
appellate authority in all these three cases".

9c 
For Divl. Railway Manager
Northern Railway,
Lucknow.

उत्तर रेलवे
Northern Railway

(38)
R D AD

NO. DOS/Control/Confdl/1/81
Dated: 2/12.1981

Divisional Office,
Lucknow.

Shri Zafar Ali Siddiqui,
Ex Sr. Trains Clerk

Sub: Penalty Notice No. DOS/Control/Confdl/
1/81 dated 29.6.1981.

Ref: Your review appeal dated 19.11.1981.

...

Review petition has been considered by the reviewing authority
D.R.M./Lucknow and he has passed the following orders:-

" Having gone through the review petition and the
orders passed by the appellate authority, I do not
find any justification to change the orders of the
appellate authority in all these three cases".


For Divl. Railway Manager
Northern Railway
Lucknow.

37

N.R. -2,211/18-June, 1981-28,200 P.

उत्तर रेलवे
Northern Railway

R D AD

No. DOS/Control/Confdl/1/81
Dated: 12.12.1981

Divisional Office,
Lucknow.

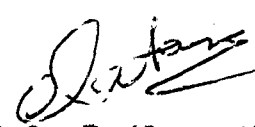
Shri Mohd. Naseem,
Ex Trains Clerk

Sub: Penalty Notice No. DOS/Control/Confdl/
1/81 dated 29.6.1981.

Ref: Your review appeal dated 19.11.81.

Review petition has been considered by the reviewing authority
D.R.M./Lucknow and he has passed the following orders:-

" Having gone through the review petition and the
orders passed by the appellate authority, I do not
find any justification to change the orders of the
appellate authority in all these three cases."


For Divl. Railway Manager,
Northern Railway,
Lucknow.

ofc.

36

अपील

42 -

सेवा में,

मण्डलीय रेलवे प्रबन्धक,
नांदेड रेलवे, हजूरतगंज,
लखनऊ ।

R
6L
23/11

विषय: दण्ड नोटिस संख्या डीओएसओ/कन्ट्रोल/क/1/81, दिनांक
29-6-1981 के अंतर्गत सेवाओं से मुक्त किया जाना ।

Asac
M D P O I
24/11

आदरणीय महोदय,

निवेदन है कि प्रार्थी आपके विभाग में कार्यालय मण्डलीय रेलवे प्रबन्धक, एसओआरओ, हजूरतगंज, लखनऊ में ट्रेन्सपोर्ट के पद पर कार्यरत था । प्रार्थी की सेवाएँ वरिष्ठ मण्डल परिचालन अधीक्षक, एसओआरओ के पद सं 0 डीओएसओ/कन्ट्रोल/काओ/1/81, दिनांक 29-6-81 के अंतर्गत समाप्त कर दी गयी हैं (प्रतिलिपि संलग्न) ।

DPO
24/11

प्रार्थी अपनी सेवा समाप्ति के संबंध में निम्नलिखित नम्र निवेदन करता है :-

Subscribed 138

(1) प्रार्थी ने दिनांक 17-7-81 को एक प्रत्यवेदन (प्रतिलिपि संलग्न) द्वारा वरिष्ठ मण्डल परिचालन अधीक्षक (एसओआरओ) महोदय को उक्त आदेशों के संदर्भ में प्रेषित किया था । जिसके माध्यम से यह निवेदन किया था कि प्रार्थी को जहां तक स्मरण है प्रार्थी द्वारा विभाग में कोई ऐसा कार्य नहीं किया गया है, जिसके आधार पर प्रार्थी की सेवाएँ समाप्त करने का दण्ड दिया जाये । और न ही कोई इस प्रकार का कार्य किया है जिसके आधार पर यह सम्झा जाय कि प्रार्थी ने अपने अधिकारियों के साथ दुर्व्यवहार करने की कोई योजना बनाई थी ।

(2) प्रार्थी को उक्त दण्ड नोटिस के साथ आदेश व आरोपों की प्राप्ति प्राप्त होने पर यह ज्ञात हुआ कि दिनांक 24-6-81 को श्री मोहम्मद हसनैन व श्री सतीश चन्द्र बाजपेई, उप मुख्य नियंत्रकों पर जब वे अपने निवास स्थान से कार्यालय की ओर आ रहे थे उस समय लगभग 10 बजे रात में श्री हसनैन से व लगभग 11-30 बजे रात में श्री बाजपेई से किन्हीं अज्ञात व्यक्तियों ने मारपीट की ।

(3) मुझे एक विभागीय कर्मचारी के नाते अत्यन्त ही सहानुभूति उक्त अधिकारियों के साथ हुए इस दुर्घटना से रही है और है । किन्तु यह अक्षेप कि मैंने उक्त अधिकारियों को मारने पीटने की कोई योजना बनाई है, नितान्त

असत्य है। क्योंकि जिस समय उक्त अधिकारियों के साथ मारपीट की घटना हुआ उस समय मैं, 8-16 बजे की झगड़ी समाप्त करके, अपने निवास स्थान पर था। जिसकी तसदीक घर वालों से की जा सकती है। महोदय से यह भी निवेदन करना चाहता हूँ कि मेरे लगभग 5 वर्ष के सेवाकाल की अवधि में किसी प्रकार के दुर्व्यवहार की कोई शिकायत नहीं हुई है। मैंने सदैव ही अपने उच्चाधिकारियों का सम्मान किया है व अपने कार्य को परिश्रम तथा कर्तव्यनिष्ठा से किया है।

(4) दण्ड नोटिस प्राप्त होने पर मैंने एक प्रत्यावेदन दिनांक 17-7-81 को अपने वरिष्ठ मण्डल परिचालन अधीक्षक को प्रेषित करते हुए यह निवेदन किया था कि प्रार्थी को अपील से संबंधित आवश्यक कागजात उपलब्ध कराने की कृपा की जाये। ताकि एक प्रभावी अपील अतिरिक्त मण्डलीय रेलवे प्रबन्धक के समक्ष संबंधित कागजात के साथ जिसमें श्री बाजपेई व श्री हसनैन द्वारा लिखायी गयी रफ0आई0आर0 प्रमुख हैं, को आवश्यक कार्यवाही व न्याय हेतु प्रेषित किया जा सके।

मेरे द्वारा प्रेषित प्रत्यावेदन पर कोई भी प्रतिउत्तर स्मरणपत्र भेजने के बाद भी न मिलने के कारण अपनी अपील अतिरिक्त मण्डलीय रेलवे प्रबन्धक के समक्ष अनेकों कागजातों के अभाव में प्रस्तुत करनी पड़ी।

(5) कि मेरे द्वारा 11-8-81 को अतिरिक्त मण्डलीय रेलवे प्रबन्धक, परिचालन, रन0आर0; को प्रेषित की गयी अपील पर श्रीमान अतिरिक्त मण्डलीय रेलवे प्रबन्धक(परिचालन) ने अपनी टिप्पणी देकर मेरी अपील को अपने पत्र सं0 अपील/डी0ओ0एस0/कन्ट्रोल/का0/1/81, दिनांक 7-11-81 (प्रतिलिपि संलग्न) के द्वारा अस्वीकृत कर दिया है।

(6) कि श्रीमान अतिरिक्त मण्डलीय रेलवे प्रबन्धक(परिचालन) की टिप्पणी के संदर्भ में अत्यन्त विनम्रता के साथ निवेदन करना चाहता हूँ कि मेरा आशय इस बात का कदापि नहीं था कि जो दण्ड मुझको दिया गया है उसकी वैधता क्या है, वरन् मैं एक कर्मचारी की हैसियत से मात्र यह निवेदन करना चाहता था कि जिन परिस्थितियों में नियम 14(2) का प्रयोग किया गया है वे मुझ पर लागू नहीं होती हैं। और उसी के साथ यह भी निवेदन किया था कि मुझको सम्पूर्ण वस्तु-स्थिति से अवगत कराने हेतु व्यक्तिगत सक्षात्कार का अवसर प्रदान कर न्याय करने की कृपा की जाये। परन्तु सक्षात्कार का अवसर न प्रदान कर मेरी अपील अस्वीकृत कर दी गयी।

अतः श्रीमान जी के समक्ष प्रस्तुत प्रार्थनापत्र के माध्यम से मैं

निम्न तथ्य प्रस्तुत करते हुए निवेदन करना चाहता हूँ कि हम पर कृपापूर्ण विचार करते हुए दण्ड-आदेशों को निरस्त कर सेवा में लिये जाने की कृपा की जाय ।

: 1: कि जिस समय श्री हसनैन व श्री बाजपेई के साथ मारपीट की तथाकथित दुर्घटना हुई उस समय में, 8-16 बजे की दृष्टी समाप्त करने के बाद, अपने घर पर था, जिसकी पुष्टि मेरे घर के लोगों और ~~प्रबुद्ध~~ मुहल्लेवालों से की जा सकती है ।

: 2: कि प्रार्थी ने अपनी सेवा मुक्ति के एक माह पूर्व अन्य अभ्यार्थियों के साथ एक प्रार्थनापत्र 'विजिलेन्स इंस्पेक्टर' के पद की विभागीय परीक्षा हेतु अपने तत्कालीन अधिकारी श्री इन्द्र घोष, डी०ओ०एस० के माध्यम से प्रेषित किया था । श्री घोष ने प्रार्थी के प्रार्थनापत्र को अपनी संस्तुति के साथ अमसारित कर दिया था, जिससे इस बात की पुष्टि होती है कि प्रार्थी का चरित्र व कार्य संतोषजनक था अन्यथा 'विजिलेन्स इंस्पेक्टर' जैसे महत्वपूर्ण पद पर चयन हेतु ~~प्रार्थी~~ प्रार्थी के प्रार्थनापत्र को तत्कालीन अधिकारी द्वारा अमसारित न किया गया होता ।

: 3: कि श्री बाजपेई व श्री हसनैन के द्वारा वारदात के बाबत पुलिस में लिखाई गयी स्फ०आई०आर०(प्रतिलिपियां संलग्न) में कहीं पर भी मेरा नाम नहीं लिखाया गया है, और न ही मुझ पर कोई सदेह ही व्यक्त किया गया है ।

: 4: कि श्री बाजपेई ने अपने स्फ०आई०आर० में लिखाया है कि वह मुलजिम को सामने आने पर पहचान सकते हैं । इससे यह स्पष्ट है कि मैं घटना से किसी प्रकार भी संबंधित नहीं था, क्योंकि ये दोनों ही अधिकारी मुझे भलीभांति परिचित हैं । यदि इन्हें मुझ पर सदेह भी होता तो मेरा नाम भी स्फ०आई०आर० में लिखाया गया होता ।

: 5: कि उपरोक्त दोनों अधिकारियों से लगभग 2 वर्षों से मेरा संपर्क है और इस अवधि में आज तक मेरी इनसे कभी कोई न तो किसी प्रकार की कहा-सुनी हुई और न ही मैंने इनके साथ किसी प्रकार का कभी कोई दुर्व्यवहार किया है । इन अधिकारियों द्वारा भी आज तक मेरे खिलाफ कभी किसी प्रकार की कोई लिखित या मौखिक शिकायत नहीं की गयी है ।

इसलिए इस प्रकार का कोई प्रश्न नहीं उठता कि ~~प्रश्न~~ उक्त अधिकारियों के विरुद्ध किसी प्रकार की मैं कोई योजना बनाऊंगा । जिससे कि इनकी जान-माल को कोई नुकसान हो । मैंने सदैव ही अपने उच्चाधिकारियों का सम्मान किया है ।

- (ii) the applicant was apparently present at Lucknow yet he had created such an atmosphere of terror that it was not reasonably practicable to ~~ex~~ conduct an enquiry or to adduce any evidence against him.

4). That apart from the above, it is pointed out that the charge of assault causing grievous injuries to Shri S.C., Bajpai, Deputy Chief Controller, Lucknow does not indicate the time and exact place of occurrence when and where he was alleged assaulted. The more so, no evidence, if any coming on the records and relied upon, has been shown in the Annexure or Order in support of the alleged connivance with anti-social elements in getting Shri Bajpai physically assaulted. These materials and informations ought to have been shown in the Order/Annexure to enable the applicant to rebut the charges and allegations in the appeal.

5). That it has also not been made clear in the said list of charges (Annexure) annexed with the order of dismissal from service as to how the applicant was the Master Mind and also no evidence to this effect has been shown therein which gave you personal satisfaction to exercise the powers conferred by Rule 14 (ii) of the Railway ~~Service~~ Servants Discipline & Appeal Rules, 1968. This under the law and rules, was a must to be shown in the said order/annexure for the said purpose.

6). That the order of dismissal from service is also not accompanied by the copies of the reports of S/Shri Mohd. Hameed and S.C. Bajpai, if any submitted to the Railway Administration, F.I.R.s. if any lodged by them at the police Station in respect of the alleged assault, Medical Reports, if any got by them in respect of the alleged assault and grievous injuries and the statement of witnesses, if any recorded by the Railway Administration which led your honour to exercise the powers conferred by Rule 14 (ii) of the R.S. (D & A) Rules, 1968, which ought to have been supplied to the applicant to prefer an appeal and to rebut the charges and allegations.

7). That for reasons stated in the aforesaid paras, the applicant is handicapped to prefer an effective appeal against the order of his dismissal from service. It is submitted that if the Opportunities as pointed out in the aforesaid paras are not made available to him, he will suffer serious prejudice, which will amount to denial of opportunity of defence even at the stage of appeal and the entire actions shall be in utter disregard of the departmental rules and violation of the principles laid down by Hon'ble Supreme Court and High Courts of India in various cases adjudicated by them.

36/14

8). That the applicant respectfully submits that the entire charges/ allegations are false, fabricated and he has falsely been implicated and got punished under a deep rooted conspiracy and plan hatched by the interested persons and the order of his dismissal from service has been passed on no evidence valid in law, but on presumption, supposition and false and un-trustworthy informations which act is arbitrary in nature.

The facts mentioned above (Para 8) can be established to a greater extent in the appeal provided the applicant is afforded the opportunity as hereunder prayed :-

In view of the facts and circumstances stated above, it is respectfully prayed that your honour may be pleased to consider this representation with a judicious view in that the contents of paras 3 to 6 may be taken into consideration and the applicant be furnished with the materials/informations claimed therein, so that he may be able to prefer an effective appeal rebutting the charges and allegations in in the appeal to the entire satisfaction of the appellate authority.

It is hoped that the materials/informations as claimed by the applicant would be supplied to him within a reasonable time keeping in view the limitation for filing the appeal.

Thanking you,

Yours Faithfully,

Zafer Ali

Dt. 17th July, 1981.

(~~Signature~~)

~~Signature~~,
~~Signature~~,
~~Signature~~,
~~Signature~~

(Ex. Trains Clerk)

436/13

The Addl. Divl. Railway Manager (OP),
Northern Railway,
Hazratganj, Lucknow.

Through: The proper channel.

Appeal under rule 18 of the Railway Servants
Discipline & Appeal Rules, 1968 against order
No.DOS/Control/Conf/1/81 dated 29.6.1981
passed by the Sr.DOS/LKO dismissing the
appellant from service with effect from 29.6.1981.

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1) That for the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DOS/Lucknow, in purported exercise of the powers conferred by rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.1981 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant.

REASONS FOR NOT HOLDING THE ENQUIRY.

"The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.....".

2. That since the dismissing authority, while passing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with the enquiry, which was necessary to be held under rule 9 and 10 of the D&A Rules, 1968, it is expedient in the interest of justice that your honour may make a legal and judicious assessment of the order passed, in the light of the following issues involved in the case:-

contd.....2.

26/12

- a) Whether the reasons given by the learned Sr. DOS/LKO - the dismissing authority for not holding the enquiry and adducing evidence as required under rule 9 and 10 of the D & A Rules, 1968 are based on objective reasons as required under rule 14 (ii) of the said Rules or the powers have been exercised in an arbitrary manner.
- b) Whether the findings of the dismissing authority are merited and warranted by the evidence on the records or based on surmises and conjectures.
- c) Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUES:

Issue(a).

/himself

3. That as regards issue (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied that it was not reasonably practicable to hold enquiry as required under rule 9 and 10 of the D&A Rules, 1968, in the case giving an opportunity to the appellant to rebut the charges. Now your honour, in the ends of justice, has to consider whether the reasons given by the said authority are based on objective satisfaction, which is the necessary and legal requirement to exercise the power conferred by rule 14(ii) of the D&A Rules, 1968.

(ii) From the records and the documents supplied to the appellant alongwith the order of dismissal, your honour will observe that no evidence oral or documentary is available to justify the contention of the dismissing authority in respect of the appellant's mood creating an apprehension of grave disorders affecting the vital railway system as alleged against him. It may be mentioned that on receipt of the order of dismissal, the appellant, vide representation dated 17.7.1981, had made a specific request to the dismissing authority to apprise him the evidence oral or documentary if any available with him in support of his contention made in respect of the appellant's mood which satisfied him not to conduct the enquiry as required by the D&A departmental rules. Despite many efforts and approaches, the said authority could not furnish the said necessary requirements to the appellant, which fact goes to establish that no material other than the charge and allegation was available with the dismissing authority for his personal satisfaction to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968.

contd....3.

(iii) The dismissing authority further failed to furnish the evidence oral or documentary, if any available with him, in support of its contention that the appellant created terror and due to which it was not reasonably practicable to hold the enquiry and to give him an opportunity to rebut the charges. Despite specific request made vide application dated 17.7.1981, the said authority maintained complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968.

(iv) The absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Shri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controller/LKO and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations, and then to pass order under rule 14(ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controllers/LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising ~~the~~ its powers under rule 14 (ii) of the D&A Rules, 1968, dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

(v) No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under rule 14(ii) of the D&A Rules, 1968 are in sufficient compliance of the said rule.

From the discussions made above, it is established as under:-

- (a) The dismissing order passed under rule 14(ii) is not based on the objective satisfaction of the dismissing authority.

contd...4.

- (b) The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controllers and not any other material or concrete evidence which was necessary to be taken into account to exercise powers under rule 14 (ii) of the D&A Rules, 1968.
- (c) The dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d) The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e) The dismissing authority has misused the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f) The findings of the dismissing authority is not supported by any evidence available on the record and that too is contrary to the facts mentioned in the F.I.Rs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controller/LKO at the Police Station, Hazratganj, Lucknow.

47. That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy. Controller/LKO, which are false and untrustworthy specially in view of the F.I.Rs which they had lodged at the Police Station, Hazratganj, LKO soon after the alleged occurrence. A few examples are given below for your judicious consideration:-

- (i) It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd. Hasnain, Deputy Controller from the back and asked for the repayment of money on the day of alleged occurrence. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.
- (ii) Contrary to above, Shri Mohd. Hasnain, Dy. Chief Controller/LKO, in his F.I.R. lodged at the Police Station, Hazratganj, LKO has not at all mentioned the name of the appellant. A true copy of the report (FIR) lodged by the said Shri Hasnain is filed herewith as Annexure II to this appeal for your kind perusal.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact, Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the last lines of his report (FIR) had made a request to the S.O., Police Station Hazratganj, Lucknow to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R. at the Police Station is itself indicative of his intention to get the offenders punished. Despite this inclination, he does not mention the name of the appellant in his report/FIR. Thus it is proved beyond doubt that he himself did not see the appellant either on the spot or any where else having the common intention of assaulting him. Had it been a fact, Shri Hasnain would have surely given the name of the appellant in his report/FIR to the police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii) Shri Hasnain, in his report/FIR lodged at the police station Hazratganj, Lucknow, has clearly mentioned that during the course of 'Mar Peet' his leather bag containing his pen, goggle, office key and some official records fallen down and one of the miscreants picket it up and fled away.

(iv) Nothing of the sort as mentioned above has been shown in the Charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given if it was based on fact. Similarly nothing is available in the record to show as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hasnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

- (b) Because there being no sufficient compliance or rule 14 (ii) of the D&A Rules, 1968, the order of dismissal is without jurisdiction.
- (c) Because the satisfaction required under rule 14(ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.
- (d) Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.
- (e) Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.

Authority: AIR 1964 SC 364, AIR 1965 SC 247 and AIR 1958 SC 300.

- (f) Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.

Authority:- 1969 Labour & Industrial Cases 896.

- (g) Because the dismissing authority, despite application dated 17.7.1981 moved by the appellant, did not supply the necessary documents and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority: Railway Board's letter No.E(D&A) 61 RG-47 dated 29.1.1963.

- (h) Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

- (i) Because the order of dismissal from service having been passed by the Sr.DOS/LKO by using his personal knowledge which the said S/Shri Mohd. Hasnain and S.C.Bajpai, Dy.Chief Controllers had not mentioned in their reports/FIRs lodged at the Police Station, Hazratganj, the action is illegal and inoperative in law.

Authority:- AIR 1958 SC 86.

- (j) Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority:- AIR 1958 SC 300 and AIR 1963 SC 779.

- (k) Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRs of the said S/Shri Mohd. Hashain and S.C.Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority:- 1969 Labour & Industrial cases 773.

- (l) The order of dismissal having been passed on a mere conjunctures and suspicion and a mere belief the action is illegal and unconstitutional.

Authority:- AIR 1957 SC 637.

- (m) Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Hashain and S.C.Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed with out of a great favouritism to the said persons.

- (n) Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. Hashain and S.C.Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

P R A Y E R

In the name of justice, humanity and man-kind, it is respectfully prayed that your honour may be pleased to consider this appeal with a judicious view and to meet the ends of justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect.

- (j) Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional?

Authority:-- AIR 1958 SC 300 and AIR 1963 SC 779.

- (k) Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRs of the said S/Shri Mohd. Hasnain and S.C.Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority:--1969 Labour & Industrial cases 773.

