

(See rule 114)

OA/TA/RA/CP/MA/PT 203/89 of 20.....

V.K. MishraApplicant(S)

Versus

..... Respondent(S)

INDEX SHEET

Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 203 of 1988

APPLICANT (s) V. K. Misra

RESPONDENT(s) The Union of India through the Sec. Minister of Railways - Rail Bhawan -

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent? — yes —
2. (a) Is the application in the prescribed form? — yes — in old Proforma.
(b) Is the application in paper book form? — yes —
(c) Have six complete sets of the application been filed? — only two sets have been filed.
3. (a) Is the appeal in time? — yes —
(b) If not, by how many days it is beyond time? — yes —
(c) Has sufficient case for not making the application in time, been filed? — N/A —
4. Has the document of authorisation/Vakalat-nama been filed? — yes —
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/- — yes —
6. Has the certified copy/copies of the order (s) against which the application is made been filed? — yes — (certified from certified copy).
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed? — yes —
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? — No — by a advocate.

24.1.09

D.R.

Copys to be served of the 0 for Notices
filed today. The case is fixed
for Reply dt 23.2.09.

DR

20/1/09

OR

Notices issued to the respondents
through Regd. Post. fixed 23.2.09
to reply & 27.3.09 for final
hearing.

DR

27/3/89

DR

Reply not filed so far. Shri
Anil Srivastava Adv. appeared for the
respondents and as requested, he is
allowed to file reply by 9/5/89.

DR

5.89

Hon. G.S. Sharma, JM
Hon. K.J. Raman, AM

DR

The Applicant is present in
person and requests for adjourn-
ment. No reply has been filed
in this case. There is also no
request for further time to file
reply. In case no reply is filed within
a month, the case shall proceed ex-parte.
In case the reply is filed, adjournment may
be fixed within 2 weeks thereafter.

OR. No reply filed by the
learned counsel for the
respondents. Submitted for order.
w
8/5

List it to final hearing on 8.8.1989.

A copy of this order be sent to the
Respondent No. 3- A.D.M. M.E. Railway, Secunderabad
for his information.

AM

JM

9.5.89

Notice issued to
OP No. 3 through Regd. Post
on 31.5.89.
Needless reply not
any undelivered reply
cover have returned. Case
is submitted for order
w
8/5

3-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

O.A. No. 203 of 88(L)
REGISTRATION No. _____ of 198 .

APPELLANT/
APPLICANT

Shri V.K. Mishra

VERSUS

DEFENDANT/
RESPONDENT

Union of India & ors

trial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
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8/8/89

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

The applicant in person is present.
Shri Anil Srivastava learned counsel for
respondents is present, and files counter
affidavit. Keep it on record. The applicant
may file rejoinder, if any, within three
weeks hereof and fix this case on 25/10/89
for final hearing.

Dep
J.M.

(sns)

OR No R.A. filed
submitted for
hearing

25.10.89

No sitting of D/B. Adj. to 3-1-90.
Both the counsel are present.

B.O.C

OR No R.A. filed
submitted for hearing

3-1-90 Case not reached. Put up tomorrow.

24/11

4/1/90

Mr Justice Kamleshwar Nath, V.B.C
Mr. K. Obayya, A.M.

sel for the applicant files rejoinder.
plication for amendment has also been
whose copy has been delivered to the
l for Op.ps. Shri Anil Srivastava. Objections
may be filed within two weeks and the
listed for orders on the amendment application

90.
A.M.

V.C.

OR No objection filed
S. to

7/13

Atchul, Mr. Joseph L. e. Garvague ve
Gambel, Mr. A. B. Garlin. A. M.

13.9

He. Mr. Justice K. Math.
Hon. Mr. K. Math.

23/4/91
Performance
many 9th grade
counted by
15/5/91

cost is paid for
23. 91 to - 500
Suppl. Co. in
by the suppl. Co.

pick-up tomorrow
for this hearing

(M. 4)

T


O.A 203/88

18-9-91

Hon. Mr. Justice U.C. Srinivasra, VC
Hon. Mr. D.B. Gorthi, DM.

2 days time is allowed
to respondents to file
Supplementary Affidavit as
requested by Sh. Anil
Srinivasra. List on 25-11-91


A.M.


ve.



25-11-91

No Suing adjn 24-1-92

24-1-92

No Suing of D.B. adjn
5-2-92

5-2-92

No Suing adjn 2-4-92

2-4-92

No Suing adjn 22-5-92

22-5-92

Hon Justice U.C. S. VC
Hon R. Gajaga, AM

Sh. Anil is in person and states
that he has not engaged his
counsel. 2 weeks time is
granted. L1 for hearing
on 6-8-92

OR
Submitted
for hearing.
Sh. Anil

S.F.H.




25/8/92

6-8-92

Can be read adjn
26-8-92

noe

OR
SPH
Q
20/5


VC

84 203/80

27/8/94

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

(84)

List before some other
Bench which does not consist
Hon. Mr. B.C. Saksena as
a member.

[Signature]

✓
A.M.

✓
Bach

List on 20.6.94
before the Hon. Mr.
Bench of Hon. Mr.
V.K. Seth and Hon. Mr. D.C.
Verma. *[Signature]*

of 20.6.94
Submitted
for hearing
regarding M/S 09/93
The case has also
been decided
on 22.8.93
27/8/94

No filing of D.B. after
22.8.94

✓
Bach

The case
could not be traced
out on 22.8.94
Submitted.

th
20/8/94

DB
26.8.94

This file has been
placed before me today.
Office to be more careful
in future regarding listing.
List this case for hearing
on 15.9.94. Notify in the
warning list.

✓
DB

20/10/94

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

(A/G)

The O.A. is wrongly
listed today. The learned
counsel for the respondents states that
notices have been issued in
review No. 63/93.

Learned Counsel for
the applicant is not present
today.

A perusal of the notice
received by the learned counsel
for the respondents shows
that review petition is not
traceable. Office is directed to
trace the review petition & list
on 12/12/94 for hearing.

2
Rev NO 63/93. Review
connected with OA 203/88
as per Court order dt 20.10.94
SPH
9/10/94

J.M.

L.V.
A.M.

12.12.94

MO Singh and B. Singh to
9.2.95
Bare

CA 203/80

28/1/87

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

The applicant is Present
in Person & States that
his counsel is not available
today.

List on 20/3/87

J.M.

AM

20/3/87

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

The learned Counsel for the
applicant States that Review
Petition bearing No 68/83 seeking
review of the judgment & order
dt 23/2/83 passed in this
CA is still pending for disposal
& the same is already
listed for 8/5/87. In the
circumstances, we consider
this MP No 59/83 is not
maintainable & rejected
for want of law. Review
Petition be listed on the
date already fixed.

J.M.

AM

Filed on 21-11-08
A

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

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Application no. 203 of 1988 (U)

BETWEEN

Vijay Kumar Misra

--Applicant

AND

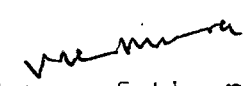
Union of India and others

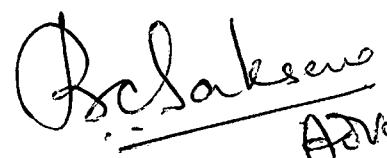
-Respondents

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Signature of the applicant


Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench at Allahabad

Lucknow Circle, Lucknow

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Application no. 203 of 1988 (U)

BETWEEN

Vijay Kumar Misra, aged about 47 years, son
of late Sri P.C.Misra, resident of 89, Ghunnoo
Mal Marg, Mawaiya, Lucknow

Applicant

AND

1. The Union of India through the Secretary,
Ministry of Railways, Rail Bhawan, New Delhi
2. The General Manager, North Eastern Railway,
Gorakhpur
3. The Additional Divisional Railway Manager,
North Eastern Railway, Divisional Offices, Ashok
Marg, Lucknow
4. The Senior Divisional Safety Officer, North
Eastern Railway, Divisional Offices, Ashok
Marg, Lucknow

Respondents

DETAILS OF APPLICATION:

1. Particulars of the applicant:

- (i) Name of the applicant: Vijay Kumar Misra
- (ii) Name of father : Late Sri P.C.Misra
- (iii) Age of the applicant: 47 years

Noted for
24.11.88

for
21/11/88
Advocate

V.K. Misra

- (iv) Designation and particulars of office in which employed Trains Clerk, Aishbagh Station, N.E. Railway, Lucknow
- (v) Office address Care of Station Supdt., Aishbagh Station, N.E. Railway, Lucknow
- (vi) Address for service of notices Seth
89, /Ghunnoo Mal Marg,
Mawaiya, Lucknow.

2. Particulars of the respondents:

- (i) Name and/or designation of the respondents
1. The Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi
 2. The General Manager, North Eastern Railway, Gorakhpur
 3. The Additional Divisional Railway Manager, North Eastern Railway, Divisional Offices, Ashok Marg, Lucknow.
 4. The Senior Divisional safety Officer, North Eastern Railway, Divisional Offices, Ashok Marg, Lucknow
- (ii) Office Address of the respondents As above
- (iii) Address for service of notices As above
3. Particulars of the order against which application is made.
- (a)

V.K. Mishra

(A)

- (i) Order no. with reference to Annexure no. T/537/TA/Misc./Link/10/185 Annexure no. A-6...
- (ii) Date 9.11.1987
- (iii) Passed by Senior Divisional Safety Officer, N.E. Railway, Divisional Offices, Ashok Marg, Lucknow.

(B)

Order passed by the Additional Divisional Railway Manager respondent no.3 was communicated by the Divisional Railway Manager (Safety), N.E. Railway, Lucknow by his letter no. T/537/TA/ Misc./Link/10/85 dated Nil February, 1988 received by the applicant on 16.4.1988 and contained in Annexure no. A-8...

(iv) Subject in brief

Imposition of penalty of reduction in rank and grade from the post of Guard Grade 'C' in scale Rs. 1200-2040 to the post of Trains Clerk in scale Rs. 950-1500 for a period of five years with cumulative effect and loss of seniority.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject-matter of the orders against which he wants redressal is within the jurisdiction of the Tribunal

5. Limitation:

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

V. Kumar

6. Facts of the case:

The facts of the case are given below:-

1. That the applicant on 10.3.1987 was served with a Memorandum (Charge-sheet) issued by the Senior Divisional Safety Officer, North Eastern Railway, Lucknow by which it was intimated that it was proposed to hold an inquiry against the applicant under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Enclosed to the said Memorandum were the following three Annexures:-

Annexure I: Substance of imputation of misconduct in respect of which inquiry was proposed to be held and it was contained in statement of Article of Charge.

Annexure II Statement of imputation of misconduct in support of the particular charge.

