

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow BENCH

OA/TA/RA/CP/MA/PT 298/89 of 20.....

Lalji An Mishra Applicant(S)

Versus

C.O. I. Cant. Respondent(S)

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Certified that the file is complete in all respects.

B/C Wee dtd out / destroyed

Signature of S.O.

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW

Circuit
Date of
Date of Recd.

Registration No. _____ of 1989

Deputy Registrar(J)

APPLICANT(S) _____

RESPONDENT(S) _____

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 delayed time?
c) Has sufficient cause for not making the application in time, been shown?
4. Has the document of authorisation/Vakalatnamah been filed?
5. Is the application accompanied by B.D./Postage stamp of 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/referred upon by the applicant been 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 space?
8. Has the index of documents been filed and paging done properly?
9. Have the chronological details of representation made and the outcome 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?

74

74

74

74

74

74

74

74

Particulars to be Examined

Endorsement as to result of examination

Application/duplicate
copy/spare copies signed ?

Are extra copies of the application
with Annexures filed ?

a) Identical with the Original ?

b) Defective ?

c) Wanting in Annexures

Yes _____ No _____ ?

13. Have the file size envelopes
bearing full addresses of the
respondents been filed ?

14. Are the given address the
registered address ?

15. Do the names of the parties
stated in the copies tally with
those indicated in the appli-
cation ?

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. 6 of the
application ?

a) Concise ?

b) Under distinct heads ?

c) Numbered consecutively ?

d) Typed in double space on one
side of the paper ?

18. Have the particulars for interim
order prayed for indicated with
reasons ?

19. Whether all the remedies have
been exhausted.

anush/

ORDER SHEET

①

2
290/1965

58 number of order and date	Brief Order, Mentioning Reference if necessary	How compl with and date of complan
27-10-89	<p><u>Hon'ble Justice K. Nath, V.C.</u></p> <p>The order of punishment of the applicant by reducing him to a lower grade passed by the Divisional Commercial Superintendent is challenged to be without jurisdiction on the ground that the applicant had been promoted as Head Goods Clerk under the orders of the Divisional Railway Manager. The applicant's learned counsel has filed a supplementary application to state categorically that the Divisional Commercial Superintendent is lower in rank to the Divisional Railway Manager.</p> <p>Admit.</p> <p>Issue notice to opposite parties to file a counter within four weeks to which the applicant may file a rejoinder within two weeks thereafter.</p> <p>In the matter of interim interim relief issue notice and list for orders on 10-11-89. Till that date, the operation of the impugned order dated 25-9-89 of reduction of the applicant to a lowe grade contained in Annexure 1 shall remain stayed. A copy of this order alongwith the application meant for Opposite parties No.2 may be delivered to the learned counsel for the applicant which the applicant undertakes to serve on the opposite parties No.2 out of court. Notices to opposite parties 1 and 3 shall be issued a by the office in the narmal cause.</p> <p>V.C.</p> <p>rrm/</p>	<p>Notice of O.P. No. 123 has been recd. by the HC for the applicant on 30.10.89. Cf 2, 3 & 4 attached.</p> <p>Notices were issued O.P. Nos 1, 2, 3 on 30.10.89. Neither reply nor any answer has been given.</p> <p>The applica- not filed ac- gement.</p> <p>Submitted</p>

Dinash

DT 2/8/29 (L)

(3)

2/2/40.

Hon. Justice K. N. W. V.C.
Hon. K. J. Raman, A.M.

S. m. D. P. Srivastava for the applicant
and Shri Anil Srivastava for the
respondents are present.

S. m. D. P. Srivastava says that
the applicant's departmental
appeal has been rejected by
an order dated 17/11/29 in
respect of which the applicant
will apply for amendment
of the petition. The application
for amendment may be
filed within three weeks and
the case be listed for
orders on 2/3/30.

W.R.

A.M.

W.R.

V.C.

OR

No Amendment
Application has
been filed.

S. J. order

1/3/30

2.3.90 Hon. Justice K. N. W. V.C.
Hon. K. J. Raman, A.M.

We have heard the
learned counsel for the parties
on the amendment application.
Since the amendments, as prayed for,
are necessary on account of disposal
of the departmental appeal, it is
allowed. The applicant shall incorporate
the amendments and file an amended
copy of the petition within two weeks.
The respondents may file a counter-
affidavit within four weeks thereafter.
List for further orders on

27.4.90

W.R.

A.M.

W.R.

V.C.

Neither
the applicant has not
submitted amendment.

P.O.

28/4/30

5.11.90

D.R.

This case has been
taken up today,
because 1.11.90 was
declared holiday
due to disturbances.
Respondents have
also not filed
counter to the
amended petition.
Due to resolution
of Bar Association
case is adjourned
to 5.12.90

✓

5.12.90

D.R.

Respondent
did not appear
applicant's side
in present
second opportunity
to file counter
on merits
opportunity is
allowed. For
3/11/90 to file
counter

✓

5/12/90

3.1.91

D.R.

Both the parties are
present today. O.P's
ld. Counsel did not
file counter till
today. Case is list
before me on 1/1
for filing C.A. c

(5)

15.1.91

Applicant is
present. Respondent is not
present. He did
not file Counter
Petition on 4.2.91
for filing Counter.
file

6/2/91

Both the Ld. Counsel
are present.
O.P. desires time
to file the Counter
He is directed
to file it by
28/3/91

1.4.91

D.R.

Applicant's side is
present. O.P.'s side is
absent today. Counter
has not been filed yet.
Respondent to file Counter
by 16.4.91. No further
opportunity shall be provided
to the respondent.

⑦

O.A. 298/89

31.7.91

D.R.

Both the parties
are absent today.
Counsel for the
applicant to file
Rejoinder by 6/9/91.

6.9.91

D.R.

Counsel for the O.P.
is present. Applicant
to file Rejoinder by
24/10/91.

24.10.91

D.R.

Both the parties are
present. Sri D. P. Srinivasan
desire to file Rejoinder
by 2/12/91.

2.12.91

D.R.

Applicant is absent.
O.P. is present. Applica-
cant to file Rejoinder
by 20/2/92.

DA 298/89

19.11.92

From Mr Justice V.C. Smeaton
for Mr 10/6/93, Am

2 weeks time to file
Response is granted. but
for hearing on 11-1-93.

Am

LC
RC

2

13/4/93 The file has been traced
undated. The date has fixed
month 1: 10.5.83

for hearing. From parties
through V.C.

DRD

13/4/93

21/5/93.

4/93.

clerk's office
15/4/93

10.5.93

No sitting at D. on 10.5.93

20.7.93 From Mr S. de P. J. M.

None responds on
behalf of either of the parties
but this case before D.R.

25.8.93

2/93

DA 298/89
(21)
(22)

24/10/93

✓

SM

sup ①
D

11.4.94

No binding of D.M. only to
26.5.94
moe

CA 20.8/894

A/A

26.5.94

Jointly. Mr. Justice B.C. Saksone vs
Jenm. Mr. V.K. Seth. Am

On re-admission application
of Dr. C.P. Saksone learned Counsel
for apph. Out - adjourn to 29.7.94

Bcl
Vc

Am

2

of
RA not filed
S.F.H.
28.7.94

29.7.94

lawyers abstain from judicial
work. adjourn to 9.9.94.

9.9.94 Lawyers abstain from judicial work
colly 6.10.94
moe

6/11/94

Hon. Mr. V.K. Seth, A.P.
Hon. Mr. D.C. Karmg. J.

List on 25/11/94 for
order.

26

J.M.

h k
A.M.

of
RA not filed
S.F.H.
29/10/94

GA 298/87

1/10

(21)

16/2/95 HON.MR.JUSTICE B.C.SAKSENA, V.C.
HON.MR.V.K.SETH, A.M.

List on 1/3/95 for hearing.

GA
298/87
20/1/95

L K
MEMBER (A)

bol
VICE-CHAIRMAN.

1.3.95

Hon. Mr. V. K. Seth. A.M.
Hon. Mr. D. C. Varna B.M.

on the request of Counsel
for appell. and adjourn to 7.4.95 -

L K
D.M.
Jm

7.4.95

Hon. Mr. Justice B. C. Saxena V.C.
Hon. Mr. V. K. Seth A.M.

on the adjournment application
of Counsel for appell. and adjourn to
27.4.95

L K
D.M.
bol
K

27.4.95

No listing of D.M. adjourn to
27.5.95
bol
D.M.

17.10.95

No fitting of D.B. at 2.30 P.M. Case is
adj. to 8.12.95.

D
D.O.C.

8.12.95

No change D.B. adj. to
02.1.96
D.O.C.

or
f. Coe
complect
24/12/95

02-1-96

Horible. Mr. T. K. B. C. Saksena. V.C.
Horible. Mr. V. K. Seth. A.M.

Learned counsel for
the applicant has sent an
illness slip. No further adjourn-
ment shall be granted.

Up on 31-1-96 for
hearing.

L.S.
A.M.

Boh
V.C.

or
sub P.A. not
f. Coe
S.H.
24/11/96

31.1.96

Heard. Mr. V.K. Seth. A.M.
Heard. Mr. D. C. Vame. 3 m.

on the adjournment.
app. of Counsel for
app. of adjournment 15-2-96
no further adjournment - still be
trial.
J.M.
A.M.

or
app P.A. not
have been
examined
S.H.
25/2/96

15.2.96

Case out - search adj. to
27.3.96
D.O.C.

OA 288/89 ~~✓~~

27/3/86

Judgment with
the preceding me
on 1.7.96 from
Amf (Steno)
27/3/86

Hon. Mr. S. San Lupa, AM
Hon. Mr. D.C. Verma, J.M.

Heard the arguments.
Judgment dictated
separately.

~~S~~
J.M.

AM.

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

....

Original Application No. 298 of 1989

this the 27-th day of March, 1996.

HON'BLE MR S. DAS GUPTA, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Lalji Mishra, aged about 52 years, S/o Late Gomti Prasad Mishra, R/o Station Road, Pacheerwa District Gonda, presently functioning as Head Goods Clerk, N.E. Rly, Sohratgarh.

Applicant

By Advocate : None

Versus

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

2. Divisional Commercial Superintendent, N.E. Rly. Lucknow.

3. Enquiry Officer, Sri N.P. Singh, Assistant Commercial Superintendent (II) N.E. Rly., Lucknow.

4. Senior Divisional Commercial Superintendent, N.E. Rly., Lucknow.

Respondents

By Advocate : Sri Anil Srivastava

ORDER (ORAL)

S. DAS GUPTA, MEMBER(A)

This application has been filed under section 19 of the A.T. Act/1985, challenging the order dated 25.9.89 (Annexure-1) passed by respondent No. 2 imposing the penalty for reduction in rank. During the pendency of the

this O.A., the appeal of the applicant was rejected by the order dated 12.12.1989. By the subsequent amendment in the O.A., this order was challenged and prayed that both the orders be quashed and the applicant be allowed to continue as Goods Clerk and paid salary and usual allowance attached to the posts

2. The facts of the case is that the applicant was working as Head Goods Clerk when he was served a major penalty charge memo dated 6/11.5.88 in which several charges were levelled against the applicant. An Enquiry was held, and enquiry officer was found that all the charges were ~~not~~ established. Agreeing with the findings of the enquiry officer, the respondent No. 2 imposed the penalty for reduction in rank by the impugned order dated 25.9.89. The applicant filed an appeal which was rejected by the impugned order dated 12.12.89.

3. The applicant has challenged the order of disciplinary authority on the ground that the same has been passed by an authority which is not competent to take disciplinary action. He has pleaded that the charges against him has not been proved in the enquiry. A further contention is that the applicant was not ^{given} an adequate opportunity to defend himself. Lastly, he pleaded that the copy of the enquiry report was not given to him. Therefore, an opportunity to challenge the findings of the enquiry officer before the same was accepted by the disciplinary authority has been denied.

4. The respondents have filed their Counter

Wb

affidavit in which it is submitted that on receipt of report from Sri S.P. Srivastava, preliminary enquiry was held and after the said inquiry, a memorandum of charges was issued. The inquiry was held in accordance with the rules and the charges were found to have been established. The inquiry officer's report was considered and accepted by the disciplinary authority who imposed the penalty of reduction in rank. It has been further submitted that the applicant is a Group 'C' staff and that though the appointing authority in respect of the applicant is the Divisional Railway Personnel Officer, the competent authority to institute and impose the punishment is the respondent no.2 who has passed the impugned order as he is a Senior Scale Officer holding independent charge. It has also been submitted that the appointing authority of the applicant i.e. Divisional Railway Personnel Officer is equal in rank to Divisional Commercial Superintendent under whom the applicant was working.

5. The applicant has filed rejoinder affidavit reiterating the points raised in the O.A. with assertion that the appointing authority of the applicant is Divisional Railway Personnel Officer, who is only competent to impose major penalty. In the Supplementary Counter Affidavit filed by the respondents this contention has been rebutted and it has been reiterated that Divisional Commercial Superintendent is equivalent in rank to the Divisional Personnel Officer.

