

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 265 OF 89

NAME OF THE PARTIES R. G. Mishra Applicant

Versus

Union of Indico Respondent

Part A.

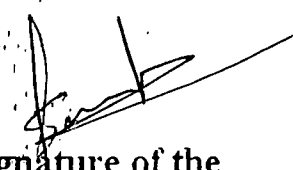
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CERTIFICATE

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

Dated 10/6/11

Counter Signed.....


Signature of the
Dealing Assistant

Section Officer/In charge

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A1

25/4/27

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 265 of 1989 (C.)

APPLICANT(S) Ram Lalal Mehta

RESPONDENT(S) Union of India & others

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/ Vakalatnama been filed?
5. Is the application accompanied by B.O./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?
c) Are the documents referred to in (a) above neatly typed in double spaces?
8. Has the index of documents been filed and paging done properly?
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

A2

<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
11. Are the application/duplicate copy/spare copies signed ?	yes
12. Are extra copies of the application with Annexures filed ?	yes
a) Identical with the Original ?	yes
b) Defective ?	
c) Wanting in Annexures	
Nos. _____ pages Nos _____ ?	
13. Have the file size envelopes bearing full addresses of the respondents been filed ?	
14. Are the given address the registered address ?	yes
15. Do the names of the parties stated in the copies tally with those indicated in the application ?	yes
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	
17. Are the facts of the case mentioned in item no. 5 of the application ?	yes
a) Concise ?	yes
b) Under distinct heads ?	yes
c) Numbered consecutively ?	yes
d) Typed in double space on one side of the paper ?	yes
18. Have the particulars for interim order prayed for indicated with reasons ?	yes
19. Whether all the remedies have been exhausted.	yes

dinesh/

265/OP/9

A3

8/3/90 - Hon. J. P. Sharma, JM

The learned Counsel for the ~~repts~~
parties are present. The learned
Counsel for the ~~repts~~ ~~repts~~ prays three
weeks time to file reply & is allowed
Rejoinder, if any, may be filed
within two weeks thereafter. List for
hearing order on 22.5.90.

22/5/90

Hon. Mr. B. C. Mathur, V.C.,
Hon. Mr. D. K. Agrawal, J.A.,

JM

CR

No CA filed
S. F. O.
18/5

No one appears.

List is for orders on 22/8/90.

12

Dec
J.M.

[Signature]
V.C.

22-8-90

No sitting Adj to 25.9.90

[Signature]
22/8/90

25.9.90

No sitting Adj to 14.11.90

14/11/90

Hon. Mr. Justice K. Prasad, VC.
Hon. Mr. M. Y. Prasad, J.A.

Sri B. K. Shukla files vakalatnama
on behalf of all the respondents
last opportunity to file a counter
within three weeks is given as
which the appl. court may file a
rejoinder within two weeks thereafter.
List for final hearing on 16/11/91.

CR

No CA filed
S. F. O.

13/11/90

Am

[Signature]

VC

AS

16.1.91

No sitting Adj to 2.9.91

8.4.91

No sitting Adj to 10.7.91

10.7.91

No sitting Adj to 23.9.91

23.9.91

No sitting Adj to 17.12.91

17.12.91

No sitting Adj to 13.2.92

13.2.92

No sitting Adj to 22.4.92

22.4.92

No sitting Adj to 7.7.92

7.7.92

No sitting Adj to 27.8.92

d

OR

SF-H

B
26.8.9227.8.92

Hon. Mr. Justice U.C. Srivastava - V.C.

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

Put up tomorrow.

b

A.M.

w

V.C.

28.8.92

Case not reached.

Adjourned to 11/11/92.

On re-hearing.

No R A has 11.11.92
re-filed
S.F.O. 8

No sitting Adj to 21.11.92

d

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CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A.No. 265/89

R.G. Mishra

Applicant

versus

Union of India & others

Respondents.

Shri T.N. Gupta, Counsel for applicant.

Shri B.K. Shukla, Counsel for Respondents.

Coram:

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

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was a Khalasi in the Railway, of was faced with a disciplinary enquiry because his unauthorised absence for two months. An enquiry proceeded and a finding was recorded that his absence was unauthorised. The appeal filed by the applicant was also dismissed. The applicant took a plea before the respondents that he sent the medical certificate from private Practitioner and sent it by U.P.C. and himself posted it.

2. From the appellate order it is clear that the application was sent but not the certificate. From the appellate order it is also revealed that the applicant was unable to resume his duties due to

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sickness for one month and in his application dated 4.2.86 he mentioned that one month more may be granted for recovery. The private medical certificate which was filed by the applicant, recommends for rest for two months from 3.2.86 to 2.4.86. From this the appellate authority concluded that in case this application dated 4.2.86 might have been posted by the applicant, it must have mentioned period 2 months and not one month. While applying for regularisation of period vide his application dated 4.4.86, the applicant has not mentioned anything regarding his sickness that he was in private treatment. Thus, it was concluded that no certificate was filed by him. But it appears that some intimation was given by the applicant and may be because of ignorance and illiteracy he went to the extent of giving a statement which is not correct. As it is not justified setting aside the removal order but it does indicate that the applicant was absent for two months. Accordingly, the respondents will consider his case for re-employment in the circumstances, if they cannot give him continuity. It will be open for the respondents to treat the continuity of service of the applicant without giving any monetary benefit.

3. But for the above observations, the application is otherwise dismissed. No order as to costs.

A. K. Ranga
A.K.R.

V.C.
V.C.

Shakeel/-

Lucknow: Dated: 21.11.92.

Before : THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
(An Application U/s 19 of the Central Tribunal Act, 1985)

O.P. NO. 265/89(L)

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 20/9/89
Date of Receipt by Post

Ram Gopal Misra ...

Deputy Registrar (J) Applicant.

Versus

Union of India , through its General Manager , N.E. Rly.

Gorakhpur & Others. ...

... Opp. Parties.

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Lucknow ;
Dated ; .9.1989.

Applicant / Petitioner.

Filed today
Noted for
13/10/89
S.K. Singh
per

(RAM GOPAL MISRA)

A8

Before : THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(An application Under section 19 of
Central Administrative Tribunals
Act, 1985).

GA 265/1985(V)

Ram Gopal Misra , aged about 35 years , Son of Sri
Mishri Lal M isra , resident House No. 173, Shahganj,
Chowk, Lucknow.

.... Applicant.

Versus

- Union of India through its*
1. General Manager , N.E.Railway, Gorakhpur.
 2. Divisional Railway Manager, N.E.Railway, Lucknow.
 3. A.D.R.M. , N.E.Railway, Lucknow.
 4. Senior D.M.E. (LOCO) N.E.Railway, Lucknow.
 5. Assistant Mechanical Engineer, N.E. Railway,
Lucknow.

... Respondents.

DETAILS OF APPLICATION

*1. Particulars of the Order against which the
Application is made.

(a) Charge Sheet da ted 21.4.86 Annexure No.-A-1

(b) Order of removal from service dated 18.7.86 -
31.7.86 ANNEXURE NO.-A.2

Cont d.on 2,....

30/11/1985

A9

(2)

(c) Order of the rejecting of the Appeal of the Appellant dated 5.2.89 Annexure No. 1, 2, 3

(d) Order of the rejecting of revision of the Applicant 24.2.89 Annexure A-4.

2. JURISDICTION OF THE TRIBUNAL.

The applicant declares that the subject matter of the application against which the applicant wants redressal is within the jurisdiction of the Tribunal.

3. LIMITATION. - The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal.

4. FACT OF THE CASE: The fact of the case are given asunder :-

4.1. That by way of instant application the applicant seeks to challenge the impugned Memorandum of charges, dated 21.4.86 for alleged charge of unauthorised absence and the order of removal from services dated 18.7.86 received by the applicant 26.8.86 as well as the orders of Appellate Authority dated 5.2.87 rejecting Appeal of the Applicant the abovesaid orders under challenge are being filed herewith as Annexure No. 1, 2 and 3 and rejection of revision Annexure No. A-4.

4.2. That the applicant was working as Fitter Khallas

Contd. on 3..

राम. भ. ल. म. म.

(3)

Under LOCO Foreman, N.E. Railway, Charbagh, Lucknow till 17.7.86.

4.3. That while the applicant was functioning as Fitter Khallasi served with the Memorandum of Charges dt. 21.4.86 issued by the Asstt. Mechanical Engineer, N.E. Railway, Lucknow Respondent No. 5. Indeed the said Authority has no jurisdiction to initiate Disciplinary Proceedings & issue Memorandum of charges in relation to Rule 9 of R.S.(D.A.) Rule filed as Annexure -1 to this Application.

4.4. It was to utter surprise of the applicant that simultaneously alongwith the said Memorandum of charges dated 21.4.86 served to the applicant, an order of appointment of Sri O.P. Saxena, LOCO Foreman, Inspector, as Enquiry Officer was also served vide letter dated 21.4.86 under the provision of Law the Enquiry Officer could not have been appointed at this stage, which affects the service of Charge Sheet itself as it tentaments to the applicant's presumed guilt, further the appointment of Enquiry Officer is subject to consideration of the defence of the applicant. It has also been stated that in para -6 of the said standard form of the Memorandum dated 21.4.86 that the

(4)

Enquiry will be held in respect of these Articles of charges which are not admitted. It is in-conformity with the provisions of Sub-Rule 7(a) of Rule -9 of R.S.(D.A) Rule , 1968 (hereinafter referred to as D.A.R.). The act of the respondent No. 5 is obviously showing malafide and biased mind towards the applicant . A true copy of the aforesaid order dated 21.4.86 appointing the respondent No. 5 as Enquiry Officer is being filed herewith as Annexure No.5.

4.5. That thereafter the applicant moved an application dated 15.5.86 asking for various documents relied upon by the respondent for the purposes to prepare reply to the Charge Sheet and prepare his defence. A true copy of the said Letter dated 15.5.86 for the document is being filed as Annexure No. 6 to this Application . That the applicant received no reply of his letter dated 15.5.86 . Further, the applicant was also not supplied the basic documents listed in Annexure -III of the said Memorandum dated 21.4.86 by which the charges were meant to be based /proved sustained such act of Respondent No. 5. This is denial of reasonable opportunity and violative of on 5...

22/11/2021

Article 311(2) of Constitution of India . Thus the applicant was deprived of submitting his defence (as well as before the charges effecting).

4.6.

That the applicant was allowed to avail rest on 2.2.86 , and further , he under the circumstances beyond his control , applied leave on Medical ground and submitted his Medical Certificate from Registered Medical Practitioner and intimated to LOCO Foreman, N.E. Rly. Charbagh, Lucknow regarding his sickness under postal Certificate of Posting dated 4.2.86 and again on 4.3.86 . The submission of such Medical Certificate and Intimation of the Sickness of the applicant is well within the Railway Rules so framed.

4.7.

That applicant resides beyond the jurisdiction of the Railway Doctor . The jurisdiction is well defined under Note to para 1472 of IREM . Hence , the act of the applicant in requesting for leave on Medical Certificate from a Registered Medical -s Practitioner (Non -Rly. -Doctor) and going under treatment of his choice is well within Rules. The Respondent have not acted within the direction of Rule and treated the applicants absence

A13

(6)

on Medical Certificate as unauthorised absence.

- 4.8. That while accepting the Medical Certificate of the applicant from a Non -Rly. Doctor the respondent is having any doubt might have referred the case was to D.M.O. for advice and investigation and would have dealt with according to the circumstances. Further, the request of such leave on Medical Certificate have been accepted by the Respondents without referring to the D.M.O. and also sanction of Leave so applied for and forwarded by the LOCO Foreman, Charbagh, N.E.Rly., Lucknow under his letter No. U/CLIV / Maint./ 86 dated 5.4.86 . This recommendation of the immediate controlling Supervision to the D.R.M. (P) to be deemed to have been sanctioned on the basis of the Fit Certificate granted by the Competent Rly. Doctor.
- 4.9. That the D.M.O. N.E. Rly. had also accepted the Medical Certificate submitted by the Applicant for the said Medical Leave and issued the Duty Fit Certificate under the Authority of para 1478(1) of I.R.E. M. .

4.10.

That as per Railway Rules , workment Continuous

On 7..

absent for 5 years are only liable to be taken up under order D.A.R. for removal from service. But that Rules is not applicable in this case. Further, the applicant did not remain absent on the date of issue of the Charge Sheet later he had reported for duties after being medically fit by the Competent Authority and therefore he is eligible for continuity in service.

4.11. That as per Annexure III of the Memorandum dt.21.4.86 the charges are based and to be sustained on LF / C.B.'s Letter No. M / CLIV / Maint / 86 dated 5.2.86. And as per Annexure IV to the said Memorandum LOCO Foreman Charbagh, was the only Rly. witness to sustain the charges. It is of great surprise that the LOCO Foreman's Letter stated above had not been supplied alongwith Memorandum dated 21.4.86. An order for not supplying the relevant document when asked for by the applicant vide Item -4 of Letter dated 15.5.86 is attached herewith as Annexure No.6 to this application.

4.12. That further the LOCO Foreman, the prosecution witness, listed in Annexure IV of the Memorandum dated 21.4.86 was annexed by the E/O, but the E/O had called up other witnesses Sri Bhowmic and Munir Ahmad not mentioned

21/11/1986

AS

(8)

in the Memorandum relied upon witness. Such act of the E/O was wishful and mala fide. Hence, had in Law.

4.13. That applicant is charged for unauthorised absence which tantamounts to violative of Rule 3(1), (ii) (iii). That the unauthorised absence is willful absence without any authority for such absence. So request of Leave on the Authority of Medical Ground cannot be said to be unauthorised absence and as such there is no violation of Rule 3(1) (ii) (iii) of Conduct Rule, 1966.

