

## FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, *Lokmane* BENCHOA/TA/RA/CP/MA/PT *203/82* of 20.....V.K. *Mirha*.....Applicant(S)

Versus

*V.O.I.G.I.*.....Respondent(S)

## INDEX SHEET

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Certified that the file is complete in all respects.

*B/C. Deed act/ Destroyed**On 18/12*

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 form.
(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 cause 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.

24.1.89 D.R.

Copies to be served of the O for Notices filed today. The case is fixed for Reply dt 23.2.89.

D.R.

26/1/89

OR

Notices issued to the respondents. Notices Regd. Post. fixed 23.2.89 to reply & 27.3.89 for trial hearing.

D.R.

27/3/89

D.R.

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

See

5.89

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

D.R.

The Applicant is present in person and requests for adjournment. 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, rejoinder may be filed within 2 weeks thereafter.

List it to final hearing on 8.8.1989.

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

Notice issued

W.M.

AM

9.5.89

JM

Notice issued to O.R. No. 3 through regd. a/c. 31.5.89. No reply to any communication received. Cover letter return. Case (for) submitted for order.

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

DEFENDANT  
RESPONDENT

VERSUS  
Union of India & ors

Trial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
	<u>Hon' Mr. D.K. Agrawal, U.M.</u>	
8/8/89	<p>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 <u>25/10/89</u> for final hearing.</p> <p style="text-align: right;">J.M.</p> <p style="text-align: right;">(sns)</p>	<p>OR No R.A filed submitted to hearing</p> <p style="text-align: right;">24/10</p>
25-X-89	<p>No sitting of D/B. Adj. to 3-1-90 Both the counsel are present.</p> <p style="text-align: right;">B.O.C</p>	<p>OR No R.A filed submitted to hearing</p> <p style="text-align: right;">24/10</p>
3-1-90	<p>Case not reached. Put up tomorrow.</p> <p style="text-align: right;">B.O.C</p>	<p>OR No R.A filed submitted to hearing</p> <p style="text-align: right;">24/10</p>
4/1/90	<p>Mr Justice Kamleshwar Nath, V.O. Mr. K. Obayya, A.M.</p> <p>sel for the applicant files rejoinder. plication for amendment has also been whose copy has been delivered to the l for O.P.S. Shri Anil Srivastava. Objections may be filed within two weeks and the listed for orders on amendment application</p> <p style="text-align: right;">A.M.</p>	<p>OR No objection filed S. FO</p> <p style="text-align: right;">7/3</p>

13.9.  A.M.    
Pul-up towards the  
firkin leaning

13.9.  A.M.      
Herrn Dr. Mr. Dr. G. Müller A.M.  
Herrn Dr. Mr. Dr. G. Müller A.M.

     <img alt="handwritten mark" data-b

18-9-91

Hon Mr Justice U.C. Srivardes, V.C  
Hon Mr D.B. Gorai, A.M.

2 days time is allowed  
to respondents to file  
Supplementary Affidavit as  
requested by the And  
Srinivasan. Last on 25-11-91

*ur*

re.

*A*  
A.M.

25/11/91

No Siting adj to 24.1.92

24.1.92

*S*  
No Siting of D.B. adj to  
5.2.92

5.2.92

No Siting adj to 24.2.92

24.2.92

No Siting adj to 22.3.92

22-5-92

*S*  
Hon Justice U.C. S, V.C  
Hon K. Gopala, A.M.

*OR*  
Submitted  
for hearing  
Srinivasan  
- Applicant in person as states  
that he has not engaged his  
counsel. 2 weeks time is  
granted. L.A for hearing  
on 6.8.92

*s.f.m.*

*S*

25/8/92

*S*  
Srinivasan

*ur*

*V.C.*

*S. S. 9 - Case are ready adj to*

26.8.92

*Boi*

O.A.No.203/88

2/2/93. Hon. Mr. Justice U. e. Seivastava, U. e.  
Hon. Mrs. K. Obayya, A.M. A.M.

Supplementary Counter reply  
in respect of amendment  
application has been filed  
today. Rejoinder, if any,  
be filed within 2 weeks.

