

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

INDEX SHEET

CAUSE TITLE OF
NAME OF THE PARTIES.....Kedar Nath.....
.....Applicant
Versus
.....Union of India & Ors.....Respondent
Part A, B & C

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CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Dated...23-2-17...

Counter Signed.....

Section Officer / In charge

Signature of the
Dealing Assistant

GA. 102/89

10.2.2000.

Dech: Harikesh (PVH)
Harshbhar (JLN).

Mr. O.P. Srivastava.
Mr. A. Srivastava.

Heard. Orders pronounced in open court.

On order dt 10.2.2000
prepared, on 17/2/2000
Q

By order
Y
Co C J
10/2

(15)

04-11-99-

Honble Mr D. C. Verma - JM
Honble Mr A K Misra - AM

Sri O.P. Srivastava Counsel for
applicant -

Sri A. Srivastava Counsel for
respondent

L/c for respondent seeks further
time to produce for perusal of
tribunal, the draft file containing
the review proceedings initiated
by the General Manager

As prayed two week time is
granted.

List for hearing on 13.12.99.

AM

J.M.

13/12/99.

Honble Mr D. C. Verma - JM
Honble Mr A K Misra - AM

Sri O.P. Srivastava Counsel for applicant

Sri A.K. Srivastava Counsel for respondent

List for hearing on 08/02/2000

AM

JM

08/02/2000

case is adjourned to 10/02/2000
for hearing

J
Boc

(13)

O.A. 102/89

25.11.78

No sitting of D.B. case is
adj. to 12.4.99 for hearing.

B.E

or
Pleadings are
complete
28/6/99

12.04.99

Due to special D.B. the case is
adjoined to ²⁹25.06.99.

29-6-99

Hon Mr D.C. Verma, Jm B.O.C
Hon Mr A.K. Misra, Am

None for applicant.
Sh. Anil Sawantkar for
respondent has sent
application for adjournment
but for hearing on

8-7-99

Am
AM

Jm
Jm

08-7-99

Due to the sad demise of
Sri B.A. Naqvi, Adv., case is adjourned
to 27-7-99 for hearing.

BPC

(11)

OA 102/89 (C)

A/6

20-3-97

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

Hon. Mr. D.C. Verma, D.M.

Counsel for both the
sides have prayed for
adjournment.

List on 11-4-97 for
hearing.

J.H.

A.M.

Az

11.4.97

NO sitting of D.M. court
21.5.97

mt

21-5-97

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

Hon. Mr. D.C. Verma, J.H.

L. O.P. Bivartana, learned
counsel for applicant has submit-
ted request for adjournment.
Adjourn.

List on 14-7-97 for hearing.

This will not be treated as
heard at this bench.

J.H.

A.M.

Az

14.7.97

NO sitting of D.M. court

15-9-97

Doc

2
Counsel for
applicant
discharged
3/5/97

(9)

OB
CPABA 17.1.54

Dir to Sadom of S. B. Sadom Adv.
colly 10.3.94

Filed
S. for Reg

10.3.94
13/11/94

Shrin Path.

Dir to N. K. Path. Sadom Adv.
colly 9.5.94

il
Boc

Boc

OB
Submitted for

9.5.94

No sitting of D. Sadom 11.7.94

Shrin Path.

11.7.94

Lawyers absent. The Sadom Adv.
colly W.D.

il
Boc

Boc

S.F.H.

Shrin Path.

19-3-94

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

As per order of
Hon. V.C. Saksena
lasted on
19.3.96

Learned Counsel for
applicant seeks adjournment.
lit on 08-4-94 for
hearing.

Readings are
complaint
S.F.H.
15/5/96

V.K.
A.M.

Boc
V.C.

0446

Dir to Sadom of S. C. Sadom Adv.
colly 30.4.96

il
Boc

Shrin Path.

Hon. Mr. Justice B. C. Saksena, V.C.
Hon. Mr. V. K. Sethi, A.M.
The learned counsel for applicant
has sent illness slip.
lit on 15/7/96.

il
A.M.

Boc
V.C.

15.7.96

No sitting of D. Sadom
13.8.96

7

A/c

O.A. No. 102/89

30.7.93

Hon'ble Mr. B.K. Singh, A.M.

None for the parties. Sri A.K. Shukla has conveyed the message on behalf of ^{Sr} Anil Srivastava learned counsel for the respondents ~~as~~ ^{praying} for fixing this case on 3.8.93. List this case on 3.8.93 for hearing and disposal.

(g.s.)

d


A.M.

6

A/q

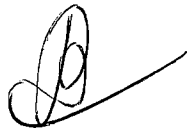
7/7/93

Hon.Mr.B.K.Singh,A.M.

The order sheet dated 5/1/93 indicates that an order was passed to the effect by the Bench comprising of Hon.V.C. and A.M. that a last opportunity be given to the applicant for filing R.A. and no further time may be granted thereafter. Even to-day, after a lapse of nearly 5 months, no R.A. has been filed. The applicant is not interested in pursuing the application and as such it is dismissed for default on the part of the applicant.

18

(tgk)



A.M.

for copy of order

Kishan

21/1/93

Chief Secy. to the Bench
B.K.S.

on

M.A. 657/93
made

ffs

2

29/1/93

(I)

P/O

5-1-93

Hon. Mr. Justice U.C. Sinastana, V.C.
Hon. Mr. K. Obayya, A.M.

Learned Counsel for the applicant
Prays for 2 weeks' time to file
rejoinder. Last opportunity is given
to file rejoinder. No further
time shall be granted. Last
time shall be granted. Last
this case on 12/2/93 for orders.

V.C.

A.M.

(Ug)

12-2-93

No filing adj n 24.3.93

OK
No R A filed 24.3.93

No filing adj n 8.4.93

11/2/93 8.4.93

No filing adj n 7.5.93

OK
RA 24.3.93

7-5-93

No filing adj n 7.7.93

24/93

OK
RA 24.3.93

24/93

RA 24.3.93

(4)

X

13.11.91

No sitting AM to 23.1.92.

23.1.92

No sitting of D.B. adj to 23.3.92
a

23.3.92

No sitting of D.B. adj to 12.5.92
a

12.5.92

No sitting of D.B. adj to
22.7.92
a

22.7.92

No sitting of D.B. adj to
2.9.92
a

2.9.92

No sitting of D.B. adj to
20.10.92
a

S.F.C.

19/10/92

20.10.92

Hon. Mr. K. obayya A.M.

Hon. Mr. S.N. Prasad. J.M.

(DPB)

Both the parties have requested
for adjournment of the case. Allowed.
List this case on 3.12.92 for orders.

J.M.

A.M.

3.12.92

No sitting of D.B. adj to
do 5.1.93
a

3/12/92

(1)

REGISTRATION No. CA-10 of 1989. (15)

APPELLANT
APPLICANT Kedar Nath

VERSUS

DEFENDANT
RESPONDENT U. O. India

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and of compliance
15.5.89.	Hon. K. J. Raman. AM.	
	<p>Due to sudden death of Sri Jagdish Suroop, Ex. Solicitor General of India. The Lawgess have abstained from attending court.</p> <p>The case is accordingly by Adjourned to 18.7.89, for Admission.</p> <p><i>[Signature]</i> AM</p>	
18.7.89	<p>No sitting. Adj. to 3.8.89 for admission.</p> <p><i>[Signature]</i> h B.O.C.</p>	
3/8/89	<p>Hon. Justice K. Nath, VC.</p> <p>On the request of the learned Counsel for the applicant last this case for admission on 10-8-89.</p> <p><i>[Signature]</i> VC</p>	
10/8/89	<p>No sitting. Adj. to 14.9.89. Counsel for the applicant is present.</p> <p><i>[Signature]</i> 10/8</p>	

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

11-5-89

Registration No.

of 1989(4)

APPLICANT (s)

Kedar Nath

RLS

RESPONDENT(s)

Union of Indes, through G.M. N-R
Baroda House, New Delhi
30188.

Particulars to be examined

Endorsement as to result of Examination

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

Yes

Yes

Yes

Yes (2 copies at present have been submitted)

Yes

N.A.

N.A.

Yes

Yes. DD 841659dr Rs. 50/-

Yes

Yes

Yes

A
B

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A.No.102/89

Thursday this the 10th day of February, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Kedar Nath,
R/o 559-Kha/280
Srinagar presently working
as Chief Booking Supervisor,
Northern Railway, Varanasi.

... Applicant

(By Advocate Mr. OP Srivastava)

V.

1. Union of India through the General Manager, North Railway Baroda House, New Delhi.
2. General Manager (P) Northern Railway, Circle Office, Baroda House, New Delhi.
3. Chief Commercial Superintendent, Northern Railway, Hazaratganj Lucknow.
4. Senior Divisional Commercial Supdt. Lucknow.

... Respondents

(By Advocate Mr. A Srivastava)

The application having been heard on 10.2.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant while working as Chief Parcel Clerk, Northern Railway, Lucknow was served with a memorandum of charges dated 30.4.84 which contained two articles of charges. Which reads as follows:

- (a) That he on 22.11.83 granted open delivery of one case bearing raily mark No.0095/12 ex Howrah to Lucknow containing Bata Shoes without association of RPF representative thus violating the provisions contained in Rule No.1840 of Indian Railway Commercial Manual Volume.II.

contd...

✓

-2-

- (b) That he while granting open delivery of the said consignment recorded 20 pairs of shoes as having been found in the said damaged case against 32 pairs according to packing slips ie., 12 pairs short. When the said consignment was intercepted at the time of removal by the Vigilance team actually 20 pairs of shoes were found therein, thus he made fictitious inventory by showing as pairs of shoes as short as against 3 pairs actually less in the said case. Obviously he recorded false and fictitious inventory with malafide intention and to allow the party to lodge a false claim for 2 pairs of shoes."

The applicant denied the charges. An enquiry was held. The Enquiry Officer submitted a report with the following finding:

"On going through all the documents in defence of Sri Kedarnath cross-examination of the witnesses, the statement of the witnesses and the VIs I found that the charges levelled against Sri Kedarnath are not fully proved but found that he is not absolutely exonerated because of his gross negligence, as he failed to obtain the signature of the party on the MGR and allowed the removal of the C/ment, which is a serious one."

The disciplinary authority, the 4th respondent, disagreed with the finding of the enquiry officer and held both the charges established and passed order dated 14.11.85 (A.3) imposing on the applicant a penalty of reduction to lower grade from the grade Rs.700-900 to the lower grade in the scale of Rs.550-750 reducing his pay to the beginning of the grade ie., Rs.550/- with holding future increments for a period of five years with effect on the seniority and future increments etc. Aggrieved by this penalty imposed on the applicant the applicant filed an appeal to the Addl. Divisional Railway Manager who by order dated 11.4.86 (A.8) allowed the appeal and set aside the Annexure.3 order of penalty. However, the third respondent in purported exercise of the revisional power issued an order dated 27.11.86 (Ann.2) imposing on him the

contd...

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-3-

penalty which was earlier imposed by the disciplinary authority by the Annexure.3 order. The applicant aggrieved by that made a representation to the second respondent who set aside the order (Annexure.2) and called upon the applicant to show cause why he in exercise of powers of revision under Rule 25(2) of the Railway Servants (Discipline and Appeal) Rules should not restore the punishment imposed on the applicant by the A.3 order. The applicant again submitted his representation and on consideration of his representation the second respondent has passed the impugned order Annexure.I dated 13.5.88 imposing on the applicant the penalty of reduction in the same scale by two stages with cumulative effect. It is aggrieved by that the applicant has filed this application challenging the legality, propriety and correctness of the order. The applicant has alleged that the second respondent could not have ~~XXXX~~ exercised the powers of revision inasmuch as the Chief Commercial Supdt. had already exercised the power and that the order has not been passed within a period of six months from the date on which the order reviewed was issued. It is also alleged that the enquiry has been held not in conformity with the rules, that the applicant has not been given fair and reasonable opportunity to make proper defence inasmuch as the report of the Vigilance Inspector which is a very important document vital to his defence though sought by him was not supplied on the ground that it was a privileged document, that there

contd....

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is no evidence by which the findings could be reasonably arrived at and that the penalty has been imposed without the guilt being established in an enquiry held in conformity with the rules.

2. The respondents have filed a detailed reply statement.

3. We have heard the learned counsel of the applicant as also the counsel of the respondents at great length.

The argument of the learned counsel of the applicant that the second respondent could ^{not} have exercised the revisional powers firstly for the reason that it was earlier exercised by the third respondent and secondly for the reason that the order has not been passed within a period of six months of the date on which the order ^{under} review was passed has no force at all. Though the third respondent has exercised the powers of review which he was not competent to exercise, the second respondent does not lose his powers under Rule 25(2) of the Railway Servants (Disciplinary & Appeal) Rules and for exercising such power the period of six months does not apply to the General Manager. Therefore, this contention has no force.