6. The appellate order has been challenged

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by the applicant on the ground that the same has been passed without application of mind in contravention of provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

7. In the absence of the learned counsel for the applicant, we have heard the learned counsel for the respondents and carefully gone through the pleadings on record.

8. The plea of the applicant that the order of the disciplinary authority is bad in the eye of law on the ground that the report of the disciplinary authority was not supplied to him before imposing the penalty can easily be disposed of. It is now settled law that delinquent employee is entitled to a copy of the enquiry report submitted by enquiry officer but this law is applicable only after the date of the order of Hon'ble Supreme Court in the case of Mohd. Ramzan Khan and the penalty in this case was imposed much earlier.

9. As regards challenge on the ground that the charges have not been established in enquiry, it is settled law that Tribunal is only expected to determine whether the enquiry was held in a proper manner and the principles of natural justice are complied with. When the findings or conclusions of the inquiry officers are based on some evidence, the tribunals cannot reassess the evidence and substitute their own findings for those of the inquiry officer/disciplinary authority. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of charge. We have seen a copy of the inquiry report annexed with the C.A., we do not find it a case of no evidence. Findings of

Wb

- 5 -

the enquiry officer is based on evidence.

10. The plea taken as regards inadequacy of opportunity is not well founded on the basis of the averments. No assertion has been made in this regard specifically indicating in what manner the principle of natural justice or mandatory provision has been violated. This plea, therefore, is rejected.

11. As regards competence or otherwise of the disciplinary authority, the respondents have specifically stated that Senior Scale officer is competent under rule to inquire into the charges and impose major penalty on the employees belonging to Group 'C' to which the applicant also belongs. Though the appointing authority is the Divisional Personnel Officer, the authority passing the impugned order of penalty is an authority who is equivalent in rank. As the applicant was actually working under the control of Divisional Commercial Supdt. and he is equal in rank to Divisional Railway Personnel Officer, we do not find any irregularity committed in this regard.

12. Coming to the appellate order, we do not, however, find that the said order conforms to the statutory requirements imposed on the appellate authority by Rule 22(2) of the Railway Employees(Discipline & Appeal) Rules. It would be clear from a reading of this rule that a statutory obligation is cast on the appellate authority to consider certain aspects of the case while disposing of the appeal. In this regard, we may refer to the appellate order passed. The text of the appellate order is as below :-

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"आपकी दिनांक 17-11-89 की सन्दर्भित अपील पर विचारोपरान्त अधी-हस्ताक्षरी ने निम्न आदेश पारित किये हैं:-

मैंने इनके केस को, इनकी अपील को भली-भाँति पढ़ा है

यह खुद स्वीकार किया है कि चार केस में Forest

Department से permit पर लोडिंग जरूर की परन्तु

उसमें एक केस में Destination से different स्टेशन

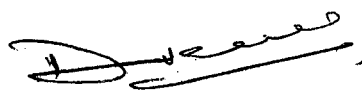
पर लोडिंग की गई और जो अन्य केसेज में वुड (wood) लोड

की गई वह भी Permit में दी गई Wood से अलग थी।

यह एक गंभीर अनियमितता है अतः इनकी अपील रद्द की जाती है।"

13. It would be clear from the aforesaid order that various provisions of Rule 22(2) ibid have not been complied with. This case is, therefore, fully covered by the law laid down by the Hon'ble Supreme Court in the case of Ram Chandra. We, therefore, consider it appropriate that the case be remitted back to the appellate authority for reconsideration in accordance with rules and instructions on the subject.

14. In view of the foregoing discussions, the O.A. is partly allowed. The case is remitted to the appellate authority for reconsideration of the memo of appeal and for disposal of the same by a reasoned and speaking orders keeping in view the provisions contained in the rule 22(2) of Railway Servants (Discipline & Appeal) Rules, 1968. ^{within a period of three months after receipt of copy of this order.} No order as to costs.



Member (J)



Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

MISC. AN. NO. 126 1990

IN RE:

O.A.No. 298 OF 1989(L)

Lalji Misra Applicant

VERSUS

Union of India and others Respondents

APPLICATION FOR AMENDMENT OF ORIGINAL
APPLICATION.

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

1. That the above noted application has been filed challenging the validity of order of reduction in rank dated 15.9.1989 contained in Annexure-1 to the Original Application.
2. That the application was admitted by this Hon'ble Tribunal on 27.10.1989, but on 10.11.89 the Hon'ble Tribunal pleased to observe that the alternative remedy of the departmental appeal was available to the applicant and as such the applicant should resort to it. The application was ordered to be put up for orders on 2.2.1990.
3. That in compliance of the Hon'ble Tribunal dated 10.11.1989 the applicant preferred a departmental appeal under rule 18 of 1968 rules to the

Recd duplicate
from Srivasth
Adv
2/3/90

enter

Senior Divisional Commercial Superintendent, N.E. Railway on 17.11.1989. This departmental appeal was later on rejected vide order dated 12.12.1989.

4. That when the aforesaid case was listed on 2.2.1990 the entire facts were brought before the the Hon'ble Tribunal relating to filing of the departmental appeal and rejection the appeal vide order dated 12.12.1989. The Hon'ble Tribunal having heard the parties pleased to allow the applicant to make appropriate amendment in the Original Application in the wake of the changed circumstances, hence the instt. misc. application is being filed:

5. That the applicant wants to implead the Respondent No. 4 after the Respondent No. 3 as under:-

4) - Senior Divisional Commercial Superintendent, N.E. Railway, Lucknow. Respondent

6. That the following sentence is proposed to be added after para 1 of the Original Application:

The applicant also challenges the validity of the order dated 12.12.1989 passed by the Respondent No.4 rejecting the applicant's departmental appeal by a non-speaking order, a true copy of which is being filed herewith as Annexure No. 1A to this Application.

ANNEXURE-1A

7. That the following sentence is proposed to be ^{added} made in paragraph 4.1 of the Original Application:-

The validity of the order dated 12.12.89 rejecting the applicant's departmental appeal is also challenged through the instant application, a true copy of which has already been filed as Annexure No. 1A.

8. That after paragraph 4.26 of the Original Application the following is proposed to be added:

Para 4.27 : That after the observations of this Hon'ble Tribunal dated 10.11.1989 the applicant preferred a departmental appeal under rule 18 of 1989 Rules to the Senior Divisional Commercial Superintendent, N.E. Railway, Lucknow on 17.11.89. A true copy of the departmental appeal dated 17.11.1989 is being filed herewith as Annexure-8 to this Application.

Para 4.28 : That the applicant in his departmental appeal clearly stated that he has not violated any provisions of either Railway servant Conduct Rules 1966 or Railway Commercial Manual or any other directions or instructions issued by the competent authority or any provisions

ANNEXURE-9

of the U.P. Transit of Timber and other ~~various~~ Forestproduce Rules 1978. For the sake of ready reference a true copy of the afore said 1978 Rules is being filed herewith as Annexure-9 to this application.

Para 4.29 : That the applicant has very clearly stated in his departmental appeal that the logs ^{had been} brought to the Railway premises within the knowledge of the Forest Departmental officials and booking was made strictly in accordance with the Booking Manual by including all the information required by the proforma issued and approved by the Central Govt. for use by all Railways under section 72 of the Indian Railways Act 1890. The proforma has been filed as Annexure-7 to the application. Almost all the ^{was} booking ^{of} the logs ^{was made} in accordance with the proforma contained in Annexure-7. Sarvashri P.N. Singh, Gopalji Gupta, Ram Rati Prasad are some of the persons who booked the logs even without taking any permit from the consignee and without making any reference of the permit on the requisition form which was also detected by the Divisional Commercial Insprctor, Mr. S.P. Srivastava as mentioned in his report. No action has been taken against any of the errering employee except the applicant who has committed no mistake and made all endeavours to protect the

Sanjay

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interest of the Railway Administration. Nothing has been mentioned in the order dated 12.12.1989 rejecting the departmental appeal.

Para 4.30: That paragraphs Nos 11,12,13, 14 and 15 are the ~~pa~~ relevant paragraphs of the departmental appeal. Annexure-8 has completely been ignored.

The Respondent No. 4 has rejected the departmental appeal without application of mind whimsically without considering the appeal in terms of Rule 22 of 1968 Rules.

9. That the following ground is proposed to be added after ground No. 5(xvi):-

Ground No. (xvii) : Because the Respondent No. 4 rejected the applicant's departmental appeal without application of mind against the provisions of Rule 22, 1968 Rules.

10. That the following sentence is proposed to be added after the last line of para 6 of the Original Application:

"The departmental appeal dated 12.11.89 was later on rejected by Respondent No.4 vide order dated 12.12.89.

11. That the following paragraph is proposed to be added after paragraph 8(c) of Original Appn.:

Para 8(d): This Hon'ble Tribunal may be pleased to quash/set aside the order dated 12.12.89 passed by the Respondent No.4 rejecting the departmental

Contra

appeal.

12. That the following sentence is proposed to be added after last line of para 9(a):-

Para 9(b): The operation of the order dated 12.12.89, Annexure-1A may also be stayed during pendency of the case.

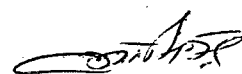
13. That in the Index of Compilation No.1 the particulars of Annexure-1A be allowed to be mentioned while in Index of Compilation No.II the particulars of Annexures-8 and 9 be allowed to be made.

WHEREFORE it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to the applicant to incorporate the amendments in the original application as proposed in paragraphs 5 to 11 of this Misc. Application for the sake of ends of justice.

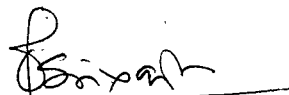
VERIFICATION

I, Lalji Misra, aged about 52 years, son of late Sri Gomti Prasad Misra, resident of Station Paxhperwa, district Gonda, presently functioning as Head Goods Clerk, North Eastern Railway, Soh-ratgarh, do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and that I have not suppressed any material fact.

Lucknow Dated:
1990.



APPLICANT.


ADVOCATE.

Lalji Misra

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Applicant

Union of India & others

Respondents

ANNEXURE - 1-A

पूर्वोक्ता रेलवे

कार्यालय,

मंडल रेल प्रकल्पक (वाणिज्य),

लखनऊ, दिनांक 12.12.89

प० सं० सी/एक/एक/5/88

श्री लालजी मिश्रा,

प्रकाश भाल बाबू/शोहरत गढ़ । डी० ए० सी० ए० ए० ए० ए० - 509/91

लन्दन - आप की अपील दिनांक 17.11.89 ।

आपकी दिनांक 17.11.89 की लन्दन में अपील पर विचारोपरान्त अधीन-हस्ताक्षरों ने निम्न आदेश पारित किए हैं :-

मैंने इनके क्लेम को, इनकी अपील की भलो-भाति

सुझा है यह सुझाव दिया है कि वार क्लेम में Forest Department

से Permit पर लोडिंग जगह की पान्तु उसमें एक क्लेम में

Destination से different स्टेशन पर लोडिंग को

गई और जो अन्य क्लेज में वुड (Wood) लोड की गई वह भी

Permit में दो गई Wood से अलग थी। यह एक

गंभीर असियमितता है अतः इनकी अपील रद्द की जाती है।

(वी० के० तिवारी)

वरिष्ठ अधिकारी (वाणिज्य)

पूर्वोक्त रेलवे, लखनऊ

Recd. 14/12/89

509/91

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in the Central Office/Service Manual, Allahabad Circuit Bench, Lucknow.
O.A. 298 of 1989(L)
Haty Mishra
U.O.D. Pethers

To,

ANNEXURE-8

The Sr. Divl. Commr. Supdt.,
North Eastern Railway,
Lucknow.

Through: The DCS/N.E.R./Lucknow.

Respected sir,

Sub: Appeal under rule 18 of DAR 1968.

Ref: NIP No. C/SS/5/98 dated 25.9.89
issued by the learned DCS/LJN.

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A) BRIEF HISTORY OF THE CASE AND CAUSE OF APPEAL.

1. Shri S.P. Srivastava, the then DCI/SOT, in his report dated 9.3.88, submitted to the Divl. Office, pointed out as many as 25 cases of improper booking of timber, which was re-enquired by Shri D.K. Asthana, SCI, who found certain irregularities in only 6 cases vide his report dated 22.4.88.

2. Hence, charge memo dated 11.5.88 was issued against the appellant containing 6 articles of charges as will be seen at Annexure 'A'.

3. Consequent upon the findings of learned E.O. the N.I.P. under reference was issued by learned DCS/LJN reverting the appellant for 5 years from the post of HGC to that of Sr.GC and fixing the pay at Rs.1200/-. Hence THIS APPEAL.

B) GROUND FOR APPEAL.