List this case on 23/2/93

(Terry)

A. P. K.

12

U - e

q

~~OK~~  
SFAD

Vch

2.9.93

No. 3.7.199 of D.B. adjoin  
to 4.10.93

el  
Poe

Over to Sead divide at 2<sup>nd</sup>  
S-N. Trip to Nels Crn  
is off on 10.11.83

Max.

order 9.11.03 Cores reached only  
for 2.12-53

Ceramocanth Boyle  
Collected by 10-1-84

Max

money for  
real goods  
dates 23/

100

1811/62

of  
not radical

01/14

84203/84

27/8/94

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

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

S

u.s.  
A.M.

Recd  
u

List on 28.6.94  
before the Hon'ble  
Bench of Hon'ble Mr.  
V.K. Seth and Hon'ble Mr. D.C.  
Khera. D.C.

of

28.6.94

Mr. Saksena v. D. B. D. & J. 2  
22.8.94

Recd

Submitted  
for hearing  
regarding MS(91) of  
the case has  
been decided  
on 27.2.93

The case  
could not be traced  
out on 22.8.94  
Submitted.

20/8/94

27/8/94 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.

On  
DR

20/10/94

Hon'ble Mr. V. K. Seth, A.M.

Hon'ble Mr. D. C. Verma, J.M.

(A)  
(A)

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.

O  
Ref) NO 63/93 foreseen  
connected with OA 203/88  
as per Court order dt 20.10.94  
S.P.J  
9/10/94

J.M.

L.F  
A.M.

12.12.94

No filing of D. B. add'l to  
9.2.95  
Date

OA 203/80

(A)  
(D)

28/1/87

Hon. Mr. V.K. Seth, AM  
Hon. Mr. Q.C. Verma, JM

The applicant is present  
in person & states that  
his counsel is not available  
today.

list on 20/3/87

J.M.

V.S.  
AM.

A

20/3/87

Hon. Mr. V.K. Seth, AM,  
Hon. Mr. Q.C. Verma, JM

The learned Counsel for the  
applicant states that Review  
Petition bearing No 681/83 seeking  
review of the judgment & order  
dt 23/2/83 passed in this  
OA is still pending for disposal  
& the same is already  
listed for 8/5/87. In the  
circumstances, we consider  
this MP No 509/83 is not  
maintainable & rejected  
for leave as such. Review  
Petition be listed on the  
date already fixed.

J.M.

V.S.  
AM

B

filed as 2-11-01 (8)

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

Application no. 203 of 1988 (1)

## BETWEEN

Vijay Kumar Misra

--Applicant

AND

Union of India and others

### **-Respondents**

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Signature of the applicant

Dr. Clarkens  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench at Allahabad

Lucknow Circle, Lucknow

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

Noticed for  
24.11.88  
Final  
2/11/88  
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)

(A)

(i) Order no. with reference to Annexure no. T/537/TA/Misc./Link/10/185 Annexure no. 4-6...

(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. 4-8...

(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.

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. Chaurasia

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 <sup>as</sup> 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 <sup>not</sup> were 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

*J.K.Gaur*

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 by me."

4. That Sri J.L.Chaba, Safety <sup>Counselor</sup> 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. At 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. Tandon

Guard and Driver to shunt the load from Line no. 6 to line no. 7. The route was correctly set and Down starter for line no. 6 was taken off for shunting purposes. On observing starter in Off position and Guard's signal driver of Down Aishbath Special pulled the full load for clearing trailing points and stopped short of Up Outer signal at Unnao and after passing Dn. Advanced starter in ON position. ~~Driver stopped outside of~~  
~~points~~

After clearance of trailing points the Guard asked Switchman at East Cabin to change the route for line no. 7 to back the load of Down Aishbagh Special. The switchman changed the route and confirmed it by showing green hand signal towards G (petitioner) Guard/and Driver. After ensuring the correct setting of route the Guard gave signal to the driver of goods train to back the load but some how, he did not move immediately as he could not observe Guards signal due to darkness and foggy weather. In the meanwhile ASM, Magarwara gave line clear for 513 UP at 21.36 hrs. and also exchanged P. No. with Switchman of East Cabin, Sri Parideen. 513 UP left Unnao at 21.58 hrs. but driver of 513 UP Sri Taran Singh, Engine no. 6379 YDM 4 overshot UP Outer signal and collided with Engine of Down Aishbagh Special which was already standing there. As a result, one coach of 513 UP and 2 goods wagons were derailed at 22.07 hrs. There was no serious injury to any one.