- (l) The order of dismissal having been passed on a mere conjunctures and suspicion and a mere belief the action is illegal and unconstitutional?

Authority:-- AIR 1957 SC 637.

- (m) Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Hasnain and S.C.Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed with out of a great favouritism to the said persons?

- (n) Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. Hasnain and S.C.Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

P R A Y E R

In the name of justice, humanity and man-kind, it is respectfully prayed that your honour may be pleased to consider this appeal with a judicious view and to meet the ends of justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect?

contd....10.

- (b) Because there being no sufficient compliance or rule 14 (ii) of the D&A Rules, 1968, the order of dismissal is without jurisdiction.
- (c) Because the satisfaction required under rule 14(ii) is to be based on objective reasons and not arbitrarily on surmises and conjunctures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.
- (d) Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.
- (e) Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.

Authority: AIR 1964 SC 364, AIR 1965 SC 247
and AIR 1958 SC 300.

- (f) Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.

Authority:- 1969 Labour & Industrial Cases 896.

- (g) Because the dismissing authority, despite application dated 17.7.1981 moved by the appellant, did not supply the necessary documents and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority: Railway Board's letter No.E(D&A) 61 RG-47 dated 29.1.1963.

- (h) Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

- (i) Because the order of dismissal from service having been passed by the Sr.DOS/LKO by using his personal knowledge which the said S/Shri Mohd. Hasnain and S.C.Bajpai, Dy.Chief Controllers had not mentioned in their reports/FIRs lodged at the Police Station, Hazratganj, the action is illegal and inoperative in law.

Authority:- AIR 1958 SC 86.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bajpai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its powers under rule 14 (ii) in an arbitrary manner and favoured the said Shri Bajpai in total disregard of the departmental rules and the principles of Natural Justice.

The whole discussions on issue (b), therefore, lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not merited and warranted by the evidence on the record and the appellant has been punished merely on doubt, suspicion, surmises and conjectures.

5. That as regards issue (c), it is respectfully submitted that in face of the major contradictions in the reports/FIRs lodged by the said S/Shri Mohd. Hashain and S.C. Bajpai, Deputy Chief Controllers at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of justice to hold an enquiry in terms of the departmental rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry in terms of Railway Board's letter No. E-55-RG6-20 dated 4.2.1956 should have been held in accordance with the Principles of Natural Justice and no material, in terms of Railway Board's letter No. E(D&A) 62 RG-6-8 dated 27.7.63 should have been relied upon without giving an opportunity to the appellant to rebut the same.

From the above, it is established that it was a fit case to be dealt with under the Principles of Natural Justice. The dismissing authority, by exercising ~~the powers~~ its powers under rule 14 (ii), has misused the powers in an arbitrary manner and it is a fit case of discrimination which violates the provisions of Article 14 of the Constitution of India.

6. That in view of the discussions made above under issues (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and inoperative in law and the departmental rules on the following amongst other grounds:-

G R O U N D S

- (a) Because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of Article 311(2)(b) of the Constitution of India.

- (v) Shri S.C. Bajpai, Deputy Chief Controller, Lucknow, in his report/FIR dated 24.6.1981 lodged at the Police Station Hazratganj, LKO, has stated that he can identify the miscreants if they are produced before him. This fact, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bajpai would have surely given the name of the appellant in his report/FIR.

It is a matter of surprise that the dismissing authority clearly mentioned the name of the appellant in his charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore, are false and after thought.

- (vi) Shri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his bag which was hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a black purse, and in that there were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the Police Station, Hazratganj, Lucknow is being filed herewith as Annexure III to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal does not contain the aforesaid Articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charge, therefore, shows that Shri Bajpai had no definite case. No other document shows the loss of office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14 (ii), dropped the enquiry and deprived of the appellant from making defence purposely and deliberately with a view to save Shri Bajpai from facing a confronted enquiry and thereby has favoured the said Shri Bajpai arbitrarily and in violation of the principles of Natural Justice.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact, Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the last lines of his report (FIR) had made a request to the S.O., Police Station Hazratganj, Lucknow to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R. at the Police Station is itself indicative of his intention to get the offenders punished. Despite this inclination, he does not mention the name of the appellant in his report/FIR. Thus it is proved beyond doubt that he himself did not see the appellant either on the spot or any where else having the common intention of assaulting him. Had it been a fact, Shri Hasnain would have surely given the name of the appellant in his report/FIR to the police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii) Shri Hasnain, in his report/FIR lodged at the police station Hazratganj, Lucknow, has clearly mentioned that during the course of 'Mar Peet' his leather bag containing his pen, goggle, office key and some official records fallen down and one of the miscreants picket it up and fled away.

(iv) Nothing of the sort as mentioned above has been shown in the Charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given if it was based on fact. Similarly nothing is available in the record to show as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hasnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

36/4

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It is further prayed that the appellant be given an opportunity of personal hearing to substantiate the facts stated in this appeal.

It is hoped that due justice would be given to the appellant at a very early date.

Thanking you,

Encl: 3

Dated 11-8-1981.

Yours faithfully,

Zafar Ali

Sd/-

~~(Sd/- Zafar Ali)~~

Ex. Trains Clerk.

Ex Sr Trains clerk

36/3

उत्तर रेलवे,

मण्डल, कार्यालय,

तत्काल दिनांक - ७-११-१९८१

फर संख्या: श्री अपील DOS/Control/Conf/1/81

श्री

J.P.Tripathi,

द्वारा Ex.Trains Clerk

विषय: दंड नोटिस संख्या

DOS/Control/Conf/1/81

दिनांक

निमित्त दंड

29/6/81

द्वारा

Sr.DOS/LKO

Dismissal from service
के विषय आपकी अपील।

सन्दर्भ: आपकी दिनांक ११-८-१९८१ की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम, १९६८ के नियम २२(२)

के अनुसार अपील अधिकारी

तत्काल नै

ADRM (O) N.Rly.

द्वारा उपरोक्त आदेश के विषय आपके द्वारा की

Sr.DOS/LKO

गई अपील पर ध्यानपूर्वक विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

(क) अनुशासन अधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार
प्रमाणित है। तथा

(ख) आरोपित दंड

I have gone through the appeal of Shri J.P.Tripathi, I find that in his 12 page long appeal he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and his appeal is rejected.

हो(नो०के०मल्लोत्रा)

प्रतिलिपि सूचनार्थ तथा आवश्यक कार्यवाही हेतु। सहायक कार्मिक अधिकारी। तत्काल

१- सम्बन्धित लिपिक कार्मिक विभाग

(35)

Before The Divisional Railway Manager, Northern Railway,
LUCKNOW.

Through the Proper Channel.

Petition for Review of order No. DOS/Control/Conf/1/81, dated 7.11.81, passed by A.D.R.M(OP)N.Rly., Lucknow, rejecting appeal of Mohd. Naseem, Ex. Trains Clerk, against the order of dismissal from service, dated 29.6.81, passed by Sr. Divil. Optg. Superintendent, N. Railway, Lucknow.

Respected Sir,

The petitioner begs to submit the following, in the fervent hope that your Honour would be pleased to give to it your

judicious consideration, and review the order sought to be reviewed, favourably personally:-

1. The fact of the case, briefly to put are that on 24.6.81, Sri Mohd. Hasnain, and Sri S.C. Bajpai, Dy. Chief Controllers, Lucknow, were beaten by some miscreants who could not be identified by either of them. They both, soon after the incidents lodged reports at Hazratganj, Police Station Lucknow, and neither of them mentioned any name at all. However they made complaints to department later on. Probably, only Sri Mohd. Hasnain, in his complaint, may have mentioned the name of the petitioner.

The result was that the dismissal order with a list of charges came suddenly as a bolt from the blue, without making an enquiry, without taking any evidence, and without giving the petitioner an opportunity for defence. The imaginary reason given in the order for dismissal is stated as under:-

"The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the Vital Railway System. The said employee is apparently present at Lucknow, yet he has created such atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him".

It is significant that there is no iota of evidence on record to ~~prove~~ prove that there was apprehension of grave disorder on account of his mood, or he had created an atmosphere of terror. The allegations against him in the order, are prima facie, imaginary, arbitrary and capricious, and are not better than suppositions without any basis or ground.

Contd.....Page 2.

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As regards charges (vide Annexure I to appeal), in the first para, incident of Sri Mohd. Hasnain is stated. In the second para, incident of Sri S.C. Bajpai is stated. And in neither of them, the name of petitioner is mentioned. In para 3, his name is introduced as under:-

" Sri Mohd. Naseem, trains clerk, Lucknow had ~~pointed~~ pointed out Sri Mohd. Hasnain to the three miscreants resulting in the Assault." There is no such allegation in this para regarding incident of Sri S.C. Bajpai. But the para ends in this way that the petitioner connived with anti-social elements in getting Sri Mohd. Hasnain and Sri Bajpai, physically assaulted. It is strange as to what the word, " Connived with" means as far as the incident of Sri Bajpai is concerned. Further, the charge of cconniving with, in the case of Sri Mohd. Hasnain is contradictory with the charge of pointing out Sri Mohd. Hasnain, which ^{is} the charge of aiding or ~~abetting~~ ^{abetting} the crime and not connivance. This contradictory statement occurs in the same para of charge, para 3.

2. Turning to the order rejecting the appeal, it is submitted that, prima facie, it appears that the learned appellate authority ignored the material issues raised in appeal and passed his order, under colour of the very dismissing order. Thus it is a judgement without reasons, and a judgement without reasons is no judgment in law. The only observation made in the order of the appellate authority, is that the appellant did not categorically deny the charges and has all along alleged legal flaws in the order. In the ^{first} ~~just~~ place, the observation is not justified as the appellant was not examined as an accused person. Secondly it is also not a fact that he did not deny the charges. The statements in appeal and the grounds of appeal, repeat time and again that charges are baseless, arbitrary, capricious, without evidence etc. Is it not a denial of the charges.?. Categorical denial may be expected when categorical questions are put to the accused regarding charges.

3. That a Review by your Honour of the order rejecting the appeal is necessary in the ends of justice, as material points raised in appeal have been conveniently looked over, and have not been decided. In fact the appeal has not been decided on merits at all.

The points not decided by the appellate Authority are stated as under:-

Contd....Page 3.

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(a) ^{The first} ~~This~~ point submitted as issue(a) in para 2 of the appeal is, "whether the reasons given by the dismissing authority for not holding an inquiry under rules 9 & 10 of D & A Rules of 1968, are based on objective reasons, as required under Rule 14(ii) of the said rules"? This issue was not considered and decided by appellate Authority. It is submitted that no paper or document was furnished to the petitioner with the dismissal order to inform him of the source of his private satisfaction regarding the alleged mood of the petitioner which justified the dismissing Authority to act under Rule 14(ii). The petitioner made a specific request also in his representation, dated 17.7.81, to him, but nothing more was ~~done~~ furnished beyond the charges and the dismissal order.

It is crystal clear that action under 14(ii) without enquiry and opportunity to petitioner, in the absence of any sort of evidence for objective satisfaction of the dismissing Authority, which is a condition precedent, is illegal, unjust and arbitrary. There is no finding on this issue of the appeal. The complaints of the two Dy. Controllers, subsequent to their F.I.R., at Hazrat Ganj Police Station, and contradictory to the latter, can not be evidence for objective satisfaction. There ought to be some definite oral or documentary evidence which is absent, in this case.

(b) The second issue submitted as (b) in para 2 of the Appeal is "Whether findings of the dismissing authority are based on evidence on record, or, are surmises and ^{Conjectures} ~~conjectives~~"? This issue was not decided by the Appellate Authority.

It is submitted that they are based on no evidence. The dismissing Authority seems to rely on the subsequent complaints. In this connection it will be seen that Police Report of Sri Mohd. Hasnain (vide annexure II to appeal), has been looked over. Sri Mohd Hasnain does not even name the petitioner, nothing to say of his pointing him out to the miscreants as is stated in the charge. Sri Mohd. Hasnain, in the F.I.R. requests the S.O. Police Station to take action against the miscreants only. The absence of the petitioner's name in his F.I.R., proves, beyond doubt, that the petitioner was neither present on the spot nor did he point him out to miscreants. Any allegation of Sri Mohd. Hasnain contrary to F.I.R. can not be reliable at all. The F.I.R. of Sri Mohd. Hasnain was not considered at all which was

35(6)7

sufficient for Appellate Authority to decide this issue in favour of the petitioner, and hold that findings of the dismissing authority are not based on evidence, and so, are surmises and conjectures. The F.I.R. also states that some goods and Office Key were picked up and taken away by one of the miscreants. No such thing is mentioned in the charge. It is also not stated as to how duplicate key was arranged for, as office key is being used.

Similar is the case of the F.I.R. lodged at the Police Station by Sri S.C. Bajpai (Annexure III to appeal). He also does not name the petitioner, but says that he can identify the miscreants if produced before him. This also proves that he did not see the petitioner as an associate of the miscreants. He also mentions that his cycle and goods including office key were taken away by one of the miscreants. No mention of this or office key is made in the charges, nor the manner as to how the office key again came into existence. The Appellate Authority has not applied his mind to decide this issue and has not considered the F.I.R.'s of both the Dy. Controllers, which exonerate the petitioner from the burden of the ~~imaginary~~ imaginary charge against the petitioner, and show the findings of the dismissing authority as based on no evidence, and so, only conjectures and surmises. It is further submitted that there is sufficient reason to infer that the dismissing authority wanted to save the two Dy. Controllers from facing an enquiry and therefore, stated imaginary and groundless reasons in the order, for not making an enquiry.

(c) The third point, issue (c), in para 2 of the appeal is "Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice"?

It is submitted that this issue was also neither considered nor decided by the Appellate Authority. It is clear that when the ~~XXXXXX~~ F.I.R.'s of both the complainants did not name the petitioner nor did they assign any part whatever to the petitioner regarding the offences, and when they contradicted materially the complaints made subsequently and ~~also~~ also the charges, the Appellate Authority ought to have decided and held that an enquiry under rules was necessary on principles of Natural Justice and the dismissing order was illegal and unjustified.

4. As the two F.I.R.'s dispense with the presence of the petitioner on the spot by not naming him, and do not allege any association of the

petitioner with the crimes, it was necessary for the Appellate Authority to enquire of the dismissing authority as to whether the petitioner was on duty at the time of occurrence or not. The fact is that the petitioner's duty was ~~was~~ in the day, on the date of occurrence, from 8 AM to 4 PM. He went back after duty at 4 P.M. to his place of residence, at 556/9, Sujjanpura, Alambagh, Lucknow. The occurrence took place at night at 22 Hrs. as alleged, on 24.6.81. The fact is that the petitioner on 24.6.81, remained sitting with Sri Manzoor Ahmad, the Govt. Contractor, in whose building he resides, from 8 P.M. to 11.30 P.M., in connection with repairing of his watch. In support of ~~of~~ this, he is enclosing his affidavit with this petition for which no opportunity was given to him either by the dismissing Authority or the Appellate Authority.

5. That the Appellate Authority, in connection with issue (b) of para 2 of the appeal did not consider the petitioner's character Roll which is flawless. He was appointed on 15.1.80, by the Sr. Divil ^{Personnel} ~~Personal~~ Officer, Lucknow, and till his dismissal, on 29.6.81, there has been no complaint against his conduct, and there is no adverse remark, at least none was ever communicated to him. He is a resident of Faizabad and came to Lucknow after his appointment on 15.1.80. During his short tenure of service at Lucknow, he could gain no influence of any kind. The charge that he created an atmosphere of terror disabling the dismissing authority to hold an enquiry is, on the face of it, hollow and baseless, both in view of his flawless course of conduct in service, and of the absence of an iota of evidence on record to support it. Besides, there could be no motive on the part of the ~~petitioner~~ petitioner to associate with such crimes, and none has been alleged in the charge. It is a sorry affair and misfortune of the petitioner that the dismissing authority without any kind of evidence on record, has painted his figure black to the greatest extent to which human imagination could stretch. This aspect of the case has been ignored by the Appellate Authority.

Wherefore it is ~~is~~ humbly prayed that your Honour with your breadth of vision, wide experience of life, and merciful disposition, would graciously review the order of the Appellate Authority and the appeal, and be pleased to set aside the orders of the Appellate Authority

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and the order of the dismissing authority, and re-instate the petitioner in his post, allowing all salaries and emoluments etc., admissible to him, in the ends of justice, fairness and good conscience.

For the act of justice and benevolence, the petitioner shall highly be greatful.

Enclosures:-

1. Copy of the Appellate Authority's order.
2. Affidavit.

Appellant -Petitioner

Mohd Naseem

(Mohd. Naseem)
Ex. Trains Clerk,
556/9, Sujapura, Alambagh,
LUCKNOW.

Dated.

19.11.1981.

35(3)

उत्तर रेलवे

महल कार्यालय

तत्काल दिनांक

7-11-1981.

पत्र संख्या: ई/अपील

DOE/Control/Conf/1/81.

श्री Mohd. Naseem,

Mr. Trainee Clerk

द्वारा

विषय: - रेल नोटिस संख्या DOE/Control/Conf/1/81 दिनांक 29-6-1981

विनिर्दिष्ट रेल Dismissal from service I/81

द्वारा Dr. DOE/IKO के विरुद्ध आपकी अपील

संख्या: - आपकी दिनांक 11-8-81 की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम 1968 के नियम

22(2) के अनुसार अपील अधिकारी ADRM(O)/N.Rly., तत्काल

Dr. DOE/IKO द्वारा

उपरोक्त आदेश के विरुद्ध आपके द्वारा की गई अपील पर, खानपूर्वक विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है -।

(क) अनुशासन प्रधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार प्रमाणित है। तथा

(ख) आरोपित रेल

"I have gone through the appeal of Shri Mohd. Naseem. I find that in his 12 page long appeal, he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and appeal is rejected."

(बी.के.महताब)

सहायक कार्मिक अधिकारी/तत्काल

प्रतिलिपि सूचना तथा आवश्यक कार्यवाही हेतु।

1. सम्बन्धित लिपिक कार्मिक विभाग

2.

==

विज/29.5

13/30
9/11/81

Noted
on file

35(2)



Before the Divisional Railway Manager (U.P.)
Northern Railway, Hazaratganj,
Lucknow.

Petition for review of appellate order
through Proper Channel.

AFFIDAVIT RELATING TO PETITION OF REVIEW

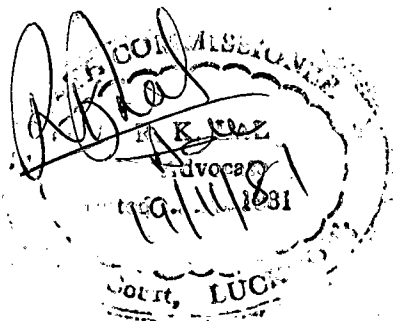
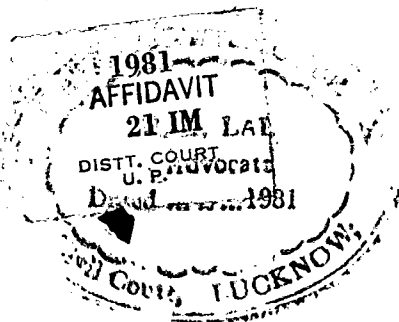
I, MOHD. NASEEM, aged ^{about} ~~about~~ 22 years,
son of Shamshuddin, Ex. Trains Clerk, residing
at 556/9, ^{Sh} ~~Se~~ujanpura, Alambagh, Lucknow, do hereby
solemnly affirm and state on oath as under:-

1- That the deponent is petitioner of the petition
for review and is conversant with the facts of the
case.

2- That the deponent has been residing at 556/9,
Sujanpura, Alambagh, Lucknow, in the building of
Shri Manzoor Ahmad, the Government Contractor.

3- That the deponent's duty on 24-6-1981 was from
8 A.M. to 4 P.M. after which he came away to
his place of residence.

4- That the deponent was not present on
the ^{spots} ~~spots~~ of alleged assaults on Shri Mohd. Hasnain
and Shri S.C. Bajpai, the Dy. Controllers, Lucknow
nor did he in any way, associate himself with
the alleged crimes or alleged miscreants who are
not known to him.