4. Before explaining the charges, all the six articles of charges are separately grouped as under based on the nature of allegations:-

Other

[illegible]

NB: Copies of above invoices in seriatum of entry with related permits are enclosed as annexures (B-C-D) (E-F) (G-H) (I-J) (K-L) & (M-N).

5. First I would like to invite your kind attention to articles of charges 1 & 4 which are absolutely wrong as explained below :-

No.1. Annexures B & C are invoices and annexure D is the permit. Invoices have been issued for Gurgaon and Idgarh and these destinations appear in Col.5 of the permit. These invoices have been issued for Sheesam and Semal logs and these commodities appear in Col.3 of the permit. It was upto the sender to load or not to load Khair, though mentioned in Col.3 of the permit. It will thus be judged that both the

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Invoices have been issued correctly as per permit and therefore the allegation is not proved. VJ

- No.4 Annexure 'G' is the invoice and annexure 'H' is the permit. Invoice has been issued for Shahamatganj (Baroilly) and for the commodity Kukat. Permit is also for Baroilly and Kukat vide Cols. 5 & 3. It was upto sender to load or not to load Shesham as mentioned in the permit. It will thus be judged that this invoice also has been issued correctly as per permit and therefore the allegation is not proved.
6. The common factors in the remaining invoices and permits relating to articles of charges 3-5-2-6 are that only the persons, whose names appear in the permit loaded the goods. This is submitted in reference to the observation of the learned E.O. in his inquiry report that there appeared to be no relation between the permits and invoices issued because permit No. was not mentioned in the invoice. This system is neither in vogue on any station of the division nor this is an allegation in the articles of charges and related statement of imputations. This factor of framing a fresh charge by E.O. which did not appear in the charge memo has been explained by me in forthcoming paras 15 & 16.
7. While working as a Commercial man, I had always in mind to boost the traffic. The minor deviations in only 4 cases in respect of destination and commodity and expiry of validity date by two days only are not in violation of any operational restriction of booking to a particular destination or in contravention of any IRCA Comml. Manual and Goods Tariff rules. I have acted in good faith and have been working honestly and diligently.

8. All the logs are brought to the Railway premises and in the Commercial plots within the knowledge of Forest Deptt. officials. Nothing can be taken out from the Forest Area without the consent/permission of Forest officials. There are flying squads of the Forest Deptt. comprising of Rangers, Sub-Inspector of ^{U.P.} ~~CCP~~ Polico ^{or} ~~and~~ ~~CCP~~ Police constables armed with rifles. They also visit the premises where the logs are stacked, besides ensuring that no forest produce is taken out from the forest unauthorisedly. Logs at Stations are open for inspection at all times and whenever any wagon is loaded the presence of Forest Staff is conspicuous. It is irony of fate that a poor Rail employee has been sacked for working in the interest of the Railways.
9. I have atleast obtained from genuine senders some sort of permits which I used to cancel after booking lest the same may not be used again. There is also no element of connivance with the senders.
10. I have always been doing the best what I could do for the Railway, and at the same time maintaining absolute integrity and devotion to duty and thus did not violate any of the provision of Railway (Services) Conduct Rules, 1966.

C) ADDITIONAL PLEAS:

11. BECAUSE the policy of serious discrimination has been adopted by the learned DCI Sri S.P. Srivastava in reporting such cases. S/Shri P.N. Singh Gopalji Gupta and Ram Rati Prasad also booked logs and timber ex. ^{BNY} ~~EXT~~ vide list at Annexures C - P - Q - R . Out of the 6 cases cited against me, two have been disproved totally. Remaining 4 items have no doubt been booked on permit

X/30

with a bit deviation in destination and kind of wood which is not as serious as booking without any sort of permit or permission of forest department as done by other goods Clerks. Your honour may kindly judge the reason for such discriminatory behaviour by the learned DCI in not reporting much more serious nature of irregularities against his favourite Goods Clerks.

12. BECAUSE, the prejudicial and discriminatory behaviour of Shri S.P.Srivastava DCI is further proved that in a fit of finding fault he picked up as many as 25 cases against the appellant. On my representation, SCI Shri D.K.Asthana was deputed to recheck the cases and in the scrutiny 19 cases were dropped. Out of the balance 6 cases two have been disproved by me beyond the least shadow of doubt. vide para 5 of this appeal.

13. BECAUSE it is admitted by Sri D.K.Asthana SCI in case of BNY (vide Annex. S-1, S-2, S-3) in reply to questions 2 & 3 that other Goods Clerks had also booked such consignments even without any sort of permit but he only enquired into the cases referred to in the report of DCI. Thus Shri Asthana confined himself only to the cases cited by the DCI in his report. Your honour can decide what is more serious in the following :

- i) Booking on permit with certain variations in destination and kind of wood in FOUR cases only,
 - ii) Booking without permit dozen and dozen consignments.
- Definitely the booking of forest produce without permit by several other Goods Clerks is more serious which the DCI ignored in order to favour them.

14. BECAUSE, with profound respect and regards to the learned E.O., I may kindly be excused to submit that the

contd.

the inquiry report is quite sketchy with the result that the learned disciplinary authority could not do justice with the case. The defence of the appellant, my examination under rule 9(21) dt. 4.4.89 defence brief received by E.O. on 21.4.89 and evidence of PW-1 Shri D.K.Asthana SCI are not self contained in the inquiry report as per rule 9(25) (1) (b) & (c) of DAR 1968.

15. BECAUSE an allegation in support of the articles of charge but not appearing in the charge memo, that permit number was not quoted on the invoices was raised by E.O. only on the last date of enquiry i.e. 4.4.89 while examining the appellant under rule 9(21) of DAR. This allegation was not brought on record at any stage in the inquiry. This allegation in support of articles of charges does not appear in the statement of Fws No. 1&2 i.e. Sri D.K.Asthana, SCI and Shri S.P.Srivastava, DCI. In respect of an offshoot allegation raised by the E.O., I may humbly submit that such an afterthought allegation raised by E.O. at the time of closing the proceedings can neither form the basis for finding nor a supporting evidence to prove the charges.
16. BECAUSE the afterthought allegation of not writing the permit no. on the invoices is not applicable in case of SOT alone and especially in my case. Permit No. was not quoted on the invoice by any station and by any staff in the Division. It was explained to E.O. that there was no such practice to note the permit number on the invoice but I started doing it on the instruction of DCI which is dated 28.1.88. Annex. T-1 and T-2 may kindly be perused which contains examination of appellant under rule 9(21) of DAR. The point for consideration is that whether this contention of E.O. i.e. not endorsing permit No. on

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invoices is applicable on me alone or to other Goods Clerks of other stations also. In the parallel inquiry of Shri D.V.Rai HGC/BNY no such question was raised.

17. BECAUSE no loss of revenue has been caused to the Railway. I earned the freight for Railway by booking such consignments against permits with a bit variation/c deviation in respect of destination and kind of wood. but NOT WITHOUT PERMIT as done by several GCs and SAs at several other stations.
18. BECAUSE no such consignment was booked against restriction imposed by the Railways from time to time.
19. BECAUSE no Railway rule of IRCA Comm. Manual Goods tariff or any of the para of Optg. circulars was violated. There is also no Audit/Accounts para against SOT station on this account.
20. BECAUSE no harm has been caused to the railway by my actions but the traffic of timber has definitely on the decrease in the loop line as evident from the comparative statement of earning enclosed (Annex. U) and explained here under. If the similar cases are taken up with the staff in ERK and MLN sections, the existing traffic will be diverted to Road and chances of recapturing will be lost altogether.

During 6 months period from 4/87 to 9/87 total 41 wagons were loaded but in the corresponding period of the current year only 24 wagons have been loaded. I believe that the fate of other stations in the loop line will also not be better. The main reason for steep decline in quantum of traffic is non-businesslike attitude of Shri S.P. Srivastava, DCI towards the Trade.

21. BECAUSE the punishment imposed upon me is not maintaining able on the point of discrimination practised in the Divl. Office, Lucknow itself. Similar more such cases have been dealt with in the open section and security section and the disciplinary authority was either Sr. DOS/Sr. DSO or DCS. I beg excuse to mention that the punishment imposed on other staff as under, to the best of my knowledge and belief will show discrimination:

i) Punishment of only one year WIT was awarded to Shri Sayeed Ahmad, the then SS/P&W now SS/BLP from open section case.

ii) Punishment of 2 years WIT, was awarded to Sri R.S. Singh, SM/KPE from security section Vigilance Case.

Such cases of SM/Parsa (now SS/DDW) and other are galore.

In my case, when I booked the consignments against para permit with certain variation/deviation in respect of destination and kind of wood, the punishment of reversion to the post of Sr. GC for 5 years has been awarded with reduction of pay to Rs. 1200/- I may reiterate here that the relation of permits to the invoices issued has been proved by me in the foregoing paras.

22. BECAUSE, admitting that like IPC, minimum and maximum punishments have not been specified under DAR based on the nature of offences, the discretionary power exercised by disciplinary authority should at least be based on natural justice, equity and free from discrimination where nothing specific has been laid down under the rules, discretion should be applied with utmost care, because the rule can be applied even with eyes closed

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whereas the discretion is applied with eyes and brain wide open. with due regards to the decision of learned DCS/LJN, I beg excuse to submit that the NIP under appeal is discriminatory and liable to be set aside.

P R A Y E R

23. In the circumstances stated above, it is humbly requested that my case may also be treated at par with others and NIP under appeal may kindly be set aside to remove the discrimination.

I also request for personal hearing alongwith a Defence Helper. The original documents of Xerox copies will be produced at the time of personal hearing. With best regards,

DA: 24

Yours faithfully,

Sanjay Misra

(SANJAY MISRA)

Sr. GC/SOT

Dt. 17.11.89.

Sanjay Misra


In The Central Administrative Tribunal, Allahabad
Circuit Bench, Lucknow. ~~8/5~~

O.A. No. 298 of 1989(2)

Lalji Misra. Applicant
vs

C.O. 2 others Respondents

ANNEXURE - 9


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

APPENDIX 151

THE UTTAR PRADESH TRANSIT OF TIMBER AND OTHER FOREST PRODUCE RULES, 1978.

In exercise of the powers under sections 41, 42, 51 and 76 of the Indian Forest Act, 1927 (Act No. XVI of 1927), and in supersession of Government Notification No. 672/XIV-42, dated September 30, 1915, and, all other orders and notifications on the subject, the Governor is pleased to make the following rules to regulate the transit of timber and other forest produce, namely:

RULES

1. Short title, extent and commencement.—(1) These rules may be called the Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978.
- (2) They shall extend to whole of Uttar Pradesh.
- (3) They shall come into force with effect from the date of their publication in the Gazette.
2. Definition.—In these Rules 'Act' means the Indian Forest Act, 1927.

CHAPTER I

Transit of Timber and Other Forest Produce by Land.

3. Regulation of transit of forest produce by means of passes.—No forest produce shall be moved into or from or within the State of Uttar Pradesh except as hereinafter provided, without a transit pass in the form in Schedule A to these rules, from an officer of the Forest Department or a person duly authorised by or under these rules to issue such pass or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass :

Provided that no transit pass shall be required for the removal—

- (a) of any forest produce which is being removed for *bona fide* consumption by any person in exercise of a privilege granted in this behalf by the 'State Government' or of a right recognised under the Act, within the limits of a village in which it is produced ;
- (b) of forest produce by contractors' agency from the forests managed by the Forest Department, in which case the movement shall be regulated by the relevant conditions of sale and terms of the corresponding agreement deed executed by the buyer ;
- (c) of such forest produce as may be exempted by the State Government from the operation of these rules by notification in the official Gazette.

1. Vide Notif. No. 2108/XIV-3-95-1974, dated September 27, 1978, published in U. P. Gazette, Extra., dated 27th September, 1978, pp. 11-20.

4. Officers and persons to issue passes.—(1) The following officers and persons shall have power to issue passes under these rules—

- (a) for forest produce belonging to Government or under its management the Conservator of Forest, the Divisional Forest Officer, the Sub-Divisional Forest Officer or any other officer authorised in this behalf in writing by the Conservator of Forest or the Divisional Forest Officer ;

- (b) for forest produce owned by any other person within a periphery of 50 kilometers of any reserved forest in respect of the species of trees exempted, from time to time, by Government under section 21 of the Uttar Pradesh Production of Trees in Rural and Hill Areas Act, 1976 (U. P. Act No. 45 of 1976) and for other species of trees owned by any person anywhere in Uttar Pradesh, such person or his agent if so authorised in writing by the Divisional Forest Officer ;

Provided that—

- (i) any person who desires to obtain a transit pass or authorisation to issue passes under clause (b) of sub-rule (1) above, shall apply in the form in Schedule 'B' and the Divisional Forest Officer may, before issuing the transit pass or authorisation, conduct such inquiry and call for such information as he considers necessary ;
- (ii) such transit pass or authorisation shall specify the period during which it shall remain in force, and shall also specify the route to be adopted and check Chawki or depot or forest nursery through which the produce must pass, and shall be issued after taking prescribed transit fees ; and
- (iii) any transit pass or authorisation may at any time be modified (on request or otherwise) or cancelled by the Divisional Forest Officer or Conservator of Forests.