6. e. That the articles of charge against the applicant on the basis of these facts were

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 para 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 Gurard/ Aishbagh is not proved."

*Attested*  
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 <sup>it</sup> had indicated reasons ~~for~~ ~~causing~~ ~~the finding that the failure on~~ <sup>for</sup> 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 application of SR 5.43/7(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/ is being annexed as Annexure no. A-6 to this application.

11. That aggrieved by the said order of punishment,

2. K. D. M. I. N.

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 ~~not~~ 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.W. Main*

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.

*Divisional*

13. That the 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 Additional 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.Dwivedi*

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

*L.M.A.*  
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 reduct 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 <sup>\* (Amendment on the</sup> back of page ~~12~~ amongst others on the following

A/P

(a) Because opposite-party no.<sup>3</sup> and <sup>4</sup> 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

against the weight of the evidence on record.

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

1. Number of 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

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

*D.K. Misra*

that the contents of paras 1 to 5 and all the paras under para 6 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. Anisra*

Signature of the applicant

Date 28.9.1988

Place Lucknow

*B. Chakravarthy*

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 Magarwara his  
 Shtg.load entered into Block section MGW-On without  
 proper authority and violated Sr.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.

Sd/- Illegible  
 A. N. Aga

Sr. D. S. O/LJN

Attested from  
 true copy  
 J. K. Aga  
 2/14  
 (ADVOCATE)

V.K. Misra

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. ASH 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 S.5.15/7(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 ASH 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 Railway Service (Conduct).

V.K. Mishra

Attested from  
true copy.

3d/- illegible

..... AGA

Gr. DSO/LTN

10.3.

forwarded  
21/11  
ADVOCATE

19  
M

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

Application No. of 1988

Between

Vijay Kumar Misra.... .... ... Applicant

And

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

Annexure No. A-3

List of documents by which the Article of  
Charge has been framed against Sri Vijay Kumar  
Mishra, Guard(c) s/o Sri Phool Chand Mishra.

1. A/C Accident wire

2. Genl.79.

3. Summary Statements of staff.

*Attested from  
true copy  
21/11/1988  
Advocate*

Sd/- Illegible  
(R.N. Aga)  
Sr. DSO/LJP

*V.Kumar*

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 Lamesh Sd. Shuntman/MGK
2. " Sri Ram Lal, Porter/MGK.
3. " Sri Parideen, Switchman/MGK.
4. " Ram Swaroop, Gateman.
5. " Taran Singh, Driver(A) of 5130pExp.
6. " Jagat Narain, Asstt. Guard of 5130pExp.
7. " J. C. Mandan, ASK/MGK.

Sd/- Illegible  
A. Aga  
S. DSC/LJN

Attested from  
true copy.

2/11  
Advocate

24/11/11

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL PENCH 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 inforced over Northern Railway during the period of 27.12.85. Subsidiary rules are domestic rules of N.Railway.
3. Copies of the SWL of MGW pertaining to the shunting movements inforced during the period of 27.12.85.

*Attested from 4. Copy of OPT-79 (shunting order) issued by ASR/MGW  
one copy. 5. Copy of MGW/MGU  
on duty from 16.00 to 24.00 hrs to the Drive  
Advocate*

-2-

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

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

6. Copies of Log-Book maintained by ASH & E/Cabin of MGR 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 SC(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.

Attested from  
true copy.

Yours faithfully,

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

21/11  
Advocate

V.K. Mishra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL PLEADER AT AIJMABAD

LUCKNOW CIRCUIT LUCKNOW.

APPLICATION NO. OF \*

BETWEEN

VIJAI KUMAR MISRA.... ...APPLICANT

AND

THE UNION OF INDIA AND OTHERS....respondents.

Annexure No. A-5

From J.L.Chaba,  
SC(T)/IJN.

D.L.M. (Safety)/IJN. Dated 1.10.87

Sub: D.M. enquiry against Sri V.K.Misra, Guard/ASH,  
vide Memorandum No.T/537/TA/Misc/Link/10/65  
dated 11.3.87.