Annexure III List of documents by which and a list of witnesses by whom the articles of charge were proposed to be sustained.

The said Memorandum was on a cyclostyled standard form of charge-sheet under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The attested true copies of three Annexures to the said Memorandum are being annexed as Annexures nos. A1, A-2, and A-3 respectively to this application.

V. K. Anand

2. That the applicant after receiving the said Memorandum dated 10.3.1997 on 13.3.1987 made a representation dated 20.3.1987 addressed to the Senior Divisional Safety Officer, N.E.Railway, Lucknow . By the said representation the applicant requested to be furnished with eight categories of documents enumerated in his representation and further indicated that he reserves his right to ask for further documents^{as} and when needed by him during course of inquiry. An attested true copy of the said representation dated 20.3.1987 is being annexed as Annexure no. A-4 to this application.

3. That in reply to the applicant's representation dated 20.3.1987 the Divisional Railway Manager (S) , N.E.Railway, Lucknow by letter dated 4.5.1987 furnished copies of the documents indicated at serial nos. 2 to 6 of the applicants representation dated 20.3.1987. Copies of documents mentioned at serial nos. 1,7 and 8 were^{not} furnished . In respect of document at serial no. 1 it was indicated that the charges framed against the applicant are based on summary of evidence which have been supplied . As such no further statements of staff can be made available. With regard to document at serial no.8 it was stated that the CRS report is a confidential document and it cannot be supplied. The document at serial no. 7 was not

Y.K. Chinn

furnished. The applicant on 4.5.1987 made the following endorsement on the copy of letter dated 4.5.1987:-

"Received letter along with 15 pages of required documents, but items 1,7 and 8 required by me in my application of 20.3.1987 have not been supplied to me , in the absence of which I will not be able to prepare the reply as these documents are necessary for preparation of reply.

Rough Journal of Sri K. Chandra, Guard 513 UP have been seen ny me."

4. That Sri J.L.Chaba, Safety ^{Counsellor}~~Controller~~(Traffic) N.E.Railway, Lucknow, was appointed as the Inquiry Officer.

5. That the brief facts as would be found from the three annexures to the Memorandum dated 10.3.1987 are that on 27.12.1985 Down Aishbagh Special was worked by 3498 YG, Driver Sri S.P. Avasthi and the applicant as its guard. It arrived at Magarwara at 15.45 hrs. on line no. 6 . The train performed shunting in Mill siding and the load consisting of 64 wagons was ready on line no. 6 at about 19.30 hrs. After shunting the driver demanded water and at 20.20 hrs the Train Controller (TNL) ordered that load of Dn. Aishbagh Special should be transferred on loop line no. 7 to clear main line. At about 21.20 hrs ASM on duty Sri J.C. Tandon sent the shunting orders on OPT/79 to the

J. K. Dandin

1

V. K. Antevy

that while supervising shunting operation of DN Aishbagh Special goods train at Magarwara, his shunting load entered into block section, Magarwara- ON without proper authority and violated SR 5.13/7(b) read with GR 8.11 which tantamounts to misconduct. * (Amendment incorporated on the back of page 6, 7 and 8. as paras 6.15 to 6.20)

7. That during the inquiry proceedings before the Inquiry Officer all witnesses named in Annexure 4 to the Memorandum except Sri J.C.Tandon ASM., Magarwara, who had been removed from service, had been examined. Under Divisional Railway Manager (S)'s order contained in his letter dated 15.9.1987 despite the objections raised by the applicant's defence counsel the name of the said witness was deleted. He was an important witness and he could not be deleted.

8. That the Inquiry Officer in his report recorded cogent and detailed findings of fact and reached the finding that :

"It is quite clear and amply proved from the statements of prosecution witnesses and evidences on record that accident did not take place due to failure on the part of Guard Down Aishbagh Special. Therefore, the violation of SR 5.13/7(b) read with GR 8.11, which tantamounts to violation of Rule 3(i)(ii) of Railway Service (Conduct) Rules, 1966 by Sri V.K.Misra Guard/ Aishbagh is not proved."

V.K. Misra
attached
A true copy of the Inquiry Officers report is

being annexed as Annexure No. A-5 to this application.

9. That a perusal of the Inquiry Officers report would show that ^{it} had indicated reasons ~~for reaching~~ ~~the finding that the failure on~~ ^{for} and the failure on the part of other railway officials which had caused the accident. He found that the failure on the part of Sri J.C.Tandon, Assistant Station Master, Sri Parideen Switchman, Sri Taran Singh Driver and Sri S.P. Avasthi Driver of Down Aishbagh Special had caused the accident.

10. That the Senior Divisional Safety Officer, N.E.Railway, Lucknow by order dated 27.10.1987 disagreed with the findings of the Inquiry Officer with regard to non-violation ~~of~~ by the applicant ~~under~~ of SR 5.13/7(b) of N. Rly., G & S.R. In paragraph 3 of the order the Senior Divisional Safety Officer has taken the view that the Inquiry Officer had not commented upon violation of rule 8.11 by the applicant in his report and therefore he ordered that the applicant be reduced from the post of Guard Grade 'C' in scale Rs. 1200-2040 to the post of Trains Clerk in scale Rs. 950-1500 at Rs. 1200/- for a period of five years with cumulative effect and loss of seniority. An attested true copy of the said order dated 27.10.1987 ^{and order dated 9-11-87} is being annexed as Annexure no. A-6 to this application.

11. That aggrieved by the said order of punishment,

V.K. Amin

the applicant preferred an appeal under rule 18 of the Railway Servants (Discipline and Appeal Rules, 1968 to the Additional Divisional Railway Manager, N.E.Railway, Lucknow on 29.12.1987.

With a view to place on record the facts stated and grounds raised by the applicant in his appeal an attested true copy thereof is being annexed as Annexure no. A-7 to this application.

12. That a perusal of the said appeal would show that the ~~per~~ applicant had challenged the order of penalty, inter alia, on the ground that the punishing authority has failed to consider the comments given by the Inquiry Officer at page 3 of his report in respect of application of GR 8.11 and therefore the finding of the punishing authority in paragraph 3 of the order stating that the facts relating to GR 8.11 had not been commented upon by the Inquiry Officer is against the facts and evidence on the record. The other ground was that the punishing authority had misinterpreted the provisions of GR 8.11 and failed to consider that the said rule was to be followed & observed by the SM/ ASM on duty ordering the shunting operation of the load in question. The applicant further indicated that Ramesh Prasad, ~~Shunt~~ Shuntman, in answers to questions nos. 6, 10 and 11 had confirmed about the practice relating to shunting then prevalent at Magarwara railway station. He had stated that according to the said practice no authority was given to the Driver to pass Advance Starter in ON position.

V.K. Minin

during shunting . He further confirmed that shunting order no.OPT/79 was the proper authority to pass the last stop signal by the driver in shunting operation.

13. That the ^{Divisional} Additional/Railway Manager (Safety) in his order has without assigning any good and proper reasons rejected the applicants contention that the punishing authority erred in making the observation that the Inquiry Officer has not ~~made any~~ commented with regard to the applicability of GR 8.11 and also affirmed the finding of the punishing authority with regard to violation of SR. 5.13/7(b) by the applicant.

The order stated to have been passed by the Addtional Divisional Railway Manager was communicated to the applicant by the Senior Divisional Railway Manager (Safety) , N.E.Railway, Lucknow by his letter no. T/537/T.A./Misc./ Link/10/85 dated Nil February, 1988 which was served on the applicant on 16.4.1988 . An attested true copy of the said letter dated Nil Febryary 1988 is being annexed as Annexure no.A-8 to this application.

14. That the post of Guard belongs to the Operating Department also otherwise known as Transportation/Traffic Department. Opposite-party no 4 is an officer belonging to the Safety Department and not to the Operating Department . He neither has the administrative or disciplinary control over the petitioner. The initiation of departmental

V.K. Omia

proceedings and the order of punishment are wholly illegal and without jurisdiction. (In several writ petitions the Lucknow Bench of the Allahabad High Court has taken the view that officers belonging to other departments of the railways cannot exercise administrative or disciplinary control over officers of the other department. A Full Bench of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad consisting of Hon'ble Mr. Justice K. Madhava Reddy Chairman, Hon'ble Mr. B.N. Jayasimha, Vice Chairman and Hon'ble Mr. D. Surya Rao Member (Judicial) by a decision dated 14.12.1987 has held that the General Manager alone is competent to impose any of the penalties including the penalties specified in Article 311 of the Constitution. It has been held that the General Manager would be the appointing authority being the highest amongst appointing authorities. The others would be merely delegates of the appointing authority and since the power to institute disciplinary proceedings has not been delegated by the General Manager, any authority other than the General Manager shall be incompetent to impose the penalty. In view of the said decision the entire departmental proceedings, and the order of punishment as also the appellate order are wholly without jurisdiction and void.)

7. Details of the remedies exhausted

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

Against the order of punishment of reduction in rank and grade from the post of Guard Grade 'C' to the post of Trains Clerk dated 9.11.1987 passed by the Senior Divisional Safety Officer, N.E. Railway, Lucknow, the applicant preferred an appeal to the Additional Divisional Railway Manager, N.E. Railway, Lucknow on 29.12.1987 and the appeal has been rejected.

8. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

9. Relief(s) sought

In view of the facts mentioned in para 6 the applicant prays that this Hon'ble Tribunal be pleased to set aside the order of punishment dated 9.11.1987 (Annexure A-6) passed by the Senior Divisional Safety Officer, N.E. Railway, Lucknow, opposite-party no.4 as also the order passed by opposite-party no.3 and communicated to the applicant by opposite-party no.4 through his letter dated Nil February, 1988 and contained in Annexure A-8 to this application ^{*(Amendment on the} on the following _{back of page 12.} amongst others

- 3 and
A/S
- (a) Because opposite-party no. 4 not being the officers of the Operating/ Transportation/Traffic department to which the petitioner belongs have wholly without jurisdiction exercised disciplinary control over the petitioner. The initiation of departmental proceedings and other steps and orders passed by opposite-party no. 4 culminating in the order of punishment being wholly without jurisdiction are null and void.
- (b) Because in view of the Full Bench decision of Central Administrative Tribunal, Hyderabad Bench, Hyderabad the General Manager is alone competent being highest of the appointing authorities to impose the penalty on the petitioner.
- (c) Because in view of several decisions of the Lucknow Bench of the Allahabad High Court officers not belonging to the department to which the delinquent employee belongs cannot act as disciplinary authority or appointing authority.
- (d) Because, in any case, the order for punishment is wholly illegal and opposite-party no. 4 has failed to apply his mind to the defence taken by the petitioner and the nature of duties which the petitioner was required to discharge.
- (e) Because opposite-party no. 3 erred in not upholding the grounds and pleas raised by the petitioner in his departmental appeal.
- (f) Because, in any case, the findings are wholly
- V. K. Amin*

against the weight of the evidence on record.