- (c) for forest produce owned by any other person outside the periphery of 80 kilometres of a reserved forest in respect of the species of trees exempted, from time to time by Government under section 21 of the Uttar Pradesh Protection of Trees in Rural and Hill Areas Act, 1976 (U. P. Act no. 45 of 1976), such person or his agent if so authorised by an order in writing by the Divisional Forest Officer or the Block Development Officer having jurisdiction over the area after verifying that the trees are of the exempted species ;

Provided that any person who desires to obtain a transit pass or authorisation to issue passes under clause (c) of sub-rule (1) above, shall furnish to the Divisional Forest Officer or the Block Development Officer concerned an affidavit giving the following particulars—

- (a) the quantity of such forest produce ;
- (b) the name and the address of the owner ;
- (c) the holding with Khasara/Khatauni numbers from which the produce has been obtained and that the holding is located outside the periphery of kilometers of a reserved forest ;

(d) the number and the species of trees; and
(e) the place to which the produce is to be taken.

(ii) the transit pass or authorisation shall be issued by the Range Officer/Deputy Range Officer on the basis of the order of the Divisional Forest Officer/Block Development Officer after taking prescribed transit fees;

(iii) such transit pass or authorisation shall specify the period during which it shall remain in force, and shall also specify the route to be adopted and check Chawki or depot or forest nursery through which the produce must pass.

(2) The Officer competent to pass order for the issue of a transit pass or authorisation may refuse to pass such order for reasons to be recorded in writing.

(3) Appeal against the orders passed by the Block Development Officer shall lie to the Conservator of Forests and in case of orders passed by any other officer to the next higher authority (Conservator of Forest in case the order has been passed by the Divisional Forest Officer, and Additional Chief Conservator of Forests in case the order has been passed by the Conservator of Forest) and its decision shall be final.

5. Fees payable for different classes of passes.—At the check Chowki or depot established under Rule 15 and specified under proviso (ii) to clause (b) sub-rule (1) of Rule 4, the forest produce along with the two copies of the pass (duplicate and triplicate) shall be produced for examination under sub-rule (4) of Rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule 'C'—

(i) per lorry load of timber or other forest produce	Rs. 500
	per tonne
	of capacity
(ii) per cart load of timber or other forest produce	Rs. 2.50
(iii) per camel load of timber or other forest produce	Rs. 1.25
(iv) per pony load of timber or other forest produce	Rs. 0.50
(v) per head load of timber or other forest produce	Rs. 0.25

Note.—In respect of resin and resin products, the provisions of the Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act, 1976 and the rules framed thereunder, shall apply.

6. Passes what to contain.—(1) Every transit pass shall be in the form given in Schedule 'A'.

(2) The colour and size of each pass and the price to be paid in respect of each book of transit passes will be such as may be prescribed by the Chief Conservator of Forests.

(3) (i) Such pass shall be in Hindi in Devanagiri script or Urdu.

(ii) Transit passes shall be in triplicate and bound in books which shall be obtainable from the Divisional Forest Officer. Each book shall bear an identifying number and the passes in each book shall be numbered serially.

(4) First copy of the triplicate forms of pass shall form the counterfoil and second and third parts shall be given to the person incharge of the produce under transit and shall be produced whenever required by any checking officer. The third part shall be collected by the Forest Officer checking the forest produce who will initial the second part and mention thereon that the third part has been received by him.

7. Separate passes for each load.—No transit pass shall ordinarily cover more than one load, whether such load be carried by a person, an animal or in a vehicle. But the Divisional Forest Officer may, whenever he deems fit, order that one pass may cover any number of headloads or animal loads not exceeding 50 and any number of cartloads not exceeding 10, for journeys not exceeding 25 kilometres from and to the same places and undertaken at one and the same time.

8. Passes not to be tampered with.—No alteration shall be made in anything printed or written on any transit pass, except in the matter of route and period and this may only be done by a Forest Officer not below the rank of a Forester for sufficient reasons to be mentioned in the pass.

9. Books of blank passes to be supplied to persons authorised to issue them.—(1) When the Divisional Forest Officer authorises any person or the agent of any person under clause (b) of sub-rule (1) of Rule 4 to issue transit passes, he shall furnish such person from time to time, with authenticated books of blank passes.

(2) The said person to whom such book is supplied shall pay the price, if any, fixed under sub-rule (2) of Rule 6. In addition to the price, a security of Rs. 50 with also be deposited to ensure proper utilisation of the pass.

(3) No person who has been authorised to issue passes shall issue transit passes otherwise than in accordance with the conditions of his authorisation.

(4) No such person shall charge any fee for any transit passes issued.

10. Counterfoils of used transit passes to be returned.—The counterfoils of all used transit passes shall be returned to the officer from whom the book of passes was received. Failure to do this may result in forfeiture of security deposited under sub-rule (2) of Rule 9. No fresh pass and no pass-book shall be supplied until the counterfoils of all passes previously used have been so returned or fresh security deposited in the event of failure to return the counterfoil.

11. Counterfoils to be produced for inspection on demand.—Any person or the agent of such person who has been authorised to issue transit passes under clause (b) of sub-rule (1) of Rule 4 shall be bound, if called upon by any forest officer not below the rank of a Forester, to produce for the inspection or to return the counterfoils of all passes which have been issued by such person or agent.

12. Procedure on cancellation or expiry of authority to issue passes.—In the event of any authority given under clause (b) of sub-rule (1) of Rule 4 being at any time cancelled under the said clause or on the expiry of the period specified in such authority, the person whose authority is so cancelled or the person to whose authority, has so expired, as the case may be, shall forthwith return to the officer, who granted the authority, every unused

book of transit passes and the unused portion of any such book in his possession, together with the counterfoils of used passes, if any, which he has not already returned; and thereupon the said person shall be entitled to receive a refund of the amount paid by him in respect of every such unused book of transit passes, but no refund shall be allowed in respect of any partly used book.

13. Transit passes issued by private persons when invalid.—No transit pass issued by any person or by the agent of any person authorised under clause (b) of sub-rule (1) of Rule 4 to issue transit passes shall be valid—

- (a) if such pass is not prepared in form supplied for this purpose under sub-rule (1) of Rule 9; or
- (b) if the pass is issued after receipt by such person of an order cancelling the authority to issue such passes; or
- (c) if the pass is issued by such person after the expiry of the period specified in the authority given for the issue of such passes.

14. Property and transit marks to be affixed to timber.—Except when it is the property of Government, all timber brought at the specified check mark (the property of Government) and imprinted with a Government hammer design of such a hammer mark shall, from time to time, be prescribed by the Conservator of Forests or the Divisional Forest Officer. In addition, if the Conservator of Forests or the Divisional Forest Officer so directs, a distinguishing private property mark of the owner of such timber of the description which has been registered in the Office of the Conservator of Forests of the circle, or the Divisional Forest Officer, shall also be affixed.

15. Depots and their purposes.—The Conservator of Forests may establish at such places as he shall deem fit, depots to which forest produce shall be taken—

- (a) for initial examination or subsequent checking regarding *bona fide* removal of forest produce; or
- (b) for determining the amount of money payable on account thereof to the State Government, and for the payment of any money so found to be due; or
- (c) in order that any mark required by law or by these rules to be affixed thereto may be so affixed.

16. Situation of Depots to be published.—The Conservator of Forests shall make known from time to time by notification in the Official Gazette, and locally in such manner as he deems fit, the name and situation of such depots in his circle.

17. Depots to be in charge of an officer.—Each depot shall be in charge of an officer appointed by or under the orders of Conservator of Forests, or the Divisional Forest Officer. No forest produce shall be stored at or removed from the depot without permission of the officer in charge of the depot.

18. Registration of property marks.—(1) Any person may apply to the Divisional Forest Officer to have property mark to be attached to timber

belonging to him, registered in the Office of the Divisional Forest Officer of the Division from which it is sought to transport his timber under these rules.

(2) Every property mark shall consist of a device to be approved by the Divisional Forest Officer for his Division, provided that no person shall be allowed to register a mark identical with, or liable to be mistaken for one already registered by another person or used by the State Government. In case of dispute as to whether the marks proposed for registration has or has not too close resemblance with any other previously registered property mark, the decision of the Conservator of Forest shall be final.

(3) Registration fee [Section 41 (2) (i)]—A fee of ten rupees shall be chargeable for each registration. A receipt shall be given in respect of the payment of the fee in the form given in Schedule 'C'.

(4) A certificate of registration showing the device shall be given by the Divisional Forest Officer to each person registering his mark. The registration shall remain valid up to September 30 next following.

19. Forest produce to be removed by day light.—Except with the special permission of the Divisional Forest Officer in writing, no forest produce shall be transported between the hours of sunset and sunrise. Fee at double the rates prescribed in Rule 5 shall be charged for the transport so permitted.

20. Foreign pass.—All forest produce imported into the State of Uttar Pradesh will have to follow the rules made by the... Union Government under section 40-A of Indian Forest Act, 1927 (Act No. XVI of 1927) in addition to the rules and shall be covered by a foreign pass registered under Rule 2 and in the case of timber, by a foreign property mark registered under Rule 23.

21. Form etc. of foreign passes must be registered in Conservator's Office.—Every foreign pass must be in a form which has been registered in the Office of the Conservator of Forests of the Circle into which it is sought to import forest produce thereunder and must be signed by an official whose designation is registered in the Office of the said Conservator, and every foreign property mark must be of a description which has been registered under Rule 23 in the said office. At the time of applying for Registration of the foreign pass in the office of the Conservator of Forest of circle concerned, a declaration will have to be submitted duly verified by the competent authority concerned that there is no objection to the exporting of the desired forest produce to the State of Uttar Pradesh and custom excise duty or other duties, if any, leviable have been paid by the party concerned to the competent authority:

Provided that at the request of the neighbouring State Governments passes signed by the contractors or their authorised agents whose signatures have been duly registered in the Office of the Divisional Forest Officer in whose division forest produce is taken, may be allowed:

Provided further the passes used by such contractors or their authorised agents should bear an official stamp of the officer who has been authorised by the State Government to issue books of passes to contractors.

22. Imported forest produce may be transported to first depot without a pass under Rule 4.—Any forest produce imported into the State of Uttar Pradesh may be transported within the limits of the State of Uttar Pradesh up

to the nearest first depot established under Rule 15, without a pass issued under Rule 4, if it is covered by a foreign pass registered under Rule 21 and if stacked or deposited in any place between such limits and such depot, the foreign pass covering the material shall at once be delivered at that depot.

23. **Registration of forms of foreign passes or foreign property marks.**—The Conservator of Forests shall upon receipt of an application for registration of any foreign form or mark for the purpose of Rule 21 enquire into the authenticity of the same and, if he has no objection, shall on payment of Rs. 100 by the applicant register such form or mark in his office. Every such registration shall hold good from the date of registration till the 31st December of the year following the year of registration except in the case of forms and marks of foreign Governments; the registration of which shall hold good till they are modified or repealed by new forms or marks.

24. **Government marks not to be imitated or effaced.**—No person other than a Forest Officer whose duty it is to use such marks shall use any property marks for timber identical with, or nearly resembling any Government transit mark or any mark with which timber belonging to Government is marked and no person shall, while any timber is in transit under a pass issued by any person or by the agent of any person authorised in this behalf under clause (b) of sub-rule (1) of Rule 4, alter or efface any mark on the same.

25. **Forest produce in transit may be stopped and examined by certain officer.**—(1) Any forest produce in transit to which these rules apply and any person, animal, vehicle, vessel or craft carrying such forest produce, may be stopped, detained, examined and checked at any place by any forest officer or Sub-Inspector of Police or Kanoungo, as the case may be, if such officer shall have reasonable grounds for suspecting that any money which is due to Government in respect thereof has not been paid or that any forest offence has been or is being committed in respect thereof.

Provided that no such officer shall vexatiously or unnecessarily detain any forest produce which is lawfully in transit, not vexatiously or unnecessarily unload any such forest produce or cause the same to be unloaded, for the purpose of examination.

(2) The person in charge of such forest produce shall furnish to any such officer all the information required by him in connection with the forest produce and he is transporting the same under a transit pass, shall produce such pass on demand for the inspection of such officer and shall not in any way prevent or resist the stoppage or examination of the said forest produce by such officer.