HISTORY

on 27.12.85 Dn. ASH Spl. was worked by 3498 10 Driver  
Sri S.P.A.vasthi, Guard, Sri V.K.Misra. It arrived at 14G  
at 15.45 hrs on line no.6. The train performed shunting  
in Mill siding and the load consisting of 6+ wagons was  
ready on line no.6 at about 19.30 hrs. After shunting  
Driver demanded water and at 20.20 hrs. ~~At approximately~~  
~~Exxxxxxxmxxxxxxmxxxxxxm~~ T.M.L ordered that load of  
D.M. ASH Special should be transferred on loop line  
no.7 to clear main line. At about 21.20 hrs ASH on duty  
Sri J.C.Tandon sent the shunting orders on CPT/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. ASH Spl. pulled the full  
load for clearing trailing points and stopped short  
ofp outer signal at Unnao End after passing Dn.  
advanced starter in on position.

Attested for  
true copy  
2/1/11  
(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, ASR/PGU who has been removed from service as he was held responsible for the above accident. His attendance could not be arranged inspite of best efforts, though he was an important prosecution witness but ~~PAK~~ enquiry had been completed after deleting his name as per DDM(S)'s orders vide letter No.T/537/Ta/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:-

" Construction outside station section at a 'B' Class single line station equipped with two aspect signals.

Attested from  
True copy  
"Anil Kumar" Advocate

The line outside station section and upto outer signal shall not be obstructed unless a <sup>servant</sup> specially appointed in this behalf by SM, in charge of the operations and unless:-

- (a) the block section into which the shunting is to take place is clear or 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 ASR on duty gave line clear for 513 Up when block section was blacked by Dn. ASR special due to shunting and Switchman also exchanged P. No. with ASR confirming the clearance of block section. The driver of 513 Up overshot Up outer signal and collided with Dn. ASR special in block overlap portion.

Though Sri V.K. Misra, Guard has been charged for violation of Sr. 5.13/7(b), read with G. 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. ASR special, shuntman, switchman have confirmed the presence of Guard during shunting in their statements.

Attested for  
one copy  
J. K. Misra

-5-

As regard Qn 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. Qn 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 Nramesh 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. ASK special. He was informed by ASM on duty only after he had given line clear for 513 Up to SM/On.

Moreover as per SWH of MGW, para 6.3 (nG), 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 Gate man on duty has confirmed this fact in his statement at page no.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. ASK 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

-6-

shunting order was finally delivered to the driver through shuntman. Shuntman, Sri Ramesh D. also travelled on the engine during shunting as per statement of Sri S.P. Awasthi, Driver of Dn. ASI special at page no. 17. Sri Tandon, ASI had also admitted in his statement before Enquiry Committee (Copy attached age 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 ASI 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 on. Advanced starter for backing the same on line no. 7. Sri S.P. Awasthi, Driver of Dn. ASI special, was satisfied due to presence of shuntman on his engine. Sri Ramesh D. shuntman also told in answer to question no. 6 (page no. 10) that as per practice no authority as 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 only or only. The above intimation is only given to the driver of a train. Sri S.P. Awasthi, driver of Dn. ASI special, was solely responsible for passing the on. Adv. starter in on position while pulling lead in shunting operation without

getting any endorsement on shunting order by AGM on duty.

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

i) Sri G.C. Tandon, AGM 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.M. with AGM confirming the clearance of line for 513 Up, though line was blocksed by Dn. AGM 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 513 Up violated and overshot up outer signal of Rly.

iv) Sri S.P. Awasthi, Driver of Dn. AGM special passed Dn. Adv, starter in 'U' 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. AGM 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 Rly. Service (Conduct) Rules 1966 by Sri V.K. Misra Guard/ SH is not proved.

Enc.:- one file as above

Sd/- Illegible  
( J. L. Chaba)  
SC( )/LJN.