4.14. That Rule 3 of 1965 Rule is general in nature for followed by specific conduct to be described by the Rly. Administration Rules 3 of 1966 Rule which have been alleged to have been violated by the applicant is being reproduced asunder :-

(3) General (i).

4.15. That it is well settled principles of Law that the conduct which is incorporated in conduct Rule cannot be said to be misconduct. Hence, there is no question of violation of Rule 3(1), (ii) (iii) of RS (Conduct) Rule 1966 which does not spell out any conduct of the applicant.

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(9)

4.16. That the Enquiry Report and finding of the Enquiry Officer is not based on Rule and Evidence on Record. He is by ignoring all rules on the subject and also all facts on record made the applicant responsible on presumption and assumption and acted in the manner to any way establish the charge. He has not discussed the prosecution witness, LOCO Foreman, as he was the only witness to sustain the charges listed in Annexure IV to the said Memorandum. The copy of report and finding is being filed as Annexure No. 7 to this application.

4.17. That the Respondent No. 5 the disciplinary Authority had drawn no finding of his own on the report submitted by the Enquiry Officer but he straight away issued the standard form No. 1 passing the order of removal from services of the applicant. Further more, the Disciplinary Authority had not applied his mind and had not considered the facts on record and rules on the subject matter. The copy of the order of removal from service is filed as Annexure No. 2 of the Application.

Contd. on 10.

4.18. That the applicant had submitted a details of Appeal against the order of the removal passed by the Respondent No. 5 to the Senior D.M.E. (LOCO) . It is of great surprise that the Authority had also not considered the facts put forward by the application in his appeal, and passed the Non-Speaking order without any comment on the facts pointed out in the Appeal and rejected the appeal of the applicant. Thereafter the applicant preferred a revision to D.R.M. (P) Lucknow which was rejected on 24.2.89 and this rejection communicated to applicant on 17.3.89.

4.19. That the Respondent No. 3 (AME) have no jurisdiction to initiate disciplinary proceeding as well as improving penalty in relation to Rule -9, of RS (DA) Rule, 1968 as he is not delegated with the power of Disciplinary Authority . To impose penalty on group C & D Railway Servant Under Rule 6 (V) to IX .

4.20. That the impugned removal of the applicant is as such illegal Inter-alia on the following

On 11...

21/11/2011

Grounds .

G R O U N D S

- (i) Because the absence of the applicant is not will full but under the circumstances beyond his control and on the authority of Medical Certificate permissible under Rule, Hence, can not be taken up for unauthorised absence in Disciplinary Proceedings.
- (ii) Because the Applicant has made necessary communication as required under Rule while requested the leave on Medical Certificate.
- (iii) Because the applicant was given no reasonable opportunity to face the charge by not supplying the documents for the purpose of his defence, hence, it is violative of Article 311(2) Constitution and Principle of Natural Justice.
- (iv) Because there is no prima facie facts in the case and as respondent has failed to supply documents listed in Annexure III of Memorandum dated 21.4.86 and P.W. 1000 Foreman listed in Annexure No. 4 of the said Memorandum has not been examined in Enquiry Proceedings.

21/04/1986

A13

- (V) Because the impugned charge Sheet does not show Commission of any misconduct or the alleged misconduct as such no Disciplinary Proceedings could be made against the applicant, nor is the proceeding is maintainable.
- (VI) Because the E/O has not relied upon the facts on record as well as the Rules on the subject matter and submitted his report on presumption and assumption.
- (vii) Because the D.A. having no jurisdiction to initiate Disciplinary Proceedings as well as to impose major penalty on Group C & D Rly Servants as he is not delegated with the Disciplinary Power in relation to Rule 9 as well as to imposed penalty under Rule(6) (V to IX) .

5. GROUND OF RELIEF WITH LEGAL PROVISIONS :

- (1) That the Asstt. Mechanical Engineer N.E.Rly. Lucknow Respondent No.5 has no jurisdiction to initiate disciplinary Proceedings and issue Memorandum of charges in relied on to Rule 9 of R.S. (DA) Rule , 1968.

21/11/1977

A20

(13)

(2) That according to rules made by the Railway Board the Department was bound to supply the Copy of documents, findings etc. to the applicant -t to prepare his defence which the Department did not do.

(3) That para 1472 of I.R.E.M. well defined the jurisdiction of Railway Doctor and the treatment of Applicant with his own choice Doctor within Rules and his absence is authorised .

(6)

DETAILS OF THE REMEDIES EXHAUSTED.

The applicant further declares that he has availed of all remedies available to him under the relevant services Rules .

(1) That applicant preferred an appeal against the order of removal from services dated 12.9.89 which was rejected by the Divisional Mechanical Engineer on 5.2.87. A photostat copy of that appeal is being filed herewith as Annexure No. A --- 9 for the Perusal of this Hon'ble Court .

(2) That against the rejection of the appeal

Contd. on 14.

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(14)

the applicant preferred a revision . A photostat copy of that revision is being filed herewith as Annexure No. A-1 4/1 and that ~~the~~ too was rejected by the Divisional Rly . Manager, on 24.2.89 and its ^{intimation} ~~direction~~ was communicated to the applicant on 17.3.89.

(7) MATTERS PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit regarding the matter in respect of in this application made before any Court or any other Authority or any other ~~Ben~~ Bench of the Tribunal nor any such application or suit is pending before any of them.

8. RELIEF SOUGHT :

In view of facts mentioned in para 6 above the applicant prays for the following reliefs :-

- (A) That Charge Sheet dated 21.4.86 Annexure No. A-1 may very kindly be set -aside.
- (B) That the order of removal of ~~a~~ service dated 18.7.86 / 31.7.86 Annexure No. A-2 be cancelled all back wages from the date of removal to the date of reinstatement may be awarded to the applicant and all the benefits may also be given to the applicant.
- (C) That order of the rejection of Appeal also be set-aside.

Contd. on 15..

21/5/14/11/14571

A22

(15)

(D) That order of rejection of revision dated 24-2-89 be also set-aside.

(E) The cost of petition may also be awarded to the applicant against the Opposite Parties.

(F) That any other relief may also be awarded to the applicant against the Opposite Parties which the Hon'ble Tribunal deems fit and proper to the circumstances of the petition.

(9)

~~(E)~~ PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE PAID.

(a) I.P.O. No. ^{DD} 777123 dated 13-9-89 for Rs.50/- .

(b) Name of the Issuing Post Office High Court Branch Lucknow.

(c) Date of the issue of I.P.O. 13-9-89

(10)

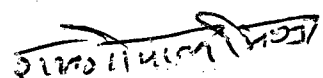
That an Index in Duplicate containing the details of the documents relied upon in this case are enclosed..

(11)

In the documents mentioned in this case are also attached herewith as shown in the Index aforesaid.

Lucknow
Dated ; 15. 9. 1989.

APPLICANT.



(Ram Gopal Misra)

Contd. on 16.....

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(16)

VERIFICATION

I, Ram Gopal Misra , son of Sri Mishri Lal Misra
aged about 35 years , was working as Fitter Khafasi
in the Office of LOCO SHED , CHARBAGH, Lucknow
do hereby verify that the contents of para 1, 4 and 6

to 11 are true to my own

knowledge and those of paras 2, 3

and 5 are believed

by me to be true on legal advice and that I have not
suppressed any material fact.

Signed and verified on this the 11th day of
15
September, 1989 at Tribunal , Lucknow.

Lucknow

Dated ; 11.9.89.
15

Signature of the Applicant .

Ram Gopal Misra

(Ram Gopal Misra)

Before: THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
(An Application U/s 19 of the Central Tribunal Act, 1985)

Ram Gopal Misra Applicant.

Versus

Union of India , through its General Manager , N.E. Rly.

Gorakhpur & Others. Opp. Parties.

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Lucknow ;
Dated ; .9.1989.

Applicant / Petitioner.

(RAM GOPAL MISRA)

पूर्वोत्तर रेलवे
NORTH EASTERN RAILWAY

पू० उ०—जा० 354
N. E.—G. 354

मानक फार्म न० 5
STANDARD FORM NO. 5

आरोप—यह का मानक फार्म
STANDARD FORM OF CHARGESHEET

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

सं० उत्प्रेषण/साक्षि/१५२४०/४६
No.

महेश्वर प्रसाद/लखनऊ (रेल प्रशासन का नाम)
(Name of Railway Administration)

निर्गम स्थान ३२११३ दिनांक २१-४-८६
Place of issue Date

जापन
MEMORANDUM

§ राष्ट्रपति/रेलवे § महोदय/निम्नहस्ताक्षरी द्वारा रे० क० (अ० और अ०) नियम 1968 के नियम 9 के अन्तर्गत श्री राजगोपाल
§ महोदय के विरुद्ध जांच करने का प्रस्तापना की गई है। अथवा या कदाचार के लक्षणों का सार, जिनके सम्बन्ध में जांच करने का प्रस्तापना है, आरोप के अनुच्छेदों का विवरण (अनुबन्ध एक) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के समर्थन में अथवा या कदाचार के लक्षणों का विवरण संलग्न है (अनुबन्ध II)। जिन लेखों और साक्षियों द्वारा आरोप के अनुच्छेदों के सिद्ध किये जाने का प्रस्तापना है उनकी भी एक सूची संलग्न है (अनुबन्ध III और IV)।

The President/Railway Board/under signee i propose (s) to hold an inquiry against Shri..... under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of mis-conduct or mis-behaviour 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 mis-conduct or mis-behaviour 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 articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. श्री राजगोपाल को एतद्वारा सूचित किया जाना है कि यदि वह चाहे तो न जापन की प्राप्ति के * पांच दिन के भीतर कार्यालय काल में किसी भी समय प्रत्यक्ष-सूची (अनुबन्ध III) में वर्णित प्रलेखों का निरीक्षण कर सकता है, और उससे उद्धरण ले सकता है। यदि वह ऐसे किसी अन्य प्रलेखों तक जाना पहुंच चाहता है, जो रेल प्रशासन के पास हैं लेकिन जिनका संलग्न प्रलेखों की सूची (अनुबन्ध III) में उल्लेख नहीं किया गया हो, तो निरीक्षण के लिए अपेक्षित प्रलेखों को सुसंगत बताने हुए इस जापन को प्राप्त के ** दस दिन के भीतर उसे निम्नहस्ताक्षरी/महा प्रबन्धक महेश्वर प्रसाद/लखनऊ को इसकी सूचना देना चाहिए। अनुशासन अधिकारी उन सूची या किसी ऐसे प्रलेखों के निरीक्षण की अनुमति देने से इनकार कर सकता है, जो उसका राय में, मामले से सुसंगत न हो या जिन तक पहुंच की अनुमति देना जनहित या राज्य के सुरक्षा के विरुद्ध हो। उसे चाहिए कि अनिश्चित प्रलेख उपलब्ध किये जाने के पांच दिन के भीतर उनका निरीक्षण पूरा कर लें। जिन अतिरिक्त प्रलेखों के निरीक्षण की उसे अनुमति दी जायेगी उसे उद्धरण लेने की उसे अनुमति होगी।

2. Shri..... 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 of security of the State to allow access thereto. He should complete inspection of additional 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 राजगोपाल को सूचित किया जाता है कि जांच के बाद के प्रक्रिया में प्रलेखों को प्राप्त करने के लिए किया गया अनुरोध तब तक स्वीकार नहीं किया जाएगा जब तक ऊपर विनिर्दिष्ट समय सीमा के भीतर विलम्ब से अनुरोध करने का पर्याप्त कारण न बताया जाय और उन परिस्थितियों से स्पष्ट रूप से प्रकट न हो जाये कि अनुरोध इससे पहले के प्रक्रम में नहीं किया जा सकता था। जांच पूरी हो जाने के बाद अनिश्चित प्रलेख प्राप्त करने के सम्बन्ध में कोई अनुरोध तब तक स्वीकार न किया जाएगा, जब तक जांच पूरी न होने से पहले अनुरोध न कर सकने का पर्याप्त कारण न बताया गया हो।

Attended
S.K. Gupta
R.D.

3. Shri..... is informed that request for access to documents made at later stages of the enquiry 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 show clearly that the request could not have been made at an earlier stage. No request for access to additional documents will be entertained after completion of the inquiry unless sufficient cause is shown for not making the request before the completion of the inquiry.

4. श्री राधा गोपाल मिश्रा को यह भी सूचित किया जाता है कि यदि वह चाहे तो मौखिक जांच होने की स्थिति में प्रलेखों का निरीक्षण करने तथा जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता करने के लिए किसी अन्य रेल कर्मचारी/रेल व्यवसाय संघ के किसी पदाधिकारी जो रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 (9) और बचाव-स्थिति उनके दिग्दर्शन एक और/अथवा दिग्दर्शन दो की अपेक्षाओं को पूरा करते हों, की सहायता ले सकता है। इस प्रयोजन के लिए अधिमाम्यता क्रम में उसे एक या अधिक व्यक्तियों का नामन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारियों) अथवा रेल व्यवसाय संघ के पदाधिकारी/पदाधिकारियों का नामन करने से पहले श्री राधा गोपाल मिश्रा द्वारा, नामित व्यक्ति (व्यक्तियों) से बचन ले लेना चाहिए कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसकी सहायता करने के लिए तैयार है। बचन में ऐसे अन्य मामले/मामलों का, यदि कोई हो, विवरण भी देना चाहिए, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही बचन दिया जा चुका हो और नामित व्यक्ति (यों) द्वारा दिया गया बचन नामन-पत्र के साथ निम्न हस्ताक्षरी/महाप्रबन्धक को प्रस्तुत किया जाना चाहिए।

4. Shri..... 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 Railway Trade Union Official (s), Shri..... 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.