26. **Prohibiting conversion of timber.**—Within the limits of any reserved, protected or unclassified forest under the charge of the Forest Department, and—

- (i) within sixteen kilometres of such limits, no person shall establish a saw-pit for the cutting, converting or fashioning of timber or manufacture of charcoal, without the previous sanction in writing of a Forest Officer not lower in rank than a Range Forest Officer; and
- (ii) within eighty kilometres of such limits no person shall erect any machinery or other plant for the cutting, converting and fashioning of timber without the previous sanction in writing of a Forest Officer not lower in rank than a Divisional Forest Officer, who may,

while granting such permission impose suitable conditions for safeguarding Government interest;

(iii) in case of machinery or other plants already established within the description and limits prescribed under clause (ii) the owners shall have to obtain sanction in writing of a Forest Officer not lower in rank than a Divisional Forest Officer, who may, while granting permission, impose suitable conditions safeguarding Government interest.

Explanation.—This rule does not apply to the ordinary operations of domestic carpentry or to other similar work on small scale.

27. **Local areas to which the rules are not applicable to be published.**—The State Government may, by notification in the Official Gazette exempt from the operation of these rules any local area specified in such notification.

28. **Penalties for breach of rules.**—(1) Whoever contravenes any of the provisions of these rules shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(2) In cases where the offence is committed after sunset and before sunrise, or/after making preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence, the penalty to be imposed shall be double of those mentioned in sub-rule (1).

CHAPTER II

Transit of Timber and other Forest Produce by Water

29. **Restriction on rafting and conveying timber without pass.** [Section 41 (2) (b), 41 (2) (c)].—(1) No person shall raft or otherwise convey any timber on any river without first obtaining a transit pass from the Forest Officer in charge of the Forest Division in which the river is situated, or from such subordinate officer as the officer in charge of the Forest Division may authorise in that behalf. No person shall be entitled to raft or convey timber by virtue of a pass which he does not himself hold but which is or is stated to be in the name of some other person.

(2) The transit pass, referred to in sub-rule (1) shall be in Hindi in Devanagiri script or Urdu and shall be in the form in Schedule 'A' to these rules, and legibly signed and stamped by the Forest Officer.

30. **Prohibition on issuing passes.** [Section 41 (2) (b)].—No pass shall be issued for any unmarked timber or for such timber, as bears a mark not registered as hereinafter provided.

31. **Levy of fees.** [Section 41 (2) (c)].—(1) A fee at the following rates for each log or piece of timber may be levied for issue of the pass, on such rivers and at such places as a Conservator of Forests may from time to time direct to raft or convey timber:

<i>Length of timber or log in metre</i>	<i>Fee per log or per piece</i>
Up to 1 metre	50 Paise
Over 1 metre and up to 2 metres	Rs. 1-00
Over 2 metres and up to 3 metres	Rs. 1-50
Over 3 metres	Rs. 2-00

(2) A receipt in the form in Schedule 'C' to these rules, shall be given in respect of the payment of the fee.

32. Restriction on collecting of timber etc. [Section 41 (2) (b) and 41 (2) (d)].—No person having launched his timber or set it afloat on any river shall collect the same except—

- (a) with the permission, in writing, of a Forest Officer Incharge of the Forest Division to which the control of the river pertains;
- (b) at places which such officer shall notify as collecting depots.

33. Powers of inspection. [Section 41 (2) (c).—Any Forest Officer/Official, not below the rank of a forest guard or any police officer, not below the rank of Sub-Inspector, may require any person rafting or conveying timber, as aforesaid, to produce the transit pass for inspection at any time.

(2) In the event of the pass being not produced or the pass being not in respect of the timber being rafted or conveyed, the said Forest Officer/Official or the said Police Officer shall detain the timber and report the case to the Divisional Forest Officer.

34. Depositing timber on river's edge prohibited.—No person shall be permitted to deposit any timber, without a pass, so close to the water's edge as to endanger its being carried away, by a rise in the river before the pass is issued.

35. Registration of marks. [Section 41 (2) (i)]—(1) All persons, wishing to float or otherwise convey timber by any river shall register, at the Office of the Forest Division to which the control of the river pertains, the mark or marks which indicate their proprietary right in regard to such timber.

(2) No person shall be allowed to register a mark already registered in favour of another person or any mark used by the Government.

(3) The Forest Officer may refuse the registration of any mark which, in his opinion, so closely resembles a mark used by the Government or a mark already registered in favour of any other person that there is an apprehension of its being easily altered into such Government or a registered mark.

36. Fees for registration of marks. [Section 41 (2) (i)].—(1) A registration fee of rupees fifty shall be payable for the registration of each mark.

(2) A receipt in the form in Schedule 'C' to these rules shall be granted in respect of the payment of the fee.

37. Period of validity of registration marks. [Section 41 (2) (ii)].—Every registration of marks under Rule 6 shall be valid for a period of three years following the first day of January next after the date of registration.

38. Registration Certificate.—A certificate, with regard to the registration of mark, specifying the mark registered, the date of registration and the period for which it shall remain valid, shall be issued by the registering officer.

39. Prohibition of certain acts in declared areas. [Section 41 (2) (h)].—(1) Except with the permission, in writing, of the Forest Officer, the moving, converting, cutting, burning, concealing or marking of timber, the altering, or effacing of any marks on the same, and the possessing or carrying of marking

hammers or other implements used for the marking of timber within the limits of any area so declared under section 45, shall be prohibited.

(2) The permission referred to in sub-rule (1), if granted, shall specify the place at which it is to take effect, and may contain other conditions regarding the previous inspection of timber or otherwise as the case may be.

40. Penalties. [Section 42].—(1) Any person, who contravenes the provisions of the rules contained in this Chapter, shall be liable to imprisonment for either description for a term which may extend to one year or to a fine which may extend to one thousand rupees or both.

(2) In the case of a second or subsequent offence or in a case where the offence is committed after sunset and before sunrise, or after making preparation for resistance to lawful authority, the penalties which are double of those mentioned in sub-rule (1) may be inflicted.

CHAPTER III

Collection of Drift and Stranded Timber

41. Declaration of areas. [Section 45].—The areas for the purpose of section 45 of the Indian Forest Act, 1927 shall be as follows:—

(1) The whole of Jaintia-Bawar Pargana.

(2) The Yamuna and its tributaries in Indian territory within the limits of the Meerut Civil Division including an area within a direct distance of 8 kilometres from either bank of the main stream of the Yamuna taking that stream at its cold season level.

(3) The Ganga and its tributaries in Indian territory above Garhmukteshwar in the Meerut District, including an area within a direct distance of 8 kilometres from either bank of the main stream of the Ganga river, taking that stream at its cold season level.

(4) The Ramganga and its tributaries in Indian territory above the road from Nagina to Afzalgarh, including an area within a direct distance of 8 kilometres from either bank of the main stream of the Ramganga river, taking that stream at its cold season level.

(5) The Sarda (Kali) and its tributaries in Indian territory above the Railway bridge at Bahramghat including an area within a direct distance of 8 kilometres from either bank of the main stream of the Sarda (Kali) river, taking the stream at its cold season level.

(6) The Gandak and its tributaries in Indian territory within the limits of the Gorakhpur District including an area within a direct distance of 5 kilometres from either bank of the main stream of the Gandak river, taking this stream at its cold season level.

42. Restriction on saving etc. [Sections 45 (2) and 51].—No person shall, unless specially authorised in writing by the Forest Officer to whom the control of the river pertains, save or collect wood or timber of any description, other than unmarked, unfashioned piece not exceeding 180 centimetres in length and 60 centimetres in girth within the areas above declared under Rule 41 of these rules.

43. **Permission to salvage and collect timber marked with registered marks.** [Sections 45(2) and 51].—(1) The Forest Officer may grant permission in writing, to the owner or owners of all timber bearing marks registered under section 41 of the Indian Forest Act, 1927 and in accordance with these rules, which, owing to floods or other causes, is a *drift* or *stranded*, to salvage or collect such timber or the Forest Officer himself collect it or he may enter into contract with a third party to salvage and collect the same at certain place or places at rates to be agreed upon between him and that party.

(2) The timber so collected, by the Forest Officer or by a person authorised by him under these rules shall be handed over to the owner or owners on payment of such dues as may be fixed from time to time by the Forest Officer.

44. **Permission to salvage and collect timber marked with unregistered marks.** [Section 45(2) and 51].—Timber, bearing marks, which have not been registered under these rules or on which the marks have been obliterated, altered or defaced by fire or otherwise and fashioned timber bearing no marks, may be salvaged and collected by the Forest Officer or by a person authorised by him in writing in this behalf.

45. **Condition of delivery of timber to the owner.** Sections 45(2) and 51].—(1) No such timber shall be delivered to any claimant, recognised as owner under section 47 of the Indian Forest Act, 1927 until he has paid to the Forest Officer, a sum not exceeding 25 per cent of its value as may be adjudged by that officer, together with such other expenses as may have been incurred in salvaging the said timber.

(2) If the recognised owner fails to make these payments within 10 days of his receiving intimation from the Forest Officer, the property salvaged shall be dealt with as unclaimed timber.

(3) All timber salvaged under these rules, which may become vested in the Government, may be disposed of to the best advantage of the Government after two months from the expiry of the period fixed for the disposal of claims under section 46 of the said Act.

46. **Power to sell unfashioned wood or timber.** Section 51 (1) (a)].—All unfashioned wood or timber, bearing no marks may be sold at any time by the Forest Officer at the place where it lies stranded or right to collect or dispose such timber may be leased by him, when in his opinion, it is not sufficiently valuable, to be brought to a depot.

47. **Marking of sold timber.** Section 52 (1) (a)].—(1) All wood or timber, when sold by the Forest Department under Rule 46, shall be marked with the departmental sale mark.

(2) All wood or timber when relinquished under Rule 45 (1), shall be marked with suitable distinguishing mark. For removal of any wood or timber from the areas declared under Rule 41, a printed and numbered pass specifying the number of pieces and kinds of wood and timber and the amount realised from the purchaser or claimant, must be obtained from the official appointed by the Divisional Forest Officer in this behalf.

48. **Penalties under this Chapter.** [Section 51 (2)].—Any person who contravenes any of the provisions contained in this Chapter shall be liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

49. **Repeal and savings.**—On coming into force of these rules, all rules, corresponding to them in force in any region of the State of Uttar Pradesh immediately before the commencement of these rules shall stand repealed: Provided that anything done or any action taken under any of the rule so repealed shall, unless such thing or action is inconsistent with any of the provisions of these rules, be deemed to have been done or taken under the corresponding provisions of these rules.

SCHEDULE 'A'

Form

(See Rule 3)

Counterfoil

Book No.	Transit pass	Page No.
1	2	3
1.	Locality of origin :	
	(a) Name and situation of forest	
	(b) Name of forest owner	
2.	Name and address of owner of forest produce	
3.	Description of produce and quantity	
4.	Property mark, etc.	
5.	Name of village/town to which the produce is to be transported	
6.	Route by which produce is to be transported	
7.	Depot/depots at which forest produce will be produced for check	
8.	Date of expiry of pass	
9.	Any other particulars	
10.	Signature seal of issuing officer and date	
11.	Signature of checking officer	

SCHEDULE 'B'

Application Form

1.	Name
2.	Father's name
3.	Full address
4.	Details of land from which the produce is to be brought. Give acreage. If from a holding, give Khastha nos. and enclose relevant extracts of Khastha and Khatauni.

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THE INDIAN FOREST ACT, 1927

[App. 15]

5. Details of trees of which the produce is proposed to be brought.

Species

Number of trees diameter class-wise (diameter at breast height)

0-10 Cm.	12-20 Cm.	20-30 Cm.	30-40 Cm.	40-50 Cm.

6. Details of permission to fell and remove the trees including permission, if any required, under the Uttar Pradesh Protection of Trees in Rural and Hill Areas Act, 1976 (U. P. Act No. 45 of 1976).

Destination where the produce is proposed to be taken.

Signature of the Applicant.

Date.....

SCHEDULE 'C'

Receipt Form

Forest Department,.....Circle, Uttar Pradesh Book
No.....Receipt No.....Forest Division.....
197 . Received from..... the sum of
Rupees.....on account of.....
Date.....197 .

Forest Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW. Deputy Registrar (J)

O.A. NO. 298 OF 1989 (L)

Lalji Misra

.....

Applicant

VERSUS

Union of India and others

Respondents.

I N D E XCOMPILATION NO. 1

Sl. No.	Description of documents	Page No.
1.	Application	1 - 21
2.	Annexure - 1 Order of Reduction in rank dated 25.9.89.	22 - 28
2A.	Annexure - 1A. Order rejecting Appeal dt. 12.12.89	
3.	Vakalatnama (Power)	29 - 30

Lucknow Dated:

October 1989.

SIGNATURE OF THE APPLICANT

As mentioned & advised by
the Court noted in 27/1/89

[Signature]

24/1/89

[Signature]
(O.P. SRIVASTAVA)

ADVOCATE

COUNSEL FOR THE APPLICANT.