Mohd Naseem

अपील

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सेवा में,

मण्डलीय रेलवे प्रबन्धक,
नार्दन रेलवे, हजरतगंज,
लखनऊ।

विषय: दण्ड नोटिस संख्या डी०ओ०एस०।कन्दौला।का०।१।८१, दिनांक
२६-६-१९८१ के अन्तर्गत सेवाओं से मुक्त किया जाना।

आदरणीय महोदय,

निवेदन है कि प्राथी आपके विभाग में कार्यालय मण्डलीय रेलवे
प्रबन्धक, एन०आर०, हजरतगंज, लखनऊ में ट्रेन्सक्लर्क के पद पर कार्यरत था।
प्राथी की सेवायें बरिष्ठ मण्डल परिचालन अधीक्षक, एन०आर० के फ़र सं०
डी०ओ०एस०।कन्दौला।का०।१।८१, दिनांक २६-६-८१ के अन्तर्गत समाप्त कर
दी गयी है (प्रतिलिपि संलग्न)।।(A)

प्राथी अपनी सेवा समाप्ति के सम्बन्ध में निम्नलिखित नम्र निवेदन
करता है :-

:१: प्राथी ने दिनांक १७-७-८१ को एक प्रत्यावेदन (प्रतिलिपि संलग्न)।
द्वारा बरिष्ठ मण्डल परिचालन अधीक्षक(एन०आर०) महोदय को पत्र उक्त
आदेशों के सन्दर्भ में प्रेषित किया था। जिसके माध्यम से यह निवेदन किया
था कि प्राथी को जहां तक स्मरण है प्राथी द्वारा विभाग में कोई ऐसा
कार्य नहीं किया गया है, जिसके आधार पर प्राथी की सेवायें समाप्त करने
का दण्ड दिया जाये। और न ही कोई इस प्रकार का कार्य किया है
जिसके आधार पर यह समझा जाये कि प्राथी ने अपने अधिकारियों के साथ
दुर्व्यवहार करने की कोई योजना बनायी थी।

:२: प्राथी को उक्त दण्ड नोटिस के साथ आदेश व आरोपों की प्रति
प्राप्त होने पर यह ज्ञात हुआ कि दिनांक २४-६-८१ को श्री मोहम्मद हसनैन
व श्री सतीश चन्द्र बाजपेई, उप मुख्य नियंत्रकों पर जब वे अपने निवास स्थान
से कार्यालय की ओर आ रहे थे उस समय लगभग १० बजे रात में श्री हसनैन से
पर व लगभग ११-२० बजे रात में श्री बाजपेई से किन्हीं अज्ञात व्यक्तियों
ने मारपीट की।

(३) मुझे एक विभागीय कर्मचारी के नाते अत्यन्त ही सहानुभूति उक्त
अधिकारियों के साथ इस दुर्घटना से रही है और है। किन्तु यह
आक्षेप कि मैंने उक्त अधिकारियों को मारने - पीटने की कोई योजना
बनाई है, नितान्त असत्य है। क्योंकि जिस समय उक्त अधिकारियों के

This Case is under
Concurrence of
The Case is
5 of Des pl. cons. D. 3

18/11/81
18/11/81
18/11/81

82
18/11
18/11

(२)

के साथ मारपीट की घटना हुई उस समय मैं कार्यालय में सायं ४ बजे से रात्रि १२ बजे तक की ड्यूटी पर था, जिसकी तस्दीक सम्बन्धित अधिकारी श्री मेहता जी (श्री के०एन० मेहता, उप मुख्य नियंत्रक) व कार्यालय की उपस्थिति पंजिका से की जा सकती है । और यही नहीं इसी सन्दर्भ में यह भी निवेदन करना चाहता हूँ कि मेरे लगभग ५ वर्षों के सेवाकाल की अवधि में प्राथी के विरुद्ध किसी प्रकार की मारपीट करने आदि अथवा किसी प्रकार के दुर्व्यवहार की कोई शिकायत नहीं हुई है । मैंने सदैव ही अपने उच्चाधिकारियों का सम्मान किया व अपने कार्य को परिश्रम तथा कर्तव्यनिष्ठा से किया है ।

:४: दण्ड नोटिस प्राप्त होने पर मैंने एक प्रत्यावेदन^(१) दिनांक १७-७-८१ को अपने बरिष्ठ मण्डल परिचालन अधीक्षक को प्रेषित करते हुए यह निवेदन किया था कि प्राथी को अपील से सम्बन्धित आवश्यक कागजात उपलब्ध कराने की कृपा की जाये । ताकि एक प्रभावी अपील अतिरिक्त मण्डलीय रेलवे प्रबन्धक के समक्ष संबंधित कागजात के साथ जिसमें श्री बाजपेई व श्री हसनैन द्वारा लिखायी गयी एफ०आई०आर० प्रमुख है, को आवश्यक कार्यवाही व न्याय हेतु प्रेषित किया जा सके ।

मेरे द्वारा प्रेषित प्रत्यावेदन पर कोई भी प्रतिउत्तर स्मरणपत्र भेजने के बाद भी न मिलने के कारण अपनी अपील अतिरिक्त मण्डलीय रेलवे प्रबन्धक के समक्ष अनेकों कागजातों के अभाव में प्रस्तुत करनी पड़ी ।

:५: कि मेरे द्वारा ११-८-८१ को अतिरिक्त मण्डलीय रेलवे प्रबन्धक, परिचालन, एन०आर०, को प्रेषित की गयी अपील^(२) पर श्रीमान अतिरिक्त मण्डलीय रेलवे प्रबन्धक(परिचालन) ने अपनी टिप्पणी देकर मेरी अपील को अपने पत्र सं० अपील।डी०ओ०एस०।क०।१।८१, दिनांक ७-११-८१ (प्रतिलिपि संलग्न)^(३) के द्वारा अस्वीकृत कर दिया है ।

:६: कि श्रीमान अतिरिक्त मण्डलीय रेलवे प्रबन्धक (परिचालन) की टिप्पणी के सन्दर्भ में अत्यन्त विनम्रता के साथ निवेदन करना चाहता हूँ कि मेरा आशय इस बात का कदापि नहीं था कि जो दण्ड मुझको दिया गया है उसकी वैधता क्या है । वरन् मैं एक कर्मचारी की हैसियत से मात्र यह निवेदन करना चाहता था कि जिन परिस्थितियों में नियम १४(२) का प्रयोग किया गया है वे मुझ पर लागू नहीं होती हैं । और उसी के साथ यह भी निवेदन किया था कि मुझको सम्पूर्ण वस्तु स्थिति से अवगत कराने हेतु व्यक्तिगत साक्षात्कार का अवसर प्रदान कर न्याय करने की कृपा की

35(1)

5- That the alleged assaults are alleged to have taken place at night of 24-6-1981 at about 22 hours. The deponent was then at his place of residence, having been off duty since 4 P.M.,^u and sat from 8 P.M. to 11.30 P.M., in the office of Shri Manzoor Ahmad, the Government Contractor, in connection with repairing of his watch. Thereafter, the deponent went to bed.

Lucknow,

Dated. 19-11-1981

Mohd Naseem

Deponent.

Verification.

I, the deponent abovenamed do hereby verify that the contents of paragraphs 1 to 5 of the affidavit are true to my personal knowledge. Nothing material has been ^{in concept} cancelled, and no part of it is untrue. So help me God. Signed and verified this ^u 19th 2 day of November 1981 within the CIVIL COURTS' COMPOUND AT LUCKNOW.

Lucknow,

Dated. 19-11-1981

Mohd Naseem

Deponent.

I identify the deponent abovenamed who has signed on this affidavit before me.

J. B. Khan
Advocate.

19/11/81
19/11/81

15B.M

19/11/81
Mohd Naseem
I. B. Khan
Advocate

19/11/81
Oath Commission
Civil Court, Lucknow

जाये । परन्तु साक्षात्कार का अवसर न प्रदान कर मेरी अपील अवीकृत कर दी गयी ।

अतः श्रीमान जी के समक्ष प्रस्तुत प्रार्थना-पत्र के माध्यम से मैं निम्न तथ्य प्रस्तुत करते हुए निवेदन करना चाहता हूँ कि इन पर कृपापूर्णा विचार करते हुए दण्ड - आदेशों को निरस्त कर सेवा में लिए जाने की कृपा की जाये।

11। कि जिस समय श्री हसनैन व श्री बाजपेई के साथ मारपीट की तथाकथित दुर्घटना हुई उस समय मैं अपने कार्यालय (नियंत्रण कक्ष) में सायंकालीन शिफ्ट में १६ बजे से २४ बजे की ड्यूटी कर रहा था । जिसकी पुष्टि मेरे तत्कालीन अधिकारी श्री कै०एन०मेहता, उप मुख्य नियंत्रक(कोचिंग) व अन्य कार्यालय के सहयोगी कार्यकर्ताओं तथा उपस्थिति रजिस्टर से की जा सकती है ।

12। कि श्री बाजपेई व श्री हसनैन के द्वारा वारदात के बाबत पुलिस में लिखाई गई एफ०आई०आर०^ए (प्रतिलिपियां संलग्न) में कहीं पर भी मेरा नाम नहीं लिखाया गया है , और न ही मुफ्त पर कोई सन्देह ही व्यक्त किया गया है ।

13। कि श्री बाजपेई ने अपने एफ०आई०आर० में लिखाया है कि वह मुलजिम को सामने आने पर पहचान सकते हैं । इससे यह स्पष्ट है कि मैं घटना से किसी प्रकार भी सम्बन्धित नहीं था । क्योंकि यह दोनों ही अधिकारी मुफ्त मलीमांति परचित हैं । यदि इन्हें ^{मुफ्त} मुफ्त पर सन्देह भी होता तो मेरा नाम भी एफ०आई०आर० में लिखाया गया होता ।

14। कि उपरोक्त दोनों अधिकारियों से लगभग २ वर्षों से मेरा सम्पर्क है । और इस अवधि में आज तक मेरी इनसे कभी कोई न तो किसी प्रकार की कहासुनी हुई , और न ही मैंने इनके साथ किसी प्रकार का कभी कोई दुर्व्यवहार किया है । इन अधिकारियों द्वारा भी आज तक मेरे खिलाफ कभी किसी प्रकार की कोई लिखित या मौखिक शिकायत नहीं की गयी है।

इसलिए इस प्रकार का कोई प्रश्न नहीं उठता कि उक्त अधिकारियों के विरुद्ध किसी प्रकार की मैं कोई योजना बनाऊंगा । जिससे कि इनकी जान - माल को कोई नुकसान हो । मैंने सदैव ही अपने उच्चाधिकारियों का सम्मान किया है ।

15। इसके अतिरिक्त कार्यालय के बाहर भी प्रार्थी का व्यवहार किसी

34(20)

DO. / Control / Cont / 1 / PUNISHMENT NOTICE

Divisional Office,

No. _____

Place Bornalis, Uttar Pradesh

To,

June 27, 1961.

J.P. Tripathi

Dated: _____

Shri Pravin Kumar, under

the / N. No. of, Uttar Pradesh

Thro:

J.P. Tripathi

Pravin Kumar / Uttar Pradesh

WHEREAS Shri _____ Desig. _____

is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of general public, any further retention of Shri _____ Designation _____ in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants Discipline & Appeal Rules, 1968 the undersigned hereby dismisses the said Shri _____ Designation _____ from service with effect from _____.

Recd
10/1/61
J.P. Tripathi
27/6/61

R. Divl. Insp. Supdt.,
U. P. Railway, Uttar Pradesh

Enclosures:

Name _____
Designation _____

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to _____ provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.
2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

ORDER

Withd. I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow, who was appointed under the orders of Divisional Personnel Officer, a Senior Scale Officer, am fully satisfied that Shri J.P. Tripathi is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him. Therefore, under these circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause 2 of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause (2), Provide (b) of the said clause, I order dismissal of Shri ~~XXXXXX~~ J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow from service with effect from 29th June, 1981 afternoon.

B. Singh
(Bali Singh)^{2/7/81}
Senior Divisional Optd. Supt.,
Northern Railway,
Lucknow.

34(18)

ADMR. JRP

**ANNEXURE INDICATING CHARGES AGAINST SHRI J.P. TRIPATHI,
TRAINING CLERK/NORTHERN RAILWAY/LUCKNOW.**

On 24.6.81, while Shri Mohd. Hameed, Deputy Chief Controller/H.Rly/Lucknow was coming from his residence for performing his duty in 9.00 hrs. to 6.00 hrs. shift, at about 22.00 hrs. at the rear gate of LHM office, he was given a call from back and was asked to re-pay the money. Shri Hameed turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller/H.Rly/Lucknow was coming to perform his duty in 9.00 hrs. to 6.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri J.P. Tripathi, Training Clerk/Lucknow had earlier planned to beat up Shri Hameed and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hameed and Shri Bajpai physically assaulted.

Shri J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of Railway servant thereby violated Rule 3(I)(i) & (iii) of Railway Services Conduct Rules, 1966.

[Signature]
(BALDWIN)
Senior Divisional Operating Supt.,
Northern Railway, Lucknow.

34(17)

The Senior Divisional Operating Supdt.,
Northern Railway,
LUCKNOW.

(B)

Sub: Representation for reasonable Opportunity for
preferring an appeal against your Order No.DOS/
Control/Conf/I/81 dated 29.6.1981 dismissing the
applicant from service w.e.f. 29.6.1981 A.N.

Respected Sir,

Most respectfully, the applicant acknowledges to have received your order cited above dismissing him from service with effect from 29.6.1981 A.N. in purported exercise of the powers conferred by Rule 14(ii) of the Railway Servants Discipline & Appeal Rules, 1968 read with Article 311 (i), Clause (2), Proviso (b) of the Constitution of India. Alongwith he said order, the applicant has also been given an annexure indicating the so called charges on the basis of which the said order of his dismissal from service has been passed. This annexure has been supplied with the said order to enable the applicant to know what specific charges against him are and on what basis the authority exercised its powers under Rule 14 (ii) of the R.S. (D & A) Rules, 1981, so that an effective appeal rebutting the entire charges and allegations could not be filed for justice by him.

2). That in accordance with the instructions contained in the said order of dismissal, the applicant has a right to prefer an appeal to the Additional Divl. Railway Manager (OP)/N. Railway, Lucknow under rule 18 of the Railway Servants Discipline & Appeal Rules, 1968. Since this is an appealable order, the applicant has a right to claim for the Opportunities, which are necessary and expedient for preferring an appeal.

3). That under law and rules, the order giving rise to applicant's dismissal from service ought to have been issued with duly and properly constituted charge definite and distinct in nature alongwith all evidence oral and documentary that have been relied upon to arrive at a final decision that :-

(i) the applicant was in such a mood that if notice was given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.

(ii) the applicant was apparently present at Lucknow yet he had created such an atmosphere of terror that it was not reasonably practicable to ~~an~~ conduct an enquiry or to adduce any evidence against him.

4). That apart from the above, it is pointed out that the charge of assault causing grievous injuries to Shri S.C., Bajpai, Deputy Chief Controller, Lucknow does not indicate the time and exact place of occurrence when and where he was alleged assaulted. The more so, no evidence, if any coming on the records and relied upon, has been shown in the Annexure or Order in support of the alleged connivance with anti-social elements in getting Shri Bajpai physically assaulted. These materials and informations ought to have been shown in the Order/Annexure to enable the applicant to rebut the charges and allegations in the appeal.

5). That it has also not been made clear in the said list of charges (Annexure) annexed with the order of dismissal from service as to how the applicant was the Master Mind and also no evidence to this effect has been shown therein which gave you personal satisfaction to -exercise the powers conferred by Rule 14 (ii) of the Railway ~~Servants~~ Discipline & Appeal Rules, 1968. This under the law and rules, was a must to be shown in the said order/annexure for the said purpose.

6). That the order of dismissal from service is also not accompanied by the copies of the reports of S/Shri Mohd. Husnain and S.C. Bajpai, if any submitted to the Railway Administration, F.I. Rs. if any lodged by them at the police Station in respect of the alleged assault, Medical Reports, if any got by them in respect of the alleged assault and grievous injuries and the statement of witnesses, if any recorded by the Railway Administration which led your honour to exercise the powers conferred by Rule 14 (ii) of the R.S. (D & A) Rules, 1968, which ought to have been supplied to the applicant to prefer an appeal and to rebut the charges and allegations.

7). That for reasons stated in the aforesaid paras, the applicant is handicapped to prefer an effective appeal against the order of his dismissal from service. It is submitted that if the Opportunities as pointed out in the aforesaid paras are not made available to him, he will suffer serious prejudice, which will amount to denial of opportunity of defence even at the stage of appeal and the entire actions shall be in utter disregard of the departmental rules and violation of the principles laid down by Hon'ble Supreme Court and High Courts of India in various cases adjudicated by them.

8). That the applicant respectfully submits that the entire charges/ allegations are false, fabricated and he has falsely been implicated and got punished under a deep rooted conspiracy and plan hatched by the interested persons and the order of his dismissal from service has been passed on no evidence valid in law, but on presumption, supposition and false and un-trustworthy informations which act is arbitrary in nature.

The facts mentioned above (Para 8) can be established to a greater extent in the appeal provided the applicant is afforded the opportunity as hereunder prayed :-

In view of the facts and circumstances stated above, it is respectfully prayed that your honour may be pleased to consider this representation with a judicious view in that the contents of paras 3 to 6 may be taken into consideration and the applicant be furnished with the materials/informations claimed therein, so that he may be able to prefer an effective appeal rebutting the charges and allegations in the appeal to the entire satisfaction of the appellate authority.

It is hoped that the materials/informations as claimed by the applicant would be supplied to him within a reasonable time keeping in view the limitation for filing the appeal.

Thanking you,

Yours Faithfully,

Dt. 17th July, 1981.

(JAGDAMBA PRASAD TRIPATHI)

House No. 253/110,
Saryu Niwas ,
Nandan Mahal Road,
Lucknow.

(Ex. Trains Clerk)

The Addl Divl Railway Manager (or)
Northern Railway
Hazratganj, Lucknow

Through: The Proper channel (C)

Appeal under Rule 18 of the Railway Servants
Discipline and Appeal Rules, 1968 against order No.
DOS/contract/conf/18/81 dated 29/6/1981 passed by the
Sr DOS/Lko dismissing the appellant from service
with effect from 29-6-81

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your Judicious consideration and Justice into the case

- ① That for the charges, a copy of which is enclosed herewith as Annexure 1 to this appeal, the learned Sr DOS/Lko in purported exercise of the powers conferred by Rule 14(1) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Train's clerk with effect from 29.6.81 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant.

Reasons for Not holding The enquiry

"The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital Railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him...."

- (2) That Since the dismissing authority, while passing the order under appeal, has not applied its Judicious mind to the facts and circumstances of the case available on the records and arbitrarily

dispensed with the enquiry, which was necessary to be held under rule 9 and 10 of the D & A Rules, 1968, it is expedient in the interest of Justice that your Honour may make a legal and Judicious assessment of the order passed, in the light of the following issues involved in the case :-

- (a) whether the reasons given by the learned SD/J to the dismissing authority for not holding the enquiry and adducing evidences as required under rule 9 & 10 of the D & A Rules 1968 are based on objective reasons as required under rule 14(1) of the said rules or the powers have been exercised in an arbitrary manner.
- (b) whether the findings of the dismissing authority are ~~based~~ merited and warranted by the evidences on the records or based on surmises and conjectures.
- (c) whether it was necessary and expedient in the ends of Justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUES

ISSUE (a)

3). That as regards issue (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied himself that it was not reasonably practicable to hold enquiry as required under rule 9 & 10 of the D & A rules 1968 in the case giving an opportunity to the appellant to rebut the charges. Now your Honour, in the ends of Justice, has to consider whether the reasons given by the said authority are based on objective satisfaction, which is the necessary and legal requirement to exercise the power conferred by rule 14(1) of the D & A Rules, 1968.

(ii) from the records and the documents supplied to the appellant alongwith the order of dismissal, your Honour will observe that no evidence oral or documentary is available to justify the contention of the dismissing authority in respect of the appellant's mood creating an apprehension

and then to pass order under Rule 14(11) of the D & A Rules, 1968. In the present case, your honour will see that the complaints of Shri M. Hashain and S.C. Bhatnagar Dy controllers/Lko, which are self contradictory in ~~fact~~ face of the F.I.Rs which they have lodged at the Police Station/Hazratganj/Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidences in support of their contentions, the dismissing authority, by exercising its powers under rule 14(11) of the D & A Rules 1968, dispensed with the enquiry which was reasonably practicable to be held under Rule 9 and 10 of the said rules.

- (V) No reasonable and Judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under rule 14(11) of the D & A Rules, 1968 are in sufficient compliance of the said rules.

From the discussions made above, it is established as under-

- (A) The dismissal order passed under Rule 14(11) is not based on the objective satisfaction of the dismissing authority.
- (B) The order of dismissal has been passed only after considering the allegations made by Shri. Mohd. Hashain and S.C. Bhatnagar Dy controllers and not any other material or concrete evidence which was necessary to be taken into account to exercise powers under rule 14(11) of the D & A Rules, 1968.
- (C) The Dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital Railway system.
- (D) The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (E) The dismissing authority has misused the powers in holding that the enquiry was not reasonably practicable to be held in the case.

(f) The findings of the dismissing authority is not supported by any evidence available on the record in the F.I.R.s lodged by Shri Mohd Hashain and S.C. Baipai at the Police station Hazratganj/Lko.

(4) That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said Shri Mohd Hashain and Shri S.C. Baipai Dy controllers/Lko which are false and untrustworthy specially in view of the F.I.R.s which they had lodged at the P.S. Hazratganj/Lko soon after the alleged occurrence. A few examples are given below for your Judicious consideration.

(i) It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd Hashain Deputy Controller from the back and asked for the repayment of money on the day of the alleged occurrence. He was then mercilessly beaten by three persons with Hockey sticks as a result he got grievous injuries on his person.

(ii) Contrary to above Shri Mohd Hashain Dy chief controller/Lko in his F.I.R.s lodged at the Police station, Hazratganj/Lko has not at all mentioned the name of the appellant. A True copy of the report (F.I.R.) lodged by the said Shri Hashain is filed herewith as annexure II to this appeal for your kind perusal.

From the above your Honour will observe that the charges which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact, Shri Hashain would have surely given the name of the appellant in his F.I.R. lodged at the Police station, Hazratganj, Lucknow. Shri Hashain in the last lines of his report (F.I.R.) had made a request to the S.O. Police station, Hazratganj, Lko to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R. at the Police station is itself indicative of

his intention to get the offenders punished. Despite this inclination, he does not mention the name of the miscreants in his report/F.I.R. Thus it is proved beyond doubt that he himself did not see the appellant either on the spot or anywhere else having the common intention of assaulting him. Had it been a fact, Shri Hashain would have surely given the name of the appellant in his report/F.I.R. to the Police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

- (ii) Shri Hashain, in his report/F.I.R. lodged at the Police Station, Hazratganj/Lko, has clearly mentioned that during the course of the 'Mar Peet' his leather bag containing his pen, goggle, office key and some official records fallen down and one of the miscreants picked it up and fled away.
- (iv) Nothing of the sort as mentioned above has been shown in the charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal; which ought to have been given if it was based a fact. Similarly nothing is available in the record to show as to how the duplicate key was arranged. The appellant too reasons to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hashain are false and after thought and he himself is liable to be taken up under the law and the departmental Rules for giving wrong facts to railway authority.