5. श्री राधा गोपाल मिश्रा को एतद्वारा निर्देश दिया जाता है कि यदि उसे अपना प्रतिवाद तैयार करने के लिए किसी प्रलेख का निरीक्षण करना अपेक्षित न हो, तो इस आपन की प्राप्ति के लिए दस के भीतर और यदि वह प्रलेखों का निरीक्षण करना चाहे तो प्रलेख का निरीक्षण पूरा होने से दस दिन के भीतर निम्नहस्ताक्षरी के पास (महाप्रबन्धक**/.....) रेलवे के माफ़त) अपने प्रतिवाद का लिखित कथन (जो उक्त महाप्रबन्धक के पास पहुंचना चाहिए) प्रस्तुत करे और—

- (क) बताये कि क्या वह व्यक्तिगत रूप में कुछ कहना चाहता है, और
- (ख) उन साक्षियों के, यदि कोई हों, नाम और पता बताये जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है, और
- (ग) उन प्रलेखों की सूची, यदि कोई हो, पेश करे जिन्हें वह अपने प्रतिवाद के समर्थन में प्रस्तुत करना चाहता है।

5. Shri..... is hereby directed to submit to the undersigned (through General Manager..... Railway) a written statement of his defence (which should reach said General Manager)** within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence; and within ten days after completion of inspection of documents if he desires to inspect documents, and also—

- (a) to state whether he wishes to be heard in person; and
- (b) to furnish the names and address of the witnesses, if any, whom he wishes to call in support of his defence; and
- (c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

6. श्री राधा गोपाल मिश्रा को सूचित किया जाता है कि आरोप के केवल उन अनुच्छेदों के बारे में जांच की जायेगी, जो स्वीकार नहीं किये गये हैं। इसलिए उन्हें चाहिए कि आरोप के प्रत्येक अनुच्छेद को खास तौर से स्वीकार करें या इनकार करें।

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

7. श्री राधा गोपाल मिश्रा को आगे यह भी सूचित किया जाता है कि पैरा 5 में विनिर्दिष्ट अवधि के भीतर यदि वह अपना लिखित बयान प्रस्तुत नहीं करता या जांच अधिकारी के सामने व्यक्तिगत रूप से हाजिर नहीं होता या रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 के नियम 9 के उपबन्धों या उक्त नियम के अनुसरण में जारी आदेशों/निर्देशों का अनुपालन करने में अथवा अपराध रहता है, या इनकार करता है तो जांच प्राधिकारी एक पक्षीय जांच कर सकता है।

7. Shri..... 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 refused 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 राधा गोपाल मिश्रा को सूचित किया जाता है कि कर्मचारी (आचरण) नियम, 1966 के नियम 20 की ओर दिखाया

Attended
S.K. Gupta

8. The attention of Shri..... is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966, 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 within these proceedings, it will be presumed that Shri..... is aware of such a representation and that is had been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules 1966.

9. The receipt of this Memorandum may be acknowledged.

नक्षम प्राधिकारी का नाम और पदनाम
"By order and in the name of
the President.

हस्ताक्षर *Signature*
राधकृष्ण जीवित अधिकारी
Name and designation of Competent authority.

सेवा में
To

स्थान आदि.....
Place, etc.

(g) Copy to Shri (name and designation of the lending authority) for information.

*This time limit may be extended upto ten days at the direction of the competent authority.

Attested
S. K. Goshal
Adv.

A27

** यह समय सीमा सक्षम प्राधिकारी के निर्देश से बीस दिन तक बढ़ाई जा सकती है।

** This time limit may be extended upto twenty days at the direction of the competent authority.

† जहाँ कहीं राष्ट्रपति या रेलवे बोर्ड सक्षम प्राधिकारी हो वहाँ इसे रहने दिया जाय।

† To be retained wherever President or the Railway Board is the competent authority.

† जहाँ राष्ट्रपति अनुशासनिक प्राधिकारी हो।

† Where the President is the disciplinary authority.

(a) जहाँ कहीं लागू हो वहाँ इस्तेमाल किया जाये। देखिये रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 का नियम 16 (1) रेल कर्मचारी को भेजी जाने वाली प्रतिलिपि में इसे शामिल न किया जाय।

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

§ जो लागू न हो उसे काट दें।

Strike out whichever is not applicable.

£ 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.

NER—81820861—10,000 F.—Aug. 82

Attended
S.K. Gupta

Annexure to Statement Form No 50 concerning claim of Charge Sheet under Rule 9 of the P's (QAR) Rule 1968

Statement (of articles of charges) found against
Shri Ram Gopal Chandra Kishore, a while functioning as Fitter, Khatu
under AF/CP's absence is himself is from 3.2.86 to 3.4.86
unauthorisedly. This period is to be taken into consideration and
in a manner to be taken into consideration of the same there by
violating Para 3.9 (iii) of the Service Conduct Rules 1968.

(S.M. Poores) April 1986

Annexure II

Statement (of imputation) based on which articles of charges
have been found against Shri Ram Gopal Chandra Kishore

That Shri Ram Gopal Chandra Kishore, a while functioning
as fitter Khatu as in S.O. No. (196-232) CP's absence is himself is from 3.2.86 to 3.4.86
without any information of AF/CP. This is unbecoming conduct
part of the Khatu Gopal Chandra Kishore, Khatu under AF/CP
Statement of Service Conduct.

(S.M. Poores) April 1986

Annexure III

Documents on the basis of charges have been prepared.
D 27/11/86-27/11/86-86 = 5.6.86

(S.M. Poores) April 1986

Annexure IV

List of witnesses by whom the articles of charges found
against Shri Ram Gopal Chandra Kishore, Khatu are
reported to be sustained
F/CP.

(S.M. Poores) April 1986

Attested
S.K. Jaiswal
Advo

27/11/86-27/11/86

ANNEXURE "A-2"

22.

ORDERS OF IMPOSITION OF PENALTY OF DISMISSAL/REMOVAL/COMPULSORY RETIREMENT FROM SERVICE UNDER RULES-6(VII), (VIII) AND (IX) OF THE RAILWAY SERVANTS (D/A) RULES 1968.

A29

No. 30/10/10/रामगोपाल/प्रि.सं/86

Date 18/7/86
31/7/86

To Name SRI RAM GOPAL MISRA

Father's name SRI MISRI LAL

Designation Filev KHALASI Department MCH

Ticket No. _____ Date of appointment 24-7-76

Station CB SHED Scale of pay (196-232)

Shri RAM GOPAL MISRA, Filev KHALASI, CB SHED, under LAEB
(Name, designation & Office in which he is employee)
(* Under suspension) is informed that the

Inquiry Officer/Board of Inquiry appointed to enquire into the charge(s) against him has/have submitted his/their report. A copy of the report of the Inquiry Officer/Board of Inquiry is enclosed.

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

OR

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

3. The undersigned has, therefore, come to the conclusion that Sri RAM GOPAL MISRA, Filev KHALASI, CB SHED
(Name of the Railway servant) is not a fit person to be retained in service and has decided to impose upon him the penalty of dismissal/removal/compulsory retirement from service, Shri RAM GOPAL MISRA, Filev KHALASI, CB SHED
(Name of the Railway Servant), therefore, dismissed/removed/compulsory retired from service with effect from 18-7-86.

Contd...2

दिनांक 26-8-86 को

10 वजे यात्रा हुई

रामगोपाल मिश्रा

26-8-86

रामगोपाल मिश्रा

A30

- 2 -

4. Under Rule 18 of the Railway Servant (D & A) Rules, 1968 an appeal against the orders lies to S.R. DME/LN provided:-

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

5. Please acknowledge receipt of this letter.

* Strike out where not applicable.

copy of Report of ~~C. M. Prasad~~ ^{Office}

SRI RAM GOPAL MISHRA
(FHEXN)

EB shed, N.E. Ry
THROUGH LA/EB SHED
N.E. Ry

Signature (S. M. PRASAD)

Name & Designation
of the disciplinary
authority.

ADME/LN
N.E. Ry, LUCKNOW

Attended
S.K. Zaidi
Adv

21/11/1981

24.
A31
ANNEXURE A-3

N.E. Railway

No. E/PC/RGM/F-Kha.

Office of the
Divl. Rly. Manager (P)
Lucknow: Dt. 5-2-1987

Shri Ram Gopal Mishra,
Fitter Khalasi,
Through Loco Foreman,
Charbagh Shed/Lucknow.

Sub:- Appeal against removal from service.

Ref:- Your appeal dated 12-9-86.

I have gone through the proceedings of the
case and the appeal and find no reason to alter the
punishment already awarded to Shri R.G. Mishra by
AME/LJN.

[Signature]
Sr. Divl. Mech. Engineer/Loco
Lucknow.

Copy forwarded for information and necessary
action to Loco Foreman/CB.

for Divl. Rly. Manager(P)
Lucknow.

रायजीपाल मिश्रा

Attested
S.K. Singh
Adv

25-
ANNEXURE A-4

NORTH EASTERN RAILWAY

A32

OFFICE OF THE
DIVISIONAL RLY. MANAGER (P),
LUCKNOW.
DATED: 24-2-1989.

NO. E/PC/RGM/FKha.

Shri Ram Gopal Misra,
Ex. Fitter Khalasi THROUGH

Loco Foreman,
Charbagh Shed.
N.E. Railway.

Sub:- Appeal of Sri Ram Gopal Misra for
Revision under Rule 26 of DAR 1968
dated 9-3-1987.

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On the above appeal ADRM has passed the following
orders:-

" I have gone through the entire case including revision petition dated 9-3-87 of Sri Ram Gopal Misra ex Fitter Khalasi/CB Shed. The points brought out by Sri Misra to ~~advise~~ that he had send timely intimation to the railway administration about the periods of his absence and his contention that he was not on unauthorised absence during the said period as per extent rules, are not convincing. In this connection I have also gone through the proceedings of the DAR enquiry as well as the various documents submitted by Sri Misra in connection with this enquiry. It is apparent from the papers on record that Sri Ram Gopal Misra in his application dated 4-2-86 and 4-3-86 had mentioned that due to his sickness he was unable to resume his duties. In the application dated 4-2-86 he had mentioned that one month time will be required for his recovery and likewise in his application dated 4-3-86 he had againe alleged to have intimated that one month more will be required for his recovery. But Private Medical certificate bearing the date 3-2-86 produced by Sri Misra recommends the period of leave for complete rest for two months with effect from 3-2-86 to 2-4-86. Had the application dated 4-2-86 been actually posted by Sri Ram Gopal Misra, it must have borne the period of two months and not one month. Not only that, Sri Misra while attending LF's Office on 3-4-86 with his sick and fit certificates and applying for regularisation of the period of his absence vide his application dated 4-4-86 has not mentioned anything that he had intimated regarding his sickness to LF/CB pre-hand by two applications, except that he was in private treatment. If the so claimed application had been a fact, in the first information so as to emphasis his innocence and claim for regularisation of the period covered under PMC.

Contd....2

He must have mentioned this fact

2000/11/11/11/11

A33

- 2 -

From the above it is established beyond doubt that Sri Ram Gopal Misra Ex Fitter Khalesi/CB Shed was on unauthorised absence from 3-2-86 to 3-4-86 and no intimation from him in respect of his periods of absence was received by the Aly. Administration the charges levied against him are, therefore proved beyond doubt and the punishment given to him in this case is considered just and adequate, and the same is upheld"

[Signature]
For Divl. Aly. Manager (P.),
Lucknow.

Attested
S. K. Jaiswal
Advo

[Signature]
21/05/1987

To, ANNEXURE A-4
The Divisional Railway Manager,
N.E. Rly.,
LUCKNOW.

A34

Subj: Revision under Rule 25 of DAR, 1968.

Sir,

The appellant, being aggrieved with the decision of Sr. DME. (Loco) on my appeal dt. 12.9.86 against the order of removal imposed by the AME (Loco), beg to appeal for revision inter alia on the following grounds:-

1. That the appellant did not absent unauthorisedly w.e.f. 3.2.86 to 3.4.86 as alleged by the AME (Loco) in his Chargesheet.
2. That the detailed defences/evidences were adduced during the enquiry proceedings and also elaborated the grounds and pleas in my appeal to the Sr. DME. (Loco) but the Sr. DME. (L) has rejected the appeal and maintained the punishment on some undisclosed extraneous consideration which is illegal, his letter is not a speaking order.
3. That the removal of the appellant is based on all imaginations, presumptions, prejudices, unfair labour practice and illegalities.
4. That not accepting valid documents and government evidences adduced during proceedings against the allegations is arbitrariness and illegal before law. Despite my pointing out all these factors, neither Sr. DME (L), nor has the AME (L) accepted them. Nothing can satisfy them because they acted predeterminingly not to accept any evidence what so ever whether genuine or ingenuine and they have arbitrarily acted in imposing and in maintaining the punishment.
5. That I did not absent from 3.2.1986. The facts remained that I had been sanctioned compensatory leave on 2.2.1986 and due to sudden severe incapacitation of the appellant for unexpected and unforeseen illness I was forced to be on leave in continuation of compensatory leave. Again, I had sent the concerned authority the required

.....2/-

information and that also through the government agency, who have certified the fact of my genuine acts of sending information to the Railway authority.

6. That I had been on leave, in continuation of my sanctioned leave on 2.2.1986. Again, I had sent the intimation of my being on extended leave within 3days i.e. on 4.2.86 as required under the extant rules.

7. That in accordance with the rules 2114R-II the Railway employees proceeded on sanctioned leave, in case proceeds on extended leave, would automatically be deemed to be on leave. ~~unpaid leave~~. Hence the question of the humble appellant's being absent from duties did not arise. All acts repugnant to the statutory rules are arbitrary, mala fide and prejudicial.