Amendment in the application
has been incorporated in compliance
of the order of the Hon'ble Tribunal
dated 13.9.86

[Signature]

14.9.80

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW-BENCH, LUCKNOW

8/6/89

ORIGINAL APPLICATION NO. 298 OF 1989 (L)

Laiji Misra, aged about 52 years, son
of late Gombi Prasad Misra, resident
of Station Road, Pachperwa, district
Gonda, presently functioning as Head
Goods Clerk, N.E. Railway Sohratgarh.

.. Applicant

VERSUS

1. Union of India through General
Manager, N.E. Railway, Gorakhpur.
2. Divisional Commercial Superinten-
dent, N.E. Railway, Ashok Marg,
Lucknow.
3. Enquiry Officer, Sri N.P. Singh,
Assistant Commercial Superinten-
dent (II), N.E. Railway,
Ashok Marg, Lucknow
4. Senior Divisional Commercial Superintendent-
N.E. Rly. Lucknow.

.. Respondents

DETAILS OF APPLICATION

1. Particulars of the order against which
the application is made:

The present application is being made challeng-
ing the validity of the order of reduction in rank
dated 25.9.1989 passed by the Respondent No. 2
whereby the rank of the petitioner has been reduced
from the post of Head Goods Clerk to the post of
Senior Goods Clerk and his salary has been fixed
at the initial stage at Rs.1200/- per month for a
period of 5 years. A true copy of this order of
reduction in rank dated 25.9.1989 is being filed

ANNEXURE-1 herewith as Annexure-1 to this application.

Further - See at left.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

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

4. Facts of the case :

4.1 That by way of the instant application the applicant seeks to challenge the validity of the order dated 25.9.1989 passed by the Respondent No.2 reducing the rank of the applicant from the post of Head Goods Clerk to the post of Senior Goods Clerk and fixing his pay at the initial of the pay scale of Rs.1200-2040 for a period of 5 years. A true copy of the aforesaid order of reduction in rank dated 25.9.1989 has already been filed as Annexure-1

*In continuation of
Para 4.1 -*

to this application. *Further, see at left margin of this page.*

The validity of 4.2 That so far as the facts of the case are concerned the applicant was initially appointed as Goods Clerk in Northern Railway, Delhi Division on 1.5.1958. He was later on transferred and

The order dated 12.12.1985 rejecting the applicant's departmental appeal is also challenged through the instant application, a true copy of which has already been filed as Annexure 1A to this application

posted as Goods Clerk, N.E. Railway Basti by the General Manager, N.E. Railway in the year 1962 and since then he is continuing in the service of the N.E. Railway.

4.3 That as the work and conduct of the applicant was found to be excellent, he was promoted to the post of Senior Goods Clerk in the year 1974 by the Divisional Personnel Officer.

4.4 That on account of superb and spectacular performance or work of the applicant he was promoted to the post of Head Goods Clerk with effect from 1.1.1984 by the Divisional Railway Manager (Personnel), N.E. Railway, Lucknow and since then he is continuing as such with full devotion and dedication to the entire satisfaction of his superiors with neat and clean service record. A true copy of the aforesaid letter of promotion passed by the Divisional Railway Manager (P), Lucknow is being filed herewith as Annexure-2 to this application.

ANNEXURE-2

4.5 That while the applicant was functioning as Head Goods Clerk at N.E. Railway Sohratgarh he was served with a Memorandum of chargesheet dated 6/11.5.1988 issued under the seal and signatures of the Respondent No. 2. A true copy of the aforesaid chargesheet dated 6/11th May 1988 received by the applicant on 20.5.1988

ANNEXURE-3

is being filed herewith as annexure-3 to this Application.

- 4.6 That a perusal of the aforesaid chargesheet contained in Annexure-3 to this application makes it overt that as many as six charges have been formulated against the applicant and on the basis of that it has been alleged that the applicant has contravened sub rule 3 1(i) and 3 1(ii) of Railway Service (Conduct) Rules 1966 (hereinafter referred to as 1966 Rules).
- 4.7 That the aforesaid allegations were proposed to be sustained with the help of the enquiry report dated 22.4.1988 submitted by one Sri D.K.Ashthana Goods Superintendent, Divisional Railway Manager Office and the report dated 9.3.1988 submitted by Sri S.P. X Srivastava, Divisional Commercial Inspector, Sohratgarh. These two persons alone have been indicated to be the relied upon witnesses for the purposes to substantiate and prove the article of charges levelled against the applicant by the oral evidence.
- 4.8 That as the allegations levelled against the applicant were false, misconceived and incorrect in as much as the facts have been broken into irrelevant parts, the applicant denied all the charges and consequently one Sri Ahmad Ullah,

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Assistant Commercial superintendent (I) was appointed as Enquiry Officer; but as he was subsequently transferred without initiating any enquiry proceedings the Opposite Party No.3 was appointed as Enquiry Officer vide order dated 7.7.1988.

4.9 That the first date of enquiry was fixed as 25.1.1989 in the office of the Opposite Party No. 3 at Lucknow. Sri D.K. Asthana and Sri S.P. Srivastava appeared before the Enquiry Officer and confirmed their reports without supporting the allegations levelled against the applicant. through the aforesaid chargesheet. Both the aforesaid witnesses however failed to establish that as how they could come to know the fact that a different kind of wood was loaded which was not mentioned in the demand form submitted by the party before the applicant for the purposes of booking.

4.10 That any way the enquiry proceedings were concluded after the statements of the aforesaid witnesses and suddenly the impugned order of reduction in rank dated 25.9.1989 was issued under the signatures of the Respondent No.2 which was received by the applicant on 7th of October 1989.

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4.11 That alongwith the impugned order of reduction in rank, a copy of enquiry report has also been supplied to the applicant which has been filed as part of Annexure-1 to this application. A perusal of the enquiry report palpably reveals that the applicant has been held responsible for some different charges which have not been included and mentioned in the aforesaid chargesheet as contained in Annexure-3 to this application. It has been stated in the enquiry report that on an enquiry the following facts were emerged:-

- a) The applicant has not mentioned the permit number etc. on any of the Railway Receipts technically known as R.R. as a sequel to which the said Railway Receipts are rendered devoid of credence. This has not been included in the chargesheet as there is no charge to the effect ~~that~~ that the applicant failed to mention the number of permit on the R.R.. Moreover there has never been any such instructions nor even there is any column or space provided in the R.R. to mention the number of permits produced by the consignor and therefore this finding is wholly baseless and on this very finding the applicant cannot be held responsible.

[Handwritten signature]

b) It is further mentioned in the said enquiry report that on examining the documents relating to charge No. 1 it has been established that the commodity mentioned in the permit is different from the commodity mentioned in the said R.R. Book which is not acceptable. This charge is also different from the charge no. 1 mentioned in the chargesheet. It has altogether not been considered that a single permit was issued for different kind of woods. The total quantity of the wood has been indicated in the said permit and the Consignor while applying for booking has separated different kinds of woods which were mentioned in the permit but the total weight of all the woods booked has been exactly the same which has been mentioned in the permit. For the sake of ready reference one such copy of permit is being filed herewith as Annexure-4 to this Application indicating the truth that 5 K.C. lot i.e. 5 Cart of 4 wheeler has been permitted vide this permit containing a total lot of 50 Cubic mtrs. It has not been alleged that in total this booking has not been done as the booking is always done in accordance with the convenience of the consignor and the only thing which is to be checked by the Goods Clerk (applicant) was to book the consignment only after looking the permit for the same.

ANNEXURE-4



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c) Regarding charge No. 2 it has been stated

in the said enquiry report that the applicant did not show the concerned permit and as such it appears that the averment of Sri Asthana is correct that the permit was relating to Basti but the booking was made to Sikar Jn. This charge has not been levelled against the applicant. It has not been indicated as how the allegations have been found to be true and the contention of the applicant to the effect that there was no such directions to book a consignment in accordance with the entries made in the permit relating to the destination was found to be untenable and incorrect. No rule or instruction has been disclosed instructing the applicant to book a consignment only upto the destination mentioned in the permit and not according to the destination ~~in~~ mentioned in the demand form submitted by a sender.

d) Regarding the charge No. 3 no reason has been stated for accepting it to be true and proved in the said enquiry report and as such it is not acceptable in the eye of law.

e) Similarly regarding the charge Nos. 4 and 5 also nothing has been mentioned as how the charges have been brought home and what is the basis and reasons for the conclusions arrived at and as such it is also not tenable in the eye of law.

Order

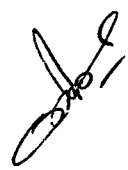
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f) Regarding charge No. 6 it has been mentioned in the said enquiry report that the invoice dated 23.1.1988 indicates that the loading has been done without permit. In this respect also no evidence has been discussed as how this conclusion has been arrived at. As a matter of fact the consignment was loaded against the permit, a true copy of which is being filed herewith as Annexure-5 to this application.

ANNEXURE-5

4.12 That the punishment of reduction in rank is a major punishment under Rule 6 of the Railway Servant (Discipline and Appeal) Rules 1968 (hereinafter referred to as 1968 Rules) and as such the Respondent No.2 is neither an appointing authority under rule 2(1)(a) of 1968 Rules nor the Respondent No.2 is the actual authority who promoted the applicant to the post of Head Goods Clerk as is evident from the order of promotion contained in Annexure-2 to this application.

4.13 That the applicant has never violated any rule or instructions and as such no charge can be framed against him under the provision of law. The applicant has never been instructed that the booking or a consignment should be made in accordance with the entries made in a permit and the only instruction which has been issued



was to the effect that booking should not be done in absence of permit regarding the forest produce. A true copy of the instruction which was circulated for the purposes of booking of forest produce dated 3/4.1.1985 is being filed herewith as Annexure-6 to this application. A perusal of the instructions contained in Annexure-6 to the application avowedly reveals that the transportation of a forest produce should not be allowed through any railway station by way of booking without getting a permit for the same duly issued by the Forest Department. It is categorically stated that the applicant has not booked any forest produce without receiving a proper permit issued by the Forest Department.

4.14 That the applicant has also not violated any provisions of U.P. Transit of Timber and other forest produce Rules 1978 which have been referred in the aforesaid instructions contained in Annexure-6 to this application. Indeed these Rules 1978 do not contain any instruction regarding transportation of forest produce through Railways.

4.15 That the applicant has also not violated any provision relating to booking of a consignment for the purpose of transportation from one

ANNEXURE-6

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place to another place. He has always scrupulously submitted to all provisions of law and has also complied with all the instructions relating to transportation of a consignment. Even the proforma prepared by the Railways for the purposes to transport a consignment from one place to another place was approved under section 72 of the Indian Railways Act 1890 has always been properly ~~followed~~ filled in and checked in accordance with law. In fact it does not contain any space for referring the details of the permit. For the sake of ready reference the applicant is filing herewith a blank proforma used by a sender for the purpose to transport a consignment from one place to another place as duly approved by the Government as Annexure-7 to this application.

ANNEXURE-7

4.16 That as the allegations levelled against the applicant are neither misconduct nor misbehaviour hence no disciplinary enquiry could have been instituted against him under the provisions of Rule 9 of 1968 Rules for the purposes to impose unlawful penalty contemplated under rules 6 of 1966 Rules.

4.17 That no violation of any instruction or rule has been referred in the said chargesheet and the only violation which has been referred in the

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said chargesheet is violation of rule 3 of the 1966 Conduct Rules. Rule 3 of the 1966 Rules is a definition clause and as such the applicant cannot be punished for violation thereof as has already ^{been} settled by the Central Administrative Tribunal in catena of decisions.

4.18 That the disciplinary enquiry has also not been conducted in accordance with the principles of fair play, equity and natural justice. The applicant has never been afforded full and adequate opportunity to assail the allegations and establish his innocence. As the allegations which have been formulated in the form of charge are abysmal, obscure and vague having no support of any material, they cannot be demolished by the applicant in any manner whatsoever. The matter disclosed has got no relation with the charge levelled against the applicant and therefore it is wholly unwarranted and arbitrary to hold the applicant responsible for certain conduct which has not been prohibited under any law or guided by any law to be followed in a particular fashion.

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4.19 That the applicant has been punished maliciously by an incompetent authority which has got no jurisdiction to punish the applicant under the

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provisions of 1968 Rules. The applicant is at the verge of retirement and his salary has been reduced to the initial stage of the lower grade for a period of 5 years and the applicant shall retire from the service on reaching the age of superannuation immediately at the end of the aforesaid 5 years. Thus the applicant will suffer a recurring loss relating to his post retirement benefits as he will have to fill form etc. indicating himself to be working on the lower post and his pension etc. will also be fixed accordingly which shall be a recurring loss to him.

4.20 That the applicant has also not been supplied with the copy of the enquiry report enabling him to demolish the findings of the Enquiry Officer before the same are accepted by the disciplinary authority and consequently due to non affording of this vital opportunity the applicant has suffered a great loss. This renders the entire disciplinary proceedings to be void abinitio.