- (v) Shri S. C. Pruthi, Deputy Chief Controller, Lucknow, in his report/F.I.R. dated 24.6.81 lodged at the Police Station/Hazratganj/Lko has stated that the

can identify the miscreants if they are produced before him. This fact, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bastpai would have surely given the name of the appellant in his report/F.I.R.

It is a matter of surprise that the dismissing authority clearly mentioned the name of the appellant in the charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore, are false and after thought.

(vi) Shri Bastpai has further mentioned in his report/F.I.R. that his cycle was taken away by one of the miscreants and along with the cycle his bag which was hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a blackpurse and in that there were two Rupees and some paise, one key, one coloured duster, one office key, Sugar, tea and milk bottle. A copy of the report/F.I.R. lodged by Shri Bastpai at the Police Station/Hazrat - jani/Lko is being filed herewith as annexure (iii) to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal does not contain the aforesaid articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charges, therefore, shows that Shri Bastpai had no definite case. No other document shows the loss of office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14(1), dropped the enquiry and deprived

of the appellant from making defence purposely and deliberately with a view to save Shri Bafai from facing a conjointed enquiry and thereby has favoured the said Shri Bafai arbitrarily and in violation of the principles of Natural Justice.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bafai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its power under rule 14 (1) in an arbitrary manner and favoured the said Shri Bafai in total disregard of the departmental Rules and the principles of Natural Justice.

The whole discussion on issue (b), therefore, lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not ~~not~~ merited and warranted by the evidence on the record and the appellant has been punished merely on doubt, suspicion, surmises and conjectures.

(5) That as regards issue (c), it is respectfully submitted that in face of the major contradictions in the reports/F.I.R.s lodged by the said Shri Motilal Hashim and S. C. Bafai, Deputy Chief Constable at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of Justice to hold an enquiry in terms of the departmental Rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry in terms of Railway Board's letter no E-55-RC-6-20 dated 4-2-1956 should have been held in accordance with the principles of Natural Justice and no material, in terms of Railway Board letter no E(D & A) 62 RC-6-B dated 27-2-63 should have been relied upon without giving an opportunity to the appellant to rebut the same.

Authority - AIR 1958 SC 300

From the above it is established that it was a fit case to be dealt with under the Principle of Natural Justice. The dismissing authority, by exercising its power under rule 14(II), has misused the powers in an arbitrary manner and it is a fit case of discrimination which violates the provisions of Article 14 of the Constitution of India.

(6) That in view of the discussion made above under issue (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and impermissible in law and the departmental rules on the following amongst other grounds:-

Grounds

- (a) Because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of Article 311(a)(b) of the Constitution of India.
- (b) Because there being no sufficient compliance of rule 14(II) of the DTA Rules, 1963, the order of dismissal is without Jurisdiction.
- (c) Because the Satisfaction required under rule 14(II) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unconstitutional and unconstitutional.
- (d) Because there being no opportunity having been given to the Appellant, the order of dismissal is against the Principles of natural Justice.
- (e) Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.

- (D) Because the dismissing authority has punished the applicant on a mere suspicion and the mere suspicion only has been taken as proof which is illegal and as such the order is liable to be quashed.

Authority 1969 Labour & Industrial Cases 876

- (E) Because the dismissing authority, despite application dated 18.7.81 moved by the Applicant, did not supply the necessary documents and materials to enable the applicant to rebut the charges effectively in a trial, and as such the action is arbitrary and illegal.

Authority Railway Board's Letter No. E (DPA)
 61 R.C.-47 dated 29.1.1963

- (F) Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority AIR 1964 SC 364 and AIR 1965 SC 247

- (I) Because the order of dismissal from service having been passed by the S/DOS/LKO by using his personal knowledge which the said S/Store Mohd Hashim and S.C. Bhatia, by chief controllers have not mentioned in their reports/FIRs lodged at the Police station, Hazratganj, the action is illegal and violative in law.

Authority AIR 1958 SC 86

- (J) Because the order of dismissal from service having been passed in violation of the principles of Natural Justice, the action is illegal and unconstitutional.

Authority AIR 1968 SC 300 and AIR 1963 SC 777

- (K) Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRs of the said Shri Mohd Hashim and S.C. Bhatia which do not contain the name of the appellant, the action is illegal and unconstitutional. Authority 1969 Labour Industrial Case, 173
- (L) The order of dismissal having been passed on mere conjectures and suspicion and a mere belief the action is illegal and unconstitutional.
- (M) Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt Shri Mohd Hashim and S.C. Bhatia from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been ~~dispensed~~ without of a great favouritism to the said persons.
- (N) Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said Shri M. Hashim and S.C. Bhatia have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of Justice in the circumstances of the case is motivated and deliberate.

Prayer

In the name of Justice, humanity and mankind, it is respectfully prayed that your Honour may be pleased to consider this appeal with a Judicious view and to meet the ends of Justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect. It is further prayed that the appellant be given an opportunity of personal hearing to substantiate the facts stated in this appeal. It is hoped that the Justice would be given to the appellant at a very early date.

Thanking you

yours faithfully
J. P. Bhatia

Dated 11-8-1981

34(3)

उत्तर रेल्वे,

मण्डल, कार्यालय,

लखनऊ दिनांक - ७-११-१९८१

पत्र संख्या: ई। अपील DOS/Control/Conf/1/81

श्री

J.P.Tripathi,

Ex.Trains Clerk

द्वारा

विषय: दंड नोटिस संख्या DOS/Control/Conf/1/81

29/6/81 दिनांक

निमित्त दंड Dismissal from service

द्वारा Sr.DOS/LKO

के विरुद्ध आपकी अपील।

सन्दर्भ: आपकी दिनांक ११-८-१९८१ की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम, १९६८ के नियम २२(२)

के अनुसार अपील अधिकारी ADRM (O) N.Rly. लखनऊ ने

Sr.DOS/LKO

द्वारा उपरोक्त आदेश के विरुद्ध आपके द्वारा की

गई अपील पर ध्यानपूर्वक विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

(क) अनुशासन प्रधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार प्रमाणित है। तथा

(ख) आरोपित दंड

I have gone through the appeal of Shri J.P.Tripathi, I find that in his 12 page long appeal he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and his appeal is rejected.

हो (बी०के०मल्होत्रा)

सहायक कार्मिक अधिकारी। लखनऊ

प्रतिलिपि सूचनार्थ तथा आवश्यक कार्यवाही हेतु।

१- सम्बन्धित लिपिक कार्मिक विभाग

आये । और मुझे स्कूटर पर बिठा कर लालबाग की तरफ गए । पर
उनका कोई पता नहीं चला । सामने आने पर पहचान सकता हूँ । लिखित
रिपोर्ट दाखिल करता हूँ । उचित कार्यवाही करने की कृपा करें ।

घर का पता-

सतीश चन्द्र बाजपेई,
ईई।१५, क्षितिवापुर खास, लखनऊ,
२४-ई-८२

नोट: मैं यह प्रमाणित करता हूँ कि
नकल तहरीर वादी चिक लगाकर
अदालत: अंकित किया गया ।

प्रार्थी-

सतीश चन्द्र बाजपेई,
डिप्टी चीफ कन्ट्रोलर
डी०आर०एम०आफिस,
उ०१०, लखनऊ ।

(सत्य प्रतिलिपि)

34(2)

E

नक्स तहरीर हिन्दी वादी
oooooooooooooooooooooooooooo

पीएनओ ७५६३७७

३७६।३२३ आई पी सी,

सेवा में,

थानाध्यक्ष महोदय, कोतवाली, हजरतगंज, लखनऊ ।

निवेदन है कि मैं लगभग ११-२० बजे रात में अपने घर से अपने आफिर जा रहा था । जब मैं विधान सभा के सामने से पास हो रहा था पीछे से तीन व्यक्ति जो साइकिल पर सवार थे , सामने आकर मेरी साइकिल से अपनी साइकिल लड़ानी चाही, लेकिन साइकिल लड़ी नहीं । फौरन वे सामने आकर हाकियां लेकर मुझे मारने लगे । मेरे दोनों हाथों में चोटे आई और साइकिल मेरे हाथों से छूट गई , और मैं बचाव के लिए शोर मचाने लगा । इसी बीच एक लड़का मेरी साइकिल लेकर भाग गया । साइकिल के हैंडिल में मेरा एक फोला टंगा था , उसमें एक काला पर्स था जिसमें दो रुपये और कुछ पैसे थे , एक जीभी थी, एक रंगीन फाड़न , एक दफ़्तर की चाभी , चीनी, चाय, तथा दूध की शीशी थी । वह फोला भी साथ में चला गया । मेरे शोर मचाने पर कुछ लोगों ने भी शोर मचाया जिनमें मोहम्मद नईम भी थे और वे दूसरे गेट से विधान सभा के बाहर निकल कर

नकल तहरीर हिन्दी वादी

पीएन ७५६३७८

३७६।३२३ आइ०पी०सी०

सेवा में,

थानाध्यक्षा महोदय, कोतवाली, हजरतगंज, लखनऊ ।

निवेदन है कि आज दिनांक २४-७-६१ को मैं अपनी ड्यूटी करने डी० आर०एन० (उ०र०) कार्यालय के दफ्तर आ रहा था । करीब १० बजे रात कार्यालय के दक्षिण दरवाजे से अन्दर घुसा वैसे ही दो लड़कों ने पुकार कर कहा मेरे पैसे देते जाओ । मैंने जैसे ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई हाकियों से मारने ज लगे में आफिस की ओर शोर मचाते हुए भागा तो सामने से एक तीसरे आदमी ने अपने हाथ में ली हुई हाकी से मारना शुरू कर दिया । तीसरा आदमी वहीं पर था । इसी मारपीट के दौरान मेरा चमड़े का काले रंग का हैंड बैग हाथ से छूट कर नीचे गिर गया जिसे जिसमें ३ पैन, चश्मा , आफिस की चाभी, आफिस के कुछ कागजात थे । मेरे शोर मचाने पर वे लोग मेरा गिरा हुआ पर्स लेकर भाग गए । मेरे शरीर पर चोटें आई हैं जिनकी डाक्टरी जांच करवाकर डाक्टरी रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही की जाये ।

प्रार्थी-

नोट:

मैं यह प्रमाणित करता हूँ कि नकल तहरीर वादी चिक लगाकर अद्वारशः अंकित किया गया। तहरीर संलग्न- एफ०आइ०आर० है।

ह०राम सरवर शुक्ला,
२५-६-६१,

मोहम्मद हसनैन,
पुत्र स्व० श्री शमशुल हसनैन,
मदेवा, थाना खाला बाजार,
उप० नि० लखनऊ, २४-६-६१
लेखक श्री पी०के० गुप्ता,
द्व० अप्रिन्टिस, उ०र०, लखनऊ।

33

उत्तर रेलवे
मण्डल कार्यालय

लखनऊ दिनांक 1.1.98
= = = = = 7-11-1981.

पत्र संख्या: ई/अपील DOS/Control/Conf/1/81

श्री J.P. Tripathi,
Ex. Trains Clerk.
द्वारा

विषय: - दंड नोटिस संख्या DOS/Control/Conf/1/81 दिनांक 29-6-1981.

निर्णय दंड Dismissal from service.
द्वारा Sr.DOS/LKO. विरुद्ध आपकी अपील

संदर्भ: - आपकी दिनांक 11-8-1981 की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम, 1968 के नियम

22(2) के अनुसार अपील अधिकारी तलखत
द्वारा Sr.DOS/LKO... ADM(O)/N.Rly. द्वारा

उपरोक्त आदेश के विरुद्ध आपके द्वारा की गई अपील पर खण्डपूर्वक
विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

(क) अनुशासन प्रधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार प्रमाणित
है। तथा

(ख) आरोपित दंड

I have gone through the appeal of Shri J.P. Tripathi. I find that in his 12 page long appeal he has not even once categorically denied the charges levelled against him... He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and his appeal is rejected.

(सी.के.महोत्रा) 7.11.81
सहायक कार्मिक अधिकारी/लखनऊ
प्रतिलिपि सूचनाय तथा आवश्यक कार्यवाही हेतु

1. सम्बन्धित लिपि कार्मिक विभाग

2.)

विज/29.5

Received at
17 hrs
J.P. Tripathi
9/11/81

He had also
sent by post
7.11.81

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उत्तर रेलवे
महल कार्यालय

लखनऊ दिनांक 11-8-1981.

पत्र संख्या: ई/अपील DOS/Control/Conf/1/81.

श्री Zafar Ali Siddiqui
Sr. Trains Clerk.
द्वारा

विषय:- दंड नोटिस संख्या DOS/Control/Conf/1/81.
दिनांक 29-6-81.
निमित्त दंड Dismissal from service.
द्वारा Sr.DOS/LKO के विरुद्ध आपकी अपील

संदर्भ:- आपकी दिनांक 11-8-1981 की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम 1968 के नियम

22(2) के अनुसार अपील अधिकारी ADRM(O)/N.Rly., लखनऊ
ने Sr.DOS/LKO. द्वारा

उपरोक्त आदेश के विरुद्ध आपके द्वारा की गई अपील पर विचारपूर्वक
विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

(क) अनुशासन प्रधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार प्रमाणित
है। तथा

(ख) आरोपित दंड

I have gone through the appeal of Shri Zafar Ali. I find that in his 12 page long appeal, he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and appeal is rejected.

Recd.
one copy
Zafar Ali
9/11/81
at 16/11/81

अपील नं.
11/81

(सी.के.महोत्रा)
21.11.81

सहायक कार्मिक अधिकारी/लखनऊ
प्रतिलिपि सूचनाय तथा अवश्य कार्यवाही हेतु।

1. सम्बन्धित लिपिक कार्मिक विभाग
- 2.

==

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उत्तर रेलवे

महल कार्यालय

लखनऊ दिनांक

7-11-1981

पत्र संख्या: ई/अपील

DOS/Control/Conf/1/81.

श्री Mohd. Naseem,
Ex. Trains Clerk
द्वारा

विषय:- दंड नोटिस संख्या DOS/Control/Conf/ दिनांक 29-6-1981
निमित्त दंड I/81
द्वारा Dismissal from service.
के विरुद्ध आपकी अपील
Sr.DOS/IKO.

सन्दर्भ:- आपकी दिनांक 11-8-81 की अपील

रेल कर्मचारी अनुशासन एवं अपील नियम 1968 के नियम

22(2) के अनुसार अपील अधिकारी ADRM(O)/N.Rly., लखनऊ
ने Sr.DOS/IKO द्वारा
उपरोक्त आदेश के विरुद्ध आपके द्वारा की गई अपील पर अनुरोध
विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

- (क) अनुशासन प्रधिकारी के निष्कर्ष अभिलेखों के समक्ष के अनुसार प्रमाणित है। तथा
- (ख) आरोपित दंड

I have gone through the appeal of Shri Mohd. Naseem. I find that in his 12 page long appeal, he has not even once categorically denied the charges levelled against him. He has all along argued that there are alleged legal flaws in the orders. He has further alleged that the Disciplinary Authority has not exercised its mind judiciously. After going through the papers, I find that the relevant railway rules and procedure have been correctly followed by the Disciplinary Authority. I also do not find any reason to doubt the correct application of mind by the Disciplinary Authority.

In view of the above, there are no grounds for any change in the orders, and appeal is rejected."

(सीकेमहोत्रा)

सहायक कार्मिक अधिकारी/लखनऊ

प्रतिलिपि सूचना तथा अवश्य कार्यवाही हेतु

- 1. सम्बन्धित लिपिक कार्मिक विभाग
- 2.

==

विज/29.5

Recd one copy
at 13/30
Mohd Naseem
9/11/81

He appeal in
line
int by 6288
7/11/81

सत्य मार्ग दर्शन



भारतीय लेबर

स्थापित १९७२

(हिन्दुस्तानी मजदूरों का एक मात्र निष्पक्ष समाचार पत्र)

सौजन्य से :- अखिल भारतीय नवयुवक संघ

(प्रदेश की प्रमुख पंजीकृत सामाजिक संस्था)

मुख्य कार्यालय :- सविता निवास गनेशगंज, लखनऊ

पत्रांक 112

दिनांक १५-१०-८१

श्री नारायण दत्त तिवारी

मुख्य संरक्षक—

केन्द्रीय उद्योग एवं श्रम मन्त्री

संरक्षक—

श्रीमती स्वरूप कुमारी बरूणी

शिक्षा मन्त्री, उत्तर प्रदेश

हरिकृष्ण शास्त्री सांसद

सिप्ते रिजवी सांसद

डा० जे० डी० शुक्ला

आई० सी०

डा० विश्वनाथ खन्ना

सदस्य विधान परिषद

श्री ज्ञान प्रकाश चौबे

अध्यक्ष—(केन्द्रीय)

श्री सलिल कुमार मिश्रा

(५) महामंत्री—एवं संस्थापक निदेशक

(२) महामंत्री उ० प्र० रा० वि० परिषद

चतुर्थ श्रेणी कर्मचारी संघ

(३) संरक्षक उ० प्र० निजी प्रेस

कर्मचारी संघ

(४) अध्यक्ष उ० प्र० जन स्वास्थ्य

रक्षक संघ

राम अभिलाष पांडे

संगठन मंत्री

जिला प्रतिनिधि—

लखनऊ

परमेश्वरी यादव

बाराबंकी

मो० कुदृश

फैजाबाद

बाल गोविन्द

बस्ती

सरदार शेर सिंह

बलिया

मोती लाल ओझा

इलाहाबाद

प्रदीप कुमार अग्रहरि

आजमगढ़

रामाश्रय यादव

झाँसी

हरी शंकर पाठक

रायबरेली

गंगा प्रसाद मिश्र

बांदा

लालमन मिश्र

गोरखपुर

शशी भूषण द्विवेदी

गोन्डा

धिराज बाल मिश्र

उन्नाव

मूल चन्द बाजपेई

सीतापत

राम अशीश सिंह

आदरणीय श्री चट्टा जी,

निवेदन है कि भारतीय लेबर समाचार पत्र का प्रकाशन इस उद्देश्य से किया जा रहा है कि विभिन्न उद्योगों में कार्यरत श्रमिकों को मूल चुनौतीपूर्ण समस्याओं को समझ कर उनकी शासन के समक्ष लाया जाये तथा शासन के कृपापूर्ण सहयोग से उनका अविश्वसनीय निराकरण कर श्रमिक अशांति को समाप्त करने में भरपूर सहयोग दिया जा सके । ताकि निहित स्वार्थों तत्व इन छोटी-छोटी समस्याओं को आई में श्रमिकों को धराव व आन्दोलन के लिए न प्रेरित कर सके । समय-समय पर आपका जो कृपापूर्ण सहयोग हमें मिलता आ रहा है उसके लिए हम कृतज्ञ हैं ।

इसी सन्दर्भ में निवेदन है कि मैंने एक मामला श्री जे०पी० त्रिपाठी, ट्रेन्स वर्क , डी०एस०आफिस, लखनऊ जिनको कि विभाग द्वारा बर्खास्त कर दिया गया था का सम्पूर्ण रूप से उनकी न्यायोचित अपील के साथ श्री आर०सी०शर्मा, ए०डी०आर० एम० के समक्ष इस अनुरोध के साथ रखा था कि वे उनके मामले पर तत्काल कार्यवाही अनुग्रहित करें ताकि अन्यायपूर्वक सेवाओं से निकाले गए तीन कर्मचारियों को जीवनयापन का न्यायोचित अवसर पुनः प्राप्त हो सके ।

यहाँ कहाँ मामले को काफी समय तक श्री शर्मा द्वारा अवलोकन करने का प्रक्रिया जारी रखने के में उनसे व्यक्तिगत रूप से मिलकर निवेदन किया था कि वह स्वयं ही विचार करें कि एक अल्पवैयस्य में जो कर्मचारी जो बिना किसी कारण के सेवा-मुक्ति कर दिया जाये किन्तु द्वािी तक बिना वेतन के अपना व परिवार का पालन पोषण कर सकता है ।

श्री शर्माजी ने आश्वासन भी दिया था कि वे इस मामले पर पिछले माह सितम्बर में ही इस मामले पर फैसला

हमारा उद्देश्य :- २८ सूत्रीय कार्यक्रमों को सफल बनाना

मजदूर एकता जिन्दाबाद !

इन्दिरा गांधी जिन्दाबाद !

समाजवाद जिन्दाबाद

सत्य मार्गदर्शक



भारतीय लेबर

स्थापित १९७२

(हिन्दुस्तानी मजदूरों का एक मात्र निष्पक्ष समाचार पत्र)

सौजन्य से :- अखिल भारतीय नवयुवक संघ

(प्रदेश की प्रमुख पंजीकृत सामाजिक संस्था)

मुख्य कार्यालय :- सविता निवास गनेशगंज, लखनऊ

पत्रांक.....

(१)

दिनांक.....