10. Particulars of Postal Order in respect of the application fee.

1. Number of ~~K~~ Indian Postal Order (s) .
2. Name of the issuing post office
3. Date of issue of Postal Order(s)
4. Post Office at which payable.

11. List of enclosures

1. Statement of articles of charge framed against the applicant
2. Statement of imputation in support of the Article of charge.
3. List of documents by which and a list of witnesses by whom the articles of charges were proposed to be sustained.
4. Representation dated 20 3.1987
5. Inquiry Officers report
6. Order dated 27.10.1987 along with order dated 9.11.1987
7. Appeal dated 29.12.1987
8. Order dated Nil February, 1988

VERIFICATION

V.K. Misra

I, Vijay Kumar Misra, son of late Sri P.C. misra aged about 47 years, working as Trains Clerk Alhbagh Station, N.E.Railway, Lucknow, resident of 89, Seth Ghunnoo Mal Marg, , Mawaiya, Lucknow, do hereby verify

that the contents of paras 1 to 5 and all the paras under para 5 except the portion within brackets in para 14, para 7, 8 and para 9 except the grounds paras 10 and 11 are true to my personal knowledge and those of portion within brackets ~~under~~ of para 14 under para 6 and grounds are believed to be true on legal advice and that I have not suppressed any material fact.

V.K. Mishra

Signature of the applicant

Date 28.9.1988

Place Lucknow

B. Lakshmi

Counsel for the applicant .

To

The Registrar,
Central Administrative Tribunal,
Lucknow Circle, Lucknow.

In the Central Administrative Tribunal

Additional Bench at Allahabad

Lucknow Circle, Lucknow.

Application No. of 1988

Between

Vijai Kumar Misra... .. Applicant

And

The Union of India and others..... Respondents.

Annexure No. A-1

Statement of Article of charge framed against Sri
Vijay Kumar Mishra s/o Sri Phool Chand Mishra,
Guard(C).

Article

On 27.12.85 Sri Vijay Kumar Mishra s/o Sri Phool
Chand Mishra, Guard(C) while supervising shunting
operation of Dn.ASH Spl.Goods train at Nagarwara his
Shtg.load entered into Block section MGN-On without
proper authority and violated Gr.5.13./7(b) read
with GR 8.11.which tantamounts to misconduct.He
thus violated Rule 3(i) (ii) of Railway Service
(Conduct) Rules 1966.

Attested from
true copy.

Sd/- Illegible
A.H.Aga

Sr.D.S.O/LJM

[Signature]
21/12
(ADVOCATE)

V.K. Amin

10

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

Application No. of 1988

Between

Vijai Kumar Mishra.... Applicant

And

The Union of India and others..... Respondents.

Annexure No. A-2

Statement of imputation in support of the article
of charge framed against Sri Vijay Kumar Mishra s/o
Sri Phool Chand Mishra, Guard(C).

On 27.12.85 during the course of shtg.operation
of Dr. ASE Shtg. Goods Train Sri Vijay Kumar Mishra,
Guard(C), failed to supervise the shunting properly
and his shtg.load entered into the block section
MGW-ON without proper authority violating Sec. 15/7(b)
read with G. 8.11 which tantamounts to misconduct. As a
result of which when 513 Up Marudhar express Train was
approaching Magarwara station from Unnao station
its Diesel Engine collided with steam Engine of
Down ASE shtg. Goods causing derailment of
Passenger coach just behind the Diesel Engine and
a body of first class coach 4th from Diesel Engine
hogged. On the Goods Train four wagons next but one
were affected, the first three capsized and the
other derailed. He thus violated Rule 3(i) and (ii) of
of Railway Service (Conduct).

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... W. AGA
Sr. DSC/LTW
10.3.

*Attested from
true copy.*

Advocate
21/11
ADVOCATE

V. K. Mishra

Annexure IV

List of witness by whom the Article of charge framed against Sri Vijay Kumar Mishra, S/o Sri Phool Chand Mishra, Guard(C) as proposed to be sustained:-

1. Statement of Sri Ramesh Sd. Shunthan/MGW
2. " " Sri Ram Lal, Porter/MGW.
3. " " Sri Parideen, Switchman/MGW.
4. " " Ram Swarup, Gateman.
5. " " Taran Singh, Driver(A) of 5130pExp.
6. " " Jagat Narain, Asstt. Guard of 5130pExp.
7. " " J.C. Pandon, ASH/MGW.

Attested from
true copy.

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A.N. Aga
Sr. DSO/LJM

Forw'd
21/11
Advocate

V.K. Mishra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD
LUCKNOW CIRCLE LUCKNOW.

Application No. of 1988

Between

Vijai Kumar Misra.... Applicant

And

The Union of India and others..... Respondents.

Annexure No. A-4

To
The Sr. Divl. Safety Officer,
North Eastern Railway,
Lucknow.

Through Proper -Channel.

Ref. No. T/537/TA/Misc./link/10/85 dated 10.3.87 received on 13.3.87.

Sri,

With the respect I beg to apply for the documents mentioned below for preparation of my defence. Summary statements of witness are but privilege documents of the Administration and supply of those summary statements are :

1. Copies of statement of witness as mentioned in the list of witness in annexure-IV of the memorandum under reference. The summary statements as supplied will not do the purpose.
2. Copies of SR 5.13/7(b) as mentioned in the Article of charges alongwith the copies of Subsidiary Rules enforced over Northern Railway during the period of 27.12.85. Subsidiary Rules are domestic Rules of N. Railway.
3. Copies of the SWA of MGW pertaining to the shunting movements enforced during the period of 27.12.85.
4. Copy of OPT-79 (shunting order) issued by ASm/MGW on duty from 16-00 to 24.00 Hrs to the Drive

V.K. Anwar

Attested from
True copy.
Signature
Advocate

-2-

Dn.ASH Spd.Goods train for shunting movements and also counter-signed by the Guard.

5. Copies of Train Movement Register (TSR) of MGW & on during the period of 16-00 to 24-00 hrs. of 27.12.85.

6. Copies of Log-Book maintained by ASM & E/Cabin of MGW for operational movements of trains and shunting as well.

7. Rough Journal book in original from the period of 14.12.85 to 28.12.85 of the alleged accused employee taken by SO(T)/LJN under clear signature.

8. Copies of the preliminary enquiry reports conducted by the Departmental Authorities and reports of CRS enquiry reports conducted subsequently in regard to the subject case.

I preserved the right to ask for further documents as and when needed be during the course of enquiry proceedings.

With kind regard.

Dated, Aishbagh.

20th March, 1987.

Yours faithfully,

sd/- illegible
(V.K. Mishra)
Guard/ASH.

Attested from
true copy.

[Signature]
21/11
Advocate

V.K. Mishra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 ADDITIONAL BENCH AT AILANABAD
 LUCKNOW CIRCUIL LUCKNOW.

APPLICATION NO. OF 11

BETWEEN

VIJAI KUMAR MISRA.... APPLICANT

AND

THE UNION OF INDIA AND OTHERS.....Respondents.

Annexure No. A-5

From J.L.Chaba,
 SO(T)/LJN.

D.M.M.(Safety)/LJN. Dated 1.10.87

Sub: Dm enquiry against Sri V.K.Misra, Guard/ASM,
 vide Memorandum No.T/537/TA/Hisc/Link/10/85
 dated 11.3.87.

HISTORY

on 27.12.85 Dn.ASM Spl.was worked by 3498 LG Driver
 Sri S.P.A.wasthi, Guard, Sri V.K.Misra. It arrived at NG
 at 15.45 hrs on line no.6. The train performed shunting
 in Mill siding and the load consisting of 64 wagons was
 ready on line no.6 at about 19.30 hrs. After shunting
 Driver demanded water and at 20.20 hrs. ~~After shunting~~
~~XX~~ TML ordered that load of
 D.M.ASM Special should be transferred on loop line
 no.7 to clear main line. ~~At~~ ^{At} about 21.20 hrs ~~ASM~~ ^{ASM} on duty
 Sri J.C.Tandon sent the shunting orders on OPT/79
 to the Guard and driver to shunt the load from
 line no.6 to line no.7. The route was correctly set
 and Dn.starter for line no.6 was taken off for shunting
 purposes. On observing starter in off position and
 guard's signal driver of Dn.ASM Spl.pulled the full
 load for clearing trailing points and stopped short
 of Outer signal at Unnao End after passing Dn.
 advanced starter in off position.

V.K.Misra

Attested from
 true copy.

[Signature]
 21/11
 (Advocate)

List of documents. vide page no. 1 to 26.

List of witnesses. As given in Annexure IV of memo.

All witnesses have been examined except Sri J.C. Tandon, ASM/IGM who has been removed from service as he was held responsible for the above accident. His attendance couldnot be arranged inspite of best efforts, Though he was an important prosecution witness but DMR enquiry had been completed after deleting his name as per DM(S)'s orders vide letter No. T/537/TM/misc/Link /10/85 dated 15.9.87 inspite of objections raised by Defence council in the course of enquiry.

Discussion of Evidence and Reasons for finding.

The Guard has been charged for violating SR 5.13 /7 (b) read with GR 8.11.

SR 5.13/7(b) reads as under:-

" Responsibility of Guard for shunting of complete trains in the station yard:- Whenever a complete train of any description is to be shunted from one line to another or placed in or taken out from a siding, such as in the process of crossing or giving precedence to another train, the Guard Incharge of the train will supervise the shunting and will be responsible:-

A) The points and crossing are correctly set and facing points locked for the shunting as per SR 5.14/1.

b) For exhibiting the necessary signals to the driver performing the shunting.

GR 8.11 is as under:-

" ^{obs} ~~Construction~~ outside station section at a 'B'

Class single line station equipped with two aspect signals.

*Attested from
true copy.*

*Pushpal
21/11
Advocate*

The line outside station section and upto outer signal shall not be obstructed unless a duly servant specially appointed in this behalf by SM^{is} in charge of the operations and unless:-

- (a) the block section into which the shunting is to take place is clear of an approaching train and all relevant and necessary signals are at ON position, or
- (b) If an approaching train has arrived at the outer signal, SM has personally satisfied himself that the train has been brought to a dead stand at the signal.

Provided that the line shall not be obstructed under clause B in thick, foggy or tempestuous weather impairing visibility or in any case unless authorised by special instructions.

After going through the evidence available and statement of witnesses, it is amply clear that accident occurred as the ASM on duty gave line clear for 513 Up when block section was blocked by Dn. ASM special due to shunting and Switchman also exchanged P.No. with ASM confirming the clearance of block section. The driver of 513 Up overshot Up outer signal and collided with Dn. ASM special in block overlap portion.