8. That in view of the positions explained above, the humble appellant did not absent himself from duties, but he had been made to continue on leave, in continuation of sanctioned leave, by the sudden physical incapacitation under influence of the nature. It is needless to stress that the powers of nature on human bodies are universally accepted to be unpredictable and uncontrollable. The appellant's suddenly falling sick and being on continued leave was not in his hand. The only thing in his hand was to inform the employer railway about his inability to report for duties within 3 days and that part I have complied with as per rules.

9.) That as far as the second charge of my failure to maintained devotion to duties in a manner unbecoming to a railwayman is concerned, I respectfully beg to clarify that this charge is not applicable on me in the instant case, because in the absence of any evidence of not devoting my services on any allotted job while on duty,,this charge becomes invalid. Further, during the charged period, I had been on leave on self sickness and no work was allotted to me. Hence, the question of not being devoted on the allotted job does not arise. Further, being on leave and that also on self sickness is neither an offence, nor can the same be an offence. Alleging this as an offence is certainly unfair and arbitrariness.

(3)

10. That in view of the positions explained above, this humble appellant is innocent in all respects. The punishment imposed on the appellant is, therefore, totally unfair, prejudicial and illegal.

11. That, over and above, the appellant is a young man of about 32 years and he has still to serve the nation through this railway service for very long years. His removal from service at this early age would cause a serious disability in his securing a fresh service in other government departments. The appellant has a big family consisting of five members, out of them are ^{Two} ~~three~~ school going students, ~~while working two more children.~~

12. That this untimely removal of the appellant has caused serious debacle to the appellant's survival in these hard days and we all family members have reached to a stage of starvation.

I, therefore, pray to your goodness to kindly set ~~aside~~ aside the illegal orders, made on extraneous consideration and reinstate me to my service for which acts of your kindness I shall remain ever thankful to you. I shall also pray to condone any delay in the matter of filling this revision application, if any.

Lucknow

Date : 9.3.1987.

Yours faithfully,

रामगोपाल मिश्रा

(RAM GOPAL MISRA)

Fitter Khallasi, T.No. 166

Loco Shed, Charbagh,

Lucknow.

21/11/1987

Attended
S.K. Tripathi
mlv

सेवा में

सहायक यांत्रिक इंजीनियर लोको।

पूर्वोत्तर रेलवे, लखनऊ।

द्वारा: लोको फोरम, चारबाग।

सम्माननीय महोदय,

सन्दर्भ: ज्ञापन संख्या ई/पी०सी०/रामगोपाल/पि०बि०/86
दिनांक 21-4-86।

उपरोक्त ज्ञापन में विनिर्दिष्ट आरोप सादर अमान्य करता हूँ साथ ही साथ गुजारिश करता हूँ कि निम्न लिखित दस्तावेज जो बचाव देने के लिए परमावश्यक हैं और केस से सीधा तालुक रखते हैं देने का कष्ट करें जिससे सम्यक न्याय मिल सके।

11। सर्विस कन्डक्ट रूल 1966 के पैरा 3 (i)(ii) एवं (iii) के उद्धरण प्रमाणित करते हुए उपलब्ध कराने का कष्ट करें जिसकी जानकारी प्रार्थी को नहीं है और ना ही सेवा-नियोजन के दौरान जिस सविदा का निमाण हुआ प्रार्थी को उसकी प्रति, शर्त के रूप में दी गई जिससे स्पष्ट हो सके कि उनका उल्लंघन किस सीमा तक हुआ है अथवा नहीं।

12। अनअथराइज्ड अबसेन्स की रेल सेवा में क्या प्रमाणित कृपापरिभाषा होती है स्पष्ट करने का कष्ट करें क्या मात्र सूचना दे देने से अनुपस्थित को वैधानिक आधार मिल जाता है वा सूचना की स्वीकृति कर्मचारी को दी जाती है प्रचलित विधि स्पष्ट की जाय।

13। साक्ष्य सूची के तहत लोको फोरम, चारबाग का लिखित बयान यदि कोई हो प्रस्तुत किया जाय।

14। दस्तावेज की प्रति जिसके आधार पर आरोप अधिरोपित किये गये रिपोर्ट या चतुर्थ श्रेणी/अनु-86 दिनांक 5-4-86 दी जाय।

16। मेरे द्वारा दी गई पी०सी० व साथ में प्रार्थना पत्र दोनोंको ही अवलोकनार्थ प्रस्तुत करने का कष्ट करें। उस पर यदि लोको फोरम की टिप्पड़ी हो तो उसे भी बताया जाय।

17। तथा कथित अनुपस्थिति के मामले में अन्य कर्मचारियों के बारे में लिए गए निर्णयों की संक्षिप्त रिपोर्ट जहाँ भारी

संख्या में लोको कर्मचारियों को अवैतनिक अवकाश स्वीकृति किया गया, छोड़ दिया गया या फिर माइनर मेमो दिया गया अतसम्यक् कार्यवाही मेरे प्रति यदि किसी द्वेष की भावना से किया गया है स्पष्ट करने का कष्ट करें।

✓ 181 180 3/4/86, 4/4/86, 5/4/86 एवं 6/4/86 को हाजिरी रजिस्टर में मुझे कहाँ दर्शाया गया है बताया जाय।

189। जब पी०एम०सी० से वापस आने के बाद मुझे मण्डल चिकित्सा-धिकारी के पास अन्तिम फिटनेस के लिए भेजा गया वापसी पर ड्यूटी पर ले लिया गया जो सिद्ध करता था कि मेरी अनुपस्थिति वैधानिक थी कालान्तर में मुझे मण्डल कार्यालय अवकाश के नियम हेतु भेजा जाना व्यवहारिक था या ऐसा होता आया था।

110। यदि अन्य कोई पत्राचार हुए हों उसकी प्रति ली जाय।

111। रेलवे चिकित्सा नागरिक के लिए प्राथमिक स्वास्थ्य ईकाई नहीं है अतः रेल कर्मचारी रेल के अलावा चिकित्सा लाभ प्राप्त कर सकता जहाँ उसके जीवन को लाभ हो।

उपरोक्त प्रश्नों की प्राप्ति पर हम अपना बचाव प्रस्तुत करेंगे।

आपसे सादर निवेदन है कि अविलम्ब सूचनावांछित सूचनाएं एकत्र करवाने का कष्ट करें।

सादर ।

भवदीय

राम जीपाल मिश्रा

1 राम गोपाल मिश्रा

पिन्टर खलाती, चारबाग रोड,
लखनऊ ।

दिनांक 15-5-86

15/5/86

Attested
S.K. Mishra
Adv

राम गोपाल मिश्रा

33-
A40

ANNEXURE-A-7

In connection with unauthorised absence w.e.f. 3-2-86 to 3-4-86.

The delinquent employee Shri Ram Gopal Misra, Fitter Khalasi under Loco Foreman Charbagh is facing DAR proceeding in case No. E/PC/Ram Gopal/F.Kh/86. The case in brief as embodied in the memorandum is that he remained unauthorised absent from duty w.e.f. from 3-2-86 to 3-4-86 and thus he violated "The Railway Services (Conduct) Rules 1966, Para 3.1(1)(ii)(iii).

The term "unauthorised absent" denotes that a man either absents himself from his normal duty without pre-sanction of leave by his controlling authority or over stays the period of his authorised leave without a legitimate intimation with sufficient reasoning of his over staying on or just after the date of his due resumption on his duty.

The failure of an employee (Railway servant) in the above manner tantamounts to lack of integrity and devotion to duty and is unbecoming act of a railway servant.

While reputing the article of charges and its imputation Sri Ram Gopal Misra with the aid of his defence counsel represented that he was on rest on 2-2-86, and due to sickness he became unable to attend his normal duty with effect from 3-2-86 to 3-4-86. He was under the treatment of a private local doctor, Vaidya Pearey Lal Gupta, 7- Siddhath Market, Madan Mahal Road, Lucknow, (P.P. certificate at C/185).

He also stated that he had informed Loco Foreman, Charbagh twice during the period under reference under certificate posting vide his applications dated 4-2-86 & 4-3-86 (copy of the applications annexed at C/208 C/209 and medical certificate at C/210, C/211).

He has also added some other references of his attendance of 7-4-86 and 8-4-86 and later on, but since these do not relates to period under reference in the memorandum, hence do not concern to this case and are beyond jurisdiction of this proceeding.

The scrutiny of the documents submitted by the delinquent employee in support of his statement, and the way they have been claimed to have been submitted to Loco Foreman/Charbagh Shed, is therefore of great importance to assess the facts of the case.

Shri Ram Gopal Misra in his application dt. 4-2-86 and 4-3-86 has mentioned (C/208 & 209) that due to his sickness that he is unable to resume his duty. In application dt. 4-2-86 he has maintained that one month time will be required for his recovery, and likewise in application dt. 4-3-86 he has again alleged to have intimated that one month more time shall be required for his recovery. But Private Medical certificate produced by him bearing that date 3-2-86 recommends the period of leave for complete rest for two months with effect from 3-2-86 to 2-4-86. Had the application dt. 4-2-86 been actually posted by Shri Ram Gopal Misra, it must have been

(...2)

borne the period of two months and not one month.

Not only that, he while attending LF office on 3-4-86 with sick and fit certificate and applying for regularisation of his period of absence vide application dated 4-4-86(C/183) has not mentioned any thing, that he had intimated regarding his sickness to LF/CB pre-hand by two applications, except that he was in private treatment. If he so claimed application would have been a fact he must have mentioned this fact in the first information (written application dt. 4-4-86) so as to emphasize his innocence and gain legitimate favour for regularisation of his period of P.M.C.

He has also not brought out this fact to the timekeeper even while attending office for duty as will be clear from reply to Q. 2 & 4 of Shri Munir Ali. Sri Munir Ali has also clarified in reply to Q. 3 that no intimation as alleged to have been sent by Sri Ram Gopal Misra, has been received by him. Sri Munir Ali in reply to Q. 15 has stated that the extension applications of the employees are received in office directly by hand by registered post and ordinary dak. There seems no reason that why Sri Munir Ali would deny the receipt of application of Sri Ram Gopal Misra, had it certainly been posted by him (Sri Misra) and received in office of LF/CB.

Shri Munir Ali has also confirmed by replying to Q. 1 that Sri Ram Gopal Misra was unauthorised agent. If any intimation at any stage could have been received by Sri Munir Ali, he would have clarified it.

This leads to establish that the applications dated 4-2-86 and 4-3-86 are after thought of the employee and have been concocted to cover up his folly. Actually neither he sent any application nor had any ~~intention~~ intention to do so. In reply to Q. 11, he has stated that he had gone to DRM office to know about his salary and regarding leave application which he alleges to have been sent to LF/CB through Post office. If connecting his reply of Q. 4 to his reply of Q. 10, where he has stated that he posted the application in GPO (General Post Office) letter box personally when he went to DRM office (Reply 11) it will be found that the first application was posted by him (as alleged by him) on the very day (4-2-86) and the very day he reached the DRM office for knowing its receipt in DRM office after being forwarded from LF/CB office (a wonderful gesture of Ram Gopal Misra).

Any way if he could have gone to DRM office which is far away from Chawk in comparison to Loco Shed/CB from Chawk, and DRM office is not his place of working or controlling office too, why he could not just go to LF/CB's office and submitted his application of leave alongwith P.M.C. Not only that, he had gone to Loco Foreman office on 1-8-86 (Reply to Q. 12) to receive his salary and even then neither he enquired of his so called posted application, nor he submitted any fresh application so that the authorised intimation of his reasons being away from duty could have been available with the Loco Foreman. In reply to Q. 6 & 7 he has stated that neither he tried nor he considered necessary to know that the leave application have been received in Loco Foreman office or not, as he had sent the applications under certificate of posting, and that was

sufficient.

This all is unbecoming of a railway servant and re-establishes that Ram Gopal Misra neither sent any application and nor he had any intention to do so.

Sri A.C. Bhawnik while replying Q.2 confirmed from records that Ram Gopal Misra has been shown absent from 3-2-86 to 3-4-86. Sri Ram Gopal Misra submitted his sick and fit both on 3-4-86 (Reply to Q.3) which is confirmed by Ram Gopal Misra as well.

Shri Ram Gopal Misra was sick under Private doctor and unable to move the hospital (Railway), he must have sent his sick certificate along with application to the Loco Foreman (application dt. 4.2.86) as medical certificate was issued by the doctor on 3.2.86, and must have arranged its posting to Loco Foreman/Charbagh in a fool proof manner i.e. by registered post or atleast with recorded delivery whose delivery is undoubted if he did not consider it important to go to DF/CE's office and submitted in person.

In all the cases, the responsibility of arranging intimation of reasons of absence from duty to Loco Foreman Charbagh rests with him (Ram Gopal Misra) as Loco Foreman will only intertain the applications received and not the applications which alleged to have been posted but not received in office.

Since there is no record of certificate of posting at any stage in the post office, so its correctness can not be verified in the manner as in case of registered post so the certificate of posting cannot essentially be taken as a fool proof evidence documents. I am sure that with a little intimacy/obligation the certificate of posting can be got stamped for back dates from same or the other postal unit. In this particular case, Shri Ram Gopal Misra while replying Q-1, has stated:

"This leads to establish that the certificate of posting as produced by Ram Gopal Misra (c/210-211) have later on been forged as while granting certificate of posting, the dealer keeps the letters with him, and not makes them over to the sender to post them in the letter box by sender himself.

Shri Ram Gopal Misra was under the treatment of a local private doctor. He neither reported to railway doctor to whom he must have reported in case of sickness for R.M.C. nor he gave any intimation to Rly. Doctor although there are a number of units of Rly. Hospitals at Lucknow. The departmental health units and indoor hospital are there only to treat ~~xxx~~ railway servants, and under normal rules a railway servant must report sick in the departmental units only.