श्री नारायण दत्त तिवारी

मुख्य संरक्षक—

केन्द्रीय उद्योग एवं श्रम मन्त्री
संरक्षक—

श्रीमती स्वरूप कुमारी बरुशी

शिक्षा मन्त्री, उत्तर प्रदेश

हरिकृष्ण शास्त्री सांसद

सिप्ते रिजवी सांसद

डा० जे० डी० शुक्ला

आई० सी० एस०

डा० विश्वनाथ खन्ना

सदस्य विधान परिषद

श्री ज्ञान प्रकाश चौबे

अध्यक्ष—(केन्द्रीय)

श्री सलिल कुमार मिश्रा

(५) महामंत्री—एवं संस्थापक निदेशक

(२) महामंत्री उ० प्र० रा० वि० परिषद

चतुर्थ श्रेणी कर्मचारी संघ

(३) संरक्षक उ० प्र० निजी प्रेस

कर्मचारी संघ

(४) अध्यक्ष उ० प्र० जन स्वास्थ्य

रक्षक संघ

राम अभिलाष पांडे

संगठन मंत्री

जिला प्रतिनिधि—

लखनऊ

परमेश्वरी यादव

बाराबंकी

मो० कुदूश

फैजाबाद

बाल गोविन्द

बस्ती

सरदार शेर सिंह

बलिया

मोती लाल ओझा

इलाहाबाद

प्रदीप कुमार अग्रहरि

आजमगढ़

रामाश्रय यादव

झाँसी

हरी शंकर पाठक

रायबरेली

गंगा प्रसाद मिश्र

बांदा

लालमन मिश्र

गोरखपुर

शशी भूषण द्विवेदी

गोन्डा

धिराज लाल मिश्र

उन्नाव

मूल चन्द बाजपेई

सोनीपत

राम अशीश सिंह

कर देंगे। और इस आश्वासन के आधार पर गत १ अक्टूबर तक प्रतीक्षा करने के बाद जब पुनः दूरभाष (टेलीफोन) पर सम्पर्क किया तो पुनः उन्होंने बताया कि बल्लू के अवकाश पर होने के कारण ये मामले को नहीं देख पाये है अतः १५ दिन का पुनः समय दिया जाये। और यह भी १५ दिन समाप्त हो गए है लेकिन निर्णय कोई नहीं।

आप स्वयं ही विचार करें कि इस प्रकार से अन्यायपूर्ण ढंग से अल्पवेतन भी गरीब किसानों को सेवाओं से निकाला जायेगा और परेशान किया जायेगा तो स्वाभाविक रूप से निहित स्वार्थ हत्यों की आन्दोलन और धेराव के लिए श्रमिकों को बढ़ाने का अक्सर मिलेगा और श्रमिक अशांति को बढ़ावा मिलेगा।

आजकल के मजदूरों के समय में किसी कर्मचारी को इस प्रकार सेवानिवृत्त करने से वह अपने परिवार का पालन पोषण किस प्रकार कर सकेगा स्वयं ही सोच सकते हैं।

अतः आपसे अनुरोध है कि कृपया श्री जे०पी० शिपाठी, देवस अर्द्ध व अन्य के प्रेषित उपरोक्त मामले पर अतिविवेक निर्णय लेते हुए इनसे सेवानिवृत्ति पर लिए जाने के कृपापूर्ण न्यायोचित आदेश प्रदान कर अनुग्रहित करें। हम आभारी होंगे।

ससम्मान,,

आपका-

श्री हरजन सिंह चट्टा,
डि०आर०एम०, एन०आर०,
डि०एस०आफिस, लखनऊ।

(सलिल कुमार मिश्रा)
सम्पादक,

प्रतिलिपि श्री आर०सी०शर्मा, ए०डि०आर०एम०, एन०
डि०एस०आफिस, हजरतगंज, लखनऊ को अतिविवेक आवश्यक
कार्यवाही हेतु प्रेषित।

(सलिल कुमार मिश्रा)
सम्पादक,

अखिल भारतीय नवयुवक संघ

मुख्य कार्यालय-सविता निवास गनेशगंज, लखनऊ

हमारा उद्देश्य :- २० सूत्रीय कार्यक्रम को सफल बनाना

पत्रांक 6.321.1441....

दिनांक १४-८-८१.....

मुख्य संरक्षक-

श्री नारायण दत्त तिवारी
केन्द्रीय योजना एवं श्रम मन्त्री,
नई दिल्ली

संरक्षक-

श्रीमती स्वरूप कुमारी बरुशी
शिक्षा मन्त्री, उत्तर प्रदेश
श्रीकृष्ण शास्त्री सांसद
सेप्टे रिजवी सांसद
डा० जे० डी० शुक्ला
आई० सी० एस०
डा० विश्वनाथ खन्ना
उत्तर प्रदेश विधान परिषद

अध्यक्ष- (केन्द्रीय)
श्री ज्ञानप्रकाश चौबे
हामन्त्री-

श्री सलिल कुमार मिश्रा
गठन मन्त्री-

एम अभिलाष पांडे

जला प्रतिनिधि-

खनऊ

तेह बहादुर सिंह

राबंकी

१० कुदृश

जाबाद

ल गोविन्द सिंह

स्ती

रदार शेर सिंह

लिया

पती लाल ओझा

लाहाबाद

दीप कुमार अग्रहरि

जमगढ़

माश्रय यादव

पंसी

श्री शंकर पाटक

यबेरली

गा प्रसाद मिश्र

दा

लमन मिश्र

रखपुर

श्री भूषण द्विवेदी

न्हा

राऊ लाल मिश्र

नाव

न चन्द बाजपेई

आदरणीय श्री चट्टा जी,

निवेदन है कि आपका पत्र में एक प्रार्थना पत्र प्राप्त हुआ है।
प्रिपाठो, ट्रेन्स वर्क जी कि आपके कार्यालय के कन्ट्रीस स्म में
कार्यरत थे, जिन्हो सेवार्थ १४-८-८१ के अन्तर्गत समाप्त कर दा है।
मृत रूपों संतप्त कर रहा हू।

प्रार्थना पत्र से ज्ञात होता है कि इनके ऊपर निम्नान्व
ने १४-८-८१ के अन्तर्गत यह माना है कि श्री प्रिपाठो ने निम्नान्व के
दोषों का रियों को जो कि राशि में निम्नान्व तात्कालिक विधानसभा
निम्नान्व व्यक्तियों द्वारा निम्नान्व रॉनश के कारण
माने गए थे जो मारने के लिए सुनिश्चित योजना तैयार की थी।
श्री प्रिपाठो ने प्रार्थना-पत्र में सूचित किया है कि निम्न
व्यक्तियों द्वारा मारे गए थे श्री प्रिपाठो अपनी ह्यूटो पर थे।
जिन्हो पुष्टि निम्नान्व कन्ट्रीस स्म के रॉनश से की जा सकती
है। यहाँ नहीं श्री प्रिपाठो ने बताया है कि १५ वर्गों के
सेवाकार में किसे प्रकार का कोई शिकायत नहीं रहा है। श्री
प्रिपाठो निम्नान्व निम्नान्व व परिभाषा कार्यरत रहे है। किन्तु
व्यक्तियों ने किसी रॉनशक इनकी फर्खने को चेष्टा की है।

अतः आपसे प्रार्थना है कि श्री प्रिपाठो के मामले में निम्नान्व
नाम अतिशय करार न्यायोचित कार्यवाही करने का कृपा करें तथा
इन्हे सेवाकार्य में लिए जाने का कृपा करें। मैं आपका रहूँ।

सम्मान ..

श्री हरमनसिंह चट्टा,

ल० नारायण, ल० नारायण,

ल० लाल, ल० लाल।

प्रतिनिधियों आवश्यक कार्यवाही हेतु प्रेषित।

(१) श्री रमेशचन्द्र शर्मा, ल० नारायण, ल० नारायण, ल० लाल।

(२) श्री बलदेवसिंह, बलिष्ठ महंत पण्डित, ल० नारायण, ल० लाल।

(सतिमिभा)

(२)

प्रार्थी

को व अन्य दोनों कर्मचारियों को बिना कुछ बताये ही उक्त नोटिस दे दी गयी।

(द) प्रार्थी से इस दुर्घटना के सम्बन्ध में न ही कोई पूछ ताछ की गयी और न ही कोई सफाई या स्पष्टीकरण का अवसर दिया गया।

(य) प्रार्थी को मत पू वगैरों के सेवा कार्य पर भी कोई विचार नहीं किया गया और न ही किसी प्रकार की अन्य कोई नोटिस आदि इसके पहले इस केस के सम्बन्ध में दी गयी थी।

अतः प्रार्थना है कि प्रार्थी के मामले पर व तिस गर तथ्यों पर कृपापूर्ण विचार करते हुए प्रार्थी को पुनः कार्य पर लौटाने का आदेश देकर प्रार्थी को सेवा कार्य पर तिस जाने के आदेश प्रदान कर अनुमति करें। प्रार्थी आपको पुनः विश्वास दिलाता है कि विभागीय अधिकारियों के साथ हुई इस दुर्घटना में प्रार्थी का न तो कोई हाथ और न ही कोई सम्बन्ध है। आपके कृपापूर्ण आदेशों के तिस प्रार्थी आभारी रहेगा।

सधन्यवाद,,

प्रार्थी
[Signature]

(जे० पी० त्रिपाठी)

हैन्सवर्क :

२५३११०, 'सायू निवास',
नादान महल रोड, लखनऊ।

२४-५-८१

प्रतिलिपि तः सूचना, एवं आवश्यक कार्यवाही हेतु प्रेषितः

- (१) श्री रमेशचन्द्र शर्मा, ए०डी०आर०, एम०, एन०आर०, हजरतगंज, लखनऊ
- (२) श्री बलदेव सिंह बरिष्ठ महल परिचाक अधीक्षक, एन०आर०, लखनऊ

([Redacted])

27 15C

The Adl. Divl. Railway Manager (OP),
Northern Railway,
Hazratganj, Lucknow.

Through: The proper channel.

Appeal under rule 18 of the Railway Servants
Discipline & Appeal Rules, 1968 against order
No. DOS/Control/Conf/I/81 dated 29.6.1981
passed by the Sr. DOS/LKO dismissing the appe-
llant from service with effect from 29.6.1981.

....

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1). That for the the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DOS/LKO, in purported exercise of the powers conferred by rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.1981 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant:-

REASONS FOR NOT HOLDING THE ENQUIRY.

" The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.... ".

2). That since the dismissing authority, while passing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with

the enquiry, which was necessary to be held under rule 9 and 10 of the D&A Rules, 1968, it is expedient in the interest of justice that your honour may make a legal and judicious assessment of the order passed, in the light of the following issues involved in the case:-

- (a). Whether the reasons given by the learned Sr. DOS/IKO- the dismissing authority for not holding the enquiry and adducing evidence as required under rule 9 and 10 of the D & A Rules, 1968 are based on objective reasons as required under rule 14 (ii) of the said Rules or the powers have been exercised in an arbitrary manner.
- (b). Whether the findings of the dismissing authority are merited and warranted by the evidence on the records or based on surmises and conjectures.
- (c). Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUES:

Issue (a).

3). (i) That as regards issue (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied himself that it was not reasonably practicable to hold enquiry as required under rule 9 and 10 of the D&A Rules, 1968, in the case giving an opportunity to the appellant to rebut the charges. Now your honour, in the ends of justice, has to consider whether the reasons given by the said authority are based on ~~sub~~ objective satisfaction, which is the necessary and legal requirement to exercise the power conferred by rule 14 (ii) of the D&A Rules, 1968.

(ii). From the records and the documents supplied to the appellant alongwith the order of dismissal, your honour will observe that no evidence oral or documentary is available to justify the contention of the dismissing authority in respect of the appellant's mood creating an apprehension

of grave disorders affecting the vital railway system as alleged against him. It may be mentioned that on receipt of the order of dismissal, the appellant, vide representation dated 17.7.1981, had made a specific request to the dismissing authority to apprise him the evidence oral or documentary if any available with him in support of his contention made in respect of the appellant's mood which satisfied him not to conduct the enquiry as required by the departmental rules. Despite many efforts and approaches, the said authority could not furnish the said necessary requirements to the appellant, which fact goes to establish that no material other than the charge and allegation was available with the dismissing authority for his personal satisfaction to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968.

(iii). The dismissing authority further failed to furnish the evidence oral or documentary, if any available with him, in support of its contention that the appellant created terror^{and} due to which it was not reasonably practicable to hold the enquiry and to give him an opportunity to rebut the charge. Despite specific request made vide application dated 17.7.1981, the said authority maintained complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968.

(iv). In absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Shri - Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controller/LKO and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing

authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations, and then to pass order under rule 14 (ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., - Controllers/LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising its powers under rule 14 (ii) of the D&A Rules, 1968, dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

(v). No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under rule 14 (ii) of the D&A Rules, 1968 are in sufficient compliance of the said rules

From the discussions made above, it is established as under:†

- (a). The dismissal order passed under rule 14(ii) is not based on the objective satisfaction of the dismissing authority.
- (b). The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controllers and not any material ~~and~~ concrete evidence which was necessary to be taken into account to exercise powers under rule 14 (ii) of the D&A Rules, 1968.
- (c). The dismissing authority has arbitrarily held that the appellat was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d). The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e). The dismissing authority has mis-used the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f). The findings of the dismissing authority is not supported by any evidence available on the record and that too is contrary to the facts mentioned

in the F.I.Rs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO at the Police Station, Hazratganj, Lucknow.

4). That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO, which are false and un-trustworthy specially in view of the F.I.Rs which they had lodged at the Police Station, Hazratganj/LKO soon after the alleged occurrence. A few examples are given below for your judicious consideration:-

(i). It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd. Hasnain, Deputy Controller from the back and asked for the repayment of ~~the~~ money on the day of alleged occurrence. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.

(ii). Contrary to above, Shri Mohd. Hasnain, Dy., Chief Controller/LKO, in his F.I.R. lodged at the Police Station, Hazratganj/LKO has not at all mentioned the name of the appellant. A true copy of the report (FIR) lodged by the said Shri Hasnain is filed herewith as Annexure II to this appeal for your kind perusal.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been ^afact, Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the ^{last line} ~~end~~ of his report (FIR) had made a request

as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hasnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

(v). Shri S.C. Bajpai, Deputy Chief Controller, Lucknow, in his report/FIR dated 24.6.1981 lodged at the Police Station, Hazratganj/LKO, has stated that he can identify the miscreants if they are produced before him. This fact, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bajpai would have surely given the name of the appellant in his report/FIR.

It is ^amatter of surprise that the dismissing authority clearly mentioned the name of the appellant in his ~~own~~ charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore, are false and after thought.

(vi) Shri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his bag which ^{was} hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a black ~~purse~~ purse

and in that there were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the Police Station, Hazratganj, Lucknow is being filed herewith as Annexure III to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal does not contain the aforesaid Articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charge, therefore, shows that Shri Bajpai had no definite case. No ^{office} document shows the loss of office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14 (ii), dropped the enquiry and deprived of the appellant from making defence purposely and deliberately with a view to save Shri Bajpai from facing a confronted enquiry and thereby has favoured the said Shri Bajpai arbitrarily and in violation of the principles of Natural Justice.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bajpai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its powers under rule 14 (ii) in an arbitrary manner and favoured the said Shri Bajpai in total disregard of the departmental rules and the principles of Natural Justice.

The whole discussions on issue (b), therefore,

lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not meritted and warranted by the evidence on the record and the appellant has been punished merely on doubt, suspicion, surmises and cunjuctures.

5). That as regards issue (c), it is respectfully submitted that in face of the major contrdiction in the reports/FIRs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controllers at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of justice to hold an enquiry in terms of the departmetal rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry, in terms of Railway Board's letter No. E-55-RG6-20 dated 4.2.1956, should have been held in accordance with the Principles of Natural Justice and no material, in terms of Railway Board's Letter No. E(D&A) 62RG-6-8 dated 27.7.63, should have been relied upon without giving an opportunity to the appellant to rebut the same.

From the above, it is established that it was a fit case to be dealt with under the Principles of Natural Justice. The dismissing authority, by exercising ~~the powers~~ its powers under rule 14(ii), has misused the powers in an arbitrary manner and it is a fit case of discrimination which violates the provisions of Article 14 of the Constitution of India.

6). That in view of the discussions made above under issues (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and inoperative in law and the departmental rules on the following amongst other grounds:-

G r o u n d s.

- (a). Because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of Article 311(2)(b) of the Constitution of India.
- (b). Because there being no sufficient compliance of rule 14 (ii) of the D&A Rules, 1968, the order of dismissal is without jurisdiction.
- (c). Because the satisfaction required under rule 14 (ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.
- (d). Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.
- (e). Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.
Authority: AIR 1964 SC 364, AIR 1965 SC 247
and AIR 1958 SC 300.
- (f). Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.
Authority: 1969 Labour & Industrial Cases 896.
- (g). Because the dismissing authority, despite application dated 17.7.1981 moved by the appellant, did not supply the necessary docu-

ments and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority: Railway Board's letter No. E(D&A) 61RG-47 dated 29.1.1963.

(h). Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

(i). Because the order of dismissal from service having been passed by the Sr. DOS/LKO by using his personal knowledge which the said S/Shri - Mohd. Hasnain and S.C. Bajpai, Dy., Chief Controllers have not mentioned in their reports/ FIRs lodged at the Police Station, Hazratganj, the action is illegal and in-operative in law.

Authority: AIR 1958 SC 86.

(j). Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority: AIR 1958 SC 300 and AIR 1963 SC 779.

(k). Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRS of the said S/Shri Mohd. Hasnain and S.C. Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority: 1969 Labour & Industrial cases 773.

(l). The order of dismissal having been passed on a mere conjectures and suspicion and a mere belief the action is illegal and unconstitutional.

Authority: AIR 1957 SC 637.

- (m). Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Hasnain and S.C. Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed with out of a great favouritism to the said persons.
- (n). Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. - Hasnain and S.C. Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

P r a y e r.

In the name of justice, humanity and man kind, it is respectfully prayed that your honour may be pleased to consider this appeal with a judicious view and to meet the ends of justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect.

It is further prayed that the appellant be given an opportunity of personal hearing to substantiate the facts stated in this appeal.

It is hoped that due justice would given to the appellant at a very early date.

Thanking you.

Enc/3.

Dated 11-8-1981.

Yours faithfully,

Mohd Naseem

Ex. Trains Clerk.

(MOHD NASEEM)

27/12 3c

ANNEXURE /

**ANNEXURE INDICATING CHARGES AGAINST SHRI MOHD. NASEEM,
TRAINING CLERK/NORTHERN RAILWAY/LUCKNOW.**

On 24.6.81, while Shri Mohd. Hashain, Deputy Chief Controller/Lucknow was coming from his residence for performing his duty in 0.00 to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Shri M. Hashain turned back and replied that he has never borrowed any money from any body. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.

On 25.6.81, while Shri S.C. Bajpai, Dy. Chief Controller/Lucknow was coming to perform his duty in 0.00 to 8.00 hrs. shift in control office, from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Mohd. Naseem, Training Clerk, Lucknow had pointed out Shri Mohd. Hashain to the three miscreants resulting in the assault. He master minded the episode and connived with anti-social elements in getting Shri Hashain and Shri Bajpai physically assaulted.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a railway servant thereby violated Rule 3(i)(ii) & (iii) of Railway Services Conduct Rules, 1966.

Baldev Singh
(BALDEV SINGH)
Senior Divisional Operating Supt.,
Northern Railway, Lucknow.

4.
फॉर्म नं० ७५६३७८
३७६ । ३२३ आई०पी०सी०

नकल तहरीर हिन्दी वादी

सेवा में,

थानाध्यक्ष महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि आज दिनांक २४-६-८१ को मैं अपनी डियूटी करने ही० आर० एम० (३० रं०) कार्यालय आ रहा था करीब १०.० बजे रात कार्यालय के दक्षिण दरवाजे से अन्दर घुसा जैसे ही दो लड़कों ने पुकार कर कहा भरे फेंके देते जाओ, मैंने जैसे ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई हाकियों से मारने लगे मैं आफिस की ओर शौर मचाते हुए भागा तो सामने से एक तीसरे आदमी ने अपने हाथ में ली हुई हाकी से मारना शुरू कर दिया । तीसरा आदमी वहीं पर था , इसी मारपीट के दौरान मेरा चमड़े का काले रंग का हैन्ड बैग हाथ से छूट कर नीचे गिर गया जिसमें ३ तीन पेन, चश्मा, आफिस की चाभी , आफिस के कुछ कागजात थे , मेरे शौर मचाने पर वे लोग मेरा गिरा हुआ फर्स लेकर भाग गये मेरे शरीर पर चोटे आयी है। जिनकी डाक्टरों जांच करवाकर डाक्टरों रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही की जाये ।

नोट:- मैं यह प्रमाणित करता हूँ

कि नकल तहरीर वादी चिक लगा कर

अक्षरशः अंकित किया गया तहरीर संलग्न

एफ०आई० आर० है ।

ह० राम सखर शुक्ला

२५-६-८१

प्रार्थी,

(मोहम्मद हसनैन)

पुत्र- स्व० श्री शमशुल हसनैन

मदैवा- थाना खालाबाजार

उप-नि० लखनऊ २४-६-८१

लेखक- श्री पी०के० गुप्ता

ट्रे० अपरेन्टिस, उ०रे० लखनऊ।

पी० न० ७५६३७८

नकल तहरीर हिन्दी वादी ३७६।३२३ आई०पी०सी०

सेवा में,

थानाध्यक्षा महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि मैं लगभग ११-३० बजे रात में अपने घर से अपने आफिस जा रहा था, जब मैं विधान सभा के सामने से पास हो रहा था। पीछे से तीन व्यक्ति जो साइकिल पर सवार थे सामने आकर मेरी साइकिल से अपनी साइकिल लड़ाना चाहते, लेकिन साइकिल लड़ी नहीं। फौरन वे सामने आकर हाथियाँ लेकर मुझे मारने लगे, मेरे दोनों हाथों में चीट आयी और साइकिल मेरे हाथों से छूट गयी और मैं बचाव के लिए शोर मचाने लगा। इसी बीच एक लड़का मेरी साइकिल से कर भाग गया। साइकिल के हैंडिल में मेरा एक फौला टंगा था, उसमें एक काला पर्स था जिसमें दो रुपये और कुछ पैसे थे, एक जीभी थी एक रंगीन फाइन, एक दफतर की चाभी, चीनी, चाय तथा दूध की शीशी थी वह फौला भी साथ में चला गया। मेरे शोर मचाने पर कुछ लोगों ने भी शोर मचाया जिसमें मोहम्मद नईम भी थे, और वे दूसरे गेट से विधान सभा के बाहर निकल कर आये। और मुझे स्कूटर पर बिठा कर लालबाग की तरफ गये पर उनका कोई पता नहीं चला सामने आने पर पहचान सकता हूँ। लिखित रिपोर्ट दाखिल करता हूँ। उचित कार्यवाही करने की कृपा करें।

घर का पता-

सतीश चन्द्र बाजपेयी

६६।१५ खित्वापुर लास लखनऊ

२४-६-८१

प्रार्थी,

(सतीश चन्द्र बाजपेयी)

डिप्टी चीफ कन्स्टीबल

डी० आर० एम० आफिस उ०री०
लखनऊ।

नोट: मैं यह प्रमाणित करता हूँ कि नकल
तहरीर वादी चिक लगा कर अद्वारशः
अंकित किया गया।

The Adl. Divl. Railway Manager (OP),
Northern Railway,
Barratganj, Lucknow.