Attested from  
True copy  
J. L. Chaba  
Advocate

J. L. Chaba

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-6

Form No. 3

Sic

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

No. T/537/TA/Misc./Link/10/85 dated 9.11.1987

To

Name Shri Vijay Kumar Misra

Father's name Shri Phool Chand Misra

Designation Goods Train Guard department operating  
 Ticket No. X Date of appointment 5.1.1965

State Aishbagh Scale of pay 1200-2040

Shri Vijay Kumar Misra, Goods Train Guard, Aishbagh  
 (name, designation and office in which he is employed  
 (\* Under suspension) is informed that the Inquiry  
 Officer appointed to enquire into the charge(a) against  
 him has submitted his report. A copy of the report  
 of the Inquiry Officer is enclosed.

XXXXXXXXXXXXXXXXXXXX

\* On a careful consideration of the enquiry  
 report aforesaid, the undersigned agd for reasons  
 stated in the attached memorandum holds that article  
 (s) of charge no.(s) framed vide memorandum the  
 Inquiry Officer held as not proved even dt. 10.3.87

3. The undersigned has, therefore came to the

-2-

conclusion that the penalty of reduction to a lower post/grade may be imposed on Sri Vijay Kumar Misra ~~XXXX~~ Shri Vijay Kumar Misra is, therefore reduced to the lower post/grade /service of Training ~~Clerk~~ in the scale of Rs.950-1500 fixing his pay at Rs.1200/- per month for a period Five years & months from the date of this order with postponing 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 ADRM/LJN provided:-

- i) The appeal is submitted through proper channel within 45 days from the date of receipt of these orders and
- ii) the appeal does not contain improper or disrespectful language.

5. Please acknowledge receipt of this letter.

Name & Designation of the Sr. D.S.O. & LJN  
disciplinary authority. Signature (V.K.T.A..)

Attested from  
T. C. Jaiswal  
Advocate.

T. C. Jaiswal

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 DMR enquiry reports submitted by Enquiry Officer.

2. Shri V.K. Misra Guard of Down ASH special of 27.12.85 worked by power No. 3498 YG was incharge of shunting operations at MGW station and while doing so, Down ASH Spl. entered into the block section MGW-On without any authority from ASH on duty at MGW. He thus violated SIR 5.13.7(b) read with CR 8.11. In the second para of DMR enquiry report, the L.O. has held that the accident concerned due to overshooting of Up Cuter signal by the driver of 513 Up, but he has overlooked the fact that another cause of the accident was the entry of Down ASH special into the block section for shifting the load from L/6 to L/7, although the ASH on duty at MGW had not authorised the driver and guard of Down ASH special to enter into the block section while performing the shunting as per the shunting order given by the ASH at MGW station on 27.12.85.

SIR 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

K.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 Shri V.K. Mishra, Guard performed shunting in violation of rule 8.11 (G.) 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 up outer signal in the case of down ASR Col. at NGV. 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. on duty to do shunting in block section, the guard Shri V.K. Misra 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 Rule G. & S.R.

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 NGV Shri J.C. Pandon to endorse on the shunting order authorising the driver to pass the advance starter at NGV position. Even assuming his statement as true, he should have refused to carry out shunting beyond down advance starter of NGV as such shunting order as was given to him.

✓ K. Chandra

F.C.

✓S

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-5-

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

6. I, therefore, order that Shri V.K.Misra, Guard C in scale 1200-2040 be reduced to the post of trains clerk in scale Rs.95/- 1500 at Rs.1200/- for a period of five years with cumulative effect and loss of seniority.

Sr. BSC/LJM.  
27.10.87

Attested from  
T. C. Jindal  
Advocate

V.K. Misra

35

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/T A/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:-

*L.K.Misra*

*A.e.*

- 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

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)/IJN 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 tantamounts 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 disagreement 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

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 violated 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 punishing 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 prevalent at Magarwara Railway Station as confirmed by Sri Ramesh Prasad, Shuntman in answer to questions Nos. 6, 10, and 11 as also discussed by the Inquiry 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 shunting before the accident.

S. V. Dinesh

T.C

-4-

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.

T.C.