Though Sri V.K. Misra, Guard has been charged for violation of Gr. 5.13/7(b), read with Gr. 8.11 but he had ensured before commencement of shunting that points and crossing were correctly set and facing points locked. He also exhibited correct signals to the driver and moreover there was no accident due to wrong setting of points or due to incorrect exhibition of signal by the Guard.

The driver of Dn. ASM special, shuntman, switchman have confirmed the presence of Guard during shunting in their statements.

V.K. Misra

Attested from
true copy
[Signature]

As regard Gn 8.11 (a), Sri V.K. Misra Guard performed shunting when block section was clear duly authorised by Sri J.C. Tandon, ASM/MGW through a shunting order and all approach signals were in ON position. Gn 8.11.(b) concerns to the duties of SM on duty. The guard was neither informed before commencement of shunting nor during shunting operation regarding reception of 513 Up by ASM on duty, Sri Ramesh Pd. Shuntman, also admitted this fact in answer to question no. 2, 3 at page no. 10 that no intimation was given by ASM regarding reception of 513 Up. Sri Parideen, Switchman also stated in statement at page no. 13 that he had no prior information about reception of 513 Up before starting shunting of Dn. ASH special. He was informed by ASM on duty only after he had given line clear for 513 Up to SM/On.

Moreover as per SWA of MGW, para 6.3 (MG), ASM on duty failed to inform Engg. Gatoman of gate no. 36/B regarding reception of 513 Up under exchange of No. Sri Ram Swarup Gateman on duty has confirmed this fact in his statement at page no. 0.2 Sri J.C. Tandon, ASM on duty is the main staff responsible for the accident, who issued shunting order to shunt the whole train from line no. 6 to line no. 7 in foggy weather and then granted line clear to 513 Up without ensuring that block section was clear.

As regards the responsibility of guard for ensuring that driver of Dn. ASH special was authorised to pass Dn. Advanced starter in On position, the Guard stated in his statement at page no. 20 that he informed Sri J.C. Tandon, ASM on duty to give an endorsement on the shunting order for the same. But ASM replied that he should attend shunting and it will be done before

V.K. Misra

shunting order was finally delivered to the driver through shuntman. Shuntman, Sri Ramesh Pd. also travelled on the engine during shunting as per statement of Sri S.P. Awasthi, Driver of Dn. ASM special at page no. 17. Sri Tandon, ASM had also admitted in his statement before Enquiry Committee (Copy attached page no. 22, Annexure II) attached with charge memorandum) that if Adv. starter is to be passed in ON position during shunting, the driver has to be authorised by special sanction on shunting order OPT/79 and no separate authority was given. But ASM failed to block back and give the above endorsement on the shunting order when he fully knew that full load train was to be shunted beyond Dn. Advanced starter for backing the same on line no. 7. Sri S.P. Awasthi, Driver of Dn. ASM special was satisfied due to presence of shuntman on his engine. Sri Ramesh Pd. shuntman also told in answer to question no. 6 (page no. 10) that as per practice no authority was given to the driver to pass Adv. starter in ON position during shunting before this accident. Again he admitted in answer to question no. 10, 11 at page no. 11 that shunting order on OPT/79 was thought to be a proper authority to pass the last stop signed by driver in shunting operations.

Sri Parideen, Switchman, also corroborated the above statement while giving answers to question no. 3 at page no. 15.

Moreover, no intimation is given to the Guard before authorising the driver of a train to pass Adv. starter in ON position either in H. only or H.L. only. The above intimation is only given to the driver of a train. Sri S.P. Awasthi, Driver of Dn. ASM special, was solely responsible for passing the Dn. Adv. starter in ON position while pulling lead in shunting operation without

V.K. Amin

getting any endorsement on shunting order by ASM on duty.

The above accident was caused due to failure of the following:-

i) Sri J.C. Pandon, ASM authorised shunting in block section without observing rules. Again he gave line clear for 513 Up without ensuring that block section was clear of Dn. goods.

ii) Sri Parideen, Switchman, exchanged, P.No. with ASM confirming the clearance of line for 513 Up, though line was blockaded by Dn. ASM special, as shunting was in progress. He admitted this fact in reply to question no.2 at page no.14.

iii) Sri Taran Singh, Driver of 513Up violated and overshoot up outer signal of NGR.

iv) Sri S.p. Awasthi, Driver of Dn. ASM special passed Dn. Adv, starter in ON position during shunting.

It is quite clear and amply proved from the statements of prosecution witnesses and evidences on record that accident did not take place due to failure on the part of Guard of Dn. ASM special. Therefore, the violation of SR 5.13/7(b) read with GR 8.11. which tantamounts to violation of Rule 3(1) (ii) of Rly. Service (Conduct) Rules 1966 by Sri V.K. Misra Guard/SM is not proved.

Enc.:- one file as above

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(J.L.Chaba)
SC(1)/LJN.

Attested from
True copy

21/11
Advocate

V.K. Misra

conclusion that the penalty of reduction to a lower post/grade may be imposed on Sri Vijay Kumar Misra ~~XXXX~~ ~~XX~~ Shri Vijay Kumary Misra is, therefore reduced to the lower post/grade /service of Train^{CLERK} in the scale of Rs.950-1500 fixing his pay at Rs.1200/- per month for a period Five yearsX months from the date of this order with postpoining future increments.and loss of seniority.

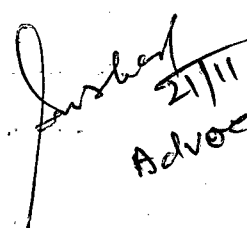
4. Under rule 18 of the Railway Servants (D.&W) Rules, 1968 an appeal against these orders lies to ADRA/LON provided:-

i) The ap;eal is submitted through proper channel within 45 days from the date of receipt of these orders and

ii) the appeal doesnot contain improper or disrespectfull language.

5. Please acknowledge receipt of this letter.

Name & Designation of the Sr.D.S.O. ^{Signature (V.K.TA..)} ^{LJN}
disciplinary authority.

Attested from
T. C. 
21/11
Advocate.

V.K. Misra

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

Application No. of 1988

Between

Vijai Kumar Misra.... Applicant

And

The Union of India and others..... respondents.

Annexure No. A-VI

I have gone through the DAA enquiry reports submitted by Enquiry Officer.

2. Shri V.K. Misra Guard of Down A3E special of 27.12.85 worked by power No. 3498 YG was in charge of shunting operations at RGM station and while doing so, Down A3E Spl. entered into the block section RGM-On without any authority from ASM on duty at RGM. He thus violated SR 5.13./7(b) read with SR 8.11. In the second para of DAA enquiry report, the L.O. has held that the accident concerned due to overshooting of Up Outer signal by the driver of 513 Up, but he has overlooked the fact that another cause of the accident was the entry of Down A3E special into the block section for shifting the load from L/6 to L/7, although the ASM on duty at RGM had not authorised the driver and guard of Down A3E special to enter into the block section while performing the shunting as per the shunting order given by the ASM at RGM station on 27.12.85.

SR 5.13 /7(b) read as under:-

"Responsibility of Guard for shunting of complete trains in the station yard:- Whenever a complete train of any description is to be shunted from one line to

V.K. Misra

T. C.

-2-

another or placed in or taken out from a siding, such as in the process of crossing or giving precedence to another train, the Guard Incharge of the train will supervise the shunting and will be responsible:-

(b) for exhibiting the necessary signals to the driver performing the shunting.

3. It is proved that Sri V.K. Mishra, Guard performed shunting in violation of rule 8.11 (G.M.) which states that line outside the station section upto outer signal shall not be obstructed unless a railway servant specially appointed in this behalf by the S.M. is incharge of the operation i.e., the S.M. on duty has to specially authorise the Guard to do shunting in block section between the Down advance starter and the outer signal in the case of Down A.S. S.N. at NGW. This fact has not been commented upon by the L.O. in his enquiry report.

4. In absence of Specific permission of the S.M. as duty to do shunting in block section, the guard Sri V.K. Mishra exhibited the hand signal to the driver to take his load beyond advance starter. He thus failed to exhibit the danger signal to driver to prevent him to enter block section thereby violated 5.13 /7(b) of R.M. G.M. S.M.

5. I do not agree with the conclusions arrived at by the L.O. on the statement of Guard that he informed the S.M. on duty at NGW Sri J.C. Fandon to endorse on the shunting order authorising the driver to pass the advance starter at its position. Even assuming his statement as true, he should have refused to carry out shunting beyond down advance starter or not as such shunting order as was given to him.

V.K. Mishra

T.C.

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Setting aside the conclusions arrived at by the L.C.I hold Sri V.K. Misra Guard responsible for violation of both Art 5.13/7(b) and Art 8.11. The ends of justice will be met by reducing him from the post of Guard 'C' to the post of B.

6. I, therefore, order that Sri V.K. Misra, Guard 'C' in scale 1200-2040 be reduced to the post of train clerk in scale Rs. 950-1500 at Rs. 1200/- for a period of five years with cumulative effect and loss of seniority.

Sr. DSO/LJM.

27.10.87

Attested from

T. C.

[Signature]
Advocate

V.K. Misra

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

Application No. of 1988

Between

Vijai Kumar Misra... ..Applicant

And

The Union of India and others.....Respondents

Annexure No. A.7

The Addl.Divl.Railway Manager,
N.E.Railway,
Lucknow Jn.

Through: The proper Channel

Appeal under rule 18 of the Railway-
Servants Discipline & appeal Rules,
1968 against order No.T/537/TA/Misc./
link/10/85 dated 9.11.1987 passed by
the learned Sr,D.S.O./NER/LJN imposing
the penalty of reduction in rank and
grade i.e.from the post of Guard grade
'8' in scale of Rs.1200-2040 to the post
of Trains clerk in scale Rs.950/--1500
for a period of FIVE years with cumulative
effect and loss of seniority.

Respected Sir,

Aggrieved by the afore -mentioned order of
punishment, the appellant prefers this appeal under
rule 18 of D&A Rules, 1968 for your judicious
consideration and justice into the case:-

1. That the appellant was served with a memorandum
for major penalty dated 10.3.1987 wherein the
specific charge against him was that he, on 27.12.1985
violated S.R.5.13/7(b) read with G.R.8.11. amounting

V. K. Mishra

T. e.

to misconduct under rule 3(i)(ii) of Railway Service (Conduct) Rules, 1966.

2. That in order to substantiate the charge, various evidences oral and documentary as indicated in Annexure No. III and IV to the charge sheet were relied upon and an enquiry was ordered to be held by Shri J. L. Chaba, SC(T)/LJN into the charge against the appellant.