15A

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Through: The proper channels

Appeal under rule 16 of the Railway Servants
Discipline & Appeal Rules, 1968 against order
No. DGS/Control/Conf/1/81 dated 29.6.1981
passed by the Sr. DGS/IKO dismissing the appa-
llant from service with effect from 29.6.1981.

....

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1). That for the the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DGS/IKO, in purported exercise of the powers conferred by rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.1981 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant:-

REASONS FOR NOT HOLDING THE ENQUIRY.

" The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.... ".

2). That since the dismissing authority, while passing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with

of grave disorders affecting the vital railway system as alleged against him. It may be mentioned that on receipt of the order of dismissal, the appellant, vide representation dated 17.7.1981, had made a specific request to the dismissing authority to apprise him the evidence oral or documentary if any available with him in support of his contention made in respect of the appellant's mood which satisfied him not to conduct the enquiry as required by the departmental rules. Despite many efforts and approaches, the said authority could not furnish the said necessary requirements to the appellant, which fact goes to establish that no material other than the charge and allegation was available with the dismissing authority for his personal satisfaction to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968.

(iii).

The dismissing authority further failed to furnish the evidence oral or documentary, if any avail-

able with him, in support of its contention that the appellant created terror^{as} due to which it was not reasonably practicable to hold the enquiry and to give him an opportunity to rebut the charge. Despite specific request made vide application dated 17.7.1981, the said authority maintained complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968.

(iv). In absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Sri - Mohd. Hamid and S.C. Bajpai, Deputy Chief Controller/LKO and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing

24/3 12B

(4).

authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations; and then to pass order under rule 14 (ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hashain and S.C. Bajpai, Dy., - Controllers/LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising its powers under rule 14 (ii) of the D&A Rules, 1968, dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

(v). No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify its act of exercising powers under rule 14 (ii) of the D&A Rules, 1968 are in sufficient compliance of the said rule.

From the discussions made above, it is established as under:-

- (a). The dismissal order passed under rule 14(ii) is not based on the objective satisfaction of the dismissing authority.
- (b). The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hashain and S.C. Bajpai, Dy., Controllers and not any material and concrete evidence which was necessary to be taken into account to exercise powers under rule 14 (ii) of the D&A Rules, 1968.
- (c). The dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d). The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e). The dismissing authority has mis-used the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f). The findings of the dismissing authority is not supported by any evidence available on the record and that too is contrary to the facts mentioned

in the F.I.Rs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO at the Police Station, Hazratganj, Lucknow.

4). That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO, which are false and un-trustworthy specially in view of the F.I.Rs which they had lodged at the Police Station, Hazratganj/LKO soon after the alleged occurrence. A few examples are given below for your judicious consideration:-

- (i). It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd. Hasnain, Deputy Controller from the back and asked for the repayment ~~of~~ the money on the day of alleged occurrence. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.
- (ii). Contrary to above, Shri Mohd. Hasnain, Dy., Chief Controller/LKO, in his F.I.R. lodged at the Police Station, Hazratganj/LKO has not at all mentioned the name of the appellant. A true copy of the report (FIR) lodged by the said Shri Hasnain is filed herewith as Annexure II to this appeal for your kind perusal.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact, Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the ^{last line} ~~end~~ of his report (FIR) had made a request —

to the S.O., Police Station, Hazratganj, Lucknow to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R. at the Police Station is itself indicative of his intention to get the offenders punished. Despite this inclination, he does not mention the name of the ^{appellant} miscreants in his report/FIR. Thus it is proved beyond doubt ^{that} he himself did not see the appellant either on the spot or any where else having the common intention ^{of} assaulting him. Had it been a fact, Shri Hasmain would have surely given the name of the appellant in his report/FIR to the police for legal action against him, but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii). Shri Hasmain, in his report/FIR lodged at the police Station, Hazratganj/LKO, has clearly mentioned that during the course of 'War Peet' his leather bag containing his pen, goggle, office key and some official records fallen down and one of the miscreants picked it up and fled away.

(iv). Nothing of the sort as mentioned above has been shown in the Charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given ^{if it was a material fact}. Similarly nothing is available in the record to show

as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Sri Basain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

(v). Sri S.C. Bajpai, Deputy Chief Controller, Lucknow, in his report/FIR dated 24.6.1981 lodged at the Police Station, Hazratganj/LKO, has stated that he can identify the miscreants if they are produced before him. This fact, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Sri Bajpai would have surely given the name of the appellant in his report/FIR.

It is a matter of surprise that the dismissing authority clearly mentioned the name of the appellant in his charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore, are false and after thought.

(vi) Sri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his bag which ^{was} hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a black ^{bus} ~~purse~~ ^{purse}.

and in that there were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the Police Station, Hazratganj, Lucknow is being filed herewith as Annexure III to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal does not contain the aforesaid Articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charge, therefore, shows that Shri Bajpai had no definite case. ^{the} document shows the loss of office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14 (ii), dropped the enquiry and deprived of the appellant from making defence purposely and deliberately with a view to save Shri Bajpai from facing a confronted enquiry and thereby has favoured the said Shri Bajpai arbitrarily and in violation of the principles of Natural Justice.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bajpai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its powers under rule 14 (ii) in an arbitrary manner and favoured the said Shri Bajpai in total disregard of the departmental rules and the principles of Natural Justice.

The whole discussions on issue (b), therefore

lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not merited and warranted by the evidence on the record and the appellant has been punished merely on doubt, suspicion, surmises and conjectures.

5). That as regards issue (c), it is respectfully submitted that in face of the major contradictions in the reports/FIRs lodged by the said S/Sri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controllers at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of justice to hold an enquiry in terms of the departmental rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry in terms of Railway Board's letter No. E-55-RC-20 dated 4.2.1956 should have been held in accordance with the Principles of Natural Justice and no material, in terms of Railway Board's letter No. E(D&A) 62RC-6-3 dated 27.2.63 should have been relied upon without giving an opportunity to the appellant to rebut the same.

From the above, it is established that it was a fit case to be dealt with under the Principles of Natural Justice. The dismissing authority, by exercising ~~the powers~~ its powers under rule 14(ii), has misused the powers in an arbitrary manner and it is a fit case of discrimination which violates the provisions of Article 14 of the Constitution of India.

6). That in view of the discussions made above under issues (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and inoperative in law and the departmental rules on the following amongst other grounds:-

Grounds.

- (a). Because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of Article 311(2)(b) of the Constitution of India.
- (b). Because there being no sufficient compliance of rule 14 (ii) of the D&A Rules, 1963, the order of dismissal is without jurisdiction.
- (c). Because the satisfaction required under rule 14 (ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.
- (d). Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.
- (e). Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.
Authority: AIR 1964 SC 364, AIR 1965 SC 247
and AIR 1958 SC 300.
- (f). Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.
Authority: 1969 Labour & Industrial Cases 896.
- (g). Because the dismissing authority, despite application dated 17.7.1981 moved by the appellant, did not supply the necessary docu-

nents and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal.

Authority: Railway Board's letter No. E(D&A) GIRC-47 dated 29.1.1963.

(h). Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

(i). Because the order of dismissal from service having been passed by the Sr. DOS/LKO by using his personal knowledge which the said S/Shri - Mohd. Hasnain and S.C. Bajpai, Dy., Chief Controllers have not mentioned in their reports/ FIRs lodged at the Police Station, Hazratganj, the action is illegal and inoperative in law.

Authority: AIR 1958 SC 86.

(j). Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority: AIR 1958 SC 300 and AIR 1963 SC 779.

(k). Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRS of the said S/Shri Mohd. Hasnain and S.C. Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority: 1969 Labour & Industrial cases 773.

(l). The order of dismissal having been passed on a mere conjectures and suspicion and a mere belief the action is illegal and unconstitutional.

Authority: AIR 1957 SC 637.

- (m). Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Hasnain and S.C. Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed with out of a great favouritism to the said persons.
- (n). Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. - Hasnain and S.C. Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

Prayer.

In the name of justice, humanity and man kind, it is respectfully prayed that your honour may be pleased to consider this appeal with a judicious view and to meet the ends of justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect.

It is further prayed that the appellant be given an opportunity of personal hearing to substantiate the facts stated in this appeal.

It is hoped that due justice would given to the appellant at a very early date.

Thanking you.

Enc/3.

Dated 11 -8-1981.

Yours faithfully,

Zafar Ali

(
Ex. Trains Clerk.

(Zafar Ali)

26/12/30

ANNEXURE I

ANNEXURE

ANNEXURE INDICATING CHARGES AGAINST SHRI ZAFAR ALI SIDDIQUI, SENIOR TRAINS CLERK/NORTHERN RLY./LUCKNOW.

On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controller, N.Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller, N.Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trains Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966.

Baldev Singh
(BALDEV SINGH)
Senior Divisional Operating Supdt.,
Northern Railway, Lucknow.

सी.
फ़ॉन-नं० ७५६३७८
३७६ । ३२३ आइ०पी०सी०

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नकल तहरीर हिन्दी वादी

सेवा में,

थानाध्यक्ष महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि आज दिनांक २४-६-८१ को मैं अपनी छिछूटी करने डी० आर० एम० (३० रै०) कार्यालय आ रहा था करीब १०.० बजे रात कार्यालय के दक्षिण दरवाजे से अन्दर घुसा जैसे ही दो लड़कों ने पुकार कर कहा भैया भैया देते जाओ, मैंने जैसे ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई हाकियों से मारने लो मैं आफिस की ओर शोर मचाते हुए भागा तो सामने से एक तीसरे आदमी ने अपने हाथ में ली हुई हाकी से मारना शुरू कर दिया । तीसरा आदमी वहीं पर था , इसी मारपीट के दौरान मेरा चमड़े का काले रंग का हैन्ड बैग हाथ से छूट कर नीचे गिर गया जिसमें ३ तीन पैन, चश्मा, आफिस की चामी, आफिस के कुछ कागजात थे , मेरे शोर मचाने पर वे लोग मेरा गिरा हुआ फर्स लेकर भाग गये मेरे शरीर पर चोटें आयी है। जिनकी डाकटरी जांच करवाकर डाकटरी रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही की जाये ।

नोट:- मैं यह प्रमाणित करता हूँ

कि नकल तहरीर वादी चिक लगा कर

अज्ञारशः अंक्ति किया गया तहरीर संलग्न

एफ०आइ० आर० है ।

ह० राम सखर शुक्ला

२५-६-८१

प्रार्थी,

(मोहम्मद हसनैन)

पुत्र- स्व० श्री शमशुल हसनैन

भविष्य- थाना खालाबाजार

उप-नि० लखनऊ २४-६-८१

लेखक- श्री पी०के० गुप्ता

ट्रे० अपरेन्टिस, उ०र० लखनऊ।

पी० न० ७५६३७८

नकल तहरीर हिन्दी वादी ३७६।३२३ आई०पी०सी०

सेवा में,

थानाध्यक्ष महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि मैं लगभग ११-३० बजे रात में अपने घर से अपने आफिस जा रहा था, जब मैं विधान सभा के सामने से पास हो रहा था। पीछे से तीन व्यक्ति जो साइकिल पर सवार थे सामने आकर मेरी साइकिल से अपनी साइकिल लड़ानी चाही, लेकिन साइकिल लड़ी नहीं। फौरन वे सामने आकर हाकियां लेकर मुझे मारने लगे, मेरे दोनों हाथों में चोट आयी और साइकिल मेरे हाथों से छूट गयी और मैं बचाव के लिए शोर मचाने लगा। इसी बीच एक लड़का मेरी साइकिल ले कर भाग गया। साइकिल के हैंडिल में मेरा एक फौलाटा टंगा था, उसमें एक काला पर्स था जिसमें दो रूपये और कुछ पैसे थे, एक जीभी थी एक रंगीन फाड़न, एक दफतर की चाभी, चीनी, चाय तथा दूध की शीशी थी वह फौलाटा भी साथ में चला गया। मेरे शोर मचाने पर कुछ लोगों ने भी शोर मचाया जिसमें मोहम्मद नहम भी थे, और वे दूसरे गेट से विधान सभा के बाहर निकल कर आये। और मुझे स्कूटर पर बिठा कर लालबाग की तरफ गये पर उनका कोई पता नहीं चला सामने आने पर पहिचान सकता हूँ। लिखित रिपोर्ट दाखिल करता हूँ। उचित कार्यवाही करने की कृपा करें।

घर का पता-

सतीश चन्द्र बाजपेयी

६६।१५ क्षितिवापुर सास लखनऊ

२४-६-८१

प्रार्थी,

(सतीश चन्द्र बाजपेयी)

डिप्टी चीफ कन्ट्रोलर

डी० आर० एम० आफिस उ०००
लखनऊ।

नोट: मैं यह प्रमाणित करता हूँ कि नकल
तहरीर वादी चिक लगा कर अक्षरशः
अंकित किया गया।



उत्तर रेलवे
NORTHERN RAILWAY

No. 1281-E-W- LKO-83
Dated 10-4-90

Sent of/c
N Rly
Deenwar

S. Sidanth Verma
Rly Advocate

E-16, K. Road
Mala Nagar Extension
Deenwar

Sd

Registration
No 1032/1987
CAT/ LKO
Zafar Ali
Siddiqui
V
LKO 01

Kindly find herewith complete
B2 & B3 file of the above named ex
employee containing pp 8 to 24 and SN
5 to 135 with a request to file the
same as the Court as per direction
of the Hon. Tribunal and hence the
case dismissed in favour of the
and against the employee.

Sd/-
Sd/- Mr. [Signature]
[Signature]

ANNEXURE

ANNEXURE INDICATING CHARGES AGAINST SHRI ZAFAR ALI SIDDIQUI, SENIOR TRAINS CLERK/NORTHERN RLY./LUCKNOW.

On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controller, N.Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller, N.Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trains Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against ~~them~~ him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966.

Baldev Singh
(BALDEV SINGH)

Senior Divisional Operating Supdt.,
Northern Railway, Lucknow.

WILLIAMS, I., Senior Divisional Operating Superintendent, Northern Railway, Jackson, the authority empowered to dismiss/remove from service Earl Earl All Siddiqui, Senior Train Clerk/Northern Railway/Jackson, who was appointed under the orders of Senior Divisional Personnel Officer, a Junior-Administrative Grade Officer, am fully satisfied that Earl Earl All Siddiqui, Sr. TWO is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Jackson yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

THAT FOR, under the circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause (2) of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause (2), Provision (b) of the said clause, I order dismissal of Earl Earl All Siddiqui, Sr. Train Clerk/Jackson, from service with effect from 29th June, 1981 afternoon.

(BALDEV SINGH)
Senior Divisional Operating Superintendent,
Northern Railway,
Jackson

PUNISHMENT NOTICE

No. DOS/Control/Conf/I/81
To,

Place of Issue Divisional Office,
Northern Railway, Lucknow.
Dated: 29-6-1981.

Shri Zafar Ali Siddiqui
Sr. Trains Clerk, under C.H.C.,
N. Railway, Lucknow.
Thro: Chief Controller/N. Rly/Lucknow.

WHEREAS Shri Zafar Ali Siddiqui Desig. Sr. Trains Clerk/IKO is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of general public, any further retention of Shri Zafar Ali Siddiqui Designation Sr. Trains Clerk in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants Discipline & Appeal Rules, 1968 the undersigned hereby dismisses the said Shri Zafar Ali Siddiqui Designation Sr. Trains Clerk/IKO. from service with effect from 29-6-1981 afternoon

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Name (Baldev Singh)
Designation Sr. Divl. Optg. Supdt.,
N. Railway, Lucknow.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to A.D.R.M.(OP)/
N. Rly/Lucknow. provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.
2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

A C K N O W L E D G E M E N T

To, The Sr. Divl. Optg. Supdt.,
N. Railway, Lucknow.

I hereby acknowledge receipt of your Notice No. DOS/Control/
Conf/1/81 dt. 29-6-1981, conveying intimation regarding the imposition of the penalty specified in Notice No. DOS/Control/Conf/
I/81 dt. 29-6-1981.

Station _____
Date. _____

Name _____
Father's name _____
Designation _____

ANNEXURE

TRAINING CLERK/NORTHERN RAILWAY/JACKSON.
ANNEXURE INDICATING CHARGES AGAINST SRI J.P. TRIPATHI.

On 24.6.81, while Smt. Mond. Hasmatin, Deputy Chief Controller/N.R.V./Jackson was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Smt. Hasmatin turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Smt. S.C. Bajpai, Deputy Chief Controller/N.R.V./Jackson was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Smt. J.P. Tripathi, Training Clerk/Jackson had earlier planned to beat up Smt. Hasmatin and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Smt. Hasmatin and Smt. Bajpai physically assaulted.

Smt. J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting, terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(i)(i) & (iii) of Railway Services Conduct Rules, 1966.

(BAJPAI SINGH)
Senior Divisional Operating Engineer,
Northern Railway, Jackson.

O R D E R

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri J.P. Tripathi Trains Clerk, Northern Railway, Lucknow, who was appointed under the orders of Divisional Personnel Officer, a Senior Scale Officer, am fully satisfied that Shri J.P. Tripathi is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him. Therefore, under these circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(i)-Clause 2 of the Constitution of India. Therefore, with the powers vested in me under Article 311(i), Clause (2), Proviso (b) of the said clause, I order dismissal of Shri ~~xxxxxx~~ J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow from service with effect from 29th June, 1981 afternoon.

B. Singh
(Baldev Singh) 29/6
Senior Divisional Optd. Supdt.,
Northern Railway,
Lucknow.

PUNISHMENT NOTICE

No. DOS/Control/Conf/I/81.

Place of Issue Divisional Office,
Northern Railway, Lucknow

To,

Dated: June 29, 1981.

Shri J.P. Tripathi

Trains Clerk, under

CHC/N.Railway, Lucknow.

Thro: Chief Controller/N.R./Lucknow.

WHEREAS Shri J.P. Tripathi Desig. Trains Clerk/Lucknow is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of general public, any further retention of Shri J.P. Tripathi Designation Trains Clerk in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants Discipline & Appeal Rules, 1968 the undersigned hereby dismisses the said Shri J.P. Tripathi Designation Trains Clerk/Lucknow from service with effect from 29-6-1981 afternoon.

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Name

(Baldev Singh)

Designation Sr. Divl. Optg. Supdt.,
N.Railway, Lucknow.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to A.D.M.(OP)/N.R./ provided:-
Lucknow.

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.
2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

A C K N O W L E D G E M E N T

To,

The Senior Divisional Optg. Supdt.,
N.Railway, Lucknow.

I hereby acknowledge receipt of your Notice No. DOS/Control/
Conf/I/81 dt. 29-6-1981, conveying intimation regarding the imposition of the penalty specified in Notice No. DOS/Control/Conf/
I/81 dt. 29-6-1981.

Station _____

Date. _____

Name _____

Father's name _____

Designation _____

5)

1. 1. 1927, Ленинград.

NO CONTROL

CONFIDENTIAL

1/31 hereby acknowledge receipt of your Notice No. _____
dt. _____, conveying intimation regarding _____
1/31 imposition of the penalty specified in Notice No. _____
dt. _____

Name _____
Station _____
Date _____
Father's name _____
Designation _____

J. T. P. H.
29/6/81

16
To, The Cr. Divl. Op. ACKNOWLEDGEMENT
N. Railway, Lucknow.

DC/Control/

Conf/1/81 29-6-1981

I hereby acknowledge receipt of your Notice No. DC/Control/Conf/
1/81 dt. 29-6-1981 conveying intimation regarding
the imposition of the penalty specified in Notice No. _____
dt. _____.

Station _____
Date. _____

Name Rafar Ali
Father's name 29/6/81
Designation al 18/2nd.

A C K N O W L E D G E M E N T

To,

The Senior Divl. Optg. Supt.,
N. Railway, Lucknow.