If necessary the Doctor(Rly) refers the case to bigger units or better hospitals such as medical College. If any how, the sick man wants to take out side treatment during his sick period, he may do it so with the due permission of Rly. doctor attending on them.

As regards, certificate of posting, if at all Shri ~~Manoj Kumar~~ Ram Copal Misra maintains that the certificates of posting are correct; he may better ask postal authorities to redress the damages caused to him, ~~whom~~ who failed to deliver this letters(envelops) to the correct addressee.

SUMMARY:

1. Shri Ram Copal Misra was unauthorisedly absent from duty w.o.f. 3.2.86 to 3.4.86 to which he submitted P.M.C.
2. Shri Misra neither reported to Railway doctor for treatment while he was sick nor he intimated the Rly. doctor where as there are so many units of Rly. Hospitals in Lucknow.
3. Shri Misra ~~was~~ conducted the allged applications on 4.2.86 & 4.3.86 to cover up his folly of neither reporting to railway doctor nor intimating to Loco Foreman regarding reasons of his absence.
4. Shri Misra forged the certificate of posting and managed to get them stamped in the dates suiting to his convenience.
5. Shri Misra failed to send his application/intimation of his sickness and inability to resume duty by registered post, a guaranteed delivery to the correct addressee.

FINDING:

The evidence on record and circumstances of the case leads to establish that :-

Shri Ram ~~Gupta~~ Copal Misra, Fitter Khalasi working under Loco Foreman/Loco Shed, CB is responsible for the charges of unauthorised absence from duty w.o.f. 3.2.86 to 3.4.86 as referred to in the memorandum No.E/PC/Ram Copal/F Kh/86 dt. 21-4-86. He failed to maintain integrity, devotion to duty and acted in a manner unbecoming of a railway servant and is responsible for violating Rule 3.1(i)(ii)(iii) of Railway Services (Conduct) Rule/1966 beyond a reasonable doubt.

SL-
Loco Inspector(DSL)
N.E.Rly/Lucknow.

Attested
S.K. Jaiswal
Asst

(Signature)
20/11/1986

A44

ANNEXURE A 8

To.

The Senior Divl. Mech. Engineer(Loco),
N.E.Railway,
Lucknow.

Sub:-Appeal against punishment under Rule 18 of the
R.S.(D&A) Rules, 1968.

Sir,

The appellant undersigned begs to lay before you the following facts for favour of your kind consideration and setting aside the punishment imposed by the Disciplinary authority:-

1. That the appellant was serviced a Charge Sheet No.E/PC/Ram Gopal/F. Khallasi/86 dated 21.4.1986. An Enquiry Officer was also appointed on the same date.
2. That the appellant was removed by the Disciplinary Authority from service w.e.from 18.7.1986 afternoon vide his order No.E/PC/Ram Gopal/F.Kh/86 dated 18/31.7.86 on the basis of the enquiry report dated nil received from the Enquiry Officer in the instant case.
3. That the appellant was charged with the following as per Annexure-I to Charge Sheet:
 - (a) Unauthorisedly absent w.e.from 3.2.86 to 3.4.86(2.2.86 being statutory rest day).
 - (b) Failed to maintain devotion to duty and in a manner unbecoming of a Railway Servant.
 - (c) Violated para 3(1),(ii) & (iii) of Rly.Services(Conduct)Rules, 1966.
4. That as per Annexure-III to the Charge Sheet, the charges framed were based on LF/CB's letter No.M/Gl.IV/Maint/86 dated 5.4.86 and as per Annexure-IV to the Charge Sheet, the LF/CB was the only Rly. witness to substantiate the charges.
5. That the Inquiry & Proceedings were conducted on 7.6.86, 13-14/6/86 and 2-3/7/86.
6. That after receipt of the Charge Sheet the appellant had asked for some relevant documents mentioned in the Charge Sheet and also clarifications on some important points relevant to the charges vide his application dated 15.5.86. But neither the appellant was supplied the documents nor had he been given any clarification on the points raised therein.
7. That in terms of Rules 9(4) of the R.S.(D&A) Rules, 1968, the Rly. servant is required to submit a written statement in defence within 10 days of the receipt, if he does not require to inspect any documents; otherwise after 10 days of the last date of inspection.
8. That the Disciplinary authority did not comply with this provision of the rule, because he appointed the enquiry officer on the same date of the issue of the Charge Sheet and he did not provide me this opportunity of Written defence statement.
9. That the disciplinary authority, ought to have considered first the written defence statement of the appellant against the charges framed and ought to have formed his opinion on the basis of the defence statements whether there were grounds for enquiring into the truth of any imputation of misconduct against the appellant, or whether the appellant accepted all the charges contained in the Charge Sheet.

10. That had the appellant accepted all the charges as per Charge Sheet, the question of holding any inquiry did not arise. But where the accused employee denied the charges, only in that case the disciplinary authority is required to sit to form his opinion if any inquiry is a must as per para 9 above.

11. That in my case the appellant has been denied of the opportunity of giving his representation against the charges, by not supplying the relevant documents mentioned in the charge sheet as per "Note" below Rule 9(5)(ii) at page 31 of the DAR Brochure to enable me to submit my defence statement statutorily required under Rules 9(4). This act of denial of the reasonable opportunity under the "Principles of Natural Justice" is an exposure of prejudice and vindictiveness of the disciplinary authority against the appellant and also established that the statutory provision of the rules framed by the President was violated by the Disciplinary authority in the appellant's case.

12. That the appointment of an enquiry officer on the very date of the charge sheet, without waiting for 10 days from the date of supply of the documents and completion of the inspection of the documents and forming an opinion for holding an enquiry without seeing the defence statements and without a communication to the accused employee of his failure to submit his defence statements within the period permissible under statutory rules, is a clear mala fide, violation of rules, illegal and unsustainable.

13. That the appellant after working upto 01.2.86 proceeded on statutory rest on 2.2.86. He could not join his duties from 3.2.86 onwards due to his sudden severe illness. As the appellant has not been provided with any railway quarter, he resides in Chowk area. So, the appellant had taken treatment from a registered private medical practitioner.

14. That the appellant has sent the requisite intimation of his sudden sickness, requesting for doing the needful, was sent to Loco Foreman, Charbagh by post under Postal Certificate vide his application dated 4.2.86. Thereafter again I sent the second intimation under the same above mentioned procedure to the LF/CB vide his application dt. 4.3.1986 stating therein about the advised duration of treatment and rest for full recovery from sickness.

15. That the appellant after being recovered from self illness, reported for duty, on 4.4.86 Foreman alongwith sick and fit certificate to LF/CB, who sent me to DMO/ASH with a G-69 Memo for a "Fit for duty" Certificate. The DMO/ASH also issued me the requisite certificate and accordingly I resumed my duties w.e. from 4.4.86 P/N.

16. That the appellant had also applied for regularisation of my sick period by sanction of leave as due and admissible on the authority of sick and fit certificates issued by a competent registered medical practitioner, and the LF/CB had also recommended sanction of the leave for regularisation of my sick period from 3.2.86 to 3.4.86 vide his letter No. M/CL.IV/Maint/86 dt. 5.4.86, alongwith the facts of my case, to DRM(P)/N.E.Rly.LKO. This recommendation of the immediate controlling supervisor to the DRM(P) ought to be deemed to have been sanctioned in terms of Rly.Board's letter dt. 14.6.1978.

17. That I have been sanctioned leave by the competent authority on my personal file and regularised my entire sick period from 3.2.86 to 3.4.86 without pay as per information I have been given to know from the dealing section of the Personnel Branch. Hence, my entire sick period now stands regularised as leave without pay, which has entailed imposition of a punishment of without pay and thus the absence on self sickness from 3.2.86 to 3.4.86 is no more unauthorised for any purpose.

18. That as per provision of the Constitution, imposing two punishments i.e (1) leave without pay, despite my having leave in my credit, (ii) removal from service w.e. from 18.7.86 is totally illegal and unsustainable in law of this land.

19. That the appellant had also performed his duties during the period from 4.4.86 to 4.86, after resumption of my duties from self sickness. Accordingly the allegation of my unauthorised continued absence does not arise after my resumption and deemed sanction of leave.

20. That the appellant was sanctioned Rest on 2.2.86 and as such absence on self sickness in continuation of leave from duties is automatically required to be deemed to be on leave on half average pay as per extent statutory rules contained in I.R. Estt. Code Vol. II. Therefore, the allegations as in the Charge Sheet and the removal order both are illegal, malafide, unfair labour practice, vindictive and unsustainable. The order of removal as such ought to be set aside and the appellant deserve to be re-instated to his service from 19.7.86 with full wages for the entire period.

21. That the I.O. in his report has cited the definition of the term "unauthorised absence" presumably from some authentic railway documents either in his personal possession or in the possession of the Railway Administration. According to the same, read with the rules mentioned above and the facts aforementioned, the appellant was not in unauthorised absence. The appellant is exempted from production of any certificate of inability to attend duties for three days in the case of self sickness while under treatment of a private Medical Practitioner as per Rly. Board made rules. Hence, my absence of first three days leave is permissible as per statutory rules.

22. That for extended period of my absence on self sickness beyond three days, I had sent the intimation to the immediate controlling officer through appropriate Government Agency i.e. Post & Telegraph Department and I have been issued a certificate of their receipt of my intimation to the competent authority for delivery of the same to the addressee. I have also adduced a copy each of my applications dated 4.2.86 and 4.3.86 and the certificates issued by the appropriate Government Agency during the course of enquiry proceeding. The I.O. has also admitted this fact in para 5 of his report.

23. That the I.O. in para 8 of his report he has presumed facts and contended that the appellant's first intimation dated 4.2.86 to LF/CB should have carried the recommendations of the Doctor for two months, not for one month and he has expressed a defamatory aspersion doubting the appellant against his actual dropping of his application dt. 4.2.86, which means that the Central Government Agency is a corrupt body and the certificate issued by the Govt. Agency is a corrupt one. Further, the I.O. is totally void of the knowledge that the letters received by the Govt. Agency, for which they issue a receipt, are not dropped in my any letter box. Those are received by them and the senders are issued receipts. Thereafter, they arrange its deliveries to the addressees through their own machineries. The I.O. for his written defamatory statements deserve being pulled up for actions against him. However his contentions is only a presumption and baseless. It is reiterated that the appellant's application dated 4.2.86 was delivered to the appropriate authority for doing the needful and I have since adduced an evidence in its support during enquiry proceeding.

24. That the wishful presumption of the I.O. in para 8 of his report about the attending Doctor's advising rest for two months in the first instance itself is having no leg to stand before law, because the Doctors also presume a likely period for recovery from the ailments as per symptoms. They see during examination. Their advice of the rests is only an approximation and measured by any measuring gauge. The period of rests advised to the patient can be less or more subsequently after commencement of the treatments and it often experienced by every body in practice. The I.O.'s contentions are only imaginary, presumptive, prejudicial, malafide, wishful and illegal. His all contentions clearly expose that he cooked his report in a manner to present the facts of his report to give a look of his avoidable long exercise in cooking the design to please his immediate officer and my disciplinary authority.

to establish my guilt. He has not the least acted in compliance with Board's letter No. E(D&A) 78 GSI-9 dated 14.12.1978. He has acted under the influence of the disciplinary authority and thus he was partial, biased and prejudiced against me.

25. That the I.O.'s wishful suggestion in para 9 of his report has no basis under the circumstances explained above. In addition, it is pertinent to mention here that he has exposed his mind and conduct that he is certainly not a fair and honest person. He in every matter presented facts according to his nature and conducts. It is never expected of an honest man of sense of self respect to repeat any fact and foresee to cover future planning against an invisible and unexpected conspiracy against him. Because, when any man has sent an intimation through the Govt. agency for delivery to its addressee, every common man expects its correct delivery, except the corrupts and criminals who always move anti-clockwise and suspects every body and every acts of others. As a common man, in the absence of any written or verbal direction from the Rly. Administration for resumption to duties or otherwise for any other actions whatsoever, the question of suspecting an unusual thing before hand and attempt to cover the suspected unusual happening the I.O. wished that I should have made a mention of my letters sent through appropriate Govt. agencies to LF/CB. It was expected and believed in good faith that those two letters already sent through the correct Govt. agencies had reached the addressee within reasonable time.

26. ~~That~~ That as per wishful contention of the I.O. mentioned in para 9, he wished that the appellant must have mentioned of the fact of his sending two intimations and he attempted to project that fact, a very big issue so as to justify his subsequent submission about the charges having been established. In this respect it is worth pointing out that in that case it would have rather been an attempt of an hardened criminal aimed to cover the fact of lapses where practically no intimation was sent. But in this case the story is totally opposite. The appellant did send two intimations on two different date, for which I was issued authenticated certificates by the competent authority of the appropriate Govt. agency, and as such it is assumed that those intimations have certainly reached. Had I not done the same, I should have mentioned those two facts only with criminal intents as for covering the lapse of "not sending" intimation. It is, therefore, submitted that the wishful suggestion of the I.O. should have not been mentioned in his enquiry report and he ought to have relied only on those documents or evidence adduced during the enquiry proceeding. All his imported story, presumptions and suggestions have no leg to stand before law, nor the disciplinary authority accepted these presumptions, suggestions, wishes etc. in the case. These acts of the I.O. is a naked acts of his being prejudiced, biased, under influence of the disciplinary authority, who is in turn his controlling officer and the I.O.'s future service career prospects is dependent on the disciplinary authority. The I.O. nakedly attempted to please the Disciplinary authority - controlling officer of the I.O. It is as such proved enough that the finding/Report of the I.O. was neither fair, nor had been based on facts.