3. That the Inquiry Officer, after having considered all the evidence on the record, submitted his report and findings wherein the appellant was not found guilty of the charge levelled against him. The findings of the Inquiry Officer are reproduced below:-

"It is quite clear and amply proved from the statement of prosecution witnesses and evidence on the record that the accident did not take place due to failure on the part of the Guard of Dn. ASH Special. Therefore, the violation of SR 5.13/7(b) read with GR 8.11, which tentamounts to violation of Rule 3(i)(ii) of Railway Service (Conduct) Rules, 1966 by Shri V. K. Misra, Guard/SH is not proved."

4. That the learned Sr. D. S. O, the punishing authority disagreed with the findings of the Inquiry Officer and after giving a note of dis-agreement dated 27.10.1987 imposed upon the appellant the penalty under appeal.

5. That for the facts and grounds mentioned below the order of punishment under appeal is highly unjustified, against the evidence on the record and, therefore, is liable to be set aside in this

V. K. Misra

T. C.

appeal:-

Grounds

- (a) The learned punishing authority failed to consider the comments given by the Inquiry Officer at page 3 of his report in respect of application of GR 8.11, said to have been violaged by the appellant. The finding of the punishing authority, as contained in para 3 of his note of dis-agreement stating that the facts relating to GR 8.11, had not been commented upon by the Inquiry Officer, therefore, is against the facts and evidence on the record.
- (b) The learned puishing authority, in his note of dis-agreement, has misapplied and misinterpreted the provisions of GR 8.11, on the appellant and failed to consider that the said rule was to be observed and followed by the SM/SM on duty ordering the shunting operation of the load in question. Therefore, the observations made by the Inquiry officer at page 3 of his report that GR. 8.11.(b) concerns to SM on duty still hold good. The said observations of the Inquiry Officer are supported by the evidence on the record.
- (c) The punishing authority also did not consider the relevant facts in regard to the practice relating to shunting of load then prevelant at Magarwara Railway Station as confirmed by Sri Ramesh Prasad, Shuntman in answere to questions Nos. 6, 10, and 11 as also discussed by the In uiry Officer at page 4 of his report. The shuntman has confirmed that as per practice no authority was given to the driver to pass Advance Starter in ON position during shuting before the accident.

V. K. Amin

T.C.

He further confirmed that shunting order on OPT/79 was the proper authority to pass the last step signal by the driver in shunting operation.

(d) It has come on the record and proved by the witnesses that no intimation is given to the guard before authorising the driver of train to pass advance started in ON position. The prosecution also failed to show any such authority to negative the fact confirmed in the enquiry. Therefore, the findings of the punishing authority is without any basis or support.

(e) It has been proved in the enquiry that during the course of shunting, the guard i.e. the appellant was responsible to carry out the instructions contained in SR5.13 /7(b) which he carried out strictly and vigilently as also observed by the Inquiry Officer in 2nd para of his report (page3).

(f) In view of the facts mentioned in the afore mentioned paragraphs, it is evident that the appellant has been punished for violation of such a rule i.e. 8.11(b) which was not applicable in his case.

6. That not a single word is available in the findings of the punishing authority to show that the facts mentioned under the grounds mentioned above were taken into consideration and the order of punishment was passed after due application of mind.

V. M. Amin

T. C.

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7. That in the facts and circumstances stated above, it is evident that the appellant has been punished on no evidence at all, and, therefore, a great injustice has been inflicted upon him as well as his small innocent children who all are under education and there is every likelihood of their studies being discontinued because of such punishment order reducing the pay emoluments of the appellant to a great extent.

8. That on account of such heavy punishments of
i. reduction from the post of Guard to the post of Trains clerk.

ii. reduction from pay scale of Rs. 1200-2040 to scale of Rs. 950-1500

(iii) Reduction of pay from Fr. 1500 to Rs. 1200/- for a period of 5 years

(v) with cumulative effect and

(v) loss of seniority, it is obvious that the appellant's children will have to discontinue their education, and, therefore, their careers will be completely ruined along with the career of the appellant.

9. That the appellant assures your goodself that he is innocent in the matter and has committed no wrong or misconduct in the discharge of his duties. Therefore, the punishment awarded to him is highly unjust and cannot be said within the four walls of justice.

Prayer

In the name of Justice, humanity and man kind, it is most respectfully prayed that your goodself may be pleased to take a judicious view of the matter and in order to meet the ends of justice be pleased further

Y. K. Amin

T. C.

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to set aside the order of punishment, which is highly unjust and uncalled for.

It is further prayed that the appellant may also be granted an opportunity of personal hearing on this appeal along with his defence helper.

Thanking you.

Yours faithfully,

29
Dated 28.12.1987

(V.K. Misra) Guard B
Now reduced to the post of
Trains clerk, Aishbagh/NER/LN

Attested from
T. C.

[Signature]
21/1/88
Advocate

V.K. Misra

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इन दि सेन्द्रल एडीमिनिस्ट्रेटिव दिवसुनल

एडीशनल बेन्स स्ट इलाहाबाद

लखनऊ बेन्स लखनऊ

एप्लीकेशन नं

आफ 1988

बिटीवन

विजय कुमार मिश्रा

एप्लीकान्ट

एण्ड

दि यूनीयन आफ इण्डिया एण्ड अदर्स रिस्पान्डेंट

एनेक्जर नं A-8

पूर्वोत्तर रेलवे

सं0टी/537/टी0सी0/मिस/लिंक/10/85

दि नॉक -2-1988

मण्डल रेल प्रबन्धक सं0

श्री वी0के0 मिश्रा/गाई

लखनऊ

पदावनत॥ ट्रेन कर्लक

द्वारा-स्टेशन अधीक्षक, रेशबाग

विषय:- दिनांक 27/12-85 को 513 अप एक्सप्रेस तथा डाउन रेशबाग
मालगाही के बीच मगरवारा स्टेशन पर टक्कर।

संदर्भ :- आप की अपील दिनांक 29-12-87 ।

आप की संदर्भित अपील अमरेप्र/लखनऊ को प्रस्तुत की गयी थी।

उन्होंने निम्नलिखित आदेश दिये है :-

मैंने श्री वी0के0 मिश्रा गाई पदावनत॥ ट्रेन कर्लक की दिनांक

29-12-87 की अपील जी हत पूरे कस का भलीभाँति अध्ययन किया।

श्री मिश्रा ने अपनी अपील में विशेष रूप से दो बातों पर बल दिया है:-

1- अनुशासनिक अधिकारी ने अपने निर्णय में कहा है कि जाँच अधिकारी ने सामान्य नियम 8-11 पर अपनी टिप्पणी नहीं दी है जो गलत है।

2- यह कि जाँच अधिकारी ने अपनी रिपोर्ट में स्पष्ट कहा है कि अपीलकर्ता ने सहायक नियम 5-13/7 (बी) का कड़ाई एवं जागरूकता के साथ अनुपालन किया है।

"अपीलकर्ता द्वारा उठाये गये उपरोक्त मुद्दों पर गहराई से विचार किया गया। अनुशासनिक अधिकारी ने यह नहीं कहा है कि जाँच अधिकारी ने सामान्य नियम 8-11 पर टिप्पणी नहीं की है बल्कि वास्तव में यह कहा है कि इस तथ्य -- कि डाउन एक्वांस स्टार्डर और अप आउटर सिग्नल के बीच ब्लॉक सेक्शन में शीटिंग करने के लिए स्टेशन मास्टर द्वारा गार्ड को प्राधिकृत होना चाहिए था ----- पर जाँच अधिकारी ने कोई टिप्पणी नहीं की है। अनुशासनिक अधिकारी का यह निष्कर्ष तथ्यों के आधार पर सही है।

जहां तक सहायक नियम 5-13/7 (बी) के अनुपालन का प्रश्न है अधोहस्ताक्षरकर्ता भी जाँच अधिकारी की रिपोर्ट से सहमत नहीं है। इस कैस में अपीलकर्ता ने शीटिंग के समय गार्ड को डाउन एक्वांस स्टार्डर और अप आउटर सिग्नल के बीच ले जाकर, जिसके लिए उन्हें प्राधिकार प्राप्त नहीं था, निश्चय ही उपरोक्त नियम का उल्लंघन किया है।

V.K. Mishra

T.C.

उपरोक्त तथ्यों को ध्यान में रखते हुए, इस ~~लेख~~ में
अनुशासनिक अधिकारी द्वारा अपीलकर्ता को दिया गया दण्ड न्यायसंगत
तथा आरोप के अनुरूप है। तदनुसार उनकी वर्तमान अपील रद्द की जाती
है।

हैं अपठनीय

कृते मण्डल रेल प्रबन्धक [संरक्षा]

लखनऊ ।

Attested from
T. C. [Signature]
21/11/89
Advocate.

सत्य प्रतीति

V. K. Mishra

ब अदालत श्रीमान At the Central Administrative Tribunal Additional Bench At-
Allohabad Lucknow Circle Lucknow महोदय

[वकील] अपीलान्ट ✓

प्रतिवादी [रेस्पान्डेन्ट] ✗

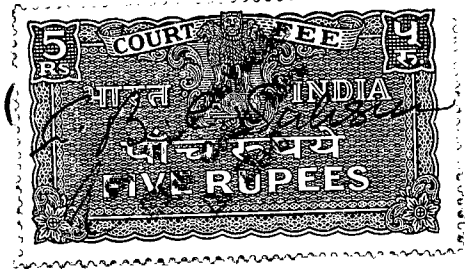
श्री

का

वकालतनामा

(टिकट)

बादी (



Vijai Kumar Misra

बनाम

Union of India & others

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

सन्

88

पेशी की ता०

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ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Shri B. C. Saksena, Advocate

वकील

No 407 Dr Baij Nath Road, New Hyderabad

महोदय

एडवोकेट

Sri S. C. Saksena, Advocate

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

Accepted
B. C. Saksena

हस्ताक्षर

V. K. Mishra

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६ ई०

Accepted
Mishra
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

Registration No. 203 of 1988 (L)

BETWEEN

Vijay Kumar Mishra -----Applicant

And

Union of India 4 others-----Respondents.

Fixed For: 8-8-89.

COUNTER REPLY ON BEHALF OF RESPONDENTS 1 to 4

I Jai Narain -----aged about 46 -----
years working as Senior Civil Supply Officer in the Office
of Divisional Railway Manager, North Eastern Railway, Ashok
Marg, Lucknow, do hereby solemnly affirm and state as under:-

1. That the above named Official, working under the respondents, is fully conversant with the facts of the case and has read the claim application, understood its contents and has been authorised by the respondents to file this reply.
2. That the contents of paras 1 to 5 of the application need no comment.