I hereby acknowledge receipt of your Notice No. _____

dt. 29.6.1981, conveying intimation re DOS/Control/
Conf/1/81 imposition of the penalty specified in Notice No. _____

dt. 29.6.1981. DOS/Control/Conf/
1/81

Station _____
Date. _____

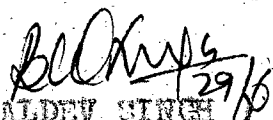
Name Mohd Naseem
Father's name Late Smt Shamassuddin
Designation _____

30/6/81

O R D E R

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri Zafar Ali Siddiqui, Senior Trains Clerk/Northern Railway/Lucknow, who was appointed under the orders of Senior Divisional Personnel Officer, a Junior-Administrative Grade Officer, am fully satisfied that Shri Zafar Ali Siddiqui, Sr. TNC is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

THEREFORE, under the circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause (2) of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause (2), Proviso (b) of the said clause, I order dismissal of Shri Zafar Ali Siddiqui, Sr. Trains Clerk/Lucknow, from service with effect from 29th June, 1981 afternoon.


(DALDEV SINGH)
Senior Divisional Operating Superintendent,
Northern Railway,
Lucknow

AMRD.

ANNEXURE INDICATING CHARGES AGAINST SHRI ZAFAR ALI
SIDDIQUI, SENIOR TRAINED CLERK/NORTHERN RLY./LUCKNOW.

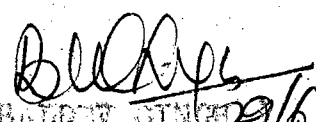
On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controller, N.Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DCM office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri P.C. Bajpai, Deputy Chief Controller, N.Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trains Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966.


(BALDEV SINGH)

Senior Divisional Operating Supt.,
Northern Railway, Lucknow.

PUNISHMENT NOTICE

No. DO/control/Conf/1/81

Place of Issue

Divisional Office,

To,

Northern Railway, Lucknow.

Dated: 29-6-1981.

Shri Zafar Ali Siddiqui

Mr. Train Clerk, under C.M.C.,
N. Railway, Lucknow.

Thro: Chief Controller/N. Ry/Lucknow.

WHEREAS Shri Zafar Ali Siddiqui Desig. Mr. Train Clerk/IKO is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of general public, any further retention of Shri Zafar Ali Siddiqui Designation Mr. Train Clerk in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants Discipline & Appeal Rules, 1968

the undersigned hereby dismisses the said Shri Zafar Ali Siddiqui Designation Mr. Train Clerk/IKO from service with effect from 29-6-1981 afternoon

Enclosures:

1. Annexure indicating the charges

2. Orders passed by the Competent Authority.

Name

Designation

(Baldev Singh)

Mr. Divl. Optg. Subdt.,
N. Railway, Lucknow.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to

N. Ry/Lucknow provided:-

1. The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.
2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

A C K N O W L E D G E M E N T

To,

The Mr. Divl. Optg. Subdt.,
N. Railway, Lucknow.

I hereby acknowledge receipt of your Notice No. DO/control/Conf/1/81 dt. 29-6-1981, conveying intimation regarding the imposition of the penalty specified in Notice No. DO/control/Conf/1/81 dt. 29-6-1981.

Station _____
Date. _____

Name _____
Father's name _____
Designation _____

ANNEXURE

ANNEXURE INDICATING CHARGES AGAINST SHRI J.P. TRIPATHI,
TRAINS CLERK/NORTHERN RAILWAY/LUCKNOW.

On 24.6.81, while Shri Mohd. Hasnain, Deputy Chief Controlier/N.Rly/Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money. Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controlier/N.Rly/Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri J.P. Tripathi, Trains Clerk/Lucknow had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai physically assaulted.

Shri J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terrier amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(i)(i) & (iii) of Railway Services Conduct Rules, 1956.

Baldev Singh
(BALDEV SINGH)

Senior Divisional Operating Suptg.,
Northern Railway, Lucknow.

O R D E R

WHEREAS, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow, who was appointed under the orders of Divisional Personnel Officer, a Senior Scale Officer, am fully satisfied that Shri J.P. Tripathi is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him. Therefore, under these circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause 2 of the Constitution of India. Therefore, with the powers vested in me under Article 311(1), Clause (2), Proviso (b) of the said clause, I order dismissal of Shri ~~xxxxxxx~~ J.P. Tripathi, Trains Clerk, Northern Railway, Lucknow from service with effect from 29th June, 1931 afternoon.

Baldev Singh
29/6
(Baldev Singh)

Senior Divisional Optd. Supdt.,
Northern Railway,
Lucknow.

सेवा में,

थानाध्यक्षा महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि मैं लगभग ११-२० बजे रात में अपने घर से अपने आफिस जा रहा था, जब मैं विधान सभा के सामने से पास हो रहा था। पीछे से तीन व्यक्ति जो साइकिल पर सवार थे सामने आकर मेरी साइकिल से अपनी साइकिल लड़ाने लगे, लेकिन साइकिल लड़ी नहीं। फौरन वे सामने आकर हाकिया लेकर मुझे मारने लगे, मेरे दोनों हाथों में चीट आयी और साइकिल मेरे हाथों से छूट गयी और मैं बचाव के लिए शोर मचाने लगा। इसी बीच एक लड़का मेरी साइकिल से कर भाग गया। साइकिल के हैंडिल में मेरा एक फनीला टंगा था, उसमें एक काला पर्स था जिसमें दो रुपये और कुछ पैसे थे, एक जीपी थी एक रंगीन फाइन, एक दफतार की चाभी, चीनी, चाय तथा दूध की शीशी थी वह फनीला भी साथ में चला गया। मेरे शोर मचाने पर कुछ लोगों ने भी शोर मचाया जिनमें मोहम्मद नईम भी थे, और वे दूसरे गेट से विधान सभा के बाहर निकल कर आये। शोर मुझे स्कटर पर बिठा कर लालबाग की तरफ गये पर उनका कौह पता नहीं चला सामने आने पर पहचान सकता हूँ। लिखित रिपोर्ट दाखिल करता हूँ। उचित कार्यवाही करने की कृपा करें।

घर का फता-

सतीश चन्द्र बाजपेयी

६६।१५ क्लिवापुर खास लखनऊ

२४-६-८१

प्रार्थी,

(सतीश चन्द्र बाजपेयी)

डिप्टी चीफ कन्स्टीबल
डी० आर० एम० आफिस उ०र०
लखनऊ।

नोट: मैं यह प्रमाणित करता हूँ कि नकल
तहरीर वादी चिक लगा कर अदालत
शक्ति किया गया।

(21)

① J. P. Irripattu S/O Arjin
DOB 13/10/52 Pro. Ad.
DOA 15/2/77
DPO.

② Z. A. Siddiqui
S/O Ahi Raza
DOB 1/7/52
DOA 17/8/76
DPO.

PUNISHMENT NOTICE

No. DO/Control/Conf/1/81.

Place of Issue Divisional Office,

To,

Northern Railway, Lucknow

Dated: June 29, 1981.

Shri J.P. Tripathi
Train Clerk, under

Thro: CHC/N. Railway, Lucknow.
Chief Controller/N.R./Lucknow.

WHEREAS Shri J.P. Tripathi Desig. Train Clerk/Lucknow is responsible for the grave charges listed in the Annexure.

2. WHEREAS in the interest of Railway and also of general public, any further retention of Shri J.P. Tripathi Designation Train Clerk in railway service is considered undesirable.

3. WHEREAS it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Railway Servants Discipline & Appeal Rules, 1968.

NOW, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants Discipline & Appeal Rules, 1968 the undersigned hereby dismisses the said Shri J.P. Tripathi Designation Train Clerk from service with effect from 29-6-1981 afternoon.

Enclosures:

1. Annexure indicating the charges
2. Orders passed by the Competent Authority.

Name

Designation (Baldev Singh)
r. Divl. Optg. Supt.,
N. Railway, Lucknow.

Under Rule 18 of Railway Servants Discipline & Appeal Rules, 1968, an appeal against these orders lies to A.O.C.M. (OP)/N.R./ provided:-

Lucknow The appeal is preferred within 45 days from the date on which a copy of this order is delivered to him.

2. The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which made the orders appealed against. It does not contain any disrespectful or improper language.

ACKNOWLEDGEMENT

To,

The Senior Divisional Optg. Supt.,
N. Railway, Lucknow.

I hereby acknowledge receipt of your Notice No. DO/Control/

Conf/1/81 dt. 29-6-1981, conveying intimation re DO/Control/

1/81 dt. 29-6-1981. DO/Control/Conf/

Station
Date.

Name
Father's name
Designation

41
फॉर्म नं० ७५६३७८
३७६ । ३२३ आई०पी०सी०

नकल तहरीर हिन्दी वादी

सेवा में,

थानाध्यक्ष महोदय, कोतवाली हजरतगंज, लखनऊ ।

निवेदन है कि आज दिनांक २४-६-८९ को मैं अपनी डि्यूटी करने ही० आर० एम० (३० रै०) कार्यालय आ रहा था करीब १०.० बजे रात कार्यालय के दक्षिण दरवाजे से अन्दर घुसा जैसे ही दो लड़कों ने पुकार कर कहा भेरे भेरे देते जाओ, मैंने जैसे ही पीछे मुड़ कर देखा उन लोगों ने अपने हाथ में ली हुई हाकियों से मारने लौ मैं आफिस की ओर शौर मचाते हुए भागा तो सामने से एक तीसरे आदमी ने अपने हाथ में ली हुई हाकी से मारना शुरू कर दिया । तीसरा आदमी वहीं पर था , इसी मारपीट के दौरान मेरा चमड़े का काले रंग का हैन्ड बैग हाथ से छूट कर नीचे गिर गया जिसमें ३ तीन पेन, चश्मा, आफिस की चाभी , आफिस के कुछ कागजात थे , मेरे शौर मचाने पर वे लोग मेरा गिरा हुआ फर्स लेकर भाग गये मेरे शरीर पर चोटे आयी है। जिनकी डाक्टरों जांच करवाकर डाक्टरों रिपोर्ट के साथ लिखित रिपोर्ट दे रहा हूँ । उचित कार्यवाही की जाये ।

नोट:- मैं यह प्रमाणित करता हूँ
कि नकल तहरीर वादी चिक लगा कर
अज्ञातः अंकित किया गया तहरीर संलग्न
स्फ०आई० आर० है ।

ह० राम सखर शुक्ला

२५-६-८९

प्रार्थी,

+

(मोहम्मद हसनैन)

पुत्र- स्व० श्री शमशुल हसनैन

भवेबा- थाना खालाबाजार

उप-नि० लखनऊ २४-६-८९

लेखक- श्री पी०के० गुप्ता

ट्रे० अपरेन्टिस, उ०र० लखनऊ।

(m). Because the order of dismissal from service has been passed in violation of Article 14 of the Constitution of India in that an attempt had been made to exempt S/Shri Mohd. Hasnain and S.C. Bajpai from leading evidence in support of their false allegations which were bound to be failed in the enquiry. Thus the enquiry has purposely and deliberately been dispensed with out of a great favouritism to the said persons.

(n). Because the appellant has been punished under a deep rooted conspiracy and plan hatched by some interested persons and the said S/Shri Mohd. - Hasnain and S.C. Bajpai have been used as one of the instruments of the said conspiracy. Thus the action of dropping the enquiry, which was necessary and expedient in the interest of justice in the circumstances of the case, is motivated and deliberate.

Prayer.

In the name of justice, humanity and man kind, it is respectfully prayed that your honour may be pleased to consider this appeal with a judicious view and to meet the ends of justice, the order of appellant's dismissal from service may be set aside and the appellant may be reinstated in service with retrospective effect.

It is further prayed that the appellant be given an opportunity of personal hearing to substantiate the facts stated in this appeal.

It is hoped that due justice would be given to the appellant at a very early date.

Thanking you.

Enc/3.

Dated 11-8-1981.

Yours faithfully,

J.P. Tripathi

(
Ex. Trains Clerk.

(J. P. Tripathi)

ANNEXURE (I)

ANNEXURE INDICATING CHARGES AGAINST SHRI J.P. TRIPATHI,
TRAINING CLERK/NORTHERN RAILWAY/LUCKNOW.

On 24.6.81, while Shri Mohd. Hasmain, Deputy Chief Controller/H.Rly/Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of LRM office, he was given a call from back and was asked to re-pay the money. Shri Hasmain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief Controller/H.Rly/Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs. shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri J.P. Tripathi, Training Clerk/Lucknow had earlier planned to beat up Shri Hasmain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasmain and Shri Bajpai physically assaulted.

Shri J.P. Tripathi, is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a ter or amongst the staff in way of assaulting/terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(1) & (iii) of Railway Services Conduct Rules, 1966.

Baldev Singh
(BALDEV SINGH)
Senior Divisional Operating Supdt.,
Northern Railway, Lucknow.

ments and materials to enable the appellant to rebut the charges effectively in appeal, and as such the action is arbitrary and illegal. Authority: Railway Board's letter No. E(D&A) 61RG-47 dated 29.1.1963.

(h). Because the findings of the dismissing authority are wholly arbitrary and capricious and as such the order of dismissal from service is illegal and unconstitutional.

Authority: AIR 1964 SC 364 and AIR 1965 SC 247.

(i). Because the order of dismissal from service having been passed by the Sr. DOS/LKO by using his personal knowledge which the said S/Shri - Mohd. Hasnain and S.C. Bajpai, Dy., Chief Controllers have not mentioned in their reports/ FIRs lodged at the Police Station, Razratganj, the action is illegal and in operative in law.

Authority: AIR 1958 SC 86.

(j). Because the order of dismissal from service having been passed in violation of the Principles of Natural Justice, the action is illegal and unconstitutional.

Authority: AIR 1958 SC 300 and AIR 1963 SC 779.

(k). Because the order of dismissal having been passed without taking into consideration the material documents such as the reports/FIRS of the said S/Shri Mohd. Hasnain and S.C. Bajpai which do not contain the name of the appellant, the action is illegal and unconstitutional.

Authority: 1969 Labour & Industrial cases 773.

(l). The order of dismissal having been passed on a mere conjectures and suspicion and a mere belief the action is illegal and unconstitutional.

Authority: AIR 1957 SC 637.

lead the appellant to an inevitable conclusion that the findings of the dismissing authority is not meritted and warranted by the evidence on the record and the appellat has been punished merely on doubt, suspicion, surmises and conjunctures.

5). That as regards issue (c), it is respectfully submitted that in face of the major contrdiction in the reports/FIRs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Deputy Chief Controllers at the Police Station Hazratganj, Lucknow and in the charges, it was necessary and expedient in the interest of justice to hold an enquiry in terms of the departmetal rules and the appellant was entitled to get an opportunity to rebut the charges. The enquiry in terms of Railway Board's letter Nb. E-55-RG-20 dated 4.2.1956 should have been held in accordance with the Principles of Natural Justice and no material, in terms of Railway Board's Letter Nb. E(D&A) 62RG-6-8 dated 27.7.63 should have been relied upon without giving an opportunity to the appellant to rebut the same.

From the above, it is established that it was a fit case to be dealt with under the Principles of Natural Justice. The dismissing authority, by exercising the powers its pōers under rule 14(ii), has misused the powers in an arbitrary manner and it is a fit case of discrimination which violates the provisions of Article 14 of the Constitution of India.

6). That in view of the discussions made above under issues (a), (b) and (c), the order of the appellant's dismissal from service is illegal, unconstitutional and inoperative in law and the departmental rules on the following amongst other grounds:-

Grounds.

- (a). Because there being no valid and justified material before the dismissing authority to become satisfied as to the impracticability of holding the enquiry, the conclusion drawn is based on no evidence and reasons and as such the action is against the provisions of Article 311(2)(b) of the Constitution of India.
- (b). Because there being no sufficient compliance of rule 14 (ii) of the D&A Rules, 1968, the order of dismissal is without jurisdiction.
- (c). Because the satisfaction required under rule 14 (ii) is to be based on objective reasons and not arbitrarily on surmises and conjectures. The order of dismissal being contrary to it is illegal, unwarranted and unconstitutional.
- (d). Because there being no opportunity having been given to the appellant, the order of dismissal is against the Principles of Natural Justice.
- (e). Because the findings of the dismissing authority being arbitrary and capricious, the order of dismissal is liable to be quashed.
Authority: AIR 1964 SC 364, AIR 1965 SC 247 and AIR 1958 SC 300.
- (f). Because the dismissing authority has punished the appellant on a mere suspicion and the mere suspicion only has been taken as a proof, which is illegal and as such the order is liable to be quashed.
Authority: 1969 Labour & Industrial Cases 396.
- (g). Because the dismissing authority, despite application dated 17.7.1981 moved by the appellant, did not supply the necessary docu-

and in that there were two rupees and some paise, one key, one coloured duster, one office key, sugar, tea and milk bottle. A copy of the report/FIR lodged by Shri Bajpai at the Police Station, Hazratganj, Lucknow is being filed herewith as Annexure III to this appeal.

It may be mentioned that the charges supplied to the appellant alongwith the order of dismissal does not contain the aforesaid Articles, which was necessary to be included therein to enable the appellant to prefer an effective appeal. Non mentioning of the aforesaid articles in the charge, therefore, shows that Shri Bajpai had no definite case. No ^{the} document shows the loss of office key and nothing is available on the record to show as to how duplicate key of the office was arranged to avoid dislocation in the official working. The appellant has come to know through reliable sources that the very same key of the office is still being used in the office. It is also worth mentioning that the dismissing authority, by exercising its power under rule 14 (ii), dropped the enquiry and deprived of the appellant from making defence purposely and deliberately with a view to save Shri Bajpai from facing a confronted enquiry and thereby has favoured the said Shri Bajpai arbitrarily and in violation of the principles of Natural Justice.

From the facts mentioned above, it is proved beyond doubt that the inclusion of the appellant's name in the charge is an after thought and Shri Bajpai has given wrong facts to the administration. It is further proved that despite major contradictions, the dismissing authority without verifying the facts, exercised its powers under rule 14 (ii) in an arbitrary manner and favoured the said Shri Bajpai in total disregard of the departmental rules and the principles of Natural Justice.

The whole discussions on issue (b), therefore,

in the F.I.Rs lodged by the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO at the Police Station, Hazratganj, Lucknow.

4). That as regards issue (b), it is respectfully submitted that the findings of the dismissing authority is based on no evidence. The said authority has simply relied on the allegations of the said S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., Controller/LKO, which are false and un-trustworthy specially in view of the F.I.Rs which they had lodged at the Police Station, Hazratganj/LKO soon after the alleged occurrence. A few examples are given below for your judicious consideration:-

- (i). It has been alleged in the charges annexed with the order of dismissal under appeal that the appellant gave a call to Shri Mohd. Hasnain, Deputy Controller from the back and asked for the repayment of ~~the~~ money on the day of alleged occurrence. He was then mercilessly beaten by three persons with hockey sticks as a result he got grievous injuries on his person.
- (ii). Contrary to above, Shri Mohd. Hasnain, Dy., Chief Controller/LKO, in his F.I.R. lodged at the Police Station, Hazratganj/LKO has not at all mentioned the name of the appellant. A true copy of the report (FIR) lodged by the said Shri Hasnain is filed herewith as Annexure II to this appeal for your kind perusal.

From the above, your honour will observe that the charge which gave rise to the appellant's dismissal from service is based on incorrect facts and false allegations and they are after thought. Had it been fact, Shri Hasnain would have surely given the name of the appellant in his F.I.R. lodged at the Police Station, Hazratganj, Lucknow. Shri Hasnain in the ^{last line} ~~end~~ of his report (FIR) had made a request —

to the S.O., Police Station, Hazratganj, Lucknow to take action against the miscreants, which fact clearly indicates that he is very much inclined to get the miscreants prosecuted and punished under the law of the land. Lodging of F.I.R. at the Police Station is itself indicative of his intention to get the offenders punished. Despite this inclination, he does not mention the name of the ^{appellant} ~~miscreant~~ in his report/FIR. Thus it is proved beyond doubt ^{that} he himself did not see the appellant either on the spot or any where else having the common intention ^{of} assaulting him. Had it been a fact, Shri Hasnain would have surely given the name of the appellant in his report/FIR to the police for legal action against him; but this having not been done, the act of mentioning the name of the appellant in the charge involving him in the case is not only against the fact on the record but also based on after thought.

(iii). Shri Hasnain, in his report/FIR lodged at the police Station, Hazratganj/LKO, has clearly mentioned that during the course of 'Mar Peet' his leather bag containing his pen, goggle, office key and some official records fallen down and one of the miscreants picked it up and fled away.

(iv). Nothing of the sort as mentioned above has been shown in the Charges on the basis of which the order of dismissal has been passed. Apart from this, no description has been given regarding the official records said to have been taken away by one of the miscreants, either in the charges or in the order of dismissal, which ought to have been given ^{if it was a fact}. Similarly nothing is available in the record to sh

as to how the duplicate key was arranged. The appellant has reason to believe that the very same key which is said to have been taken away by one of the miscreants is still being used in the office.

From the facts mentioned above, it is established beyond doubt that the entire allegations of Shri Hasnain are false and after thought and he himself is liable to be taken up under the law and the departmental rules for giving wrong facts to railway authority.

(v). Shri S.C. Bajpai, Deputy Chief Controller, Lucknow, in his report/FIR dated 24.6.1981 lodged at the Police Station, Hazratganj/IKO, has stated that he can identify the miscreants if they are produced before him. This fact, therefore, shows that it was not the appellant who associated the miscreants. Had it been a fact, Shri Bajpai would have surely given the name of the appellant in his report/FIR.

It is ^amatter of surprise that the dismissing authority clearly mentioned the name of the appellant in his ~~rep~~ charges supplied to the appellant alongwith the order of dismissal from service, which is contrary to the evidence on the record as stated above. The allegations, therefore, are false and after thought.