4.21 That the fact that Respondent No. 2 is not a competent authority to either institute or punish the applicant in any manner, as the entire disciplinary proceedings have become nonest in the eye of law and consequently the impugned

X
X

order of punishment has virtually got no legal existence in the eye of law on the basis of which no benefit or privileges already accrued in favour of the applicant can be curtailed or taken away.

4.22 That the departmental appellate authority has got no power under the provisions of the 1968 Rules to stay the impugned order of reduction in rank which is apparently void ab initio and as such the applicant has got no other effective efficacious alternative remedy except to invoke the jurisdiction of this Hon'ble Tribunal as he can only be rescued from a void and illegal order by the strong hands of this Hon'ble Tribunal.

4.23 That it is not possible for the applicant to file a departmental appeal under the provisions of 1968 Rules as the material disclosed for substantiating the charges have got no relation with the charges and the findings of the Enquiry Officer are vague containing no reasons and conclusions arrived at. In these circumstances neither it is possible for the applicant to prepare any effective appeal nor he is expecting any worthwhile orders from the departmental authorities as the applicant has virtually been

22/10/81

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noosed on the alter of arbitrariness and malafides.

4.24 That the applicant has been deprived of his right to livelihood unceremoniously for no reason and as such the impugned action is liable to ^{be} set aside by this Hon'ble Tribunal.

4.25 That it is very much pertinent to mention that Sarvasri Mohd. Sayeed Khan, ex. Station Superintendent Balrampur and Ram Shanker Singh, Station Master Kawapur have also booked forest produce without ex taking permits issued by the Forest Department yet only minor punishment has been awarded to them while the applicant has been awarded with a major punishment. Both the aforesaid persons have been awarded a punishment of withholding an increment for a period of one year temporarily.

4.26 That it is very much evident from the facts narrated herein above that the quantum of punishment imposed upon the applicant is not in ^{commensuration} ~~consonance~~ with the gravity of charges and it is, being disproportionate, is arbitrary and violative of the provisions of Article 14 of the Constitution of India. The department has not suffered any pecuniary loss in any manner whatsoever and no undue advantage has been extended to any one

Confidential

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in any manner and as such the action of the Respondents in imposing a major punishment is wholly arbitrary and uncalled for. The applicant is also entitled for the equal protection of law and in any case a minor punishment can only be imposed upon him as has been imposed on the aforesaid persons who were performing the same job.

Paragraphs 4.27, 4.28, 4.29, & 4.30. See left
5. Grounds for relief with legal provisions.

- i) Because the impugned order has been passed by the Respondent No.2 who has got no jurisdiction to pass such an order.
- ii) Because the impugned order has been passed in violation of the provisions of Article 311(2) of the Constitution of India.
- iii) Because the Respondent No.2 is not the appointing authority under Rule 2 (1)(a) of 1968 Rules.
- iv) Because the chargesheet has been issued by an incompetent authority.
- v) Because the charges are vague and based on ~~imagination~~ *imagination, suspicion and speculation with no material on record.*
- vi) Because the applicant has not violated any rule or instruction while performing his duties and therefore the conduct of the

entire

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of the applicant relating to his performance of duty cannot constitute misconduct or mis-behaviour.

- vii) Because the applicant cannot be punished for the violation of rule 3 of 1966 Rules.
- viii) Because the punishment imposed upon the applicant is arbitrary and disproportionate to the ~~ga~~ gravity of the charges and as such is violative of Article 14 of the Constitution of India.
- ix) Because no enquiry has been conducted in accordance with the principles of fair play, equity and principles of natural justice.
- x) Because the applicant has never been issued any instructions to work in a particular manner and there are no rules or guidelines providing the manner to book the forest produce for the purpose of transportation.
- xi) Because the Enquiry Officer held the applicant guilty of some different charges which have not been included in the said chargesheet.
- xii) Because the applicant has not been supplied with the enquiry report before the impugned punishment was imposed upon him.
- xiii) Because the findings of the Enquiry

contd.

Officer are vague obscure and cryptic which does not disclose the reasons for the conclusions arrived at.

- xiv) Because there is absolutely no material available on record to justify and establish the charges against the applicant.
- xv) Because the fact that one permit was issued for different variety of goods has not been taken into consideration.
- xvi) Because the entire disciplinary proceeding is arbitrary null and void in the eye of law in as much as it is violative of the statutory provisions including the provisions of para III of the Constitution of India.

Ground No. xvij - See al-left

6. Details of the remedies exhausted:

The applicant declares that he has got no other equally effective efficacious remedy under the circumstances of the case as he will have to face the travails of a void and nonest order which has got no legal existences particularly when the departmental authorities have got no power to stay the same under the provisions of 1968 Rules albeit the impugned order is apparently illegal and

arbitrary and void. The departmental appeal dated 12-11-1989 was later on rejected by the respondent vide order dated 12-12-89.

4/12/89

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

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

8. Reliefs sought :

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

a) This Hon'ble Court/Tribunal may kindly be pleased to quash/set aside the impugned order of reduction in rank dated 25.9.89 as contained in Annexure-1 to this Application with consequential benefits as if no such impugned order has ever been passed.

b) This Hon'ble Tribunal may also be pleased to pass any other orders which are found just and proper in the circumstances of the case.

c) to allow the application with cost.

d) - kindly see at 604-.

Grounds in support of the aforesaid reliefs are the same as has been mentioned in para 5 above.

9. Interim order, if any prayed for :

Pending final decision on the application,
the applicant seeks the following interim relief:

- a) That the Hon'ble Tribunal may kindly be pleased to stay the operation of the impugned order of reduction in rank dated 25.9.1989 contained in Annexure-1 to this application during the pendency of the case directing the respondents to allow the applicant to continue as Head Goods Clerk as usual and pay him the salary and usual allowances attached to the post.

b) - *Kindly see at left -*

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

11. Particulars of ~~Bank Draft~~/Postal Order file

in respect of the application fee.

- (i) Number of Postal order → *4 777/35*
(ii) Name of the Issuing Post office → *High Court Branch, Lucknow*
(iii) Date of Issue of Postal order → *18.9.89.*
(iv) Post office at which Payable → *Lucknow*

12. List of enclosures - As per Index.

VERIFICATION

I, Lalji Misra, son of late Gmti Prasad Misra, aged about 52 years, working as Head Goods Clerk in the office of North Eastern Railway, Sohratgarh

resident of Station Road, Pachperwa, district
Gonda, do hereby verify that the contents of
paras 1 to 12 are true to my personal knowledge
and that I have not suppressed any material fact.

Dated: Lucknow:
October , 1989.



SIGNATURE OF APPLICANT.

Lalji Misra

G.A. No. - 18961

Applicant

Union of India & others

Respondents

ANML X 421 - 1

Thru sec/90 (top)

NORTH EASTERN RAILWAY

FORM No. 3

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

No. 18961/G/NGC C/S/5/88

Dated- 25/9/89

Name	+	Shri Lal Jee Mishra
Father's name	+	" Gunti Prasad Mishra
Designation	+	HGC
Department	+	Commercial
Date of appointment	+	1.5.1958
Station	+	SOT
Scale of pay	+	1400-2300 ✓

Shri Lal Jee Mishra, HGC/SOT

(name, designation and office in which he is employed.)

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

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

OR

3. On a careful consideration of the enquiry report aforesaid, the undersigned agrees with the finding(s) of the Inquiry Officer 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 has/have held "as not proved/proved is also proved/not proved."

4. The undersigned has, therefore, come to the conclusion that the penalty of reduction to a lower post/grade/service may be imposed on Shri Lal Jee Mishra, HGC/SOT - is, therefore, reduced to lower post/grade/service of - - - - - in the scale of Rs. 1200-2040 fixing his pay at Rs. 1200/- per month for a period of Five years - - - - - months from the date of this order with/without postponing future increments.

5. Under Rule 18 of the Railway Servants(D&A) Rules, 1968 an appeal against these orders lies to - - - - - provided : -

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

6. Please acknowledge receipt of this letter.

DA/ COPY OF 1/Report

Signature. (Dr. L. Narad Waj)

(Name & Design. of the Disciplinary Authority)

*Strike out whichever is not applicable.

Arc

इन दि सेन्दल सेडमिनिस्ट्रेटिव ट्रीब्युनल, इलाहाबाद, सरकिट बेन्च, लखनऊ।

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आफ - 1989

लाल जी मिश्रा --

..., अप्लीकेन्ट

बनाम

यूनियन आफ इन्डिया आदि

..., अपो- पार्टीज

पार्टी आफ - अनेग्जर नम्बर - 1

=====

जॉव रपट

रेल सेवा अ-नुमासन स्वसु अपोल नियम 9, 1968 के
अन्तर्गत जॉवरपट :-

केस संख्या - सी/ एस. एस./5/88

आरोपित कर्मचारी - श्री लाल जी मिश्रा एच.जी.सी/एस.ओ.टी.

अनुमासन अधिकारी - मन्डल वाणिज्य अधीक्षक।

जॉव अधिकारी - नेत्रपाल सिंह, समाधी / लखनऊ।

आरोप पत्र संख्या - सी/एस.एस./5/88, दिनांक- 6/11-5-88

§ 1§ आरोप के अनुच्छेदों का विवरण, जिनके सम्बन्ध में जॉव की गई:-

Sri Lalji Misra while working as H.G.C./S.O.T. during the period from 28.11.87 to 23.1.88 failed to maintain assolute integrity and devotion to duty in as much as under;
i) The permit for the consignment booked by Sri Misra under inv. No.2/685746 dated 28.11.87 and Inv.No.1/685748 dated 30.11.87 was for Seesam Logs but the party has loaded the SEMAL logs and Khair wood respectively.

ii) The consignment booked by Sri Lalji Misra H.G.C./S.O.T. under Inv.No.1/685958 dated 19.1.88 accrodng to permit was to load for BST but iths been loaded for Shekar Jn.

iii) The permit for Inv.No.12/925099 dated 28.11.87

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- 2 -

prepared by Sri Misra was for mangos logs, but Seesam logs have been loaded .

5) The permit (Relating to Inv.27/925714 dated 23.1.88 prepared by Sri Misra was for mango logs but loaded Seesam logs and Kukat .

4) The permit relating to Inv.No.14/925701 dated 25.12.87 prepared by Sri Misra was for Seesam Logs but loaded Kukac logs .

6. Loading against Inv. No.28/925715 dated 23.1.88 prepared by Misra was done without permit .

Thus the above act of Sri Lalji Misra H.G.C./ S.O.T. tantamount to serious misconduct in contravention to sub Rule 31(i) and 31(ii) of the Railway Service Conduct Rule 1966

§ 28 अरवि के प्रत्येक अनुच्छेद के समर्थन में अवधार/ वादधार के तथ्यों का विवरण :-

Shri Lalji Misra while working as H.G.C. S.O.T. Station during the period from 28.11.87 to 23.1.88 committed the serious irregularities in booking of Khair wood logs consignment as detailed below:-

1) According to permit relating to Inv.2/685746 dated 28.11.87 and Inv.No.8/ 685748 dated 30.11.87 only Seesam logs were to be loaded but the party has loaded SEMAL logs and Khair wood respectively which is contrary to this permit Sri Misra who prepared the invoices who should have checked at the time of loading but he did not do so which proves his connivance with the party.

2) The permit relating to invoice no.1/685958 dated 19.1.88 prepared by Sri Misra was for loading to BST it has been loaded for SHIKAR JN. which is contrary to this permit.

AT-2
J. J. J.