That reply to the contents of paras 6 i.e. 'Facts of the case' of the application is as below :-

3. (I) That the contents of paras 6. 1 and 6.2 of application are not disputed.

3. (II) That the contents of paras 6. 3, of application are not disputed except that document at serial No. 8 relating to C. R. S. was not supplied to applicant being a confidential documents and the document at serial No. 7 (i.e. Rough Journal Book) was also not supplied because it was taken away by the ^(i.e. Safety Committee) S.C. for CRS enquiry on 3-1-86 and never returned and the same was neither a relied upon

Cont----2

प्रवर मंडल संस्था अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

document nor was available at the time of departmental enquiry proceedings held against the applicant. Besides, as per applicants own admission, he has seen the Rough Journal Book of Sri S. K. Chandra, Guard, 513 up.

3. (III) That the contents of paras 6.4 to 6.6 of application being matter of record are not disputed.

3. (IV) That the contents of para 6.7 of application ^{are} not admitted as stated, Sri J. C. Tondon, ex- ASM (Northern Railwaystaff) who was also responsible for the said accident and was accordingly removed from service, was asked to attend the DAR enquiry and efforts were made to arrange his attendance. A registered letter No. T/537/TA/Misc./Link/10/85 dated 27.8.87 along with IInd class duty pass was also sent to his residential address but he did not choose to attend the D.A.R. enquiry hence the enquiry was completed without him as per order of the competent authority. A copy of letter dated 27-8-87 is being filed herewith as Annexure No. C-1.

3. (V) That in reply to the contents of para 6.8, of application, it is stated that the findings of D. A. R. enquiry Officer was not accepted by the competent authority who was fully empowered and competent to do so as the applicant was found responsible for violation of S. R. 5,13/7(B) read with G.R. 8.11 and ~~accordingly~~ accordingly disciplinary action was taken against him.

3. (VI) That in reply to the contents of para 6.9 of application, it is stated that all the persons found responsible for the accident were accordingly punished. Sri J. C. Tondon ASM/MGW, N. Rly. was removed from service. Sri Taran Singh, driver of 513 up, his pay was reduced from Rs.2750/= to 2600/- along with NC for a period of one year. Sri S.P. Awasthi, driver of Dn. Aishbag, special was reverted as shunter in grade 1200/- 2040/ and his pay was fixed at Rs.1200/ for a period of 3 year and similarly action was also

प्रधर मंडल संरक्षा अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

taken against the applicant.

3. (VII) That in reply to the contents of para 6.10 of application, it is stated that after careful consideration of the facts of the case and after applying his mind the competent authority rightly found that the applicant was guilty of violation of S. R. 5. 13/ 7(B) and G. R. 8. 11 and accordingly disciplinary action was taken against him strictly as per rules by the punishing authority in case of applicant.

3. (VIII) That the contents of para 6.11 of application are not disputed.

3. (IX) That in reply to the contents of para 6.12 of application, it is stated that the competent authority after applying his mind and after careful consideration of the entire facts of the case has passed the said order strictly as per rules and in accordance with Law.

3. (X) That the contents of para 6.13 of application are not admitted as stated. The appellate authority after carefully considering the appeal of the applicant and after applying his mind passed the order contained in Annexure No. A-8 to application.

3. (XI) That the contents of para 6.14 of application are denied. The Sr. Divisional Safety Officer also belongs to operating department and as per Railway Board's letter No. E (D & A) 8406-5-47 dated 22-10-1984, the said authority can take disciplinary action against the guards of operating staff/ department. A copy of letter dated 22-10-84 is being filed herewith as Annexure No. C-2.

4. That the contents of para 7 of application is not admitted as stated. As per D. A. R. rules the applicant has not submitted any review petition to the competent authority.

5. That the contents of para 8 of application need no comments.

6. That in reply to contents of para 9 of application it is stated that applicant is not entitled to claim any such relief and the grounds are baseless, irrelevant, imaginary, illegal and non existent in the eyes of Law.

7. That the contents of para 10 and 11 of application need no comments.

Lucknow

Dated:- 08-08-89.

(Jai Narain)
प्रवर मंडल संरक्षा अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

VERIFICATION

I, the official above named, working under the respondents, do hereby verify that the contents of para 1 of this reply is true to my personal knowledge and those of para 2 to 7 of this reply are believed by me to be true on the basis of records and legal advice. Nothing material has been concealed.

Lucknow :

Date: - 08-08-89

(Jai Narain)
प्रवर मंडल संरक्षा अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

NORTH EASTERN RAILWAY

No. T/537/TA/Misc/Link/10/85

Office of the Divl. Rly. Manager,
Lucknow dated 27-8-1987.

To

✓ 1. Shri J.C. Tandon, Ex. ASM,
104/435 P Road Sismau, Kanpur.2. Shri Parideen S/O Sri Dhanai,
Vill. Pure Sukul Ka Purwa,
Post- Sheogarh,
Distt: Rai Bareli.Sub:- Collision between 513 Up and Down ASH
Spl. at Magarwara Station on 27.12.85.

The DAR Enquiries against Sarv Shri Taran Singh,
Driver(A) Spl., S.P. Awasthi, Driver(C) and V.K. Misra,
Guard held responsible in regard to the above case, have
been fixed to be held in DRM(O)/N.E.Rly. office, Lucknow
on 15-9-1987 at 11/- hrs. sharp.

Please attend the said Enquiries on the fixed date.
In this connection a special IInd Class Duty Pass No. 496981
dated 26-8-1987 in order to cover your journey
is enclosed herewith.

DA/As above.

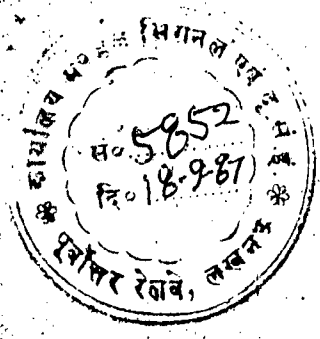
/DIVISIONAL RAILWAY MANAGER(S),
LUCKNOW

Copy to:-

1. Shri Sukh Chain Singh, Sr. Fuel Inspector (in office)
 2. Shri O.P. Saxena, Loco Inspector (Diesel) / (in office)
 3. Shri J.L. Chaba, Safety Counsellor (T) / (In office)
- for information and necessary action.

/DIVISIONAL RAILWAY MANAGER(S),
LUCKNOW.

प्रवर मंडल संरक्षा अधिकारी,
पुर्वोत्तर रेलवे, लखनऊ



18/9/87

Redner to
S.D.S. 1/4
16/9

496981

No.

A

निःशुल्क पास रीय दर्जा
FREE PASS SECOND CLASS

From London To London
By Train

Kanpur Chunab Chunab

EMB

10/9/07

Outward Journey

Outward Journey

Return Journey

Return Journey

Outward Journey

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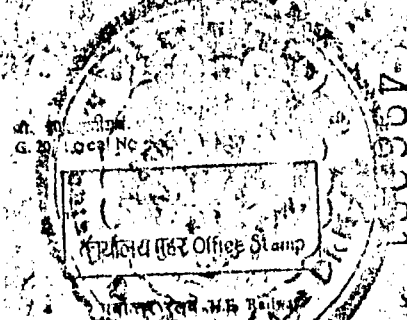
Return Journey

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277

X6

द्वितीय दर्जा SECOND CLASS

परमिशन दी जाने वाली
Permission to Break
Journey at

व्यक्तिगत
Outward Journey
व्यक्तिगत
Return Journey

प्राप्त दिशा का नाम Name of the Break Journey availed

स्टेशन का नाम STATION बाहर हुए OUTWARD आगे हुए INWARD

(1) पहुंचने की तारीख date of arrival		
छाड़ने की तारीख date of departure		
(2) पहुंचने की तारीख date of arrival		
छाड़ने की तारीख date of departure		
(3) पहुंचने की तारीख date of arrival		
छाड़ने की तारीख date of departure		
(4) पहुंचने की तारीख date of arrival		
छाड़ने की तारीख date of departure		
(5) पहुंचने की तारीख date of arrival		
छाड़ने की तारीख date of departure		

For M/P/N.E.R./LJN

Copy of Railway Board's /New Delhi's L/No.H (DAA) 5406-47
dated 22.10.1984 to the General Manager/N.E.Rly/Gorakhpur.

Subj: Disciplinary authority under Railway
Railway Servant (DAA) Rules, 1958-staff
of Operating Department.

Reference your letter No.H/44/2/Pt.4/IV/
dated 24/26.7.84 on the above subject. The Board desire that
your Railway should forcefully contest the writ Petitions
challenging exercise of disciplinary powers by the Divisional
Safety Officer in the case of Operating staff and point out
to the High Court that Safety Officers, as distinct from
Commercial Officers, belong to Operating side and
there should be no objection to their taking disciplinary
action against operating staff like SAs, ASAs, etc. perform
train passing duties.

Please acknowledge receipt.

प्रवर मंडल सुरक्षा अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

In the Central Administrative Tribunal,

Circuit Bench, Lucknow

Rejoinder-affidavit

In

Application no. 203 of 1988

BETWEEN

✓
Vijay Kumar Misra

--Applicant

AND

Union of India and others

--Respondents

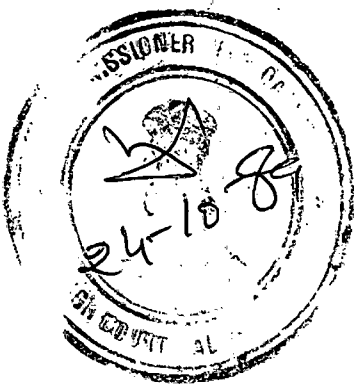
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FT
2/11/88
I, Vijay Kumar Misra, aged about 48 years,
son of late Sri P.C. Misra, resident of 89,
✓
Ghunnoo Mal Marg, Nawaiya, Lucknow, do hereby
solemnly take oath and affirm as under:-

1. That I am the applicant in the above-noted application and I am fully acquainted with the facts of the case. I have perused the counter-affidavit filed on behalf of the respondents and I have understood the contents of the same.

2. That the contents of para 1 do not call for any reply.

3. That the contents of para 2 do not call for any reply.



V.K. Misra

deleted from the list of witnesses. No explanation has been offered why his name was deleted.

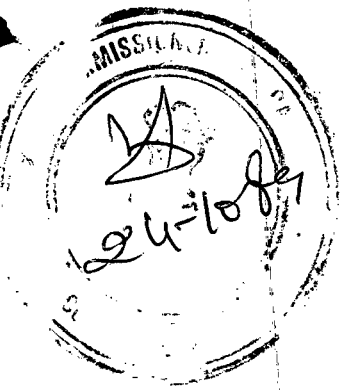
8. That in reply to the contents of para 3(V) it is stated that no reason has been indicated by the punishing authority for not accepting the findings of the Inquiry Officer referred to in para 6.8 of the application.