(vi) Shri Bajpai has further mentioned in his report/FIR that his cycle was taken away by one of the miscreants and alongwith the cycle his bag which ^{was} hanging with the handle of the said cycle was also taken away. He has further mentioned in the F.I.R. that the bag in question was containing a black^{board} ~~board~~

25/3
(4).

authority first to receive an objective satisfaction from the concrete evidence, which does not include allegations, and then to pass order under rule 14 (ii) of the D&A Rules, 1968. In the present case, your honour will see that the complaints of S/Shri Mohd. Hasnain and S.C. Bajpai, Dy., - Controllers/LKO, which are self contradictory in face of the F.I.Rs which they have lodged at the Police Station, Hazratganj, Lucknow, have been accepted as correct in an arbitrary manner and in order to save them from leading evidence in support of their contentions, the dismissing authority, by exercising its powers under rule 14 (ii) of the D&A Rules, 1968, dispensed with the enquiry which was reasonably practicable to be held under rule 9 and 10 of the said rules.

(v). No reasonable and judicious mind will appreciate that the reasons given by the dismissing authority to justify

its act of exercising powers under rule 14 (ii) of the D&A Rules, 1968 are in sufficient compliance of the said rules

From the discussions made above, it is established as under:†

- (a). The dismissal order passed under rule 14(ii) is not based on the objective satisfaction of the dismissing authority.
- (b). The order of dismissal has been passed only after considering the allegations made by S/Shri Mohd. Hanain and S.C. Bajpai, Dy., Controllers and not any material and concrete evidence which was necessary to be taken into account to exercise powers under rule 14 (ii) of the D&A Rules, 1968.
- (c). The dismissing authority has arbitrarily held that the appellant was in such a mood that if notice is given and hearing accorded to him, there was an apprehension of grave disorders affecting the vital railway system.
- (d). The dismissing authority has further held in an arbitrary manner that the appellant had created an atmosphere of terror.
- (e). The dismissing authority has mis-used the powers in holding that the enquiry was not reasonably practicable to be held in the case.
- (f). The findings of the dismissing authority is not supported by any evidence available on the record and that too is contrary to the facts mentioned

of grave disorders affecting the vital railway system as alleged against him. It may be mentioned that on receipt of the order of dismissal, the appellant, vide representation dated 17.7.1981, had made a specific request to the dismissing authority to apprise him the evidence oral or documentary if any available with him in support of his contention made in respect of the appellant's mood which satisfied him not to conduct the enquiry as required by the departmental rules. Despite many efforts and approaches, the said authority could not furnish the said necessary requirements to the appellant, which fact goes to establish that no material other than the charge and allegation was available with the dismissing authority for his personal satisfaction to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968.

(iii). The dismissing authority further failed to furnish the evidence oral or documentary, if any available with him, in support of its contention that the appellant created terror^{as} due to which it was not reasonably practicable to hold the enquiry and to give him an opportunity to rebut the charge. Despite specific request made vide application dated 17.7.1981, the said authority maintained complete silence over the matter and did not furnish the material asked for. This, therefore, further shows that no material except the charge and allegation was available with the said authority to exercise the powers conferred by rule 14 (ii) of the D&A Rules, 1968.

(iv). In absence of such evidence as mentioned above, it is evidently clear that the dismissing authority simply relied upon the contentions/allegations of S/Shri - Mohd. Basmal and S.C. Bajpai, Deputy Chief Controller/LK6 and did not apply its judicious mind to consider or call for other evidence to exercise the powers conferred by rule 14(ii) of the D&A Rules, 1968, which was a must in the case. Under the law, it was obligatory on the part of the dismissing

the enquiry, which was necessary to be held under rule 9 and 10 of the D&A Rules, 1968, it is expedient in the interest of justice that your honour may make a legal and judicious assessment of the order passed, in the light of of the following issues involved in the case:-

- (a). Whether the reasons given by the learned Sr. DCS/IKO- the dismissing authority for not holding the enquiry and adducing evidence as required under rule 9 and 10 of the D & A Rules, 1968 are based on objective reasons as required under rule 14 (ii) of the said Rules or the powers have been exercised in an arbitrary manner.
- (b). Whether the findings of the dismissing authority are merited and warranted by the evidence on the records or based on surmises and conjectures.
- (c). Whether it was necessary and expedient in the ends of justice to follow the principles of Natural Justice in the case of the appellant.

DISCUSSIONS ON ISSUES:

Issue (a).

3). That as regards issue (a), it is respectfully submitted that for the only reasons as mentioned under para 1 above, the dismissing authority satisfied himself that it was not reasonably practicable to hold enquiry as required under rule 9 and 10 of the D&A Rules, 1968, in the case giving an opportunity to the appellant to rebut the charges. Now your honour, in the ends of justice, has to consider whether the reasons given by the said authority are based on such objective satisfaction, which is the necessary and legal requirement to exercise the power conferred by rule 14 (ii) of the D&A Rules, 1968.

(ii). From the records and the documents supplied to the appellant alongwith the order of dismissal, your honour will observe that no evidence oral or documentary is available to justify the contention of the dismissing authority in respect of the appellant's mood creating an apprehension

125 15A

The Adl. Divl. Railway Manager (OP),
Northern Railway,
Hazratganj, Lucknow.

Through: The proper channel.

Appeal under rule 18 of the Railway Servants
Discipline & Appeal Rules, 1968 against order
No. DOS/Control/Conf/I/81 dated 29.6.1981
passed by the Sr. DOS/LKO dismissing the appa-
llant from service with effect from 29.6.1981.

....

Respected Sir,

Aggrieved by the above order, the appellant respectfully prefers the following appeal for your judicious consideration and justice into the case:-

1). That for the the charges, a copy of which is enclosed herewith as Annexure I to this appeal, the learned Sr. DOS/LKO, in purported exercise of the powers conferred by rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968, has passed the order under appeal dismissing the appellant from the post of Trains Clerk with effect from 29.6.1981 and for the reasons mentioned below, the said authority held that it was not reasonably practicable to conduct enquiry or to adduce any evidence against the appellant:-

REASONS FOR NOT HOLDING THE ENQUIRY.

" The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.... ".

2). That since the dismissing authority, while passing the order under appeal, has not applied its judicious mind to the facts and circumstances of the case available on the records and arbitrarily dispensed with

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

FORM OF INDEX

~~O.A./T.A./R.A./C.C.P./~~ No. 1032 1987

W.P. 1289/82

PART - I

Z-A Siddiqui

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2.	Order Sheet	: - 2 to 10 ✓
3.	Any other orders	: - _____
4.	Judgement	: - 11 to 19 ✓
5.	S.L.P.	: - _____

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 2 - Power A29
 ③ - Application for stay A30 to A31
 ④ - Notice A32 to A40
 ⑤ - Power A42 to A44
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BY: Registrar

Supervising Officer

Dealing Clerk

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

✓ D.R.M. officer N.R. Lko. ~~Not~~ confidential file of

- 11 - Announced Appli. A76 to A81
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 14 - Notices A131 to A142
 15 - Two copy order A143 to A148
 16 - Power A149 to A152

Dealing Clerk

Recheck
on 22/2/12

V.K. Mishra

50(5)

①

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW.

DATED: -----

Case Title TA 1032/87 19

Name of Parties.

Z. A. Siddiqui Applicant
versus
Union of India Respondents.

PART -A

<u>Sl.No.</u>	<u>Description of Documents</u>	<u>Page</u>
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PART -B

~~in this case, no further action is required. The case is fit for consignment to record room.~~

Part -C

miscellaneous papers.

Certified that no further action is required. The case is fit for consignment to record room.

Section Officer
Court Officer
Incharge

Signature of Dealt Assistant.

(RN)

Confidential File of Department is
with File, TA 1032/87.

① Unexpressed 60 - 00
 Sure Adhesive 40 - 00
 Total 100 - 00

~~Correct but final Court-fee report~~
~~Will be made on receipt of lower~~
~~Court record.~~

In time up to

Papers filed. Copy of 3, 0

~~Should also be filed~~

2. 10 - 12/10.

Last Dup Am 9 = 22-2-81

⑥

Receipt
 19/3/82

2

Hon. & C. Divisions

A don't. 95 sec.
 notice,

✓

19-3-82
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ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

(3)

T.A. NO. 1032 OF 1987 (T)
Zafar Ali Siddiqui Union of India 2005.

Date of order	ORDERS WITH SIGNATURE	Office Notes action (if any) taken on order
5.5.88	<u>Office report</u> W. P. No. 1289/82 has been received on transfer from Hon'ble High Court, Lucknow Bench, U.P. Writ Petition is admitted. CA and RA not filed. Sri A. N. Sinha files his vakalatnama on behalf of applicant. MOs issued to both the parties fix pay 9-5-80. Roundelined and regd. covers have been returned back. Submitted. <u>Sen</u> 5/5/88	
9.5.88	Dr. L. Sen R.R. Singh NO. 1032 OF 1987 (T) 1-1-88 the vakalatnama filed by the applicant may be put by - 2 6 00)	for report 9/5/88 by - 2 6 00)

Dr. L.

ORDER SHEET
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

(4) (A)

T-A. NO. 1032/87 OF 198
Zafar Ali vs. Union of India

Sl. No.	Date of order	ORDER WITH SIGNATURE	Office Notes as to action (if any) taken on order
	B 6 88	OFFICE REPORT An application has been filed in this Tribunal for transferring the case No. 1032/87 of _____ to the Circuit Bench, Lucknow. If approved, 10/7 April, 1988 may kindly be fixed for hearing at Circuit Bench, Lucknow. In this regard the notices may be sent to the parties counsel. <i>J. K. S.</i> 13/6 Mr. Ajay Dohi, Am. 10-7-88 Notices were sent on 30-6-88 to the applicant and to the counsel for both sides regarding transfer of this case from Allahabad to Lucknow. No body is present today on behalf of either parties. No reply to the petition has been filed as yet. A fresh notice be issued to the respondents advising them of the transfer of the case to Lucknow and advising them that they should file reply within one month and send a copy of the same to the applicant who may file rejoinder if he so likes within fifteen days. The case be listed thereafter on 23-9-88 for final hearing.	

Notice issued

J. K. S.

AKS

OR

No Reply filed so far.

AKS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCULAR BENCH AT LUDHIANA

Q.A./T.A. No. 1032 198 7

Z. A. Jiddiqui

Applicant(s)

Versus

U. O. 1

Respondent(s)

Sr.No.	Date	Orders
27.10.88	Hon. D. S. T. Misra, Am Hon. G. S. Sharma, JM	Reply on behalf of the respondents has been filed today. On the request of the learned counsel for the applicant, 3 weeks time is allowed to file rejoinder. List this case for hearing on 24.11.1988. Am JM 27.10.88 BR No R.A. filed. Am 24.11.88 Hon. D. S. Misra, Am. Hon. G. S. Sharma, JM. Sri A.V. Giche for applicant. Sri S. Sharma for respondents. Counts & rejoinders have been filed. Arguments heard. Judgment reserved. J.M. Am.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 1032 of 1987 (T)

APPELLANT
APPLICANT

VERSUS

DEFENDANT
RESPONDENT

Sl. number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance

27/6/89

Hon. Justice K. Nath, VC.
Hon. K. J. Raman, AM.

No one is present on behalf of the parties.
The order dated 31-1-89 passed at Allahabad required the case to be listed at the Lucknow Bench on a date one month after due notice to the learned counsel for the parties. On the margin of the order sheet there is an endorsement of the respondents' counsel ~~that~~ on 15-6-89 of having received notice for today's hearing. There is copy of another notice addressed to Sarwan Hussain Ahmad and Sidhartha Verma, Advocates and issued on 5-6-89 for today's hearing, but there is no indication that the hearing is to be done at Lucknow. There is also a Vakalatnama of Shri A. N. Sinha, an Advocate of Allahabad for the applicant. Obviously, the office is not taking care to comply ~~appropriately~~ fully with the Tribunal's order dated 31-1-89. Notices be issued again to the learned Counsel for both the parties mentioned above fixing 21-8-89 for hearing at Lucknow.

AM.

VC.

OR
All point Applicant & the counsel for it have noted dated 21.8.89
21/8/89
11

Noted
Sidhartha
Verma
27.6.89

Noted for
Respondent
No 3 only
3/7/89

21.8.89 Dated noted
Safar AG (App)
7.7.89

AM

TA 1032/87

(10)

(D)

203-90

Hon. D. K. Agrawal, Jm.
Hon. K. O'Gara AM.

Mr. L. P. Shukla for applicant -
Mr. Siddhasth Verma for respondents.

Arguments heard. Respondents
have not complied with the orders
dated 26-2-90, in as much as they
have not produced the relevant
documents. If they do not produce
the same, adverse inference would
be ^{drawn} ~~passed~~ against them. They are,
however, at liberty to produce
the said documents within 3 weeks.
Judgment reserved. List it on
16-4-90 for receiving the documents,
if any. Copy of this order shall
be given to the learned counsel
for the respondents, as desired.

Copy of order
has been served

D. K.

D. K.

D. K.
Jm.

16-4-90

Hon. D. K. Agrawal, JM
Hon. K. O'Gara, AM

Arguments heard. Judgment
Reserved.

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B.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

O.A. NO.

T.A. NO.

1032/87¹⁹ (T)

(W.P. 128/87)

DATE OF DECISION _____

Zafar Ali Siddiqui

PETITIONER

Shri A. M. Sinha

L. P. Sinha

Advocate for the
Petitioner(s)

VERSUS

Union of India

RESPONDENT

Shri S. Verma

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr.

D. K. Agrawal J.M.

The Hon'ble Mr.

K. B. Bhatia J.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

rmk

Recd.
Judgement copy
Zafar Ali
3/5/90

(Handwritten signature)

(10)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

T.A. 1032/87
(W.P.1289/82)

Zafar Ali Siddiqui

...Petitioner.

versus

Union of India & ors.

...Respondents.

Shri A.N.Sinha

Counsel for Petitioner.

Shri S. Verma

Counsel for Respondents.

Hon. Mr. D.K.Agrawal, Judicial Member.

Hon. Mr. K. Obayya, Adm. Member.

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

Writ Petition No. 1289/82 filed in the High Court of Judicature at Allahabad, Lucknow Bench has been received in this Tribunal under section 29 of the Administrative Tribunals Act, 1985 and registered as T.A.1032/87. The petitioner, who was employed in the Northern Railway, has challenged the order of his dismissal from service dated 29.6.81, the appellate order dated 7.11.81 and the order of the reviewing authority dated 22.12.81 rejecting the case of the petitioner and prayed for a direction to the opposite parties/respondents to treat the petitioner in service with effect from 29.6.81.

2. The petitioner was appointed as Trains Clerk in the scale of Rs 260-400 in 1976 and was posted under the Chief Yard Master, Kanpur. In 1978, he was promoted as Senior Trains Clerk and was posted at Lucknow under the Chief Controller. By an order dated 29.6.81 he was issued ~~with~~ a punishment notice dismissing him from service. The same day, an order also was issued dismissing him from

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service with effect from 29.6.1981. This order was accompanied by charge sheet and also an order indicating the circumstances under which it was not practicable to hold enquiry and provide opportunity to the petitioner of being heard. The petitioner preferred an appeal on 14.8.81 which was rejected by an order dated 7.11.1981. He preferred a review thereafter. It was also rejected by an order dated 22.12.1981-

3. The contention of the petitioner is that he was wrongfully held responsible for the assault on Mohammad Husnain and S.C. Bajpai, Deputy Chief Controller, Northern Railway by unidentified persons on 24.6.1981. The F.I.R. was lodged on the same day but did not mention the name of the petitioner as an assailant or as one who was responsible for the incident. The disciplinary authority did not consider the circumstances of the case and his order is, therefore, against the principles of natural justice, ^{being} arbitrary and not based on any evidence. It, ^{further} is ~~therefore~~ contended that there was no material to ^{arrive} at the ~~conclusion~~ ^{conclusion} that it was not reasonably practicable to ~~arrive~~ hold the enquiry. The appellate order was not in accordance with the rules as it was not a speaking order and the review order also was passed without application of mind into the facts and circumstances of the case. It is further contended by the petitioner that both the officials Mohd. Husnain and S.C. Bajpai, alleged victims of assault deposed in the civil suit filed by one Naeem that they ^{whether} donot know ~~that~~ the petitioner had assaulted them but the person who assaulted was not known to ^a them and that nobody in the department was ^{present} ~~seen~~ at the time of incident.

4. The case of the petitioner is that the impugned order

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was passed without notice or opportunity to him and that there was no circumstances to dispense with the enquiry and the appellate and review orders being not speaking orders are arbitrary and against the principles of natural justice, as such the order of his removal, the appellate order and review order are liable to be quashed.

5. In the counter filed by the respondents, it is admitted that the names of the assailants were not mentioned in the F.I.R., though the number of assailants was mentioned as 3. The name of the petitioner was not mentioned in the F.I.R. because of notorious activities and temperament of the petitioner. The victims were afraid to disclose the names of the petitioner but the confidential enquiry of the department revealed that for the petitioner was actually responsible for the incident. It is further stated by them that it was neither possible, nor in the interest of administration to hold the enquiry as laid down under rule 9 and 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. The material gathered against the petitioner was treated as confidential because of the tense situation and possibility of industrial peace being disturbed by rowdy elements if enquiry was held. It is further stated that the petitioner master-minded and connived with anti social elements in assaulting public servants. The petitioner is a miscreant and his conduct in the past also indicated that he was in the habit of assaulting the public servants.
6. In the rejoinder filed by the petitioner, the stand

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taken in the petition has been reiterated and it was pointed out that evidence in the suit filed by one Naeem who was also dismissed from service on same ground for involvement in the same incident, ~~the evidence~~ clearly revealed that the petitioner was not involved in the incident and the victims of the assault also mentioned that they had no suspicion on any other official. It is also stated that the disciplinary authority has not recorded any reasons and satisfaction while dispensing with the enquiry and that the F.I.R. lodged with the police was not followed and the police did not register any case against the petitioner.

7. We have heard the arguments of the counsel for both the parties and perused the record. The charge-sheet against the petitioner, which is contained in Annexure -4 to the petitioner reads as follows:

"On 24.6.81 while Shri Mohd. Hasnain Deputy Chief Controller, N. Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money, Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief ~~Engineer~~ Controller, N. Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trainis Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai

physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/ terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966."

8. The impugned order of dismissal dated 29.6.81 which followed the above charges contained in Annexure-3 is as follows:

"Whereas, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri Zafar Ali Siddiqui, Senior Trains Clerk/Northern Railway/Lucknow, who was appointed under the orders of Senior Divisional Personnel Officer, a Junior-Administrative Grade Officer, am fully satisfied that Shri Zafar Ali Siddiqui Sr. TNC is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

THEREFORE, under the circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(1) Clause (2) of the Constitution of India. Therefore with the powers vested in me under Article 311(1), Clause (2), proviso (b) of the said clause, I

[Signature]

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order dismissal of Shri Zafar Ali Siddiqui
Sr. Trains Clerk/Lucknow from service with
effect from 29th June, 1981 afternoon."

From this it is evident that the recourse has been
taken to rule 14(ii) of the Railway Servants(Discipline
& Appeal) Rules, 1968. This rule lays down:

"notwithstanding anything contained in rule
9 to 13,.....

(ii) where the disciplinary authority^{is} satisfied
for reasons to be recorded in writing that it
is not reasonably practicable to hold enquiry
in the matter provided in these rules or

(iii).....

the disciplinary authority may consider the
circumstances of the case and make such
orders thereon as it deems fit."

A reading of the above rule clearly indicates that
while disciplinary authority is competent to dispense
with an enquiry in taking a decision in disciplinary
matters, such a course could be adopted only after he
is satisfied ~~with~~ that it is not reasonably practicable
to hold an enquiry and the reasons thereof should be
recorded in writing. The record placed before us by the
learned counsel for the respondents deals with appeal.
The circumstances necessitating dispensing with the^l enquiry
as laid down in rule 9 to 13 are not forthcoming
in the record. It is mandatory that the reasons should be
recorded in writing as to why it is not practicable to
hold an enquiry. From the reading of the impugned order, it
is seen that the disciplinary authority has come to the
conclusion that he is "fully satisfied that Shri Z.A.
Siddiqui is responsible for grave charges listed in the
annexure. The basis for arriving at this decision is not
explained. It is further mentioned in the order that the
petitioner "is in such a mood that a notice given and
hearing accorded to him^{of} ~~there is~~ an apprehension ~~and~~ grave

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disorder affecting the vital railway system." The learned counsel for the respondents stated that there was a confidential enquiry which revealed the hand of the petitioner in the incident, resulting in assault of the public servant. What that confidential enquiry was, who were examined, what is the material against the petitioner, is not available in record. We have not been shown any record relating to this confidential enquiry. Admittedly, the petitioner continued to be in the service and attended to his duties from the date of incident i.e. 24.6.81 to the date of dismissal i.e. 29.6.81. It is not known why if his presence in the office was such ^{a force} ~~fierce~~ as to cause disruption to industrial peace, strike ~~terror~~ into the minds of the staff, ^{he} was allowed to continue in the office and not kept under suspension. It is also noticed that the F.I.R. did not mention the name of the petitioner as also in the civil suit thereafter, the victims of the assault who are ~~the~~ responsible government officers, never mentioned the names of the petitioner in their deposition in the civil suit. From this it would appear that the petitioners came to be linked with the incident with no evidence or clue. Perhaps this missing link was explained in confidential enquiry but that confidential enquiry was not placed before us. In the circumstances, we consider that dispensing with the enquiry as provided in rule 9 to 13 ^{is} ~~are~~ not justified since the petitioner was present in the office till the date of his removal and that the incident occurred outside the office and its effect on the staff was either minimal or non-existent.

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case if they so choose giving opportunity to the petitioner as provided in the rules. The petition is allowed as above. In the circumstances, the parties are left to bear their own costs.

Adm. Member.

Judl. Member.

Lucknow Dated: August 31st, 90

31.8.1990