4. We find considerable force in the applicant's argument that the applicant has been deprived of reasonable opportunity to defend. As per the allegations in the memorandum of charges and the order of the disciplinary authority it is evident that the charge was based on an incident which

contd....

was witnessed by a Vigilance Inspector. It is also evident from the materials on record that the Vigilance Inspector had made a report. This Vigilance Inspector was one of the witnesses and a key witness^{also.} Therefore the demand of the applicant to make available to him the report prepared and submitted by the Vigilance Officer at the time of occurrence cannot be said to be a document which is not relevant. On the other hand that according to us is one of the most important document. That the disciplinary authority did not chose to produce that document^{during enquiry} and marked it in evidence does not belittle the importance of the document. as far as the applicant is concerned, The action of the respondents in not supplying the Vigilance Inspectors's report to him would definitely cause great prejudice in making his defence. If the document had been made available to him on that basis he could have cross-examined not only the Vigilance Inspector~~but~~ also other witnesses who were present at the time of detection of the misconduct in this case. It is not disputed by the respondents that the applicant made a request for this document. The demand of the^{applicant} ~~it~~ was rejected by an order of the disciplinary authority (A.5) wherein it is stated that the document could not be supplied as it was a privileged document. We find no reason to accept the statement made in Ann.5 that the Vigilance Inspector's Report is a privileged document. On what account privilege could be claimed is not

contd...

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made clear even in the reply statement. We are therefore, of the view that the non-supply of the Vigilance Inspector's Report⁷ especially when V.I was an important witness ~~Report~~/has caused great prejudice to the applicant and therefore it amounted to violation of principles of natural justice.

5. In view of our finding that the applicant has not been afforded reasonable opportunity to defend and as stated by the counsel on either side at bar that the applicant retired on 31.1.96/we do not propose to go into the other rival contentions in this case. While exercising the power of review the second respondent could have seen whether the enquiry has been held in conformity with rules giving the applicant fair and reasonable opportunity to defend himself, whether the finding is warranted by the evidence on record and whether the penalty imposed is adequate or unduly harsh. The fact that the second respondent has not considered the question whether the enquiry has been held in conformity with the rules and giving the applicant a fair and reasonable opportunity to defend himself cannot be brushed aside. Had it done ~~XX~~ the infirmity in this case ie., non-supply of Vigilance Inspector's Report could have occurred to his mind.

6. Now that the applicant has already retired and the occurrence took place in 1984 more than 15 years ago it would be rather impracticable to have a further enquiry held in this case.

contd...

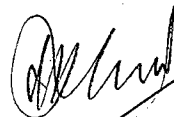
-7-

7. In the result, in the light of what is stated above, we are of the considered view that the impugned order A.I is unsustainable. Therefore, we set aside the same leaving the parties to bear their own costs. We direct the competent authority to issue appropriate orders restoring and refixing applicant's pay as a result of setting aside Annexure A.I order, to revise the retiral dues accordingly and to make available to the applicant the arrears of pay and allowances and enhanced retiral benefits accordingly as expeditiously as possible at any rate within three months from the date of receipt of a copy of this order.

Dated the 10th day of February, 2000



J.L. NEGI
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

S.

11/5/89

Pl. G.

In the Hon'ble Central Administrative Tribunal,
Circuit Bench, Lucknow.

O.A.No: 102 of 1989. (L)

Kedar Nath - - - - - Applicant

Versus

Union of India & Others - - - - - Respondents.

I N D E X

First Compilation:-

Sl.No.	Description of Documents relied upon	Page No:
(1)	Application - - - - -	1-20
(2)	<u>Annexure-1</u> - Order dated 13/5/88 rejecting applicant's representation	0-21
(3)	<u>Annexure-2</u> - Order dated 27/11/86 passed on revision appeal	0-22
(4)	<u>Annexure-3</u> - Order dated 14/11/85 imposing the punish- ment of reduction in Grade	23-26

Filed Steps today
24/5/89

Lucknow dated,
May 1989

Pl. mlt
in 15/12/88 Rtl,
Noted for 15/5/89
24/5/89

(O.P. Srivastava)
(Advocate)
Counsel for the Applicant.

8/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. NO. 102 OF 1989 (17)

Kedar Nath, aged about 50 years, son
of late Sahdev Ram, resident of 559-Kha/280,
Srinagar, presently working as Chief
Booking Supervisor, Northern Railway,
Varanasi

... Applicant

VERSUS

1. Union of India through the General
Manager, Northern Railway,
Baroda House, New Delhi.
2. General Manager (P), Northern
Railway, Circle Office, Baroda
House, New Delhi.
3. Chief Commercial Superintendent,
Northern Railway, Hazratganj,
Lucknow.
4. Senior Divisional Commercial
Superintendent, Lucknow.

... Respondents.

.....

DETAILS OF APPLICATION :

1. The applicant challenges the validity of the
order dated 13.5.1988 passed by the Respondent
No. 2 rejecting the applicant's representation
dated 4.11.1987; the order dated 27.11.1986 passed
by Respondent No.3 on the Revision appeal of the
applicant and the order dated 14.11.1985 passed by
the Respondent No. 4 imposing the punishment of

Kedar Nath

reduction to the lower grade in the scale of Rs.550-750 at the beginning of the grade withholding future increments for a period of five years affecting seniority position and future increments. True copies of the aforesaid impugned orders have been filed as Annexures-1, 2 and 3 respectively to this application.

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is

within the jurisdiction of the Tribunal.

2. Limitation :

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

4. Facts of the case :

4.1 That the applicant challenges the validity of the order dated 13.5.1988 passed by the Respondent No. 2 rejecting the representation of the applicant dated 4.11.1987, the order dated 27.11.1986 passed on revision appeal of the applicant and the order dated 14.11.1985 passed by the Respondent No.4 imposing the punishment of reduction in grade and withholding of future

increments for a period of five years affecting the seniority and future increments. True copies of the aforesaid impugned orders are being filed as Annexures-1, 2 and 3 respectively to this application.

ANNEXURES-1
2 and 3.

4.2 That so far as the facts of the case are concerned while the applicant was functioning as Chief Parcel Clerk, Northern Railway Lucknow he was served with a chargesheet dated 30.4.1984 for the alleged misconduct. A true copy of the aforesaid chargesheet dated 30.4.1984 issued by the Respondent No. 4 is being filed herewith as Annexure-4 to this application.

ANNEXURE-4

4.3 That as no material was supplied along with the aforesaid chargesheet in support of the allegations, the applicant requested for inspecting the documents relied upon. Out of the relevant documents the petitioner was not made available the documents relating to the report of Vigilance Officer, the submissions of Sri S.N. Pandey, Vigilance Inspector and the statement of Sri V.B. Sharma, Vigilance Inspector hence the applicant requested vide letter dated 28.5.1984 for making available the aforesaid documents to the applicant for inspection.

Kedar Nath

4.4 That thereafter vide letter dated 1.6.1984 the applicant was informed that the Vigilance Inspectors' report demanded by the applicant would not be made available to him as the said document was a 'Privilege document'. A true copy of the letter dated 1.6.1984 refusing the documents asked for is being filed herewith as Annexure-5 to this application.

Wh
ANNEXURE-5

4.5 That thereafter the applicant again made a representation dated 7/8.6.1984 demanding the documents required for the purposes to prepare the defence but all the documents were refused to be inspected vide letter dated 14.6.1984 on the simple ground that the document asked for had not been relied upon. A true copy of the aforesaid letter dated 14.6.1984 is being filed herewith as Annexure-6 to this application.

ANNEXURE-6

4.6 That thereafter vide order dated 3rd July 1984 one Sri Bikram Singh, Assistant Commercial Superintendent (II), Northern Railway, Lucknow was appointed as Enquiry Officer to enquire into the charges framed against the applicant by the Senior Divisional Commercial Superintendent, Lucknow.

4.7 That thereafter the said Enquiry Officer started

eduplatr

enquiry proceedings. The Vigilance Inspectors Sarvashri Vidya Bhushan and Sri M S.M. Pandey attended the enquiry on 16.4.1985. Sri Ram Shanker, Head Rashak, R.P.F. was also produced as prosecution witness. The Enquiry Officer made cross examination of all the witnesses and the applicant and thereafter concluded the enquiry proceedings by submitting the enquiry report. In his report the Enquiry Officer clearly held that the basic allegation against the applicant to the effect that the granted open delivery of one case containing Bata shoes without association of R.P.F. representative was not sustainable as the ~~prxxx~~ signatures of the Head Rakshak on duty were duly obtained on Missing Goods Report (hereinafter referred to as MGR). A true copy of the enquiry report is being filed herewith as Annexure-7 to this application.

ANNEXURE-7

- 4.8 That thereafter a notice of penalty proposed to be imposed dated 14.11.1985 was served upon the petitioner without supplying the copy of the enquiry report. The petitioner immediately demanded a copy of the enquiry report in order to reply to the show cause notice. But the disciplinary authority passed orders dated.

Kedarnath

14.11.1985 imposing punishment of reduction in grade from Rs.700-900 to Rs. 550-750 fixing the salary of the applicant at the beginning of the lower grade along with ^{with} holding of future increments for a period of five years affecting seniority. A true copy of the order dated 14.11.1985 imposing punishment on the applicant by the disciplinary authority has already been filed as Annexure-3 to this application.

- 4.9 That thereafter the aforesaid enquiry report was supplied to the ~~petitioner~~ applicant vide letter dated 18th December 1985. A true copy of the enquiry report has already been filed as Annexure-7 to this application.
- 4.10 That being aggrieved of the illegal punishment imposed by the disciplinary authority the applicant preferred an appeal on 26.12.1985 under rule 18 of 1968 Rules before the Additional Divisional Railway Manager (T), Northern Railway, Lucknow.
- 4.11 That the Additional Divisional Railway Manager (T) Northern Railway, Lucknow having considered the applicant's appeal found that the punishment imposed upon the applicant was not sustainable in the eye of law. Consequently

the additional Divisional Railway Manager (T) the appellate authority set aside the punishment imposed by the disciplinary authority vide order dated 11.4.1986. A true copy of the order passed by the Appellate Authority dated 11.4.1986 is being filed herewith as Annexure-8 to this application.

ANNEXURE-8

4.12 That thereafter the matter become virtually closed; but the applicant fell into utter consternation when he was served with an order dated 27th November 1986 under the signatures of the Divisional Railway Manager issued in the capacity of Revising Authority whereby the orders passed by the Appellate Authority exonerating the applicant were set aside and the penalty imposed by the Disciplinary Authority was restored. This order was passed by the Revising Authority on its own motion without affording the applicant any opportunity in this regard after more than 7 months. A true copy of the order passed by the Revising Authority imposing the punishment of reduction in rank as has been originally imposed by the Disciplinary Authority has already been filed as Annexure-2 to this application.

4.13 That being aggrieved of the illegal order

Kedar Nath

8/16

ANNEXURE-9

passed by the Divisional Railway Manager in the capacity of Revising Authority the applicant preferred a representation before the General Manager, Northern Railway on 22nd December 1986, a true copy of which is being filed herewith as Annexure-9 to this application.

4.14 That in his representation contained in Annexure-9 to this Application, the applicant specifically stated that neither the applicant has made any appeal before the Divisional Railway Manager as has been mentioned in the subject of the order passed by the Divisional Railway Manager in the capacity of Revising Authority contained as Annexure-2 to this application nor the said Revising Authority had any jurisdiction to pass an order imposing punishment on the petitioner sue moto after six months of the orders passed by the Appellate Authority without affording the applicant a reasonable and adequate opportunity and as such the order passed by the Revising Authority is null and void in the eye of law.

4.15 That thereafter the General Manager issued a letter dated 19.10.1987 setting aside the orders passed by the Revising Authority and

Kedarasath

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further asking the applicant to show cause as to why the penalty originally imposed by the Disciplinary Authority may not be imposed upon the applicant. Virtually the General Manager had no jurisdiction to issue such show cause notice, once the power to revise the order has already been exercised by the Divisional Railway Manager in the capacity of Revising Authority under ~~section~~ Rule 25(i) of the 1968 Rules. A true copy of the notice dated 19.10.1987 issued by the General Manager is being filed herewith as Annexure-10 to this application.

ANNEXURE-10

4.16 That thereafter the applicant submitted a detailed representation on 4.11.1987 against the aforesaid notice dated 19.10.1987 issued by the aforesaid General Manager challenging inter alia the jurisdiction of the General Manager under 1968 Rules.

4.17 That the General Manager without considering the legal question pertaining to the jurisdiction passed an order dated 13.5.88 imposing the punishment of reduction in rank maintaining the original order passed by the Disciplinary Authority. A true copy of the order dated 13.5.1988 passed by the General Manager has

Kedarnath

already been filed as Annexure-1 to this Application.

4.18 That a perusal of the chargesheet as contained in annexure-4 to this application reveals that the applicant has been held responsible for violating the provisions contained in Rule 1840 of Indian Railway Commercial Manual Vo. II as he granted open delivery without association of R.P.F. representative. For the sake of ready reference the provision of Rule 1840 is being reproduced herein below:-

- i) that open delivery of consignment is to be given on the request of the party;
- ii) presence of R.P.F. is essential;
- iii) shortage report (MGR) must be prepared and should be got clarified/ witnessed by the RPF personnel before whom open delivery has been granted.

4.19 That it is submitted that on 12.11.1983 a representative of Bata Shoe Company, Husainganj Lucknow sought open delivery of one case containing Bata shoes bearing Railway mark No. 0095/12 Ex-Howrah to Lucknow.