9. That in reply to the contents of para 3(VI) it is stated that the specific assertions made in para 6.9. have not been controverted. Action against three persons held responsible by the Inquiry Officer is irrelevant and does not justify non-acceptance of the findings recorded by the Inquiry Officer in favour of the applicant, viz., that violation of SR5.13/7(b) read with GR 8.11 is not proved against the applicant.

10. That in reply to the contents of para 3(VII) the plea raised in para 6.10 is herein again reiterated. It is stated that in view of the said assertions it is wholly baseless to allege that the competent authority carefully considered the facts of the case and applied his mind.

11. That the contents of para 3(VIII) do not call for any reply.

12. That the plea in para 3(IX) for reasons



V.K. Amin

already indicated hereinabove is wholly baseless and is legally untenable and ~~xxx~~² is, therefore, denied.

13. That in reply to the contents of para 3 (X) it is stated that a bare perusal of the order passed by the appellate authority as contained in Annexure A-8 to the application would belie the allegations made.

14. That in reply to the contents of para 3(XI) the assertions made in para 6.14 of the application are hereinagain reiterated. Reliance on Annexure C-2 is wholly baseless since the Railway Board only required the Railway authorities to contest the writ petitions wherein the ground had been raised that the Senior Divisional Safety Officer being an officer belonging to the operating Department had no jurisdiction to take disciplinary action against Guards or staff of the Operating Department. A Full Bench of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad had considered a similar ^{stand} ~~question~~ taken before it on behalf of the Railway Administration and has clearly held in its judgment dated 4.12.1987 that the General Manager alone is competent to impose any of the penalties specified in Article 311 of the Constitution of India. The respondents have deliberately avoided to indicate other judgments wherein on the basis of the Railway Boards letter Annexure C-2 the applications raising



V.K. Manna

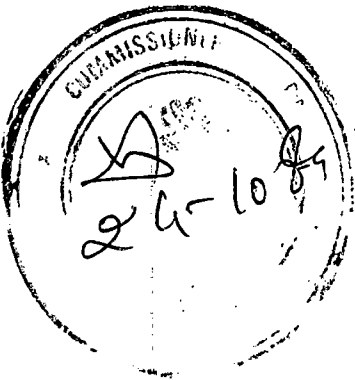
similar ground that the Divisional Safety Officer is not competent nor is disciplinary authority qua Guards had been adjudicated. It is once again reiterated that the Divisional Safety Officer is not an officer belonging to the Operating Department of the Railway but belongs to another distinct and separate department, viz., Safety Department.

15. That the contents of para 4 are denied. Filing of the review petition is not a statutory remedy but is a discretionary remedy.

16. That the contents of para 5 do not call for any reply.

17. That the plea in para 6 is based on incorrect assumption of facts and is legally untenable and is, therefore, denied.

18. That the contents of para 7 do not call for any reply.



Lucknow Dated
~~20th~~
September 26 1989

V.K. Sharma
Deponent

I, the deponent named above, do hereby verify that contents of paras 1 to 18 are true to my own knowledge. No part of it is false and nothing

material has been concealed;
so help me God.

V.K. Mishra

Deponent

Lucknow Dated

~~Oct~~
September 24, 1989

I identify the deponent who has signed in my presence

R.K. Srivastava
(R.K. Srivastava)

Clerk to Sri B.C. Saxena Advocate

Solemnly affirmed before me on 24-10-89
at 12-45 a.m/p.m by V.K. Mishra
the deponent who is identified by Sri R.K. Srivastava
Clerk to Sri B.C. Saxena
Advocate, High Court, Allahabad. I have
satisfied myself by examining the deponent that
he understands the contents of the affidavit
which has been read out and explained by me.



24-10-89
H. D. ARJUN
OATH COMMISSIONER

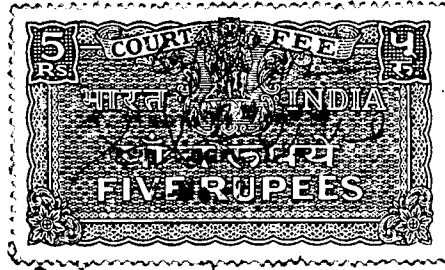
High Court Lucknow Bench Lucknow
No. 8/12144
Date 24-10-89

बअदालत श्रीमान

Hon'ble Central Administration Tribunal
महोदय

वादी (मुद्दी) Vijai Kumar Misra
मुद्दी (मुद्दीलेह) का

वकालतनामा



30

Vijai Kumar Misra

Union of India and others बनाम

प्रतिवादी रेस्पान्डेन्ट

नं० मुकद्दमा 203

सन् 88 पेशी की ता० 6-8-98 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री S. S. Sinha, Advocate

557/25, Om Nagar, Alambagh - Lucknow वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वशूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा रवीकार है और होगी। मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने परोकार को भेजता रहूँगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Power Accepted

V. K. Misra
हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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the applicant nor his counsel was informed for the date of hearing other than 4.3.1993. The copy of the judgement has also not been received.

THEREFORE it is prayed that the case may kindly be recalled ~~mand~~ in view of the above facts, and the date for hearing may kindly be fixed.

Lucknow/Dt. 7 /5/1993/

V.K. Mishra
Applicant

4. That in reply to para 4 of the supplementary counter reply it is submitted that the order for promotion against the re-structuring of the cadre was issued on 25.08.1986. The respondents have stated in the said para as under :-

" The posts of Guard "C" and Guard "B" were merged into one as Guard (Goods) on the date of his punishment 09.11.1987."

The above contention has not been supported with any rules. Moreover it is a matter of strange the merger of Guard "C" and Guard "B" as Guard (Goods) was ordered on 09.11.1987 on the date of imposition of penalty for reduction to lower post service and grade.

The applicant was erroneously consider as Guard "C" whereas he was promoted as Guard "B" with effect from 21.12.1984 and since then he was continuing as Guard "B" thus the applicants reduction as Trains Clerk below two grades was illegal and discriminatory and thus the applicant had submitted an application requesting to enlist his name amongst the candidates called for selection as Guard "A" several junior persons to the applicant whose names were indicated from serial number 97 till 126 amongst general candidates had been called to appear in the said selection. The grade of Guard "C" was Rs. 290-8-330-EB-8-370-10-400-EB-10-480 but the said grade subsequently revised to Rs. 330-530 as shown in the promotion list. The grade of Guard "B" was Rs. 330-560. The applicant was promoted in the said grade against the re-structing of the cadre, from 01.01.1984.

5. That in reply to para 5 of the supplementary counter reply, it is submitted that the representation dated 22.02.1989 was sent to the Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow. The

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

Supplementary Re-application No. of 1993
In

O.A. No. 203 of 1988

Vijai Kumar Misra ----- Applicant

Versus

Union of India and others ----- Respondents

SUPPLEMENTARY REJOINDER TO THE SUPPLEMENTARY
COUNTER REPLY FILED ON BEHALF OF THE RESPONDENTS/
OPPOSITE PARTIES.

I, V.K. Misra, aged about 51 years, Son of
Late P.C. Misra, resident of 89, Chunnoo Mal Marg, Mavaiya,
Lucknow do hereby solemnly affirm and state on oath as
under :-

1. That the above named is the applicant in the above noted case and has read the contents of the supplementary counter reply filed by the respondents and understand the same. The under noted reply is submitted according to para-wise.
2. That in reply to para 2 of the supplementary counter reply, it is submitted that the contents of Para 2-3 of the amendment application are re-iterated.
3. That para 3 of the supplementary counter reply need no comments.

V.K. Misra

(Contd. on page 2....)

applicant was working at Aishbagh Railway Station thus he had submitted the representation dated 22.02.1989 through the Station Superintendent, N.E. Railway, Lucknow. The signature of the Station Superintendent, Aishbagh, Lucknow are available thereon. Photo-stat copy of the said representation is enclosed and is marked as Annexure No. SR-I.

6. That in reply to para 6 of the supplementary counter reply, it is submitted that the contention of the respondents is incorrect as there is a provision for revision which can be done at any time in terms of Para 25 (V) of the Discipline and Appeal Rules 1968 as given below :-

" any other authority not below the rank of a Deputy Head of Department in the case of a Railway Servant serving under its control may at any time, either on his or its own motion or otherwise, call for the records of any enquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may -

- (a) Confirm modify or set a side the order; or
- (b) Confirm, reduce, enhance, or set a side the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) Pass such other orders as it may deem fit.

In view of the above, the applicant should have been called to appear in the selection for the post of Guard "A".

7. That in reply to para 7 of the supplementary counter reply it is stated that the applicant was well conversant with the rules and working of Guards thus he qualified in the refresher course. The accident took place on 31.05.1986. The Enquiry Officer did not find the applicant at fault thus the punishment awarded by the Senior Divisional Safety Officer is illegal and discriminatory and beyond his jurisdiction.
8. That in reply to para 8 of the supplementary counter reply, it is submitted that the applicant is entitled for the relief as claimed in para 3 of the amendment application. The respondent be directed to promote the applicant as Guard "A" from the date of his junior has been promoted.

PLACE : LUCKNOW

DATED :

V. K. Mishra
Applicant

V E R I F I C A T I O N

I, the above named applicant do hereby verify that the contents of para 1 to 5 are true to my personal knowledge and those of paras 6 to 8 are believe to be true on the basis of record and legal advise.

PLACE : LUCKNOW

DATED :

V. K. Mishra
Applicant

V. K. Mishra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

C.A. NO

203/88

199 (L)

C.A. NO

199 (TL)

Date of Deposition 23.2.93

V.K. Mishra

Petitioner.

Advocate for the
Petitioner(s)

V E R S U S

U.O.I (N.E. RLY)

Respondent.

Advocate for the
Respondents

C O R A M

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

Hon'ble Mr. K. Chatterjee, AM

1. Whether Reporter of local papers may be allowed to see the Judgment. ✓
2. To be referred to the reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgment ? ✓
4. Whether to be circulated to other benches ? ✓

Vice-Chairman / Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No: 203 of 1988.

V.K.Mishra Applicants.

Versus

Union of India
(N.E.Railway) Respondents.

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

Hon'ble Mr. K.Obayya-A.M.

(By Hon'ble Mr. Justice U.C.Srivastava-V.C.

In this application, the applicant prays that the punishment order dated 9.11.1987 passed by the Senior Divisional Safety officer, N.E.Railway and the appellate order be quashed. By way of amendment he also made a prayer that the respondents be directed to promote him on the post of Guard grade 'A' from the date any of the candidate selected at a particular selection who were junior to him then so promoted and passed order for his promotion accordingly and pay him arrears of his salary and allowance and difference of pay shall also be paid to him.