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

- reduction from the post of Guard to the post of Trains clerk.
- reduction from pay scale of Rs. 1200-2040 to scale of Rs. 950-1500
- Reduction of pay from Fr. 1500 to Rs. 1200/- for a period of 5 years
- with cumulative effect and
- 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

-6-

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/IND

Attested for  
 T. C. Jaiswal  
 21/1/89  
 Advocate

V.K. Misra

इन दिन सेन्ट्रल एडमिनिस्ट्रेटिव दिव्युनल

एडीशनल बैन्ड स्ट इलाहाबाद

लखनऊ बैन्ड लखनऊ

एफीकेशन नं

आफा 1988

बिटीवन

विजय लुभार मिश्रा

एफीकान्ट

संड

दिव्युन्नियान आफा इंडिया संड अदर्स रिस्पाइक्स

सन्केत नं ८-४

पूर्वोत्तर रेल्यू

संटी/५३८/टी०सी०/मिस/लिं/१०/८५

दिनांक 2-1988

मण्डल रेल प्रबन्धक ईस०४

श्री वीपेको मिश्रा/गार्ड

लखनऊ

प्रदावनतृ देन कर्त्ता

द्वारा-स्टेशन अधीक्षक, सेशबाग

विषय- दिनांक 27/12/85 को 513 अप स्क्सेस तर्फ डाउन सेशबाग मालगाड़ी 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 निम्नालिखित आदेश दिये हैं-

"मैंने श्री वीपेको मिश्रा गार्ड प्रदावनतृदून्स कर्लक की दिनांक

29-12-87 की अपील सुनी है पूर्वक स का भलीभीत अध्ययन किया।

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

- 1- अद्वितीयासीनक अधिकारी ने अपने रिपोर्ट में कहा है कि जांच अधिकारी ने सामान्य नियम P-11 पर अपनी टिप्पणी नहीं दी है जो गलत है।
- 2- यह लिंग जांच अधिकारी ने अपनी रिपोर्ट में स्पष्ट कहा है कि अपीलकर्ता ने सहायक नियम 5-13/7 बी० का कड़ाई सर्वे जारीकर्ता के साथ अद्वालन किया है।

“अपीलकर्ता द्वारा उताये गये उपरोक्त मुद्दों पर गवाई से विचार किया गया। अद्वितीयासीनक अधिकारी ने यह नहीं कहा है जांच अधिकारी ने सामान्य नियम P-11 पर टिप्पणी नहीं की है बील्कु वास्तव में यह कहा है लिंग इस तथ्य कि डाउन स्क्वार्स स्टार्टर और अप आउटर सिग्नल के बीच ब्लाक सेक्शन में शीटिंग करने के लिए स्टेशन मास्टर द्वारा गार्ड को प्राधिकृत होना चाहिए था। पर जांच अधिकारी ने कोई टिप्पणी नहीं की है। अद्वितीयासीनक अधिकारी का यह निष्कर्ष तथ्यों के आधार पर लाई है।

जहां तक सहायक नियम 5-13/7 बी० के अद्वालन का प्रश्न है अधोहरताकर्ता भी जांच अधिकारी की रिपोर्ट से सहमत नहीं है। इस कैसे में अपीलकर्ता ने सीटिंग के समय गाड़ी को डाउन स्क्वार्स स्टार्टर और अप आउटर सिग्नल के बीच ले जाकर, जिसके लिए उन्हें प्राधिकार प्राप्त नहीं था, चिन्हित ही उपरोक्त नियम का उल्लंघन किया है।

- 3 -

जरोक्त तथ्यों को ध्यान में रखते हुए, इस ब्लॉक में  
 अनुशासनिक अधिकारी द्वारा अपीलकर्ता को दिया गया दण्ड न्यायसंगत  
 तथा आरोप के अनुच्छूल है। तदाद्युत्तर उन्हीं वर्तमान अपील रद्द की जाती  
 है।

कृ अपठनीय

कृत मण्डल रेल प्रबन्धक संसरक्षा

लघु नं।

Attested from  
 T. C. J. 21/11/89  
 Advocate

सत्य प्रतीक्षिप

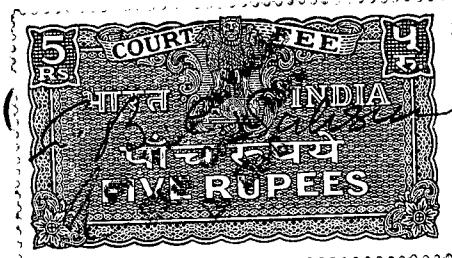
26/11/89

[वकील] अपीलान्ट ✓

प्रतिवादी [रेस्पान्डेन्ट] ✗

का वकालतनामा

(टिकट) } बादी {



Vijai Kumar Misra

बनाम  
Union of India & others  
सन् ८० पेशी की ता०

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

१६ रु०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Shri B.C. Salasena Advocate  
40407 Dr Bajaj North Road, New Hyderabad