27. That the I.O. had tried to establish in para 10 of his report that the appellant did not send the intimation by referring to those questions what he believed to be helpful to his ill desires. He did try to take out truths to the effect of whereabouts or availability of those intimations. He mentioned of the answers to Q. 2, 3, 4 & 15 which related to the points whether the appellant told the fact of his sending intimations to Sri Munir Ahmad, T.K. and the procedures of receipt of the intimations. The exercise of the I.O. done in this respect is useless and futile and not contributive to the fact of receipt of my two intimations.

28. That Sri Munir Ahmad, Time Keeper, examined in this case, was not a Rly. witness as per Annexure-IV of the Charge Sheet. Accordingly, Sri Ahmad was not to be called as a Rly. witness. LF/CB was the only witness and he alone was enough because he was the Incharge of the Charbagh Shed and he could have

given these replies. He was the person brought into the proceeding by the I.O. only to fill up the gaps in meeting his unfair desire. This act of the I.O. is uncalled for, unwarranted, unfair and illegal in terms of the "Note" under Rule 9(12) of the D&A Brochure.

29. That in terms of extent rules quoted in the foregoing para, the portion of the proceeding pertaining to Sri Munir Ahmad and others who are not included in the list of Rly. witnesses mentioned in Annexure-IV are warranted to be deemed deleted as they were called into the proceeding by the I.O. at his own to fill up the gaps and being illegal as per extent rules.

30. That further, Sri Munir has since confirmed that letters received from staff through P & T Deptt. are received by three agencies like he himself, receipt and despatch section and the office Supdt. Out of those letters received, registered letters only are diarised in the receipt section and sent through receipt register, other letters are not registered/entered in the receipt register (Ans. to Q. 16-17). Accordingly, the following facts stands proved:-

- (a) Appellant's letters were received by LF himself and sent to OS for further action, but lost in transit from the shed; or
- (b) Intimations were received in Receipt Section or by OS and these were either lost in transit or Munir Ahmad and others came to give witness have under fear or influence of their controlling officer (AME/Loco) have displaced these intimations from records or torn off so as to prove the fabricated charges.
- (c) Both the intimations were received by Sri Munir and now he has removed them from records and destroyed them to help sustaining the charges against the appellant framed by AME(Loco), because there is no record with LF office and all incoming letters are not registered in the Receipt Section Register. This lapse of the Rly. Administration is a violation of the rules made by the Central Govt. in this respect. As per statement of Sri Munir Ahmad, there is total absence of a system to establish "non-receipt" of my intimations sent to the Railway, whereas the appellant is having an authenticated document to establish the fact of my posting of the intimations.

31. That the I.O.'s presumption of my not sending the intimation and assuming Sri Munir's not receiving the intimation sent by the appellant as final in the absence of a full proof system has no leg to stand before law. Quite possible that those intimations were sent to AME(L) or DSE(L) for sanctioning of leave, the duration of leave being beyond LF/CB's powers. The I.O.'s presumption and creation of new facts to fill up gaps are not at all a valid evidence in the matter.

32. That I.O.'s presumption and suggestion in para 11 of his report is no evidence against the appellant and thus ultravires.

33. That I.O.'s imagination and presumption contained in para 12 of his report claiming to have established the fact that the appellant did not drop those two intimations dt. 4.2.86 and 4.3.86 are the clear and unambiguous exposure of his being prejudiced against the appellant and his acting at the behest of AME(Loco). His presumptions and imaginations have no validity before law. His those contentions are also proof of his being doubtful integrity because he has claimed the Govt. Officers to be corrupt and implied by claimed that the Govt. Officers are contributive to the corruptions and they have contributed in concocting false evidence in this case. This act of the I.O. is also an exposure of his corrupt conduct and his having the knowledge from his own deeds how the evidence can be corrupted. He has

certainly no knowledge that there are still persons opposite to his conduct and his imaginations and presumptions. Before commenting on any body's conduct etc., he should have peeped first in himself and his family members how far they are honest and to what extent they are corrupt and chit. An inveterate sinner is always the loudest in denunciation

34. That the I.O. has corruptly attempted to fabricate a tale to give a look to the same to have established his claim. But truth remained truth and his corruptions remained exposed, which has been explained in the few words in the next para.

35. That the I.O. asked the appellant whether the "Leave extension" letter addressed to LF/CB was dropped in the letter box by myself or through some other man. In reply I said that I myself had posted that in the GPO and delivered the same to the officer at the Counter, who after that gave me the receipt of posting. In the same context the I.O. asked me the reasons why I did not post the intimation letter in the post office of my home area and I had replied him the facts. The I.O. nakedly twisted the facts to fulfil his corrupt desire and he contended the leave extension letter dated 4.2.86 as of 4.2.86 (first letter) whereas the letter of 4.2.86 was a prayer for sanction of one month's leave and the second letter of 4.3.86 was for extension of leave. It is reiterated that I went to enquire about receipt of my first letter of 4.2.86 and drawal of my pay for the Feb/86. My reply pertains to the date 4.3.86, not 4.2.86 as the I.O. has corruptly contended. I had been to DRM Office after about one month of the first letter of 4.2.86. He has passed unwarranted comments like a mad ^{dog} to show his ever smartness and stock of few English words. Empty vessels sound much.

36. That the suggestion and wishful contortion of the I.O. has no leg to stand before law. He wishes to his choice of many "Shoulds" which are only his wishful thinking and no bearing to the facts. No common man carry any doubt in his acts, only the criminals, chits and anti-socials. Carry a doubt in their acts whether any clue has been left behind for their apprehensions. They, therefore, go on doing acts to cover up their misdeeds, whereas the general persons do a thing firmly and take that granted that their doings have reached the goal. The I.O. has proved him to be a hardened criminal and chit by his comments. Accordingly he considered the appellant alike. As he does, he also presumes others doing the same. As I had sent the written intimation by post and that also under postal certificates, in which case the appellant look it granted to its having reached to the addressee. Had I not dropped, I would have a criminal doubt like the I.O. and I would have tried to enquire about the receipt of my application, nor had the question of giving a fresh application arisen. It is affirmed that neither I tried to know whether the same had reached the addressee, nor had I felt necessary about the same, as I sent the communication through appropriate Govt. agency for the purpose.

37. That in case the intimations sent to the LF/CB did not reach to the Loco shed, I should have been called back to duties, or had there been any doubt about genuineness of my sickness, the Rly. ought to have advised me with a memo to report to the assigned Doctor. But there was total absence of any direction for me and thus it is the absolute choice of the Railway servant whether to avail of prolonged free railway treatment for recovery or to undertake treatments from Private Medical Practitioners for early ^{recovery}. Railways business is only to ascertain through Rly. Doctors whether I was honestly ill or pretended only and for this purpose I ought to have been directed in writing. But I was not issued any sort of direction either in writing or verbally and also that my PMC for the entire period of illness i.e. from 3.2.86 to 3.4.86 has been accepted and I had resumed my duties after being declared fit for duty by the Rly. Doctor. Hence, issuance of the Charge Sheet after resumption to my duties smacks malafide, prejudice, vindictiveness and unfair labour practice with me.

38. That the Contention of the I.O. in para 15 of his report that as per Sri A.C.Bhowmik I was shown absent from 3.2.86 to 3.4.86 has no meaning in my case, because till the time the sick period is regularised as leave due by competent authority, that period ought to be shown as absent as per extent rules. The I.O. here has attempted to show his over smartness due to mere prejudice. A statement of demerit.

39. That the wishful thinking and contentions of the I.O. in paras 16-18 of his report is baseless, ultravires in my case and irrelevant on the charges before law.

40. That the I.O.'s contention in paras 19-22 is only his madness and without any backing or authority of rules. Those are only a mad person's personal wishes, which has no weight before the eyes of law in the instant case.

41. That the appellant most respectfully submits that the I.O. appears to have gone mad and he needs to be referred to the Medical College or any lunatic asylum for his treatment and recovery, failing which the Railway is bound to incur severe losses and his family also to suffer lots. He has over enthusiastically gone far beyond his jurisdiction as an I.O. which are all illegal.

The charges against the appellant were violation of (a) devotion to duties (Rule 3(1) (ii)) (b) obligation of not doing any thing unbecoming of a railway servant. The I.O. over enthusiastically imported one additional charge of failure to maintain integrity at his own accord and here he acted above disciplinary authority in such excess jurisdiction. None of the charges have been proved by any valid evidence adduced during the inquiry proceeding as per charge sheet. None of the imaginations, presumptions, naked prejudicial wishes, wishful expectations of the I.O. is valid before the eyes of the law. Nor I have violated the provision of 3(1)(ii) or 3(1) (iii). Taking earned leave on self sickness or taking treatment of a registered medical practitioner for quick relief and curative treatment does not come within the definition of any of the provisions of the rules quoted in the charge sheet. My documents in support of sending the intimation of leave asked for is valid as per law of this land. Further, the appellant is a confirmed Railway Employee and as such he is entitled to getting 5 years period for going back to my duties as per extent Rly. Rules. This act of removal from service without waiting for 5 years and without asking the workman to join his duties is totally illegal and not maintainable before Law.

I, therefore, pray to your kindness to set aside the order of removal from services, with full back wages till the date of joining duties, for which act of yours I shall remain ever thankful to you.

Yours faithfully,

Lucknow Dated: 12-9-86

(RAM GOPAL MISHRA)
Fitter Khalasi, Loco Shed,
N.E.Rly., Chauragah.

Copy forwarded for further necessary actions as per Rule 21(2) of the R.S. 'D&A' Rules, 1968 to AME (Loco) N.E.Rly., Lucknow.

Lucknow Dated: 12-9-86

(RAM GOPAL MISHRA)
Fitter Khalasi, Loco Shed,
N.E.Rly., Chauragah.

Attested.
S.K. Jaiswal
ASD

ब अदालत श्रीमान्

[वादी अपीलान्त]

प्रतिवादी [रेंस्पाडेन्ट]

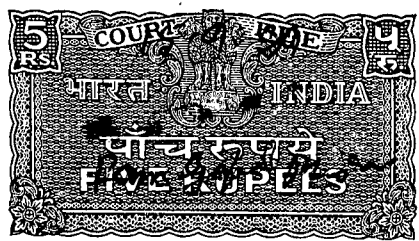
Central Administrative Tribunal

महादय

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वकीलतनामा



वादी (अपीलान्ट)

Ram Gopal Mishra

प्रतिवादी (रेस्पाडेंट)

Union of India others

नं० मुकद्दमा

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Satish Kumar Tripathi, Advocate

HN. 551 Ka/331 Kha, Bhilauran

चकील-

Alambagh Lucknow-5 महोदय
एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकैन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा 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 हारी 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 संवन्धा स्वीकार है और होना मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकर को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और ससय पर काम आवे ।

हस्ताक्षर श्रीमती पद्मिनी

साक्षी (गवाह) साक्षी (गवाह)

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स्वीकृत

S.K. Gupta
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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. No. 265 of 1989

Ram Gopal Misra Applicant

Versus

Union of India & Others Opposite Parties

COUNTER REPLY ON BEHALF OF OPPOSITE PARTIES

I, S M N Islam aged about 34 years,
son of S M Ours, do hereby solemnly
affirm and state on oath as under :

That the Official named above is working as
So. Div. Personal Officer in the Office of Divisional Railway
Manager, North Eastern Railway, Ashok Marg, Lucknow,
and as such he is fully conversant with the facts and
circumstances of the case. He has been duly authorised
to file this Counter reply on their behalf.

1. That the contents of para 1 of the application
need no comments.

Smt. Zuber
एवर सचिव न्यायिक अधिकारी
पूर्वोत्तर रेलवे - लखनऊ

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2. That the contents of para 2 of the application need no comments.

3. That the contents of para 3 of the application need no comments.

4. That the reply of para 4 of the application is being given as under :

4.1 That the contents of para 4.1 of the application need no comments.

4.2 That the contents of para 4.2 of the application need no comments.

4.3 That in reply to para 4.3 of the application, it is stated that the contents therein are not accepted, and in reply thereof it is stated that the applicant was posted as a fitter khallasi in the pay scale of Rs.196-232 by the orders of Assistant Mechanical Engineer, Loco, Lucknow, vide office letter No. E/M/227, dated 14/15-6-84, with retrospective effect, ~~and in reply thereof~~. As such the Appointing Authority is very much competent to issue a major memorandum and awarding punishment regarding removal, dismissal, termination and compulsory retirement.

4.4 That the contents of para 4.4 of the application are not accepted, and in reply thereto it

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वर सहायक कार्यालय अधिकारी
पूर्वोत्तर रेलवे - बखनठ

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is stated that in terms of Railway Board's letter No. E/D&A-83 RSG-14, dated 29-3-85, appointment of Enquiry Officer should invariably be made simultaneously with the issue of Charge-sheet. As such the instructions were correctly followed. Any allegation contrary to it is denied.

4.5 That in reply to para 4.5 of the application, it is stated that the applicant gave an application, dated 15-5-86 in defence to charge-sheet, asking for certain documents and clarifications. The relevant documents i.e. the copy of the report of Loco Foreman, Charbagh No. Ya/Chaturth Shraini/Anu-86, dated 5-4-86, on which the charge was based, was supplied to him along with the charge-sheet. The rest relevant documents were shown and explained to the applicant during the course of enquiry as desired by his defence Assistant, on which the order dated 6-6-86 was passed, by which the applicant was allowed to inspect the relevant record. A true photo copy of the order, dated 6-6-86, based on the application of the applicant, is being annexed as Annexure No. R-1 to this Counter reply.

At the closure of enquiry, the applicant never his note of defence under Rule 9(22), and did not say anything regarding dissatisfaction with the enquiry proceedings whatsoever including reasonable opportunity and facilities. Any allegation contrary to it is denied.