4.20 That having received the request of the party on 22.11.1983 was fixed for the purpose of open delivery and consequently the proceedings

Kedarnath

relating to the open delivery were initiated in presence of Mr. R.S. Misra, Head Rakshak of R.P.F., Lucknow in accordance with the aforesaid Rule 1840.

4.21 That while the counting of the items was to start in presence of the party, R.P.F. and other staff, the applicant was called upon by the station superintendent, Lucknow for immediate assessment of a Banna Wagon in his presence so that the applicant asked the Parcel Porter to count the contents of the cases to be opened for delivery as the applicant was proceeding to attend the station superintendent, Lucknow. There was no worry as the R.P.F. staff Sri R.S. Misra was already present on the spot.

4.22 That when the applicant came back the counting of the contents of the open delivery was over. Hence the applicant noted the countings made by the aforesaid Parcel Porter on a chit (a small piece of rough paper) in order to verify the same. On verification the applicant found that the information regarding counting figures given by the said Porter was incorrect, as the applicant was informed only availability of 20 pairs of Bata shoes in place of 32 pairs.

The applicant found that there were 29 pairs of Bata shoes in place of 32 and as such there was a shortage of only 3 pairs and as such the applicant prepared a report on the prescribed proforma to that effect, which is technically known as Missing Goods Report (MGR). As the aforesaid verification of counting was made by the applicant in presence of the aforesaid R.P.F. staff Sri R.S. Misra for the open delivery and the shortage report was prepared in presence of the said R.P.F. staff before whom open delivery was granted, hence Sri R.S. Misra also put his signature on the aforesaid MGR, witnessing the shortage. The said Rakshak (RPF staff Sri R.S. Misra) has never denied the signatures on the aforesaid Missing Goods Report. Hence the allegation to the effect that the applicant acted in violation of the aforesaid Rule 1840 has got no substance.

- 4.23. That the second allegation raised against the applicant is that he recorded wrong figures in the report showing shortage of 12 pairs of Bata Shoes while in fact it was 3 pairs. This allegation is also baseless as the applicant has actually recorded shortage of 3 pairs of Bata shoes on the Missing Goods Report (MGR)

bearing the signature of the RPF staff. It is strange that the rough slip prepared by the applicant on the basis of the information given by the said Porter is given so weightage which is nothing in the eye of law and which has never been submitted by the applicant as the reports are submitted in the prescribed form and the applicant has submitted reports in the prescribed form and thus the second allegation is also baseless and unsubstanable.

4.24 That it has further been alleged that the applicant has contravened the Rule 3(1)(i)(ii) and (iii) of the Railway Servants Conduct Rules 1966. In fact the applicant has not contravened any such rule in as much as the said rule is a simple definition clause and therefore no one can be held responsible for the violation of the said rules as has already been settled by the Hon'ble Supreme Court and the Hon'ble Central Administrative Tribunal in series of cases.

4.25 That no other allegation has been raised against the petitioner ~~has~~ has been indicated in annexure-II of the Chargesheet contained in annexure-4 to this Application, yet a fresh charge has been developed by the General Manager

and the Disciplinary Authority to the effect that the applicant failed to obtain the signatures of the party concerned on the aforesaid MGR. Since no charge was framed to the effect that the applicant failed to obtain the signatures of the party concerned on the MGR, hence the applicant cannot be punished for.

4.26 That the applicant has been tried to punish by hook or crook as the Respondents have made it their prestige issue and they are not prepared to leave the applicant even if the charges are not established against him.

4.27 That there is no material available on record to sustain the allegations raised against the applicant.

4.28 That the General Manager had no jurisdiction to make a second revision when once the power to make review has already been exercised by the Divisional Railway Manager under the provisions of section 25(1) of 1968 Rules. At the most the General Manager could either accept or reject the representation of the applicant but in no case the General Manager was empowered to issue a fresh show cause

notice imposing the punishment awarded by the Disciplinary Authority.

4.29 That the applicant has not been afforded full, fair and adequate opportunity to establish his innocence and the conclusions drawn by the Respondents are wholly perverse to the material available on record and as such the conclusions are based on no evidence.

4.30 That as the copies of the documents referred in the Chargesheet and relied upon have also not been supplied to the applicant inspite of repeated demands, the adverse conclusions drawn by the Respondents is wholly unsubtainable in the eye of law.

5. Grounds for relief with legal-provisions:

- i) Because the applicant has already been exonerated by the Appellate authority and the Divisional Railway Manager had no jurisdiction to revise the order of the Appellate Authority sue moto after the expiry of 6 months without affording the applicant any opportunity..
- ii) Because once the revision has been made, the General Manager was not empowered to make a second revision and as such the show

Kedarnath

cause notice issued by the General Manager as contained in Annexure-10 is void abinitio.

- iii) Because the applicant has been held responsible for an allegation which does not find place in the chargesheet as contained in annexure-4 to this Application.
- iv) Because the applicant has never been held responsible for not obtaining the signatures of the party concerned on the MGR and this was not the question under enquiry.
- v) Because the MGR submitted by the applicant is complete having no lacunae as alleged.
- vi) Because the Respondents cannot take into account the rough chit on which the applicant simply made a note for his own purpose on the basis of the information given to him.
- vii) Because the only material record in connection to the conduct of the applicant is the MGR and nothing else.
- viii) Because the said MGR is duly signed by the RPF staff and a correct shortage of the items has been indicated in it.
- ix) Because there is not even a single iota for sustaining the allegations that there was any ill motive behind the alleged episode which has never been in question.

Kedar Nath

- x) Because the applicant has not been supplied with the copy of the enquiry report along with the notice of penalty proposed to be imposed.
- xi) Because the Disciplinary Authority and the General Manager travelled without jurisdiction in holding the applicant responsible for the charges as they have discussed the matter on suspicion and speculation which is perverse to the material on record.
- xii) Because the applicant has committed no misconduct in terms of Rule 3 of the Conduct Rules.
- xiii) Because the applicant has not violated the said Rule 1840 of the Commercial Manual in any manner whatsoever.
- ix) Because the provisions of 1968 Rules have not been strictly followed by the Respondents while holding the applicant guilty of the charges.
- x) Because the action of the Respondents is wholly arbitrary, unwarranted, malafide, null and void in the eye of law besides being in transgression of the principles of fair play, equity and natural justice read with the other statutory provisions.

- xi) Because using the old proforma by the Respondents in holding the Disciplinary Enquiry has deprived the applicant of legitimate fair and adequate opportunity to defend his case assailing the prosecution story.
- xii) Because the Respondents are bent upon to punish the applicant by hook or crook as they have ~~made~~ made the matter a prestige issue.

6. Details of the remedies exhausted:

That the applicant has exhausted all the remedies available under statute. Against the order of punishment ~~the~~ passed by the Disciplinary Authority the petitioner preferred an appeal which was allowed but later on the Revising Authority suo moto revised the order passed by the appellate authority against which the applicant made a representation which was ultimately rejected by the General Manager vide order dated 13.5.1988 contained in Annexure-1 to this Application.

7. Matters not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, with writ

petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought :

In view of the facts mentioned in para 4 above the applicant prays for the following reliefs:-

AI2
This Hon'ble Tribunal may kindly be pleased to set aside the impugned orders dated 13.5.88, 27.11.86 and 14.11.1985 as contained in Annexures-1, 2 and 3 to this application.

Grounds for relief: as mentioned in para 5 above.

9. Interim Order, if any prayed for :

Nil.

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed Post-Card or Inland Letter, at which intimation regarding the date of hearing could be sent to him.

11. Particulars of Bank Draft/Postal Order file in respect of the application fee.

Postal Order No $\frac{DD}{4}$ 841659 of Rs. 50/-

12. List of enclosures : As per Index.

VERIFICATION

I, Kedar Nath, son of Late Sahdev Ram, aged about 50 years, ~~son~~ working as Chief Booking supervisor, Northern Railway, Varanasi, resident of 559-Kha/280, Srinagar, do hereby verify that the contents paras 1 to 11 are true to my personal knowledge and that I have not suppressed any material fact.

Dated : May , 1989.

Place : Lucknow

Kedar Nath
APPLICANT.

1988

Kedar Nath Applicant

Union of India and others Respondents.

ANNEXURE - I

NORTHERN RAILWAY

Confidential
No. Vig/22/C/84/LCS

Divisional Office,
Lucknow: Dt. 13/5/88.

Shri Kedar Nath,
Chief Booking Supervisor,
Northern Railway,
VARANASI.

Re: SS/NR/BSB.

As conveyed by GM(P) through his letter No. 52-E/1143/ED&A dated 8.4.88, General Manager, Northern Railway has carefully considered your representation dated 4.11.87 in reply to memorandum No. 52-E/1143-ED&A dated 19.10.87 and has passed the following orders:-

"I have carefully gone through the representation dated 4.11.87, submitted by Shri Kedar Nath, CBS/BSB in response to the notice dated 19.10.87 issued to him through DRM/LKO. I have also gone through the para-wise comments of DRM/LKO on the defence submitted by the C.O.

The point raised by Shri Kedar Nath in his defence that the charge-sheet issued to him was on the old form instead of the new form is not tenable because it does not make any material difference in view of the fact that he has been provided all the reasonable opportunity in this regard. I endorse the disagreement note of the Disciplinary Authority (Sr. DCS) against the findings of the E.O. wherein it has been made clear that Shri Kedar Nath gave open delivery on 22.11.83 of C/mnt without any witness from the RPT side. This is against the procedures. Shri Kedar Nath also failed to obtain the signatures of the party concerned on the MGR (No. LKO/Parcel/274/83 dated 22.11.83) immediately ~~xxx~~ after granting the said open delivery, because in all other cases of similar nature, signatures of the parties have been obtained in respect of MGRs prepared during 1983 itself.

With regard to second charge of showing more shortage, i.e. 12 pairs of shoes as against the actual shortage of 3 pairs only, I once again agree with the arguments purforth by the Disciplinary Authority (Sr. DCS) and find that here also he has acted against the standing instructions.

As no other new point has been given by the CO in his defence, I am of the view, on the basis of the facts of the case and the documents available, that Shri Kedar Nath has violated the standing instructions and the charges are established. Looking at the case's background, I feel that the ends of justice would be met if Shri Kedar Nath's pay is reduced by two stages, in his existing grade, with cumulative effect."

For Civil Railway Manager/LKO

Kedar Nath

AN
of

Case No. F 1989

(22) 8/3

Kedar Nath Applicant

~~YCSSE~~

Union of India and others ... Respondents.

ANNEXURE 2

NORTHERN RAILWAY

Confidential
No.Vig/22/C/84/ICS.

Divisional Office,
Lucknow: Dt. 27/11/86.

✓ Shri Kedar Nath,
CPS/LKO now CPS/RSB.

Thro: SS/NR/Varanasi.

Sub:- D&R action against Shri Kedar Nath,
CPS-RSB - Revision appeal.

....

The revision appeal in your case has been
considered by CCS/NDLS who has minuted as under :-

" I have considered the appeal of Shri Kedar Nath
and the findings of the disciplinary as well as
the appellate authorities. I find that the view
taken by the ALM cannot be supported by the
facts of the case. The punishment awarded by
the Sr.DCS is restored."

Accordingly the punishment awarded by Sr.DCS/LKO
vide punishment notice of even No. dated 14.11.85 for
reduction from grade B.700-900(RS) to lower grade
B.550-750(RS) at the beginning of the grade i.e. B.550/-
with-holding your future increments for a period of
five years affecting future increment and seniority
etc. is restored.

Please acknowledge receipt.

B. Chakraborty
for Divl. Railway Manager,
Lucknow. 26/11/86

Copy to:-

- 1) SS/RSB: He may please deliver the enclosed copy
to Shri Kedar Nath, CPS/RSB and his acknowledgement
be obtained and sent to this office for record.
BAC
- 2) GM(Vig)/NDLS for information in ref. to his conf.
letter No.11-Vig/2001/84 dt. 13.5.86.
- 3) Dealer 'R' Section for information and necessary
action. He will put up the case posting in grade
B.550-750(RS) immediately.

*h/c
Shri
LV*

S.A. No. _____ OF 1989

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Kedar Nath Applicant

VERSUS

Union of India and others ... Respondents.

ANNEXURE-2

NORTHERN RAILWAY

No: Vig/22/C/84/LCS

Divisional Office,
Lucknow

Dated: 14-11-1985

✓ Shri Kedar Nath,
CPS/Lucknow (now C.B.S., Varanasi).
Through : Station Supdt.,
Varanasi.

I have carefully considered the findings submitted by the Enquiry Officer in respect of the charges contained in Memorandum of Charge Sheet No. Vig/22/C/84/LCS dated 30.4.84 and have decided as under :-

I do not accept the findings of the Enquiry Officer because he has failed to appreciate the evidence on record in the correct perspective. I shall see the two charges specifically and see whether they have been proved by the available evidence.