वकील  
महोदय  
एडवोकेट

Shri S.C. Srivastava 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 हारा और ताजी लारी करावें और वसूल करें या सुलहनामा इकबाल दावा तथा अपील निगराना हमारी ओर से हमारे या ऐप्पहस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रूपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा कोई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अद्य ऐसी 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 छाम आवे।

Accepted  
B. Salasena

V.K. Misra

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

Accepted  
B. Salasena  
Advocate

महीना

सन् १६ रु०

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 Safety 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 respondent, is fully conversant with the facts of the case and has read the claim application, understood its contents and has been authorised by the respondent to file this reply.

2. That the contents of paras 1 to 5 of the application need no comment.

3. 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 <sup>(i.e. Safety Commissioner)</sup> S. C. for CRS enquiry on 3-1-86 and never returned and the same was neither a relied upon

Cont----2

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 not admitted as stated, Sri J. C. Tondon, ex- ASM (Northern Railway staff) 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 IIInd 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 ~~against~~ 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. Ray. 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

प्रधार मंडल संरक्षा अधिकारी, shunter in grade 1200/- 2040/- and his pay was fixed at Rs. 1200/-  
मुद्रौतर रेववे, लखनऊ for a period of 3 year and similarly action was also

taken against the applica~~nt~~.

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 incase 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.

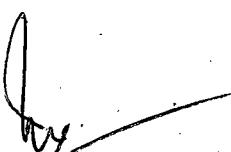
5. That the contents of para 8 of application need no comments.

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.

  
(Jainaram)  
प्रवर मंडल संरक्षा अधिकारी,  
पुर्वोत्तर 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

  
(Jainaram)  
प्रवर मंडल संरक्षा अधिकारी,  
पुर्वोत्तर रेलवे, लखनऊ

Annexure No. C-1

Registered A/D

278

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 IIInd 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



Copy of Railway Board's /New Delhi's L/Ho. II OAA)SB/66-47  
dated 22.10.1964 to the General Manager/J.S.B.I./Gorakhpur.

Sub:-Disciplinary authority under Railway  
Railway Servant (OAA) Rules, 1958-Staff  
of Operating Department.

Reference your letter No.V/44/2/Pt.4/V/  
dated 24/36.7.64 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 SIs, ASIs, etc. perform  
trades planning duties.

Please acknowledge receipt.

  
द्वारा मंडल सरकारी अधिकारी  
पुर्वोत्तर 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

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. (Signature)

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

already indicated hereinabove is wholly baseless and is legally untenable and ~~xxx~~ 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 <sup>2 stand</sup> a similar ~~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.B.



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  
26-10-1989

V.K. Anura  
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

-6-

material has been concealed;  
so help me God.

*V.K. Misra*

Deponent

Lucknow Dated

~~26~~  
September 26, 1989

I identify the deponent who has signed in my presence

*R.K. Srivastava*

(R.K. Srivastava)  
Clerk to Sri B.C. Saksena Advocate

Solemnly affirmed before me on 24-10-89  
at 10-45 a.m./p.m. by V.K. Misra  
the deponent who is identified by Sri R.K. Srivastava  
Clerk to Sri B.C. Saksena  
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*  
R. D. ARULJAM  
OATH COMMISSIONER  
High Court Lucknow Bench Lucknow  
No. .... 81/12144  
Date 24-10-89

# बअदालत श्रीमान

Hon'ble Central Administrative Tribunal  
जनकुम भवन नईदलाल

महोदय

वादी (मुद्रित) Vijai Kumar Misra  
मुकद्दमा (मुद्रित) का



वकालतनामा

30

Vijai Kumar Misra

नमूना नं० मुकद्दमा 203 बनाम विनू और और सन् १८८८ पैशी की ता० 6-8-1992 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री l. l. Shukla, Advocate

वकील ५३७/२५, Om Nagar, Almora- जनकुम

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 रूपया 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 रूपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रूपया 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 पैशी स्वयं या किसी अपने प्रोकार 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  
S. Shukla  
S. Shukla  
साक्षी (गवाह) साक्षी (गवाह)  
दिनांक 6 महीना Aug सन् १९९२ ई०

हस्ताक्षर

V.K. Misra

(2)

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 ~~summoned~~ in view of the above facts, and the date for hearing may kindly be fixed.