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Shri. M. L. Kulkarni
वर मन्त्र कर्मिक अधिकारी
पूर्वोत्तर रेलवे - बल्लारु

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4.6 That the contents of para 4.6 of the application are wrong, hence denied, and in reply thereof it is stated that the applicant sent no intimation regarding his unauthorised absence from 3-2-86 to 3-4-86 was given by the applicant before 3-4-86. The private medical certificate covering the period from 3-2-86 to 2-4-86 and duty fit certificate (Fitness certificate) from Divisional Medical Officer, Aishbagh, Lucknow, were submitted by the applicant on 3-4-86 in the office of Loco Foreman, Charbagh, Lucknow. Had the applicant actually given or posted any application as submitted during DAR Enquiry to Enquiry Officer, the first application, dated 4-2-86 must have borne the period of sickness of 2 months, as the Medical Certificate issued by Vaid Pearey Lal Gupta (Dated 3-2-86), 7, Sidhanath Market, Nandan Mahal Road, Lucknow, bears the period of sickness of two months and not one month. A true copy of the Medical Certificate submitted by the applicant is being annexed as Annexure No. R-2 to this Counter Reply.

Actually, the applicant concocted the alleged applications, dated 4-2-86 and 4-3-86 to cover up his folly of neither reporting to Railway Doctor nor intimating to Loco Foreman, regarding the reasons of his absence. The applicant has submitted in his reply to question No. 10, asked during the course of enquiry,

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like "Maine swayam G.P.O. Lucknow main lifafe main letter rakhkar letter box main post kiya." The true copy of the extract of the said statement of the applicant is being annexed as Annexure No. R-3 to this Counter reply. Whereas the letters sent under Certificate of Posting are not posted in letter box, but given to the counter clerk who grants the Certificate of Posting, and keeps the letters with him for further disposal.

4.7 That the contents of para 4.7 of the application are not accepted. In reply thereof, it is submitted that the applicant remained absent without any authentic information from 3-2-86 to 3-4-86 unauthorisedly as detailed in previous paras of this reply. The rest of the allegations contained in para under reply are denied as those are false.

4.8 That the contents of para 4.8 of the application are not accepted, and in reply thereof, it is stated that the private medical certificate was deposited by the applicant in the office of Loco Foreman on 3-4-86. The applicant was directed to obtain duty fit certificate from Divisional Medical Officer, Aishbagh, Lucknow, and applicant was allowed duty on 4-4-86 by Loco Foreman, Charbagh, on that basis. The Duty Fit Certificate by a railway doctor is neither the sanction of period as

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leave due nor directs the controlling officer to do so.

The privilege of leave cannot be claimed as a right in all the cases, but is discretionary.

4.9 That in reply to the contents of para 4.9 of the application, it is stated that the Duty Fit Certificate issued by the Divisional Medical Officer, Aishbagh, Lucknow, is only a certificate of declaration that the person to whom it has been given is fit to perform his duties, but it does not recognise the period of alleged illness, as during that period the applicant never contacted the Divisional Medical Officer or never consulted any railway medical officer.

4.10 That the contents of para 4.10 of the application are not accepted. In reply thereof it is stated that the applicant was issued major memorandum on the grounds of remaining unauthorisedly absence from 3-2-86 to 3-4-86, which is a serious misconduct, thereby violated the Railway Service Conduct Rule 1966. The applicant was removed from service after a duly conducted DAR enquiry under the rules in which he was found guilty of the charges levelled against him. As such there is no such limitation of 5 years under DAR Rules.

4.11

That the contents of para 4.11 of the application

Shri Usha
वर मंडल कामिक अधिकारी
पूर्वोत्तर रेलवे - लखनऊ

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are not accepted. In reply thereof it is stated that the copy of the report of Loco Foreman, Charbagh, was supplied to the applicant along with the charge memorandum. The applicant made no such objection during DAR enquiry even, and all the documents available on record were also shown to the applicant and his defence assistant as per their request (Annexure No. R-1 verifies the same). Anything contrary to it is denied.

4.12 That the contents of para 4.12 of the application are wrong, hence denied. In reply thereof it is stated that the statement of Loco Foreman and prosecution witnesses were recorded first in presence of the applicant and his defence assistant (Statements recorded has been signed by both of them). The other witnesses were examined in relation to the Loco Foreman's statement, to which the applicant or his defence assistant raised no objection.

4.13 That the contents of para 4.13 of the application are not accepted. In reply thereof it is stated that the applicant did not send any request during his wilful absence. Later on he submitted a private medical certificate and request for leave on 4-4-86 after his unauthorised

Sw. Ulan
वर मण्डल कामिक अधिकारी
पूर्वोत्तर रेलवे - बलनगढ़

-8-

absence, which is under the competent authority to consider on the basis of its genuinity. Anything contrary to it is denied.

4.14 That the contents of para 4.14 of the application are not accepted. In reply thereof it is stated that the employees covered by Railway Service Conduct Rules as well ~~as~~ is expected to maintain his conduct accordingly. Anything contrary to it is denied.

4.15 That the contents of para 4.15 are not accepted. In reply thereof it is stated that the rules are pious and to be followed by the employee and not to be violated. In the instant case the applicant has violated the rules. Anything contrary to it is denied.

4.16 That the contents of para 4.16 of the application are not accepted. In reply thereof it is stated that the report of the Enquiry Officer contains the detailed facts, by which he concluded his findings. The finding recorded by the Enquiry Officer is based on proper appreciation of the facts. Anything contrary to it is denied.

4.17 That the contents of para 4.17 are wrong, hence

Smt. Ula
एवर मण्डल कामिक अधिकारी
पूर्वोत्तर रेलवे - लखनऊ

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denied. In reply thereof it is stated that the disciplinary authority recorded its finding in detail before passing the order of removal on 18-7-86. Only thereafter the applicant was removed from service. If this Hon'ble Tribunal would require the finding recorded by the disciplinary authority on the personal file of the applicant, would be produced before this Hon'ble Tribunal.

4.18 That the contents of para 4.18 of the application are wrong, hence denied. In reply thereof it is stated that the appeal of the applicant was rejected by the Divisional Mechanical Engineer, Lucknow as well as Divisional Railway Manager, Lucknow, after due consideration and proper appreciation of the facts and circumstances. A true copy of the order passed by the Divisional Railway Manager on 24-2-89 is being annexed as Annexure No. R-4 to this counter reply.

4.19 That the contents of para 4.19 of the application are wrong, hence denied. In reply thereof it is stated that the Assistant Mechanical Engineer is the Disciplinary Authority of the applicant, as he is the Appointing Authority also. As such there is no violation of any rule and provision meant thereof.

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पूर्वोत्तर रेलवे - बल्लभपुर

4.20 That in reply to the contents of para 4.20 of the application, it is stated that the grounds which have been taken by the applicant, are false, frivolous, concocted and baseless. As such those are not sustainable in the eyes of law, and the applicat^{tion}~~ion~~ deserves to be dismissed throughout.

5. That in reply to para 5 of the application, it is stated that the grounds for relief and legal provisions mentioned therein are based on misrepresentation and misconception of the facts. Those are false, frivolous and concocted, and as such not sustainable in the eyes of law. The applicant does not deserve any relief, and the application deserves to be dismissed.

6. That the contents of para 6 of the application need no comments.

7. That the contents of para 7 of the application need no comments.

8. That in reply to the contents of para 8 of the application, it is stated that the applicant does not deserve any relief as prayed. In view of the facts and mentioned in the above paras of +

application as such deserves to be dismissed throughout.

9. That the contents of para 9 of the application need no comments.

10. That the contents of para 10 of the application need no comments.

11. That the contents of para 11 of the application need no comments.

Date. 12-4-91

Suzila
(एवर मण्डल कार्यालय अधिकारी)
पूर्वांचल रेलवे - लखनऊ

VERIFICATION

I, S. M. N. Islam, Sn. Div. Personal Officer

North Eastern Railway, Lucknow, do hereby verify that the

contents of paras 1 to 11 are true to my

personal knowledge, and on knowledge derived from perusal

of records relating to the instant case kept in the official

custody of the answering respondents. Nothing has been

concealed, and nothing stated therein is false.

Suzila
(एवर मण्डल कार्यालय अधिकारी)
पूर्वांचल रेलवे - लखनऊ

A63

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW
O.A. No. 265 of 1989

Ram Gopal Misra Applicant

Vs.

Union of India & Others Opposite parties

Annexure No. R- 1

To

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The Enquiring Officer

Sir

So for documents
delivered for and concerned,
these (which were available for
relaying) will be given for
receiving - DAR
by the court -
presently
non-fatal

Reg:- DAR enquiry against Sii
Ram Gopal Misra R/Kh CB sheet
the SPS Sii Ram Gopal Misra took this
defence dt 15.5.86 and request for supply
of copies of certain documents which has
not been addressed so far. It would not
be possible to proceed further without
examination here of. Further ACMT/KD
has instructed me to come back on
duty to expedite the monthly statement
due on 10.6.86. Further date may kindly be
fixed accordingly.

6/6/86

B. P. Tripathi
D/ Counsel

Shri 2 W
वर मन्त्रालय प्रधिकारी
द्वारा रजिस्टर - जलनक

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW
O.A. No. 265 of 1989

Ram Gopal Misra Applicant

Vs.

Union of India & Others Opposite Parties

Annexure No. R-2

Vaid Pearay Lal Gupta

Ayurved Bhishag, R.A.M.P. (B.I.M.)

Regd. No. 21577

Phone Resi. : 47772

.. Clinic PP : 49036

7, Sidhnath Market

Nadan Mahal Road,

Lucknow... 3... 2... 1986

Statement of Ram Gopal
Misra whose signature
is given below has been
suffering from abdominal
pain, from 28th 11/8. He
is therefore, advised complete
rest for 2 months from
3.2.86 to 4.4.86 to return
to normal health. He
is under my treatment.

श्रीमान श्री

Regd No 166

Vaid Pearay Lal Gupta

Regd No 21577

Ayurved Bhishag.

श्रीमान श्री

Vaid Pearay Lal Gupta

Regd No 21577

Ayurved Bhishag.

सुनिश्चय

इस मसलत का मिक अधिकारी

पूर्वोक्त रेलवे - लखनऊ

212

30-
 1. ਕਿਸੇ ਵੀ ਨਿਵਾਸੀ ਨੂੰ ਆਪਣੇ ਆਪਣੇ
ਨਿਵਾਸੀ ਖਾਤੇ 'ਤੇ DRM ਲਾਗੂ ਕਰਨ
ਦਾ ਹੁਕਮ ਦਿੱਤਾ ਗਿਆ ਹੈ।
ਜੇਕਰ ਕਿਸੇ ਨਿਵਾਸੀ ਨੇ ਆਪਣੇ
ਖਾਤੇ 'ਤੇ DRM ਲਾਗੂ ਨਹੀਂ ਕੀਤਾ,
ਤਾਂ ਆਪਣੇ ਖਾਤੇ 'ਤੇ

स्मृतिकुल साधनापाठ्य

3-1-86

5-12. અમર જામ અં 1.2.86 તો અમર જામ
જામ મેરે ?

30- ફે, અદ જામ જામ 10.2.86 જામ
જામ જામ જામ જામ જામ જામ જામ જામ
જામ જામ જામ જામ જામ જામ જામ જામ
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Mot - At this stage the delinquent employee &
defence counsel were informed that the
proceedings are being closed. As regards
witness of Mr. M.L. Dwivedi H/C Clerk CB
shed is concerned, it relates to certain
policies of dealing with the unauthorised
employees in general, and such policy questions
have already been asked from Mr. M.L. Dwivedi
hence witness of Mr. M.L. Dwivedi dropped,
in spite of insistence by the D/C.

2. Some copies of afo. proceedings have been
made over to delinquent employee.

રાજીવભાઈ મજા

3-7-86 જામ જામ

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW
O.A. No. 265 of 1989

Ram Gopal MisraApplicant

Vs.

Union of India & OthersOpposite Parties

Annexure No. R- 4

NORTH EASTERN RAILWAY

OFFICE OF THE
DIVISIONAL RLY. MANAGER(P),
LUCKNOW.

DATED: 24-2-1989.

No. E/PC/RGM/FKha.

Shri Ram Gopal Misra,
Ex. Fitter Khalasi THROUGH

Loco Foreman,
Charbagh Shed.
N.E. Railway.

Sub:- Appeal of Sri Ram Gopal Misra for
Revision under Rule 26 of DAR 1962
dated 9-3-1987.

====

On the above appeal ADRM has passed the following
orders:-

" I have gone through the entire case including revision petition dated 9-3-87 of Sri Ram Gopal Misra ex Fitter Khalasi/GB Shed. The points brought out by Sri Misra to ~~prove~~ that he had send timely intimation to the railway administration about the periods of his absence and his contention that he was not on unauthorised absence during the said period as per extent rules, are not convincing. In this connection I have also gone through the proceedings of the DAR enquiry as well as the various documents submitted by Sri Misra in connection with this enquiry. It is apparent from the papers on record that Sri Ram Gopal Misra in his application dated 4-2-86 and 4-3-86 had mentioned that due to his sickness he was unable to resume his duties. In this application dated 4-2-86 he had mentioned that one month time will be required for his recovery and likewise in his application dated 4-3-86 he had againe alleged to have intimated that one month more will be required for his recovery. But Private Medical certificate bearing the date 2-2-86 produced by Sri Misra recommends the period of leave for complete rest for two months with effect from 3-2-86 to 2-4-86. Had the application dated 4-2-86 been actually posted by Sri Ram Gopal Misra, it must have borne the period of two months and not one month. Not only that, Sri Misra while attending LF's Office on 3-4-86 with his sick and fit certificates and applying for regularisation of the period of his absence vide his application dated 4-4-86 has not mentioned anything that he had intimated regarding his sickness to LF/GB pre-hand by two applications, except that he was in private treatment. If the so claimed application had been a fact, in the first information so as to emphasis his innocence and claim for regularisation of the period covered under RMO.