1. As regards the first charge that he on 22.11.1983 granted open delivery of one case bearing Railway mark no. 0095/12 ex Howrah to Lucknow containing Bata shoes without association of RPF representative. The statement of Shri U.S. Misra, Coy. Commander, RPF/Lucknow dated 15.3.1984 made to the Vigilance Inspector, Hdqrs. New Delhi is very relevant. CC/RPF has clearly mentioned that as per procedure, open delivery is granted by CPS at Lucknow on nominated days, in which RPF is invited to be associated either through telephonic message or by issuing a suitable memo. In this case, the accused as per statement of Coy. Commander, did not give any message for witnessing the said open delivery. Further he has clarified that no RPF staff was deputed for witnessing the open delivery on 22.11.83. Shri Ram Shanker Misra, RPF Head Rakshak in his statement to the VI/HQ, New Delhi has also mentioned that no open delivery was done in his presence in the parcel office on 22.11.83 and that he had signed the short certificate (MGR No. LKO/Parcel/274/83 dated 22.11.83) later when he had gone to collect short certificates from the Parcel office. In this connection it is relevant to mention that as a procedure signature of RPF is to be obtained at the time of granting open delivery to verify the genuineness of the shortage mentioned in the open delivery by the CPS. MGRs are also signed by the RPF staff later as a copy of MGR goes to SO/RPF for taking action at his end since each shortage case is to be investigated and proper

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action taken by RPF to prevent their recurrence. Both these key witnesses are vital so far as this case is concerned and they have no apparent bias or malafide to give a false statement.

Therefore, I as disciplinary authority, have no hesitation in accepting the same. Moreover, it is of interest to mention here that no signature

of the party was taken on MGR No. LKO/Parcel/274/83 dated 22.11.83

prior immediately after granting open delivery. In all other cases,

signatures of the party have been obtained in respect of various MGRs

prepared during 1983 itself. It is observed that instead of 'RPF'

the word 'PRF' has been written on the MGR No. LKO/Parcel/274/83

dated 22.11.83 which shows that the whole case has been manipulated

perhaps in hurry by the accused. The written defence statement of the

accused Shri Kedar Nath is not acceptable in view of the clear evidence

statement of RPF staff and the facts discussed above. The first charge,

2. therefore, against the accused Shri Kedar Nath is clearly proved.

The second charge is that the accused while granting open

delivery recorded 20 pairs of shoes as having been found in the damaged

case against 32 pairs according to packing slip thereby showing

12 pairs short and that when the said consignment was intercepted at

the time of removal by the Vigilance Team actually 29 pairs of shoes

were found therein and thus the accused showed 12 pairs of shoes short

whereas actually 3 pairs were short. According to second charge, the

accused is charged for recording false and fictitious inventory with

malafide intention to give advantage of false claim of 9 pairs of shoes

to the consignee. It is relevant to go through the written statement

of the accused dated 20.7.85 in respect of his defence to this charge.

He has said that he deputed his porter to find out the shortage and

the porter made out certain details which he (Shri Kedar Nath) recorded

in presence of both the VIs and that he did not sign it because

no open delivery can be granted to any party unless RPF and he is

V.I. satisfied by physical check that there was no shortage and that the

VI wanted to sign this chit which he did. The accused thereby

has tried to defend himself by saying that the chit dated 11

10 which has a record of various shortages mentioned by the accused

Shoe in his hand (made at the back of the request made by the Agent of Bata

Shoe Store, Hussainganj, Lucknow to C.P.S., Lucknow) was a provisional

document which had not been signed by him and that he was going to

verify it before intercepted by the VIs. The accused plea is hollow

as had it been his intention, he would not have signed the chit even

at the instance of the VIs. Moreover, signing of the chit does not

make a material difference because the charge against the accused is

His
His
Charge

Kedar Nath

That he recorded incorrect shortage in the consignment by making fictitious inventory after having granted open delivery without association of the R.P.F. The accused has not been able to explain convincingly as to why there was a difference between the inventory made by him for the shortage and the actual shortage in the consignment. In his defence he has tried to mislead the Enquiry Officer at a point which the E.O. has miserably failed to see it. The accused's plea that this was written as per dictation of the porter is not acceptable because that is not the procedure of granting delivery and even if he did it, that was in violation of standing instructions. Moreover, at no stage he has produced any statement or defence of the porter concerned to say that the list was dictated by him and recorded by Shri Kedar Nath at his instance. In reply to question no. 1 of cross-examination of the Enquiry Officer, the accused has stated that he does not recollect the name of the porter. This is totally unconvincing that the accused would not recollect the name of the porter in a vigilance case where he was caught by the VIs committing serious irregularities immediately after the incident and he knew well that after vigilance Inspector's interrogation and investigation, a suitable disciplinary action may follow. Had ~~this~~ plea been truthful, the porter would have been the accused main defence against the charge and conceivably he should not have lost the opportunity of knowing the name of the porter, getting his statement recorded then and there to prove that the list was as per porter's diction but that was not done apparently because the claim of the accused was not correct. Moreover, in his statement and in reply to question no. 7 given to the V.I. on 8.3.84, he has mentioned that he recorded the contents of the said Bata shoe case on the version of the party and the R.P.F. and nowhere he has mentioned anything about the porter in the statement given to the V.I. Thus it is seen that his written statement dated 20.7.85 given to the Enquiry Officer is different and is obviously an afterthought. The second charge against the accused is also thus fully established as the accused plea is totally untenable and unacceptable.

From the above, it would be seen that both the charges which are grave in nature have been fully established against him. Since this is a gross misconduct in ~~violation~~ violation of Rule 3 (1)(i) and (iii) of the Railway Service

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Conduct Rules, 1966, he is reduced from grade Rs. 700-900 to grade Rs. 550-750 at the beginning of the grade i.e. Rs. 550/- withholding increment for a period of five years cumulatively. This will affect his seniority and future increments etc. as per rules."

I, therefore, hold you guilty of the charges contained in Memorandum of Charge Sheet No. Vig/22/C/84/LCS dated 30.4.1984 levelled against you and have decided to impose upon you the penalty of reduction to a lower grade. You are, therefore, reduced with immediate effect from grade Rs. 700-900 to the lower grade in the scale of Rs. 550-750 at the beginning of the grade i.e. Rs. 550/- withholding your future increments for a period of five years. This will affect your seniority and future increments etc. as per rules.

2. Under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968, an appeal against these orders lies to the Divisional Railway Manager, Northern Railway, Lucknow, provided -

- (i) the appeal is submitted within 45 days from the date you receive the orders .
- (ii) the appeal does not contain improper and or disrespectful language.

3. Please acknowledge receipt.

[Signature]
(R.M.S. Rishit)
Senior Divl. Commercial Supdt.,
Lucknow.

Copy to :

- 1. Supdt/E. for information and necessary action.

[Signature]

A/46

O.A. No: _____ of 1989 (L)

--- Applicant

Versus

Union of India & Others - - - - - Respondents

I N D E X

Second Compilation :-

S1. No.	Description of Documents relied upon.	page Nos:
1)	<u>Annexure-4</u> -Charg e-sheet dated 30/4/84	27-28
2)	<u>Annexure-5</u> -Letter dated 1/6/84	00-29
3)	<u>Annexure-6</u> - Letter dated 14/5/84	00-30
4)	<u>Annexure-7</u> - Inquiry Report	31-32
5)	<u>Annexure-8</u> - Order dated 11/4/86	34-36
6)	<u>Annexure-9</u> - Representation dated 22/12/86	37-39
7)	<u>Annexure-10</u> Notice dated 19/10/87	00-40
8)	Vakalatnama (Power)	00-41

X-X

Place- Lucknow

Dated :- May _____, 1989.

(O.P. Srivastava)
(Advocate)
Counsel for the Applicant.

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केलान्कति

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Kedar Nath Applicant

VERSUS

Union of India and others Respondents.

ANNEXURE - 4

४०२०/N.R.

आरोप-पत्र का मानक फार्म
STANDARD FORM OF CHARGESHEET

सामान्य 188
Genl. 188

रेल सेवाक (अनुशासन और अपील) नियम, 1968 का नियम 9
Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968

मानक फार्म सं० 5
Standard Form No. 5

No./No.

No.Vig/22/C/84/LCS
Dated 30.4.84

Divisional Office,
Lucknow. (Name of Railway Administration)

(निगम स्थान) (दिनांक)
(Place of issue) dated

तापन
MEMORANDUM

राष्ट्रपति/रेलवे बोर्ड निम्नहस्ताक्षरी द्वारा रे०से० (अनु० और ४०) नियम, 1968 के नियम 9 के अन्तर्गत के विरुद्ध आरोप करने की प्रस्तावना की गई है। प्रचार या कवाचार के लक्षणों का सार, जिसमें संशय में संदेह करने की प्रस्तावना है, आरोप के अनुच्छेदों के विवरण (अनुच्छेद I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के सम्बन्ध में प्रचार या कवाचार के लक्षणों का विवरण संलग्न है (अनुच्छेद II)। जिस प्रलेखों और साक्षियों द्वारा आरोप के समर्थन प्रस्तुत किए जाय की प्रस्तावना है उनकी भी एक सूची संलग्न है (अनुच्छेद III और IV)।

The President/Railway Board/Undersigned propose(s) to hold an inquiry against Shri. Kedar Nath under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed Statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom, the article of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. श्री को एतद् द्वारा सूचित किया जाता है कि यदि वह चाहे तो इस मामले की प्रार्थना के बांध दिन के भीतर कार्यालय समय में (क.स।) की समय प्रलेख-सूची (अनुच्छेद 3) में वर्णित प्रलेखों का निरीक्षण कर सकता है और इसमें उद्धरण ले सकता है। यदि वह ऐसे किसी अन्य प्रलेखों तक अपनी पहुंच चाहता है, तो रेल प्रशासन के पास ही लेकिन जिसका संलग्न प्रलेखों की सूची (अनुच्छेद 3) में उल्लेख न किया हो, तो निरीक्षण के लिए परीक्षित प्रलेखों की सुसंगति बताते हुए इस आवेदन की प्रार्थना के बांध दिन के भीतर उसे निम्नहस्ताक्षरी रेलवे के महाप्रबंधक को इसकी सूचना देनी चाहिए। अनुशासन प्राधिकारी उन सभी वाणिज्यी ऐसे प्रलेखों के निरीक्षण की अनुमति देने से इंकार कर सकता है, जो उसकी राय में, मामले के सुसंगत न हो या जिन तक पहुंच की सम्पत्ति देना अनहित या राज्य की सुरक्षा के विरुद्ध हो। उसे चाहिए कि प्रतिरिक्त प्रलेख उपलब्ध किये जाने के बांध दिन के भीतर उनका निरीक्षण पूरा कर ले। जिस प्रतिरिक्त प्रलेखों के निरीक्षण की उम्मीद अनुमति दी जायेगी उनमें रद्दगण लेने की उसे अनुमति होगी।

2. Shri Kedar Nath is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within five days of receipt of this memorandum. If he desires to be given access to any other documents which are in the possession of railway administration but not mentioned in the enclosed list of documents (Annexure III), he should give a notice to that effect to the undersigned/General Manager Railway within ten days of the receipt of this memorandum, indicating the relevance of the documents required by him for inspection. The disciplinary authority may refuse permission to inspect all or any such documents as are, in its opinion, not relevant to the case or it would be against the public interest or security of the State to allow access thereto. He should complete inspection of addition of documents within five days of their being made available. He will be permitted to take extracts from such of the additional documents as he is permitted to inspect.

3. श्री को सूचित किया जाता है कि जांच के बांध के प्रक्रमों में प्रलेखों की प्राप्त करने के लिये किया गया अनुरोध तब तक स्वीकार नहीं किया जायेगा, जब तक ऊपर विनिर्दिष्ट समय-सीमा के भीतर निम्नलिखित के भीतर निम्नलिखित कारण न बताया जाय और उन परिस्थितियों से स्पष्ट रूप से यह प्रमाण हो जाय कि अनुरोध इससे पहले के प्रक्रम में नहीं किया जा सकता था। उक्त पूरी हो जाने के बाद प्रतिरिक्त प्रलेख प्राप्त करने के संबंध में कोई अनुरोध तब तक स्वीकार नहीं किया जायेगा, जब तक जांच पूरी होने से पहले अनुरोध न कर सकने का पर्याप्त कारण न बताया गया हो।

3. Shri Kedar Nath is informed that request for access to documents made at later stages of the inquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances shown clearly that the request could not have been made at an earlier stage. No request for access to additional documents will be entertained after the completion of the inquiry unless sufficient cause is shown for not making the request before the completion of the inquiry.

4. श्री को यह भी सूचित किया जाता है कि यदि वह चाहे तो अधिक जांच होने की स्थिति में प्रलेखों का निरीक्षण करने तथा जोर प्रार्थिकारों के समक्ष अपना मामला प्रस्तुत करने में सहायता करने के लिए किसी अन्य रेल कर्मचारी, रेल व्यवसाय संघ के किसी पदाधिकारी जो रेल सेवाक (अनुशासन और अपील) नियम, 1968 के नियम 9 (9) और यथा-स्थिति उनके टिप्पण 1 और 2 के अन्तर्गत प्रार्थिकारों को पूरा करते हों) को सहायता ले सकता है इस प्रयोजन के लिए अधिसूचना-क्रम में उसे एक या अधिक व्यक्तियों का नामन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारी) अथवा रेल व्यवसाय संघ के पदाधिकारी (पदाधिकारी) का नामन करने से पहले श्री द्वारा नामित व्यक्ति (व्यक्तियों) से वचन ले लेने चाहिए कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसी सहायता करने के लिए तैयार हों। वचन में ऐसे अन्य मामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाना चाहिए, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका हो और नामित व्यक्ति (व्यक्तियों) द्वारा दिया गया वचन नामन-पत्र के साथ निम्नहस्ताक्षरी/महाप्रबंधक, रेलवे को भेजा जाना चाहिए।

4. Shri Kedar Nath is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of a Railway Trade Union (who satisfies the requirements of Rule 9 (9) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting railway servant(s) or Rly. servant(s) or Railway Trade Union Official(s), Shri. Kedar Nath should obtain an undertaking from the nominee(s) that he (they) is/are willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager Railway along with the nomination.