Lucknow/Dt. 7 /5/1993/

V.K. Mehta  
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 ~~of~~ 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-E8-8-370-10-400-E8-10-480 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-structuring 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 junioe has been promoted.

PLACE : LUCKNOW

V.K. Anur

Applicant

DATED :

#### 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

V.K. Anur

Applicant

DATED :

V.K. Anur

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

C.A. NO.

203/68

199 (L)

C.A. NO.

199 (TL)

Date of Decession 23.2.93

V.K. Mishra

Petitioner

Advocate for the  
Petitioner(s)

VERSUS

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

Respondent

Advocate for the  
Respondents

CORAM

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

Hon'ble Mr. K. Chatterjee, A.M.

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 Lord Ships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other benches ?

*u*  
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 supplying same and prayed for ~~notifying~~ of certain copies.

Copies of the documents were furnished at s.No. 26 of b/f 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 had caused the ~~accident~~. 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 penalties. 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

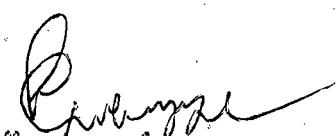
opportunity was given to the applicant and the disciplinary authority stated that not only the applicant but other persons were also involved in the accident and they were also punished.

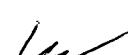
One J.C.Tandon was removed from service and Taran Sing's(Driver) pay was reduced for a period of one year and S.P.Awasthi was reverted as shunter and his pay too was reduced. It has been pointed that the Senior Divisional Safety Officer also belongs to the operating department as per Railway Board's 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.Danial Vs U.O.I. & others. As such the plea has been ordered also rejected 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 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 figured at S.No. 23 of the second list. In the order of the reduction erroneously the applicant was 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

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.

*I. S M N Dgln* aged about 35 yrs  
years working as Sr Civil 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 Dgln* Contd....2  
पश्चिम रेलवे अधिकारी,  
पूर्वोत्तर रेलवे अधिकारी,  
Sr. Divisional Civil 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 untachable.
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

*Sudhir*  
प्रधार मंडल कार्यक्रमिक अधिकारी,  
प्रौद्योगिक रेलवे विभाग  
Sr. Divisional Engineer Officer,  
G. B. Railways, 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 ~~Ex~~ 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/

*Smt. Usha*  
प्रबन्धकार्यकालीन  
प्रबन्धक रेन्डर, नवनक  
Sr. Division 11, 1000000000  
U. P. Railway, Lucknow.

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 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)

*Sauwan*  
कवार पंडल कार्यक अधिकारी,  
पुर्वोत्तर रेलवे, लखनऊ,  
S. Divisional Personnel Officer,  
N. L. Railway, Lucknow.

Contd....5

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 :

*S. D. W.*  
प्रबंध मंडल कार्यालय,  
पूर्वोत्तर रेलवे, लखनऊ  
Sr. Divisional Personnel Officer  
I. B. Railway, Lucknow

88  
:: 6 ::

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 :

*Sudhakar*  
धृवर घडल कार्यालय सचिवालय,  
पूर्वोन्दर रेल, लाल  
Sr. Divisional Personnel Officer  
I. P. Railway, Lucknow

To,

The Deputy Registrar  
Central Administrative  
Tribunal, Lucknow  
Bench, Lucknow

Sub:- O.A. 203/88, V.K. Mishra v.S.C.O.?

ff 275:97 f.o.

Sir

The above cause was fixed on 27.5.97  
for order and order was passed  
that the case may be listed  
before Sub. Bench that have no  
concern to Mr. Harble Mr. B. K. Sengar  
The same is submitted for  
Directly the Bench the case  
may be listed for which

Date 20.6.97

Submitted

(D)

G.D.C

20/6/97