Contn....2

Smt. Ula

वर मंडल कामिनी अधिकारी

प्रतिवे. वरुण

From the above it is established beyond doubt that Sri Ram Gopal Misra Ex Fitter Khalasi/CP Shed was on unauthorised absence from 3-2-86 to 3-4-86 and no intimation from him in respect of his periods of absence was received by the Hly. Administration the charges levied against him are, therefore proved beyond doubt and the punishment given to him in this case is considered just and adequate, and the same is upheld"

For Divl. Hly. Manager (P.),
Lucknow.

E. H. Man

23/2/89

Om 28/2

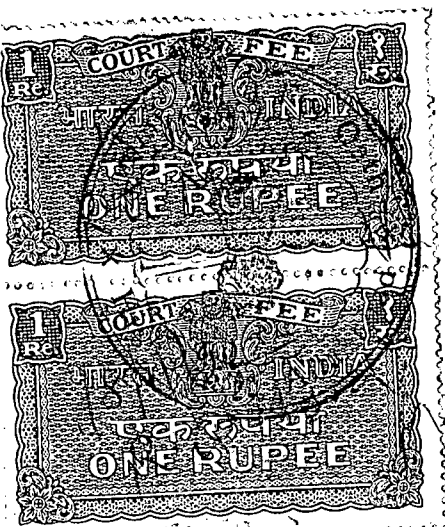
orders at
N/364N/37
Please sign.

H. Man
23/2/89

24/2
for signature

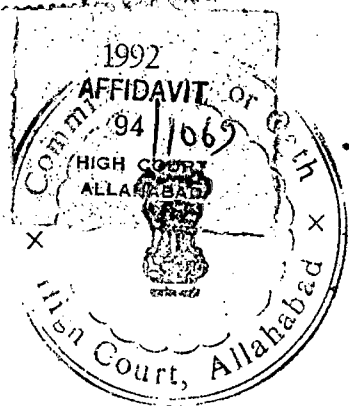
Sm. Ulan
वर मण्डल कामिक अधिकारी.
पूर्वोत्तर रेलवे - लखनऊ

A69



BEFORE THE HONORABLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A. No. 265 of 1989



Ram Gopal Misra

.....

Applicant

Versus

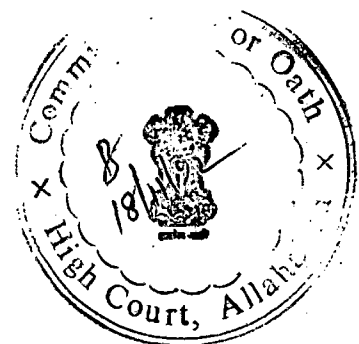
Union of India and
others.

.....

Opp. Parties.

AT
8/2/11

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT
TO THE COUNTER AFFIDAVIT FILED BY SRI S.N.M. ISLAM
ON BEHALF OF OPP. PARTIES.



I, Ram Gopal Misra, aged about 37 years s/o
Sri Misri Lal Misra, r/o House No. 173, Shahganj, Chowk,
Lucknow do hereby solemnly affirm and state on oath as
under:-

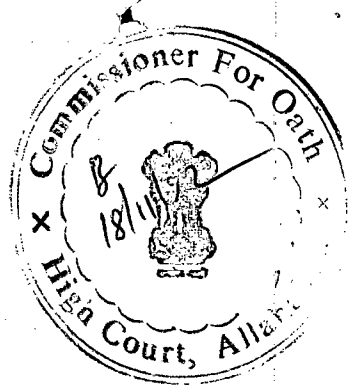
That the deponent is applicant himself in the
above mentioned case as such he is fully conversant with
the facts of the case. He has also been read out and

explained the contents of the counter affidavit filed on
behalf of opp. parties by Sri S.N.M. Islam which has been
understood by him and its parawise reply is as under:-

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- (1) That the contents of para 1 of the C.A. needs no reply.
- (2) That the contents of para 2 of the C.A. needs no reply.
- (3) That the contents of para 3 of the C.A. needs not reply.
- (4) That the contents of para 4.1 and 4.2 of the A.A. needs no reply.
- (4.3) That the contents of para 4.3 of the C.A. are Denied being incorrect in para 4.3 of the application are re-~~al~~terated.
- (4.4) That the contents of para 4.4 of the C.A. are also denied being incorrect and wrong and the facts stated in para 4.4 of the application are re-~~al~~terated.
- (4.5) That the contents of para 4.5 of the C.A. as stated are not correct hence denied and the facts stated in para 4.5 of the application are re-~~al~~terated.
- (4.6) That the contents of para 4.6 of the C.A. as stated are denied and the divertment made in para 4.6 of the application are re-~~al~~terated.
- (4.7) That the contents of para 4.7 of the C.A. as



रामप्रताप मिश्र

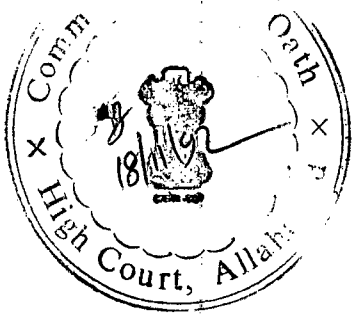
-3-

stated are denied and the contents of para 4.7 of the application are re-~~e~~iterated .

It is further stated that under Chapter XI Medical Attendance and Medical Assistance Rules of the Railway Establishment Rules and it has been specifically prescribed that a Railway Servant residing beyond the jurisdiction of a Railway Doctor must, if he requires leave on medical certificate , submit without delay the medical certificate issued by a registered medical practitioner. It has again been clarified that private medical certificate issued by registered Medical practitioners, whether Allopath, non-Allopath, Vaid, Hakims etc. may also be accepted for the purpose of grant of leave to non-gazatted staff(Railway Boards No. E-54 ME/Medical of 4.05.57 and 60/MSH/7/29 of 29.11.60.

(4.8)

That the contents of para 4.8 of the C.A, are denied and the contents of para 4.8 of the claim petitionare re-~~e~~iterated.



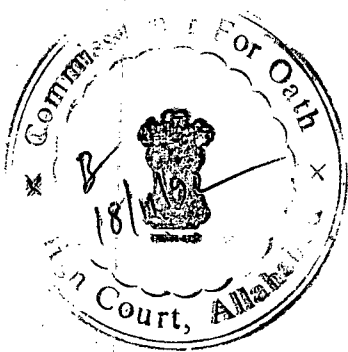
राजगोपालाचारी

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-4-

(4.9) That the contents of para 4.9 of the C.A. as alleged are denied and the facts stated in para 4.9 of the application are re-~~el~~terated. It is further stated that during the alleged period of absence the deponent was seriously ill and was under the treatment of a private Medical Practitioner whose medical certificate has been submitted to Opp. parties. It is further stated that as per the orders of Railway Board (referred in para 7) the Medical Certificate regarding the illness of a Class IV Railway employee issued by registered Vaid, Hakims etc. may also be accepted.

(4.10) That the contents of para 4.10 of the C.A, as stated are denied and the facts stated in para 4.10 of the application are re-~~el~~terated. It is specifically denied that deponent remained un-authorisedly absence from 3.02.86 to 3.04.86 but in fact he was ill and was under medical treatment of a private medical practitioner . It is denied that the deponent has violated any provision of Railway Service Conduct Rules, 1966 but the applicant has been illegally ordered to be removed from his services in most illegal



राजगोपालाचारी

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~~and~~ arbitrary manners.

(4.11 to 4.20)

That the contents of para 4.11 to 4.20 of the C.A. as stated are specifically denied and the contents of para 4.11 to 4.20 of the application are re-~~re~~iterated.

(5) That the contents of para 5 of the C.A. are denied and it is stated that the grounds for relief and Legal provisions mentioned in the application are sound, legal and just and the application deserves to be allowed with cost.

(6) That the contents of para 6 of the C.A. needs no reply.

(7) That the contents of para 7 of the C.A. needs no reply.

(8) That the contents of para 8 of the C.A. are denied and it is stated that the application bears merits as such is deserves to be allowed with Costs.

(9) That the contents of para 9 of the C.A. needs no reply.

That the contents of para 10 of the C.A. needs



राजगोपालाचारी (10)

6/----

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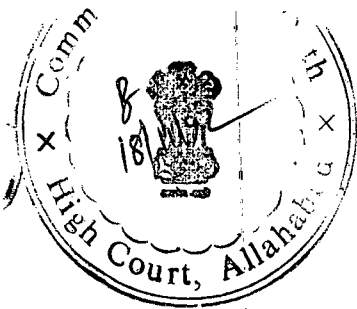
no reply.

(11) That the contents of para 11 of the C.A. needs
no reply.

राम गोपाल मिश्रा

LUCKNOW: 18th Nov. ✓
DATED: OCTOBER: 1992

DEPONENT.



VERIFICATION

I, Ram Gopal Misra, the deponent do
✓ 4, (4-3) to (4-9) (4-11) 4, 6, 7, 9, 11
hereby verify that the contents of para 1 to 11

of this affidavit are true to my own knowledge,
✓ para (4-10), 5, 8 ✓ are true and the basis of
record of the case and legal advice received from

Counsel which all I believe to be true and no material
has been concealed. So help me God.

LUCKNOW: 18th Nov ✓
DATED: OCTOBER: 1992

राम गोपाल मिश्रा

DEPONENT

I identify the deponent who has signed
before me.

(T.N. GUPTA)
Advocate.

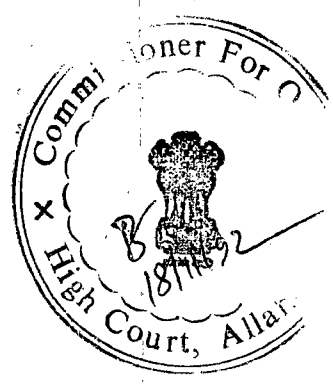
A25

Solemnly affirmed before me on ...18/11/92
..... at 10.30.....AM/PM by Sri...Ram Gopal
Misra..... the deponent who is identified by Sri T.N. GUPTA
Advocate, High Court, Lucknow Bench.

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

LUCKNOW: 18th Nov.
DATED: OCTOBER, 1992

B. N. Misra, Advocate



OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench
No. 94 / 1069
Date 18/11/92

NS/CCS
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VAKALATNAMA

Before
In the Court of

Central Administrative Tribunal Bench Lucknow

OA No. 265 of 1989 (C)

Ram Gopal Misra

Versus

Union of India and others

1/Wc. K. P. Singh Divl Rly. Manager NE Rly. Lucknow and

R. K. Singh Addl Divl Rly Manager NE Rly. Lucknow

do hereby appoint and authorise Shri Umesh Chandra & Akhilesh Pandey
Krishna Chandra Adv
Lucknow

Railway Advocate to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Application/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

1/Wc hereby agree to ratify all acts done by the aforesaid Shri.

38/ Krishna Chandra & Akhilesh Pandey
Railway Advocate, Lucknow

in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this

day of 198..

5.1.90
(R. K. Singh)

अपा मंडल रेलवे प्रबन्धक,
पूर्वोत्तर रेलवे, लखनऊ

12/1
(K. P. Singh)

मंडल रेलवे प्रबन्धक,
पूर्वोत्तर रेलवे, लखनऊ

NER-84850400-8000-4 7 84

NOT 15

This case will be argued by
Shri Umesh Chandra & Advocate

VAKALATNAMA

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Before

In the Court of

Central Administrative Tribunal Bench Lucknow

OA No. 265 of 1989 (L)

Ram Gopal Misra

Versus

Union of India and others

4/We. Keshar Deo Sr Dist Meech Engr NERly Lucknow

and S M Prasad Asstt. Meech Engr NERly Lucknow

do hereby appoint and authorise Shri. B. K. Shukla

Railway Advocate, Lucknow to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Applicaion/Appcal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

4/We hereby agree to ratify all acts done by the aforesaid Shri. B. K. Shukla

Railway Advocate, Lucknow

in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this

day of 1989

(S. M. Prasad)

Keshar Deo
(Keshar Deo)Accepted
B. K. Shukla

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NS/CCS

VAKALATNAMA

Before
in the Court of

Central Administrative Tribunal Bench Lucknow
OA 265/89 (L)

Plaintiff
Defendant

Ram Gopal Misra

Claimant
Appellant

Versus

Defendant
Plaintiff

Union of India and others

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri.....

B. K. Shukla

Railway Advocate Lucknow

..... to appear, act, apply, plead in and prosecute the above described suit/appeal/proceeding on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying, Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/pleader or any Counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceeding against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

✓ The President hereby agree to ratify all acts done by the aforesaid Shri. B. K. Shukla.....

Railway Advocate Lucknow

in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of

India this the day of 198.....

Dated 198.....

NER-84850400-8000-4 7 84

Accepted
B. K. Shukla
Advocate

Keshav Des.
(Keshav Des.)
Designation of the Executive Officer,

VAKALATNAMA

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Before
In the Court of

Central Administrative Tribunal Bench Lucknow

OA No. 265 of 1989 (L)

Ram Gopal Misra

Versus

Union of India and others

1/We. K. P. Singh Divl. Rly. Manager NERly Lucknow

and R. K. Singh Addl. Divl. Rly. Manager NERly Lucknow

do hereby appoint and authorise Shri. B. K. Shukla

Railway Advocate, Lucknow to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Applicaion/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

1/We hereby agree to ratify all acts done by the aforesaid Shri. B. K. Shukla

Railway Advocate, Lucknow

in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this.

day of 1989

(R. K. Singh)

अपर मंडल रेलवे प्रबन्धक,
पूर्वोत्तर रेलवे, लखनऊ

(K. P. Singh)

मंडल रेलवे प्रबन्धक,
पूर्वोत्तर रेलवे, लखनऊ

Accepted
B. K. Shukla
Adm.