Kedar Nath

5. श्री.....को एनडू द्वारा निदेश दिया जाता है कि यदि उसे अपना प्रतिवाद तैयार करने के लिए किसी प्रलेख का निरीक्षण करना आवश्यक न हो तो इस आपन की प्राप्ति के बाद दस दिन के भीतर और यदि वह प्रलेख का निरीक्षण करना चाहे तो प्रलेख का निरीक्षण पूरा होने के बाद दस दिन के भीतर (मान्यताशरी के पास के महाप्रबन्धक.....रेलवे के मार्फत आसन्न अधिकारी) अपने प्रतिवाद का लिखित कथन (जो उक्त महाप्रबन्धक आसन्न अधिकारी के पास पहुंचाया जाएगा) प्रस्तुत करें और—

5. Shri....Kedar. Nath hereby directed to submit to the undersigned (through General Manager.....Railway his immediate superior) a written statement of his defence (which should reach the said General Manager/his immediate superior) within ten days of receipt of this memorandum, if he does not require to inspect any documents for the preparation of his defence and with ten days after completion of inspection of documents if he desires to inspect documents, and also.

(क) बताए कि क्या वह व्यक्तिगत रूप से कुछ कहना चाहता है, और

(a) to state whether he wishes to be heard in person ; and

(ख) उन सशियों के यदि, कोई हो, नाम और पता बताएं जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है, और

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence :—

** (ग) उन प्रलेखों की सूची, यदि कोई हो, पेश करें जिन्हें वह अपने प्रतिवाद के समर्थन में प्रस्तुत करना चाहता है ।

** (c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

6. श्री.....को सूचित किया जाता है कि आरोप के केवल उन अनुच्छेदों के धारे में जांच की जायेगी, जो स्वीकार नहीं किए गए हैं इस लिए उन्हें चाहिए कि आरोप के प्रत्येक अनुच्छेद की या तो विनिश्चिष्टता स्वीकार करें या इंकार करें ।

6. Shri Kedar Nath..... is informed that any inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specially admit or deny each article of charge.

7. श्री.....का आगे यह भी सूचित किया जाता है कि पैरा 5 में विनिश्चिष्ट जवाब के भीतर यदि वह अपने प्रतिवाद का लिखित कथन 'प्रस्तुत नहीं करता या जांच प्राधिकारी के सामन व्यक्तिगत रूप से हाजिर नहीं होता या रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 9 के उपबन्धों या उक्त नियम के अनुसरण में जारी आदेशों/निर्देशों का अनुपालन करने में अन्यथा असफल रहता है या इंकार करता है तो जांच प्राधिकारी एकपक्षीय जांच कर सकता है ।

7. Shri....Kedar. Nath..... is further informed that if he does not submit his written statement of defence within the period specified in para 5 or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the orders/ directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry *ex-parte*.

8. श्री.....का ध्यान रेल कर्मचारी (आचरण) नियम, 1968 के नियम 20 की ओर दिलाया जाता है, जिस क अनुच्छेद कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से सम्बन्धित मामलों के सम्बन्ध में अपने हितों को आगे बढ़ाने के लिए किसी वरिष्ठ अधिकारी पर कोई राजनीतिक या अन्य प्रभाव न तो डालेगा अन्यथा न डालने का प्रयत्न करेगा । यदि इन कार्यवाहियों से सम्बन्धित किसी मामले में उनकी ओर से किसी अन्य व्यक्ति से कोई अभ्यावेदन प्राप्त होता है तो यह प्रकल्पना की जायेगी कि श्री..... उस अभ्यावेदन का जाहरी है और वह उसके कहने पर दिया गया है और उससे विरुद्ध कर्मचारी (आचरण) नियम 1966 के नियम 20 का प्रतिफल करने की सए कार्यवाई की जाएगी ।

8. The attention of Shri....Kedar Nath..... is invited to Rule 20 of the Railway Servants (Conduct) Rules 1968, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri. Kedar Nath..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Servants (Conduct) Rules, 1966.

9. इस आपन * की प्राप्ति भेजे ।

*(राष्ट्रपति के आदेश और उनके नाम से)

9. The receipt of this Memorandum * may be acknowledged. * By order and in the name of the President.

संलग्न: /Encls.

हस्ताक्षर/Signature.....

सेवा में/To

सक्षम प्राधिकारी का नाम और पदनाम (B.M.S. Bisht)
Name & designation of Divl. Coml. Supdt
competent authority N. Rly. Lucknow.

श्री/Shri.....Kedar. Nath,

.....Chief Parcel Supervisor (पदनाम)/(designation)

.....Lucknow. (स्थान आदि)/(Place etc.)

(प्रतिलिपि श्री..... (उपस्थान प्राधिकारी का नाम और पदनाम) सूचनायें प्रेषित ।

@ Copy to Shri..... (name & designation of the lending authority) for information.

†या समय सीमा सक्षम प्राधिकारी के विवेक से दस दिन बढ़ाया जा सकती है । जो लागू न हो उसे काट दें ।

†This time limit may be extended upto ten days at the discretion of the competent authority. Strike out whichever is not applicable.

§यह समय सीमा सक्षम प्राधिकारी के विवेक से बीस दिन तक बढ़ायी जा सकती है ।

§This time limit may be extended up to twenty days at the discretion of the competent authority.

‡जहाँ कहीं राष्ट्रपति या रेलवे बोर्ड सक्षम प्राधिकारी हो वहाँ उसे रहने दिया जाय ।

‡To be retained wherever President or the Railway Board's is the competent authority.

* जहाँ राष्ट्रपति अनुशासन अधिकारी हो ।

* Where the President is the Disciplinary Authority.

@यह पृष्ठांकन अपेक्षित होने पर किया जाय देखिए रेल सेवक (अनुशासन और अपील) नियम, 1968 का नियम 16 (1)—रेल कर्मचारी को भेजी जाने वाली प्रतिलिपि में इस शामिल न किया जाये ।

@To be used wherever applicable—See Rule 16 (1) of the Railway Servants (Discipline & Appeal) Rules, 1968—Not to be inserted in the copy to the Railway servant.

** यदि कर्मचारी इस अपेक्षा का अनुपालन नहीं करता तो इस प्रक्रम में ऐसी सूची प्रस्तुत करने पर जोर देने की आवश्यकता नहीं है ।

** Submission of such list at this stage need not be insisted upon if the employee does not comply with this requirement.

N.R.P./Pb. Bg.—35—2,101/11—1982—61,000.F.

C/GM(vig)NDLS for information in ref. to your case No.11-Vic/2001/84

dated 25.4.1984.

Kedar Nath

Statement of imputation of misconduct to support the articles of charge against Shri Kedar Nath Chief Parcel Supervisor/Lucknow.

Shri Kedar Nath while functioning as, CPS/LKO on 22.11.83 committed misconduct in as much as that:

- (1) He on 22.11.83 granted open delivery of one case containing Bata Shoes, bearing railway mark No.0095/12 ex Howrah to LKO without the association of RPF staff as required under the rules Shri Kedar Nath when asked to explain the reason for not associating the RPF staff to witness the open-delivery, stated that the open delivery was witnessed by the RPF staff. This version ~~is~~ however is incorrect in view of the following facts:-
 - (a) He was not able to tell the name of RPF staff LKO^{who} witnessed the open delivery. He however produced shortage certificate on which initial of Shri Ram Shankar Misra, RPF sainik was appearing. Shri Ram Shankar Misra when asked about his presence at the time of open delivery of said case stated that his initials on the said shortage certificate were simply as a token of receipt of copy of shortage certificate from CPS/LKO and not as witness in the said open delivery. He further added that he used to collect the shortage certificate from CPS/LKO and was never witnessing the open delivery Shri Kedar Nath, CPS, has therefore given misleading position.
 - (b) In this regard statement of Shri H.S. Misra company commandar RPF/Lucknow was also obtained who stated vide his statement dated 15-3-84 that neither any message etc were received from CPS/LKO calling for the staff to witness open delivery on 22.11.83 nor any RPF staff had actually witnessed open delivery on 22.11.83.

It is thus apparant that Shri Kedar Nath granted the said open delivery with-out association of RPF representative which was in contravention of Rule as laid down in para No.1840 of Indian Railway Commercial Manual volume-II.

2. He while granting open delivery of the said consignment recorded the proceeding on the back of party's application as under:

" One Wooden case provided with two iron band plank partly broken contains visible RF 20KG O.D. granted on demand by the party checked and found in the case UIL as under:

Found 20 pairs against 32 pairs & 12 pairs short detail given below.

- (1) 1/6043 found 6 pairs against 7 pairs i.e. 1 pairs short @ R.14.95
- (2) 8/4010 found UIL against 5 pairs i.e. 5 pairs short @ R.134.95
- 3.) 8/6029 found 3 pairs against 4 pairs i.e. 1 pair short @ R.129.95
4. 8/5032/31 found 5 pairs against 10 pairs i.e. 5 pairs short @ Rs. 69.95.

There was room to hold messian goods this is without prejudice."

.....2.

Kedar Nath

20-B

4/9

The said consignments were under removal when the a team of VIs intercepted the same and stopped removal for further verification. A fresh inventory was obtained by Sri Kedar Nath, CPC/LKO in presence of VIs with the following result.

" The pairs of shoes were found in the case booked against PW Bill No.0095/12 Howrah to Lucknow from case No.I L which remained in P.O till date for assessment purpose. The contents in the said case are as under:-

- (1) 1/6043 found 6 pairs against 7 pairs i.e.1 pair short.
- (2) 8/4010 found 5 pairs against 5 pairs short NIL.
- (3) 8/6029 found 4 pairs against NIL pairs i.e. 4 pairs excess.
- (4) 8/6029 found 1 pair 1 pairs i.e. shortage NIL.
- (5) 8/5032/31 found 8 pairs against 10 pairs i.e. 2 pairs short.
- (6) 1/9005 found 5 pairs against 5 pairs correct.

Total RKG physically available in the case after granting assessment 29 pairs in salable condition.

It is thus seen that Sri Kedar Nath while granting open delivery of his own had recorded 20 pairs of Bata shoes as having been found from the total lot of 32 pairs where as the inventory taken in presence of Vigilance team, shows the availability of 29 pairs of shoe. Sri Kedar Nath therefore had recorded fictitious inventory to the tune of 9 pairs valuing Rs.1194.26 pairs.

In his statement dated 22.11.83 Sri Kedar Nath stated that contents were counted by the party and he prepared the list in advertantly and again in his statement dated 8.3.84, He further stated that he was called by SS/LKO for assessment of one Kela wagon and he recorded inventory/open delivery proceeding on the information of party. His explanations are illogical and untenable. Not only he was a senior subordinate with sufficient experience at his credit but even as per instruction contained in para 1242 of Indian Railway Commercial Manual Volume II, The open delivery should be granted without prejudice.

It is obvious that he committed serious irregularities in connivance of party for malafied intention with scope to benefit the party for lodging false claim. Had there been no vigilance check he would have succeeded in his nefarious activities by allowing removal of the consignment.

For the above act of omission and commission Sri Kedar Nath CPC/LKO failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of Railway man thereby contravened rule No.3.1(i)(ii)&(iii) of Railway service conduct Rules 1966.

Sd/-
(B. S. Mishra)
Sr. Civil Compl. Cndt.,
W.Rly. Lucknow.

Kedar Nath

ANNEXURE-II.

Articles of charge against Shri Kedar Nath CPS/Lucknow.

Shri Kedar Nath, CPS/LKO while functioning as CPS Lucknow on 22.11.83 committed serious misconduct in as much as :-

(1) That he on 22.11.83 granted open delivery of one case bearing railway mark No.0095/12 ex Howrah to Lucknow containing Bata Shoes with-out association of RPF representative thus violating the provisions contained in Rule No.1840 of Indian Railway Commercial Manual volume-II.

(2) That he, while granting open delivery of the said consignment recorded 20 pairs of shoes as having been found in the said damaged case against 32 pairs according to packing slips i.e. 12 pairs short. When the said consignment was interceded at the time of removal by the Vigilance team actually 29 pairs of shoes were found therein, thus he made fictitious inventory by showing 12 pairs of shoes as short as against 3 pairs actually less in the said case. Obviously he recorded false and fictitious inventory with mala fide intention and to allow the party to lodge a false claim for 9 pairs of shoes.

By his above action Shri Kedar Nath failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner unbecoming of a Railway Servant thereby contravened Rule No.3(1)(i)(ii)&(iii) of Railway Service conduct Rule No. 1966.