The applicant, who was working as Guard (Goods) train was served a charge sheet on 10.3.1987. The charge against the applicant was that while supervising shunting operation special Goods train at Magarwara, his shunting load entered into block section, Magarwara- without proper authority and violated SR 5.13/7(b) read with GR 8.11 which tantamounts to misconduct.

✓

The applicant made a representation against the same and prayed for ^{supplying} ~~supplying~~ of certain copies. Copies of the documents were furnished at s.No. 26 of bf the application but one mentioned at S.No. 178 was not furnished. For this purpose the enquiry officer was also appointed and the enquiry proceeded. According to the applicant the enquiry officer reported that the accident did not take place due to failure on the part of Gaurd Aishbagh station and as such the charge against the applicant was not proved. Enquiry officer found that the failure on the part of Sri J.C.Tandon, Assistant Station Master, Sri Parideen Switchman, Sri Taran Singh Driver and Sri S.P.Avasthi Driver of Down Aishbagh Station ^{accident.} ~~had caused the c/used.~~ The Senior Divisional Safety Officer, N.E.Railway, Lucknow disagreed with the findings of the Enquiry Officer with regard to non-violation by the applicant of SR 5.13/7(b) of N.E.Rly, G & S.R. In paragraph 3 of the order the Senior Divisional Safety Officer has taken the view that the Enquiry Officer had not commented upon violation of rule 8.11 by the applicant in his report and therefore he ordered that the applicant be ~~reverted~~ from the post of Guard Grade 'C' in scale of Rs. 1200-2040 to the post of Trains Clerk in scale of Rs.

Rs. 950-1500 at Rs. 1200/- for a period of five years with cumulative effect and loss of seniority. Against the said order the applicant filed a departmental appeal. The appeal was also dismissed. The applicant challenged the punishment order on the ground that the opposite party No. 3 & 4 not being officers of Operating Department/Transportation/Traffic Department to which the applicant belongs had no jurisdiction to exercise disciplinary action against the applicant. In view of the Full Bench decision of the Central Administrative Tribunal, Hyderabad Bench, it is held that the General Manager alone is competent to impose any of the penalties including the penalties specified in Article 311 of the Constitution. It has been held that the General Manager would be the highest amongst appointing authorities. The others would be merely delegates of the appointing authority and since the power to institute disciplinary proceedings has not been delegated by the G.M, any authority other than the General Manager shall be incompetent to impose the penalty. In view of the said decision the entire departmental proceedings and the order of punishment was thus illegal. The respondents refuted the claim of the applicant and had pointed that full

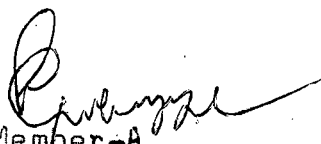
opportunity was given to the applicant and the disciplinary authority stated that not only the applicant but other persons were also involved in the accident and they were also punished. One J.C.Tandon was removed from service and Taran Sing's (Driver) pay was reduced for a period of one year and S.P.Awasthi was reverted as shunter and his pay too was reduced. It has been pointed that the Senior Divisional Safety Officer also belongs to the operating department as per Railway Board's letter dated 20.10.1984 and the authority can take disciplinary action against the Guards. The said decision stands over ruled in view of the Supreme Court's decision in the case of D.Daniel Vs U.O.I. & others. As such the plea ^{has} also ^{been ordered} by way of amendment. The applicant added certain more pleas. According to the applicant in terms of Railway Board's letter dated 25.6.1985 several Guards Grade 'C' including the applicant were ordered to be promoted as Guards Grade 'B' with retrospective effect i.e. w.e.f. 1.1.1984. As a result of restructuring and the fixation of pay etc. was made available w.e.f. 1.1.1985. In the promotion order the applicant was figured at S.No. 23 of the second list. In the order of the reduction the applicant was ^{erroneously} ~~erroneously~~ treated as Guard Grade 'C', his reversion to the post of Guard

Trains' Guard in view of the said circumstance is more punitive. Grades Guard 'B' & Guard 'C' have been merged and the revised scale of Rs. 1200-2040/- in the scale of next higher post of Guard 'A' is reverted to 1350-2200. The applicant was not called to appear in the selection for Guard Grade 'A' and several other junior persons were called. Against it the applicant filed a representation, but no response to the same was given. A fresh examination was held on 31.1.1986 in which the applicant also participated and qualified and yet he was not promoted. The respondents have disputed this claim of the applicant also and have stated that the applicant was given benefit of the promotion as Guard Grade 'B' under the restructuring of Guards and his pay was fixed @ Rs. 428/- and not Rs. 429/- on 1.12.1985 as alleged by the applicant. The posts of Guard Grade 'C' and Guard Grade 'B' were merged into one, as Guard (Goods) on the date of his punishment i.e. 9.11.1987. Also the next higher grade of Guards category is Guard 'A' or (Passangers) in the scale of Rs. 1350-2200. The notification for selection of Guard 'A' was issued on 22.12.1988 and the Guard 'G' on role were called to appear in the said selection according to their seniority. It is relevant

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to mention here that applicant was not Guard, as required for selection, but he was working as trains clerk in scale of Rs. 950-1500/- by way of punishment of reduction to lowest scale.

As such he was not eligible to be called. As such, there appears that there is no merit in the case and the application is liable to be dismissed, and it is dismissed with no order as to the cost.


Member-A


Vice-Chairman

Lucknow Dated: 23.2.93

(jw)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW, BENCH, LUCKNOW.

In Ref.:

O.A. No. 203 of 1988.

V.K. Misra

.....

Applicant.

versus

Union of India & others

.....

Respondents.

SUPPLEMENTARY COUNTER REPLY IN RESPECT
TO APPLICATION FOR AMENDMENT.

1. *S M N Dglam* aged about 35 yrs
years working as *Sr Sml Personnel Officer*

in the office of Divisional Railway Manager,

Northern Eastern Railway, Ashok Marg, Lucknow

do hereby solemnly affirm and state as under:-

1. That the above named official is working in the office of Divisional Railway Manager, Northern ~~Railway~~ Eastern Railway, Ashok Marg, Lucknow as such he is fully conversant with the facts and circumstances of the case. Also

S M N Dglam Contd....2
प्रवर मंडल कार्यालय अधिकारी,
पूर्वोत्तर रेलवे, अशोक मार्ग
Sr. Divisional Personnel Officer,
N. E. Railway, Lucknow

he has been authorised on behalf of all the respondents to file present counter reply.

2. That in reply to the contents of para 1 of the amendment application to the original application it is submitted that after filing of the original application no new developments have taken place and as such present proposed amendments are untahable.

3. That the contents of para 2 (6.15) of the amendment application to original application are admitted to the extent that applicant was given benefit of promotion as Guard B under restructuring of Guards and his pay was fixed @ Rs.428/- and not Rs.429/- on 1.12.85 as alleged by the applicant . Anything contrary to it is denied.

4. That in reply to the contents of para 2 (6.16) of the amendment application to the original application it is submitted posts of Guard'C'

Contd...3

Sudhakar
प्रवर मंडल कायिक अधिकारी,
पूर्वोक्त मंडल, लखनऊ
Sr. Divisional Officer,
G. B. Railway, Lucknow.

and ~~Guard~~ Guard 'B' were merged into one as Guard (Goods) on the date of his punishment. 9.11.87. Also next higher grade of Guards category is Guards 'A' or (Passangers) in the scale of RS. 1350-2200 and the lower grade to Guard is ~~Rx~~ Trains Clerk from which they are promoted as Guards 'G'. Anything contrary to it is denied.

- 4, That the contents of para 2(6.17) of the amendment application to the original application are wrong and as such denied.. It is further submitted that the notification dated 22.12.88 for selection of Guard 'A' was issued and the Guard 'G' on role were called ~~and~~ ~~to~~ to appear in the above said selection according to their seniority. It is relevant to mention here that applicant was not guard, as required for selection, but he was working as trains clerk in scale of Rs.950-1500 by way of punishment of reduction to lowest scale,

Contd.....3/

Su2 Wla
प्रवर मंडल कार्यालय अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ
Sr. Divisional Transport Officer,
N. E. Railway, Lucknow.

~~as such question of~~
calling to applicant for the selection of Guard
does not arise at all.

5. That in reply to the contents of para 2(6.18) of the amendment application to original application ~~xxx~~ it is submitted that no representation dated 22.2.89 of applicant was received by the office of the respondents. and as such contents are denied.
6. That the contents of para 2(6.19) of the amendment application to the original application are wrong and as such denied. It is further submitted that no application was received from applicant by the office of respondents. It is also pertinent to point out here that a person who is undergoing punishment of reduction to lowest scale cannot be permitted to appear in selection for promotion.
7. That in reply to the contents of para 2(6.20)

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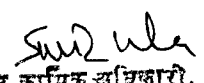
Smt. W. S.
वर मंडल कार्यालय अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ
Sr. Divisional Personnel Officer,
N. E. Railway, Lucknow.

of the amendment application to the original application it is submitted that applicant was working as Guard (Goods) on 31.5.86 prior to punishment and would have qualified the refresher course subsequently as per instructions but applicant was undergoing punishment from 9.11.87 and as such he was not sent. for any refresher course. More over qualifying the refresher course is not connected with selection of Guard 'A'. Also passing of refresher course vide A.12 is part of Guard's working and a Guard has to pass the refresher course failing which he will not be allowed to work till he passes again. Anything contrary to it is denied.

8. That in reply to the contents of para 3 of the amendment application to original application it is submitted that in view of the circumstances mentioned above, no relief is sought to be given to the applicant.

Lucknow.

Dated :


प्रवर मंडल कार्यालय अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ
Sr. Divisional Personnel Officer,
N. E. Railway, Lucknow

VERIFICATION

I, the official abovenamed do hereby verify that the contents of para 1 of this reply is true to my personal knowledge and those of paras 2 to 8 of this reply are believed by me to be true on the basis of record and legal advice.

Lucknow.

Dated :

Smt. Usha
प्रवर मंडल कार्यालय अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ
Sr. Divisional Personnel Officer
N. F. Railway, Lucknow

To,

The Deputy Registrar
Central Administrative
Tribunal, Lucknow
Bench, Lucknow

Subj: - O.A. 203/88, V.K. Mishra v. S.O.O.?
Sd/- 27.5.92 F.O.

Sir,

The above case was fixed on 27.5.92
for order and order was passed
that the case may be listed
before Sub Bench that have no
concern to Mr. Korbale Mr. B. K. Sharma
The same is. Sub and that for
directly the Bench the case
may be listed for which

Date 20.6.92

Submitted

(Signature)

U.D.C

20/6/92