B.M.S. Bisht
(B.M.S. Bisht)
Sr. Dy. Comm. Supdt.,
N.Rly. Lucknow.

Kedar Nath

ANNEXURE-III.

P/S

List of documents by which the articles of charge framed against Shri Kedar Nath CPS/LKO are proposed to be sustained.

- (1) Statement of Shri Kedar Nath CPS/LKO dated 22.11.83.
- (2) Statement of Shri Kedar Nath CPS/LKO dated 8.3.84.
- (3) Original application of the party alongwith open delivery proceeding recorded by the CPS.
- (4) Packing slip of Case I L.
- (5) Statement of Shri H.D.Singh, PS/LKO dated 24.3.84.
- (6) Statement of C.C./RPF Sri H.S.Misra, CC/RPF/LKO dated 15.3.84.
- (7) Statement of RPF Sainik Shri Ram Sharan, dated 15.3.84.
- (8) Shortage certificate book of Parcel Office/LKO for the period 6.11.83 27.12.83 with relevant pages No.53 dt.22.11.83

B.M.S. Bisht
(B.M.S. Bisht)
Sr. Divl. Comml. Supdt.,
N.Rly. Lucknow.

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ANNEXURE-^{IV} III.

List of witness by whom the articles of charges framed against Shri Kedar Nath, Chief Parcel Supervisor/Lucknow are proposed to be sustained.

- (1) ✓ Shri S.N. Pandey, Vigilance Inspector, N.Rly.
- (2) ✓ Shri V.B. Sharma, Vigilance Inspector, N.Rly.
- (3) Shri H.D. Singh, Parcel Supervisor/LKO.
- (4) Shri U.S. Misra, CC/RR/Lucknow.
- (5) Shri Ram Shankar, RPF Sainik under CC/LKO.

B.M.S. Bisht
(B.M.S. Bisht)
Sr. Divl. Comm. Supdt.,
N.Rly. Lucknow.

AB

Kedar Nath

C.A. No. _____ of 1984

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Kedar Nath

Applicant

VERSUS

Union of India and others ...

Respondents.

ANNEXURE - 5

NORTHERN RAILWAY
Divl. Office,
Lucknow.

No. Vig/22/C/84/LCS
Dt. 1-6-1984.

Shri Kedar Nath,
CBS, N.Rly.
Lucknow.

Reg: DAR action against Shri Kedar Nath,
CPS/Lucknow.

Ref: Your representation dt. 28.5.84.

Vigilance Inspectors' report is a privileged document
and cannot be shown to you. Moreover, it has not been
cited as relied upon document.

You are, therefore, desired to submit your defence
within 7 days positively.

(B.M.S. Bisht)
Sr. Divl. Comm. Supdt.,
N. Railway, Lucknow.

C/-
GM(Vig)NDBH for inf. in ref. to case no. 11-Vig/2001/84

Kedar Nath

C.A. No. _____ F 1989

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Kedar Nath Applicant

VERSUS

Union of India and others ... Respondents.

ANNEXURE - 6

S.N.—301/82—2,00,000 Pds.

जी० एन० 19-ए/G.L. 19-A

जनरल 99 छोटा Genl. 99 Small

उत्तर रेलवे NORTHERN RAILWAY

No. Vig/22/C/84/LCS
Dt. 14-6-1984.

Divl. Office,
Lucknow.

Shri Kedar Nath,
CPS/N.Rly.
Lucknow.

Ref: Your representation dated
7/8-6-84 for supply of addl.
documents.

As per Printed Serial no. 8473, only
these papers can be supplied which
have been relied upon while issuing
the charge-sheet.

None of the documents call for
in your representation, have been
relied upon; hence cannot be shown.

Please submit your defence to the
charge-sheet within 5 days.

Sr. Divl. Comm. Supdt.,
Lucknow.

C/-

GM(Vig)NDLS for information in ref.
to case no.11-Vig/2001/84.

Kedar Nath

C.A. No. _____ F 1989

(31)

Kedar Nath Applicant

VERSUS

Union of India and others ... Respondents.

ANNEXURE

NORTHERN RAILWAY

No.VIG/22/C/84/LCS

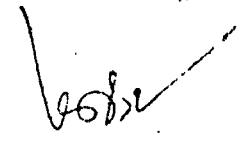
Divl.Office,
Lucknow.

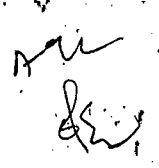
Dec. 18, 1985.

Sri Kedar Nath,
BS ~~Varanasi~~
Varanasi

Ref: Your application dt. 22.11.85.
...

A copy of the findings drawn by Enquiry Officer
is attached herewith.


for Divl.Rly.Manager,
Lucknow.



Kedar Nath

... .. JF 1989

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Kedar Nath Applicant

VERSUS

Union of India and others Respondents.

ENQUIRY REPORT IN CASE OF SRI KEDAR NATH CPS/LKO NOW AT VARANASI.

ON being appointed as Enquiry Officer on 3.7.84 vide SN.27/28 by the Disciplinary authority to enquire into the charges against Sri Kedar Nath, I fixed up the following dates i.e. 25.9.84, 12.10.84, 16.11.84, 18.12.84, 16.1.85, 30.1.85, 23.2.85, 11.3.85, 29.3.85, 16.4.85, 23.4.85, 10.5.85, 27.5.85, 6.6.85, 17.6.85, 7.7.85, 17.7.85 and 20.7.85 for enquiry, due to various obvious reasons and concluded as under :-

1. Sri Kedar Nath and his defence holder have attended enquiry on 23.2.85, out of the VIs, and other witness. The charges (see SN.15/11) were served on Sri Kedar Nath vide memo No.VCG/22/C/84/LCS dt. 30.4.85 (SN.49) and were read out before him. He was further asked, if he accepts all the charges levelled against him.

Sri Kedar Nath denied the charges to accept and the enquiry was postponed for the next date.

2. The VIs S/Sri Vidya Bhushan and S.M.Pandey attended the enquiry on 16.4.85 who made their statements in support of the charges against Sri Kedar Nath and the Defence Helper of Sri Kedarnath then cross-examined through questions which they answered vide SN.78/76.

3. Shri Ram Shanker Pd.Rakshak RPF also attended on 16.4.85 made his statement and denied to have witness the open delivery process on 22.11.85 and stated that J.S.R.(MGR) was signed by him ~~xxxx~~ as a token of receipt of the copy of MGR and not as a witness for open delivery as he was not on duty at that time on 22.11.83. He was cross-examined by defence helper, the questions and his answers and a diary extract in support of his being left by 358dn on 21.11.83 and arrived at LKO by 257up in the morning of 22.11.83 (SN.74/73) where he accepted to have signed the MGR vide question No.1 (SN.74)

4. On the last day of enquiry on 20.7.85 Shri Kedar Nath was asked by Enquiry Officer to submit his written statement in support of his denial of the charges (See SN.79 to 79/3) and thereon Sri Kedarnath was cross-examined by me and his answers are enclosed at SN.82/81.

5. Sri H.D.Singh PS/LKO another witness was also asked to give his statement, on which he was cross-examined by defence helper of Sri Kedarnath who's answers are enclosed at SN.80.

DISCUSSION

On perusal of all the documents in support of charges levelled against Sri Kedarnath, I found that the said charges have been framed by VIs 'one report of Sri Kedar Nath written on the back of the appointment of the party for open delivery, which is stated to be rough document made by him on the basis of checks exercised and narrated by his porter, which does not bear the signature of any body else except Sri Kedarnath COS LKO.

As per procedure the open delivery of any consignment on a piece of paper is not considered as authentic, till it is prepared on the prescribed form contained in the MGR books, and that too with the proper witness of RPF staff, and the charges cannot be established against one, who signed the piece of paper.

Kedar Nath

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As the report prepared on MGR (See enclosed book of MGR forms flagged) given the correct number of articles which is also witnessed by RPF staff. It has also been signed by V.I. giving remark 'no signature of the party' he has not mentioned anything against the signature of the RPF staff on MGR.

Therefore, the defence given by Sri Kedarnath that his report on a piece of paper based on a report given by porter, when he was busy in assessment of a Banana wagon with SS/LKO was as a preliminary report. For his physical check before the witness of RPF man as per procedure laid down for open delivery of the articles is not far, for the acceptance.

The statement of Sri Rqm Shanker RPF Hd RKSM, that he signed the MGR as a token of receipt and not as a witness is not acceptable, on the grounds that he was not on duty on 22.11.83 as arrived at LKO by 357 up at 6.30 hours on 22.11.85 and cannot be established, that he was not available at station between 10 to 18 hrs on 22.11.83 when O/D was given by CPS during the above duty hours.

The only charges against the accused, that he failed to obtain the signature of the party on the MGR stands established, which are serious one.

The statement of VIs that the c/ment was delivered to the consignee when they detected are neither supported by witness nor proved by any record on file, because when delivery is given under such circumstances, signatures in token of receipt of the copy of MGR and in delivery book are taken from the party.

FINDINGS

On going through all the documents in defence of Sri Kedarnath cross-examination of the witnesses, the statement of the witnesses and the VIs I found that the charges levelled against Sri Kedarnath are not fully proved, but found that he is not absolutely exonerated because of his gross negligence, as he failed to obtain the signature of the party on the MGR and allowed the removal of the c/ment, which is a serious one.

(SD)
(BIKRAM SINGH)
ENQUIRY OFFICER
ASSTT. COMMERCIAL SUPDT. (II)
LUCKNOW.

Kedarnath

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

C.A. No. _____ OF 1989

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Kedar Nath Applicant

Versus

Union of India and others ... Respondents.

1 - ANNEXURE - 8
NORTHERN RAILWAY

No. Vig/22/C/84/LCS.

DIVISIONAL OFFICE,
LUCKNOW, 11-4-1986.

✓
Shri Kedar Nath,
CPS/Lucknow (Now C.B.S./Varanasi)
Through: Station Supdt.,
N.Ry., Varanasi.

Ref: Your appeal dated 26.12.85, against Punishment
Notice No. Vig/22/C/84/LCS dt. 14.11.85. issued
by Sr.D.C.S./LKO.

I have carefully gone through your appeal as well as the record available on file and have come to the conclusion that the charges are not conclusively proved and, therefore, you get the benefit and the punishment imposed on you be waived off.

Accordingly, the punishment of reduction from Grade Rs.700-900 to the lower grade in the scale of Rs.550-750 at the beginning of the grade, i.e., Rs.550/- withholding your future increments for a period of five years, affecting your seniority and future increments, etc., is set aside.

(A.K. Yog)
Addl. Divl. Rly. Manager (T),
N.Rly., Lucknow.

Copy to the Sr. Divisional Personnel Officer, N.Rly., Lucknow,
for information and necessary action.

Copy to GM (Vig) in ref to their letter No.
11-Vig/2001/84 dt. 28.4.86

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Kedar Nath

After hearing the employee with his counsellor and going through the records and deliberations of disciplinary proceedings following questions arises -

1. EO has absolved Sri Kedar Nath of the main charges framed by Vigilance organization. EO's report is based on facts but the disciplinary authority disagreed on the basis of interpreting the same facts. The MGR, which is the main document to support the charges, is signed by Hd.Rakshak who has stated that it was not in the token of 'witnessing' but only receiving a copy of MGR. This interpretation cannot be accepted in view of the basic systems of working on Rlys. imply that whenever such signatures are sought, these are in token of witness or agreement of the statements made in the proforma. However, this relieves Sri Kedar Nath of the 'basic and most serious charge'.

2. V.I. has also signed the MGR report with a specific remark that the consignee party's signatures had not been taken. There is no mention that witnessing by a RPF representative was not there. Accordingly, because Hd.Rakshak of RPF has stated a different interpretation of his signatures on MGR, how the parcel clerk can be held responsible for the charge? Either the system can be blamed (word 'witness' should be printed as is done elsewhere - such a P.T.O. etc.) or V.I. and Hd.Rakshak who have not pinned down the real shortcomings.

3. Disciplinary authorities contention that because a statement of goods was written on the reverse of the application showed incorrect inventory, the intention of the employee was not good. However, this cannot be treated as a relied upon document for taking up the employee especially in view of MGR report duly signed by VI except that consignee's signatures were not taken. In fact the interception by VI and his party should have been at the time of delivery and with incorrect MGR.

Kedar Nath

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The authenticity of a inventory on the back of application needs examination.

4. The procedural flaw of routing the appeal through disciplinary authority has been pointed out. Considered opinion is being sought from 'P' Branch.

In the meantime Sr DCS may like to throw light/clarify the issues vide item no.1 to 3. ~~XXXXXXXXXX~~

sd.
ADRM(T)

Sr DCS

htc
dc

Kedar Nath

C.A. No. _____ F 1989

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Kedar Nath Applicant

VERSUS

Union of India and others Respondents.

ANNEXURE

The General Manager,
Northern Railway
Baroda House,
New Delhi.

(Thr: Proper Channel)

Sir,

Reg: Unlawful revision of DAR action by the CCG/HR/NDLS.

Ref: DRM/N.R./LKO's communication/letter No.VIG/22/C/84/LCO
dated 27.11.1986.

...

Most respectfully I beg to prefer this representation against unlawful and arbitrary revision of orders of the appellate authority by learned CCG/N.Rly., New Delhi on the following among other grounds :-

(A) BRIEF HISTORY

1. A memorandum of charges for major penalty bearing No.Vig/22/C/84/LCO dated 30/4/84 was served on me and after holding D&AH enquiry or DCJ the disciplinary authority awarded the penalty of 'Reduction from grade Rs.700-900(RS) to the lower grade in scale of Rs.550-750(RS) at the beginning of the grade i.e. Rs.550/- with holding future increments for a period of 2 years affecting seniority and future increments etc.' vide notice of imposition of penalty bearing No.VIG/22/C/84/LCO dated 14.11.1985.

2. ADRM(T)/N.Rly., Lucknow the appellate authority having considered my appeal had set aside the penalty of 'reduction' as aforesaid vide his communication/letter No.VIG/22/C/84/LCO dated 11.4.1986.

3. Vide DRM/N.R./LKO's letter No.VIG/22/C/84/LCO dt. 27.11.86 the unlawful and arbitrary orders passed by the learned C.C.J. N.R., New Delhi in the capacity of 'Revising Authority' have been communicated to me. The contents of DRM/N.R./LKO's letter No.VIG/22/C/84/LCO dated 27.11.86 are reproduced below:-

"The revision appeal in your case has been considered by CCG/NDLS who has minuted as under :-

"I have considered the appeal of Sri Kedarnath and the findings of the disciplinary as well as the appellate authorities, I find that the view taken by the ADRM can not be supported by the facts of the case. The punishment awarded by the Sr DCJ is restored."

Accordingly the punishment awarded by Sr DCJ/LKO vide punishment notice of even no. dated 14.11.85 for reduction from grade Rs.700-900 to lower grade Rs.550-750 at the beginning of the grade i.e. Rs.550/- with holding your future increments for a period of five years effecting future increments and seniority etc. is restored.

Please acknowledge receipt. "

(B) GROUNDS

1. That I did not prefer any appeal or representation or revision application seeking revision of the orders passed by the appellate

authority communicated to me vide ADM(1)N.1./LKO's letter No. VIG/22/C/84/LCS dt. 11.4.86 and as such the very basis of revision of D/R action against me as indicated in opening sentence of DRM/LKO's communication No. VIG/22/C/84/LCS dt. 27.11.86 Vig: "The revision appeal in your case has been considered by OCS/MDLS who has mislaid as under" is not correct rather it is misleading.

2. That the orders passed by the learned 'Revising authority' contained in DRM/LKO's letter No. VIG/22/C/84/LCS dated 27.11.86 are arbitrary, unlawful and void because :-

1. the orders have been issued without affording me reasonable opportunity of making a representation against the penalty proposed as available in proviso (a) to Rule 25(1)(v)(d) of R.S.D&A Rules, 1968 (as amended vide GM(P)MDLS PS No.8380) which reads as under :-

"No orders imposing or enhancing any penalty shall be made by any revising authority unless the railway servant has been given reasonable opportunity of making a representation against the penalty proposed."

11. the orders of revision in question have been issued vide DRM/LKO's letter No. VIG/22/C/84/LCS dt. 27.11.86 i.e. more than six months after the date of the order proposed to be revised (order of appellate authority issued on 11.4.86), this being in violation of rule 25(1)(v) proviso (1) below Note of R.S.D&A Rules, 1968 (as amended vide PS No.8380) which reads as under:-

"Provided further that no action under rule shall be initiated by."

(1) more than six months after the date of order to be revised in cases where it is proposed to impose or enhance a penalty or modification of the order to the detriment of the Rly. servant;

It appears relevant in this context to invite kind attention of your honour to the provisions of the following rule regarding reckoning of time limit.

True extract of Note(1) below proviso (11) under Note of rule 25(1)(v) of R.S.D&A Rules, 1968 as amended vide PS-8380.-

"The time limits for revision of cases mentioned in this proviso shall be reckoned from the date of issue of the orders proposed to be reviewed. In case where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders; "

P R A Y E R

In the circumstances and in the light of the facts indicating violation of extant rules brought out in this

----->

representation, I most humbly beg to request your judicious
honour to be judicious and kind enough to set aside unlawful
and arbitrary orders passed by the revlaing authority as
contained in DRM/LKO's letter No.VIG/22/C/84/LCS dt. 27.11.86
and thus to extend justice to me.

Thanking you in anticipation.

Yours faithfully,

Kedar Nath

(KEDAR NATH)

CEO/H.Rly., Varanasi

Dated: Dec. 22, 1986.

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Kedar Nath

C.A. No. _____ OF 1989

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Kedar Nath Applicant

VERSUS

Union of India and others ... Respondents.

ANNEXURE B/10

3000 2000
NORTHERN RAILWAY

318108/99/151
Genl. Mgt.

Headquarters Office
Baroda House/New Delhi.

No. 52-E/1143 E(D&A)

Dated: 19-10-87.

Shri Kedar Nath,
Chief parcel Supervisor(BSU)
N.Rly., Varanasi.

Through DRM/LKO.

MEMORANDUM.

In accordance with the orders passed by the Sr.DOS/Lucknow a penalty of reduction from Gr.Rs.700-900(RS) to Gr.Rs.550-750(RS) at Rs.550/- with-holding of increment for a period of 5 years cumulatively affecting your seniority and future increment was imposed on you vide Notice No.Vig/22/O/84/LCS dated 14/11/85 for the charges levelled against you vide Memorandum No.Vig/22/O/84/LCS dated 30/4/84. This penalty was set aside by ADPM(CP) on your appeal.

2. On review under Rule 25 of D&A Rules 1968, C.C.S. imposed the same penalty which was imposed by disciplinary authority viz. the Sr.DOS/LKO.
3. On your appeal dated 22/12/86 against the penalty imposed by C.C.S., The undersigned after carefully examined the case decides to quash the orders of Review authority viz. C.C.S. on technical ground. Taking into consideration of the record and the proceedings of the case, the undersigned, however, considers that the penalty originally imposed by Sr.D.O.S. was fully justified but taking a very lenient view decide tentatively for reducing your pay in your existing grade by two stages with cumulative effect. The undersigned, therefore, calls upon you to show the cause in writing as to why the penalty of reduction in pay in your existing grade by two stages with cumulative effect should not be imposed upon you.
4. Your defence is required to be submitted to the undersigned through DRM/LKO so as to reach this office not later than 10 days from the date of receipt of this memorandum by you.
5. If you fail to submit your defence within the period specified in para 4 above, it will be presumed that you have no representation to make and orders will be liable to be passed against you on the basis of the available records.
6. You are required to acknowledge/ receipt of this Memorandum.

KN

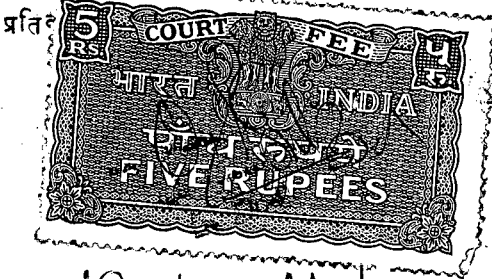
(Signature)
(A.N. VANCHOO)
GENERAL MANAGER.

Kedar Nath

In the Central Administrative Tribunal Circuit Bench
बे अवलत अधिमान् महोदय

(वादी) अपीलान्त
श्री. Kedar Nath

वकालतनामा



दिनांक

O.A. No. - 1989(L)

वादी (अपीलान्त)

Kedar Nath

यस नाम

Applicant
प्रतिवादी (रिस्पॉण्डेंट)

Union of India officers

Respondents

नं० मुकद्दमा

सन

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री ओ० पी० श्रीवास्तव एडवोकेट
(अथवा श्री ओ० पी० श्रीवास्तव, एडवोकेट)
नं० ७, पुराना महानगर निकट फातिसा अस्पताल, लखनऊ-२२६००२ महोदय

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे
बेता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील
द्वारा जो कुछ पेंरवी व जबाब देहो व प्रश्नोंत्तर करें या कोई कागज दाखिल
करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल
करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर
से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा
उठावें या कोई रुपया जमा करें या हमारी बिपक्षी (फरीकसानी) का
दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती)
रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह
सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार
करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पेंरोकार को भेजता
रहूँगा अगर मुकद्दमा अदम पेंरवी में एक तरफा मेरे खिलाफ फैसला हो
जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह
वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted

हस्ताक्षर Kedar Nath

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन १६ ई०

In The Central Administrative Tribunal,

Circuit Bench, Lucknow.

Civil Misc. Petition (M.P.) NO. 566 Of 1990 (L)

In Re:

Registration (O.A.) No 1020 of 1989 (L)

Kadar Nath and Others.....Applicants.

Versus

U.O.I. and Others.....Respondents.

Fixed For : 1-11-90

APPLICATION FOR CONDONATION OF DELAY IN FILING

COUNTER REPLY.

That delay in filing Counter Reply is not intentional or deliberate but due to administrative and bonafide reasons which deserves to be condoned.

P R A Y E R

Wherefore, it is most respectfully prayed that in the interest of justice, delay in filing counter reply may kindly be condoned and counter reply may be taken on record.

Lucknow.

Dated: 11.7.90
10.9.90

Anil Srivastava
(ANIL SRIVASTAVA)
ADVOCATE

Counsel for Respondents.

Filed today
54R
20/9

Recd copy
10/9/90

17/8/68

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW.

Registration No. (O.A.) 102 of 1980 (L)

Kedar Nath Applicant.

Versus

Union of India & others Respondents.

COUNTER REPLY ON BEHALF OF ALL THE RESPONDENTS

I, *Shiv. Pujan* working as
Asstt. Personnel officer in the office of
Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow do hereby solemnly affirm
and state as under:-

1. That the official above named is working
as *Asstt. Personnel Officer*, as such
he is fully conversant with the facts and
circumstances of the applicant's case and
has been authorised to file this counter
reply on their behalf.
2. That the contents of paras 1 and 2 of the
original application do not call for reply.

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महायक कामिक अधिकारी
उत्तर रेलवे, लखनऊ

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3. That the contents of para 3 of the original application are denied. The application is not within the limitation period.


That (C) reply to the contents of para 4 are as below:-

4. That the contents of para 4.1 of the original application do not call for reply.
5. That the contents of para 4.2 of the original application are admitted.
6. That the contents of paras 4.3, 4.4 and 4.5 of the original application are not admitted as alleged. The applicant had inspected all the relied upon documents but however, he was not provided with those documents which were confidential in nature being the privilege documents. A copy of letter dated 28.5.84 in which he has admitted to have inspected the relied upon documents is being filed herewith as annexure no. C-1 to this counter reply.
7. That the contents of para 4.6 of the original application are admitted.
8. in reply to That/the contents of para 4.7 of the original application, so far it is matter of record are admitted but rest of the contents are denied. It is, however, admitted that the enquiry proceedings were attended by the Vigilance Inspectors on 16.4.85.

L. L. Bhand
सहायक कामिन् अधिकारी
सुतर रेखदे, लखनऊ

Contd.....3

9. That in reply to the contents of paras 4.8 and 4.9 of the original application, so far it is a matter of record is admitted but rest of the contents of the paras are denied.
10. That the contents of para 4.10 of the original application are admitted.
11. That the contents of para 4.11 of the original application are admitted to the extent that the Appellate Authority waived off the punishment imposed by the respondent No. 4.
12. That the contents of para 4.12 of the original application are not admitted as stated. The Revising Authority i.e. Chief Commercial Superintendent, New Delhi restored the punishment given by respondent No. 4 strictly in accordance with relevant rules and the same was communicated to the applicant by Divisional Railway Manager, Lucknow vide his letter dated 27.11.86. The said order has been passed by a competent authority and strictly under the rules and no rules whatsoever have been violated in this regard. Since the punishment ^{already} ~~clearly~~ awarded by the Disciplinary Authority has only been restored by the Revising Authority, hence as per rules there was no necessity to give yet another opportunity of defence to the applicant.


महायुक्त कर्मिक अधिकारी
उत्तर रेलवे, पटना

13. That the contents of para 4.13 of the original application are denied. The order of punishment was issued by Chief Commercial Superintendent, New Delhi and not by Divisional Railway Manager, Northern Railway, Lucknow in the capacity of revisioning authority. The orders of Chief Commercial Superintendent, New Delhi was however communicated by Divisional Railway Manager, Lucknow.
14. That in reply to the contents of para 4.12 of the original application, it is stated that though the applicant has never moved an appeal for revision before the Chief Commercial Superintendent, New Delhi but being the revisioning authority Chief Commercial Superintendent New Delhi can review any orders passed by disciplinary/ appellate authority either on the appeal of the employee or on his own motion. Rest of the contents of the para are denied.
15. That in reply to the contents of para 4(15) of the original application, it is stated that the General Manager, Northern Railway, New Delhi, i.e. the respondent No. 1 has quashed the orders passed by Chief Commercial Superintendent, New Delhi on technical grounds and issued a show cause notice in writing


(Signature)
OFFICE OF THE SECRETARY
TO THE GOVERNMENT

Contd.....5

as to why the penalty of reduction in pay in the existing grade by two stages with commulative effect should not be imposed upon the applicant.

16. That the contents of paras 4.16 and 4.17 of the original application are admitted to the extent that the applicant made a representation before the General Manager dated 4.11.87 against the show cause notice. It is, however, not admitted that the General Manager has not considered the representation of the applicant. The General Manager, New Delhi after considering all the facts and after examining merits of the case has correctly imposed the said punishment.

17. That in reply to the contents of para 4.18 of the original application it is stated that since the applicant violated the provision of Rule 1840 of Commercial Manual Volume II, as such ~~xxx~~ he has correctly been punished. The applicant did not issue any memo or letter to Railway Protection Force to witness open delivery as per provisions laid down. The signature of the Railway Protection Force on the M.G.R. report is actually receipt of the copy of the M.G.R. It does not in any way indicate that the open delivery has been witnessed by the Railway Protection Force.


मह. यंत्र. कार्यालय अधिकारी
उत्तर रेलवे, बल्लभपुर

Contd.....6

18. *in reply to*
That the contents of paras 4.19 and 4.20 of the original application, it is stated that the open delivery of the consignment was effected on 22.11.83 in the absence of Shri R.S. Misra, Head Rakshak, Railway Protection Force. He was not on duty on 22.11.83 as stated by him in his statement during the enquiry proceedings. A copy of statement dated 16.4.85 is being filed herewith as annexure No. 2 to this reply.
19. *in reply to*
That the contents of para 4.21 of the original application, it is stated that no open delivery was made in presence of Railway Protection Force staff as Shri R.S. Misra, Head Rakshak, Railway Protection Force was not on duty on 22.11.83.
20. That the contents of paras 4.22 and 4.23 of the original application are denied. A perusal of para 2 of Annexure No. 3 would belie the contentions made in the para under reply.
21. That the contents of para 4.24 of the original application are denied. The applicant has clearly violated the conduct rules as well as commercial rules.

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सहायक कामिक अधिकारी
उत्तर रेलवे, बल्लभपुर

Contd.....7

22. In reply to That/the contents of para 4.25 of the original application, it is stated that the General Manager after going through the case held the applicant responsible for both the charges.
23. That the contents of paras 4.26 to 4.30 of the original application are denied. The correct position has already been explained in the preceding paragraphs.
24. That the grounds mentioned in para 5 of the original application are misconceived, vague, irrelevant, illegal, and not applicable to the instant case.
25. That the contents of paras 6 and 7 of the original application do not call for reply.
26. That in reply to the contents of para 8 of the original application, it is stated that *view of the facts and reasons stated in the* in preceding paragraphs the applicant is not entitled to any relief as claimed rather this application itself is liable to be dismissed with costs in favour of answering respondents and against the applicant.

Lucknow.

Dated. 11.7.90

M. Brasad
सहायक कानूनिक अधिकारी
उत्तर रेलवे, बल्लभपुर

VERIFICATION

I, the official above named do hereby verify that the contents of para 1 of the counter reply is true to my personal knowledge and those of paras 2 to 26 of this counter reply are believed by me to be true on the basis of records and legal advice.

Lucknow

Dated: 11.7.90

L. L. Bhasad
सहायक क्रामिक अधिकारी
उत्तर रेलवे, लखनऊ

Annexure No C-1

DELHI-35-2038/17-09-1983-75,000 Pgs.

19/05/84
Page 99 of 100

उत्तर रेलवे NORTHERN RAILWAY

To,

The Sr Divisional Commr Supdt
Northern Railway
Lucknow.

Sir,

Ref :- LF/S No 119/22/C/84/LCS
dt 30.4.84.

I have inspected documents
relied upon. The following additional
documents may kindly be made available
for the present before I submit a
representation.

- (i) Report of Vig. Officer.
- (ii) Statement of Sr. SNI Pandey V-8
- (iii) Statement of Sr. V B Sharma V-8

Yours faithfully
Kedar Nath
(Kedar Nath)
CPS/LKO

dt 28/5/84

Attested
G. Prasad

महामहोदय
उत्तर रेलवे

AVANTIKA NUTRITION/MSA MSA

Station/Office

Dept/Department

Dated

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The

Annexure No C-2

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Statement of Shri Rama Shanker Misra, Hd. Rakshak
Hdqr. LKO.

Charges shown to Shri Rama Shanker Misra to refresh
his memory.

On 22.11.83 no open delivery was witness by me.
The signatures which appear at SL No.5 page 33 are
in token of receipt of MGR. Actually the observations
which are being done during open delivery are noted down
on the back of the consignee's application, on the basis
of the same short certificate is prepared later on.
On that particular date i.e 22.11.83 after coming by
357 UP at 6.30 I went to home for rest. and no duty was
performed on 22.11.83. I close my statement and nothing
to add.

Defence Helper

CO

EO

(Rama Shanker Misra)

Questions by the Defence Council.

Q.1. Kindly see page No.4 to page No.33 and do you
accept that these are your signatures on JSR?

Ans. Yes. These are my signatures.

Q.2. For what you have signed for all these days?
Ans. These are being signed as receipt a copy.

Q.3. Have you accepted effected any open delivery
where you have signed as witness at Lucknow?

Ans. I don't recollect.

Defence Helper

CO

EO

(Rama Shanker Misra)
Hd. Rakshak.

16.4.85.

one copy

14/4/85
E/C

All ested

पहयक कामिक बसिजादी
उपर रेलवे, लुकरा

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

M.P. NO. 655 OF 1993

IN RE:

O.A. NO. 102 OF 1989 (L)

Kedar Nath APPLICANT

VERSUS

Union of India and others RESPONDENTS

APPLICATION FOR RECALLING/SETTING ASIDE THE
ORDER DISMISSING THE APPLICATION IN DEFAULT
DATED 7.7.1993 PASSED BY HON'BLE MR. JUSTICE
B.K. SINGH, A.M.

The humble applicant named above most respectfully
submits as under:-

1. That the aforesaid case was listed on 7th of May, 1993 before the Division Bench, but as there was no sitting the case was adjourned to 8th July 1993 which was noted on the cause list of the day.
2. That the Counsel for the applicant accordingly noted the next date as 8th July 1993.
3. That it appears that due to some inadvertant mistake the aforesaid case was listed on 7.7.1993 but as neither the applicant nor his Counsel had notice of this date none appeared before the Hon'ble Tribunal on 7.7.1993.
4. That the Hon'ble Tribunal was pleased to dismiss the above noted Original application in default due to non-appearance of parties.

1/19

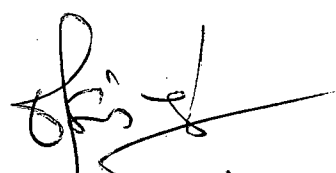
5. That as the applicant had no notice of the date 7.7.1993 none could appear on this date before the Hon'ble Tribunal, thus the non-appearance was not deliberate.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to recall/ set aside the order dated 7.7.1993 dismissing the Original Application in default and restore the same allowing the applicant an opportunity of hearing for the sake of ends of justice and the Original Application may itself be disposed of on merit.

For this act of kindness the applicant shall be highly obliged.

LUCKNOW DATED:
JULY , 1993.


(O.P. SRIVASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANT.

98/27
8/40
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

L U C K N O W

M.P. NO.

OF 1993

In re:

O.A. NO. 102 OF 1989 (L)

KEDAR NATH

.... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... OPPOSITE PARTIES

APPLICATION FOR CONDONATION OF DELAY

IN FILING REJOINDER REPLY

The humble applicant named above most respectfully submits as under:-

1. That the copy of the counter reply, on behalf of the ^{reposit} ~~applicant~~, was although served on the counsel of the applicant, yet the applicant could not receive the letter in this regard in time from his counsel.
2. That thereafter it consumed some time in collecting the relevant material and verifying the facts, narrated in the counter reply and, as such, rejoinder reply could not be filed in time. The delay is not deliberate.
3. That now the rejoinder reply is ready, which may kindly be taken on record for the sake of ends of justice.


Kedar Nath

Contd...2

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing rejoinder reply, which may kindly be taken on record for the sake of ends of justice. For this act of kindness, the applicant shall be highly obliged.

LUCKNOW

DATED 5 May, 1993.


(O.P. SRIVASTAVA)
Advocate,
COUNSEL FOR THE APPLICANT:

Kedar Nath

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

L U C K N O W

O.A. NO. 102 OF 1989 (L)

KEDAR NATH

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

REJOINDER REPLY TO THE COUNTER

REPLY OF RESPONDENTS :

1. That the contents of paras 1 and 2 of the counter reply (for short 'CA') need no comments.
2. That the contents of para 3 of the CA are denied. The original application (for short 'OA') is well within time. Further the OA has already been admitted, hence the question of limitation cannot be raised at this stage.
3. That the contents of para 4 and para 5 of the CA need no comments.
4. That the contents of para 6 of the CA are denied and in reply thereto, the contents of paras 4.3, 4.4 and 4.5 of the OA are reiterated as true and correct. It is further submitted that the respondents cannot deny a document to the applicant, which is a relied upon

Kedar Nath

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.2.

document and is being used against a delinquent employee. The respondent cannot claim such documents to be privilege document. The documents, claimed by the applicant, were vital for the purpose to assail the prosecution and to prepare proper defence.

5. That the contents of para 7 of the CA need no comments.

6. That the contents of para 8 of the CA are denied to the extent they are contrary to the contents of para 4.7 of OA, which are reiterated.

7. That the contents of para 9 of the CA are denied to the extent they are contrary to the contents of paras 4.8 and 4.9 of OA, which are reiterated.

8. That the contents of para 10 of CA need no comments.

9. That the contents of para 11 of the CA are denied to the extent they are contrary to the contents of para 4.11 of the OA, which are reiterated.

10. That the contents of para 12 of the CA are denied and in reply thereto, the contents of para 4.12 of the OA are reiterated. The revising authority had no jurisdiction to enhance the punishment by way of restoration of punishment without affording any opportunity to the applicant and without disclosing the cogent reasons for such enhancement. The Divisional Railway Manager had no jurisdiction to pass the impugned order.

Kedar Nath

Contd...3

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Moreover, the revising authority was wholly incompetent to pass such orders.

11. That the contents of para 13 of the CA are denied and in reply thereto, the contents of para 4.13 of the OA are reiterated. The applicant has never been communicated the order, passed by the said Chief Commercial Superintendent.

12. That the contents of para 14 of the CA are denied and in reply thereto, the contents of para 4.14 of the OA are reiterated.

13. That the contents of para 15 of the CA are denied to the extent they are contrary to the contents of para 4.15 of the OA, which are reiterated as correct.

14. That the contents of para 16 of the CA are denied to the extent they are contrary to the contents of paras 4.16 and 4.17 of the OA, which are reiterated.

15. That the contents of para 17 of the CA are denied to the extent they are contrary to the contents of para 4.18 of the OA, which are reiterated. The applicant did not violate any provision of law alleged.

16. That the contents of para 18 of the CA are denied and in reply thereto the contents of paras 4.19 and 4.10 of the OA are reiterated. Indeed Shri R.S.Misra, Head Rakshak, signed on the document, prepared before opening the consignment and he has never mentioned the

Contd...4

Kedar Nath

word 'receipt' or any other words, indicating that he was signing in token of receipt. In case of dispute the interpretation goes in favour of the applicant has to be accepted. No other witness has supported the statement of said Rakshak.

17. That the contents of para 19 of the CA are denied and in reply thereto, the contents of para 4.21 of the OA are reiterated. It is wholly incorrect that the said Rakshak was not on duty on 22.11.1983.

18. That the contents of para 20 of the CA are denied and in reply to this, the contents of paras 4.22 and 4.23 of the OA are reiterated. Annexure No.3 has been passed mechanically without indicating any reasons for not accepting the contents of the applicant.

19. That the contents of para 21 of the CA are denied and in reply thereto, the contents of para 4.24 of the OA are reiterated. The applicant has neither committed any misconduct nor violated the provisions of Conduct Rules in any manner whatsoever.

20. That the contents of para 22 of the CA are denied and in reply thereto, the contents of para 4.25 of the OA are reiterated. The General Manager has arbitrarily and mechanically supported the orders, passed by lower authority, without considering the case on merit and without disclosing the reasons for not accepting the contentions of the applicant.

21. That the contents of para 23 of the CA are

Kedar Nath

4/6

.5.

denied and in reply thereto, the contents of paras 4.26 to 4.30 of the OA are reiterated as correct.

22. That the contents of para 24 of the CA are denied and those contents of para 5 of the OA are reiterated. The grounds, urged by the applicant, are well tenable in the eye of law and the original application deserves to be allowed with costs.

23. That the contents of para 25 of the CA need no comments.

24. That the contents of para 26 of the CA are denied. The original application deserves merit to be allowed with cost with the relief, prayed for.

VERIFICATION

I, Kedar Nath, aged about 53 years, son of Late Sahdeo Ram, resident of 559/Kha/280, Sri Nagar, presently working as Chief Booking Supervisor, Northern Railway, Varanasi, do hereby verify that the contents of paras 1 to 24 of this Rejoinder Reply are true to my personal knowledge and nothing has been concealed.

LUCKNOW

DATED 5.5.1993.

Kedar Nath

APPLICANT