- 3 -

3) In the same way the irregularities has maintained against item No.3,4,5,6 in the Annexure no.1 while also have been checked up if Shri Misra had taken a least cure of more ,but he failed to do so which also proved of his connivence with the parties .Shri Misra has thus violated the instruction of U.P. Transit of Forest and other Forest produce rule 1978 circulated under D.R.M.(Optg) letter No.T/208 /Forest/ dated 15.6.83 and this office letter No.C/387 / PRITBANDH Dated 3/4-1-85 and X R No.T/208/ Forest dated 22.12.87

अभियोजन पक्ष साक्ष्य स्वयं साक्षी :-

अभियोजन पक्ष की तरफ से जाँच में श्री जी० एस० अस्थाना जी० एस०/एच.जी. स्वयं श्री एस. पी. श्रीवास्तव, डी. सी. आई. /एस. ओ. टी०॥ तत्कालीन ॥ उपस्थित हुये। साथ ही साथ आरोप पत्र में उल्लिखित अभिलेखों आदि को देखा, स्वयं परखा। चूँकि इस कस में श्री एस. पी० श्रीवास्तव डी. सी. आई. की रपट पर पुनः श्री अस्थाना जी.एस./एच.क्यू.॥ तत्कालीन॥ को जाँच करने को कहा गया था, फलस्वरूप बचाव सहायक ने केवल श्री अस्थाना को ही एकजांमिन करने पर जोर दिया, क्योंकि आरोप पत्र श्री अस्थाना की रपट की मुद्दों पर ही तैयार किया गया था।

आरोपित कर्मचारी, अभियोजन पक्ष, साक्ष्य स्वयं साक्षी की जाँच स्वयं अभिलेखों के देखने से ज़रूरी निम्न तथ्य प्रकट हुये:-

1- श्री लाल जी मिश्रा ने किसी भी आर. आर.॥ रेलवे रसीद॥ स्वयं अग्रेशन नोट पर किसी भी परमिट की संख्या आदि का उल्लेख नहीं किया है, जिससे रेलवे रसीद की प्रामाणिकता पर विश्वास नहीं किया जा सकता है कि किस परमिट के लिये जारी की गई वास्तविक रसीद कौन सी है, जैसा कि सम्बन्धित जाँच प्रक्रिया के पृष्ठ॥८॥ पर "ए" चिन्होंकित अंश से स्पष्ट हो जाता है, यथा:-

A.S.C.
Dy. Secy

On the point as to why permit No. was mentioned either on F/ Note ,ORR or in any documents it was clarified that there was no such procedure in the past it was stated being done only after the instruction of the D.C.I. of the Section which is dated 28.1.88.

इससे स्वतः स्पष्ट हो जाता है कि श्री मिश्रा जान बूझ कर किसी भी अभिलेख पर परमिट संख्या अंकित नहीं करते थे।

आरोप क्रमांक 1:-

सम्बन्धित अभिलेखों का अध्ययन करने पर स्पष्ट हो गया कि परमिट पर किसी कमोडिटी स्वप्न ओ.आर. आर. पर बुक कमोडिटी में अन्तर है, जो कि मान्य नहीं है। अतः आरोप की पुष्टि होती है।

आरोप क्रमांक-2:-

श्री मिश्रा ने सम्बन्धित परमिट को नहीं दिखाया। उनका कहना था कि यह परमिट उनको इस समय उपलब्ध नहीं हो पाया। अतः श्री अस्थाना जी० एस०/ स्व. क्यू. का कथन ही सत्य प्रतीत होता है कि परमिट बी. एस. टी. का था, परन्तु गाड़ी लेकर जेक्शन को बुक की गई। आरोप की पुष्टि होती है।

आरोप क्रमांक "3":-

के परमिट को अध्ययन करने पर स्पष्ट हो गया कि आरोप सही है।

आरोप क्रमांक 4 स्वप्न 5:-

के परमितों के अध्ययन से आरोपों की पुष्टि हो जाती है।

आरोप क्रमांक 6, :-

इसमें सम्बन्धित इन्वायेस नो 28/925715, दिनांक- 23-1-88 बिना परमिट के ही जारी की गई है। अतः आरोप की पुष्टि होती है।

ATC
KMP

बचाव पक्ष, साक्ष्य स्वम् साक्षी:-

बचाव पक्ष की तरफ से केवल बचाव सहायक श्री पी० एन० लाल स्वम् सम्बन्धित अभिलेख ही प्रस्तुत किये गये। कोई अन्य साक्षी श्री लाल जी मिश्रा ने प्रस्तुत नहीं किया और न कोई मौग भी की।

कर्मचारी द्वारा अपने बचाव में प्रस्तुत किया गया बचाव पत्र :-§ तथ्य §:-

श्री लाल जी मिश्रा स्व. जी. सी./ बी.एन. वाई. ने अपना पत्र बचाव/बिना तिथि अंकित किये दिनांक 17.4.89 को पंजीकृत डाक से मेरे पते पर भेजा था, जो कि मुझे एक पैड में दिनांक- 24-4-89 को प्राप्त हुआ।

साक्ष्यों का मूल्यांकन एवं निष्कर्षों पर पहुँचने का कारण:-

आरोप संख्या 1, 3, 4, स्वम् 5 से सम्बन्धित परमिटों स्वम् ओ. आर. आर. में लिखित रूपसे कोई सम्बन्ध प्रगट नहीं होता। कारण यह है कि परमिट किसी वस्तु के लिये जारी है, तथा श्री मिश्रा के कथनानुसार बनाई गई ओ. आर. आर. किसी दूसरे सामान को बुक करने में प्रयोग की गई है। स्वम् साथ ही साथ परमिट का रेलवे बुकिंग के किसी भी अभिलेख पर उल्लेख नहीं किया है।

आरोप संख्या 2:- का परमिट श्री मिश्रा द्वारा जाँचके समय प्रस्तुत न करना स्पष्ट करता है कि यह अपने को दोषी मानते हैं।

आरोप संख्या 6:- तो स्वतः स्पष्ट है कि यह इन्वायेस बिना ~~परमिट के~~ बनाई गई है।

साथ ही साथ श्री मिश्रा अपने ऊपर लगाये गये आरोपों के विरुद्ध कोई प्रमाणित अभिलेख प्रस्तुत नहीं कर पाये।

निष्कर्ष :-

इस प्रकार श्री लाल जी मिश्रा स्व. जी. सी./ स्व. ओ.टी.

ATC
R. M. S.

के विरुद्ध लगाये गये सभी आरोपों की पुष्टि हो जाती है। अर्थात्
आरोप पत्रमें निहित सभी आरोप सही पड़े।

जॉब रपट श्रीमान् जी की सेवामें आवश्यक कार्यवाही हेतु प्रेषित
 है।

दिनांक:- 06-5-89

ह0- अपठनीय,

6/5,

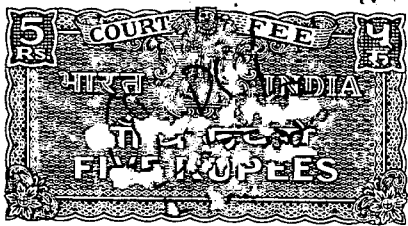
४ जॉब अधिकारी४

सत्य- प्रतिलिपि

ATC
 Read

In The Central Administrative Tribunal, Allahabad.
ब अवालत श्रीमान् Lucknow Bench, Lucknow. महोदय

वादी / अपीलान्त श्री Lalji - Missa Applicant बकालतनामा



O.A. NO - 1989(L)

दिनांक

पायी (अपीलान्त)

Lalji Missa

Applicant

पनाम

प्रतिवादी (रेस्पॉण्डेंट)

Union of India & others

Respondents

म० मुकद्दमा

सन

पेशी की ता०

१२ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री ओ० पी० श्रीवास्तव एडवोकेट
(वर श्री सी० पी० श्रीवास्तव, एडवोकेट)
द६७, पुराना महानगर निकट फातिमा अस्पताल, लखनऊ-२२६००२ महोदय

नाम अदायत
मुकद्दमा न०
नाम करीफिन
पनाम

जो अपना वकील नियुक्त करके प्रतिज्ञा (इफरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई खपया जमा करें या हमारी बिपक्षी (फरीकसानो) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (बस्तखती) रसीद से लेवे या एवं नियुक्त करें—वकील महोदय द्वारा की गई वगैरे सव कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने परोकार को भेजता एहंगा अगर मुकद्दमा अदम पेरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह एकीलनामा लिख दिया प्रमाण रहे और समय पर काम आये।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

जहीना

सन १२

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A/3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. 297 (W) OF 1989(L)

Lalji Misra

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Applicant

VERSUS

Union of India and others

.....

Respondents

I N D E X

COMPILATION NO. 2.

Sl. No.	DESCRIPTION OF DOCUMENTS RELIED UPON.	PAGE NO.
1.	ANNEXURE - 2 Letter of promotion dated 5-5-86	1 - 3
2.	Annexure - 3 Chargesheet dated 6/11.5.1988.	4 - 6
3.	Annexure - 4 Copy of permit	7 - 00
4.	Annexure - 5 Form	8 - 00
5.	Annexure - 6 Instructions dated 3/4.1.1985.	9 - 00
6.	Annexure - 7 Blank Proforma used by the sender.	10 - 00
7.	Annexure - 8 - Departmental appeal dated 17.11.87	
8.	Annexure - 9 - 1978 Rule	

Amendment incorporated in compliance of order dated 12.9.88

[Signature]

14.9.90

[Signature]
SIGNATURE OF THE APPLICANT

[Signature]
(O.P. SRIVASTAVA)
ADVOCATE

COUNSEL FOR THE APPLICANT.

Lalji Misra

Applicant

Union of India & others

Respondents

ANNEXURE - 2

कार्यालय आदेश

रेल परिषद के पत्रिक पोसी/11/ 80/ प्रोपोजी0/80/ 800/ 1-19 दिनांक

20/12/83 सर्व महाप्रबन्धक(का0) गोरखपुर के पत्रिक ई/205/ पोसी/ प्रोपोजी0/81/1/88V

दिनांक 28/12/83 के अन्तर्गत रिट्यूनिंग स्कीम में दिनांक 1-1-84 से रिक्त पदों के लिए

निम्नलिखित

तदर्थ पदोन्नति

जारी किया जाते हैं तथा माल बाबू 260-430 की अन्तिम

(अ) माल बाबू जो इस कार्यालय के पृष्ठक संख्या ई/11/255/जीसी/84 दि0 31-1-85 के

अन्तर्गत प्रकाशित की गयी है को रेल परिषद के अन्तिम निर्णय तक के लिये पेन्ड किया

है। क्रमो नाम पद नाम वेतनमान स्टेशन पदोन्नति पद स्टेशन वेतन निर्धारण

क्रमो	नाम	पद नाम	वेतनमान	स्टेशन	पदोन्नति	पद	स्टेशन	वेतन निर्धारण
1)	श्री ए0 सुक्ता, भू0 प्रो0 मु0 माल बाबू	आनन्दनगर	मान 550-750	1-1-84	1-1-85	आनन्दनगर	एव -	
	455-700			दि0 1-1-84 से	1-1-86			

दिनांक 31-10-85 तक देय है।

2)	श्री राम मूर्ति	गोरखपुर	गोरखपुर	दि0 1-1-84 से	28-2-84 तक			
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3)	श्री कमला प्रसाद	सीतापुर	सीतापुर	दि0 1-3-84 से	31-5-84 तक			
	ओवास्तव							

4)	श्री आर0 स्त0 वर्मा	गोरखपुर	गोरखपुर	590/-	610/-	630/-		
				1-6-84 (1-6-84)	1-6-85	1-6-86		

दि0 1-6-84 से देय है।

5)	श्री वी0के0 दास	गोरखपुर	गोरखपुर	-	-	610		
						1-11-85		

(ब) मुख्य माल बाबू (455-700)

1)	मुहम्मद शमीम प्रधान माल मिलानी	मुख्य माल बाबू/मिलानी	580/-	एक की	620/-			
	हान 425-640	455-700		वेतन आरेख	1-1-86			

2)	ए0ए0 बारी	पलिवाकली	पलिवाकली	530/-	545/-	560/-		
				1-1-84	1-7-85	1-1-86		

3)	राकि हुसेन भू0प्रो0	हरगाँव	हरगाँव	दि0 1-1-84 से	31-7-85 तक			

4)	आर0ए0 मिश्रा	लखनऊ	लखनऊ	जब 560/-	580/-	600/-		
				1-3-84	1-1-85	1-1-86		

क्रमशः

5) श्री मो० रम० प्रधान नौतनवा म० मालबाबु/नौतनवा दिनांक 1-1-84 से 31-1-84 तक देय है।
श्रीवासव माल बाबु 455-700
425-640

6) श्री जो० सो० अरोरा .. सीतापुर .. सीतापुर 580/- 600/- 620/-

(स) प्रधान माल बाबु / टी० आ० सो० (425-640)

7) श्री ए० शुक्ला, प्रवर जो० सो०/बहराइच .. जो० सो०/बहराइच 545/- 560/- 580/-
श्री 330-560 425-640

8) खान मुहम्मद जहीर .. गोरखपुर .. गोरखपुर 530/- 545/- 560/-

9) श्री राम बहल त्रिपाठी .. तुलसीपुर .. तुलसीपुर 530/- डब्लू आईपी ड० आ० टी०
। का । का

10) श्री ध्रुव जी प्रसाद .. टी० आ० सो०/गोडा .. टी० आ० सो०/गोडा 580/- 600/- 620/-

11) श्री लाल साहेब सिंह .. जो० सो०/गोरखपुर .. जो० सो०/गोरखपुर 500/- 515/- 530/-

12) श्री जे० यो० त्रिपाठी .. गोरखपुर .. गोरखपुर 515/- 530/- 545/-

13) श्री डो० आ० सिंह .. जो० सो०/गोरखपुर .. जो० सो०/गोरखपुर 500/- 515/- 530/-

14) श्री डो० एस० सिंह .. टी० आ० सो०/ प्रधान टी० आ० सो०/ गोडा 530/- 545/- 560/-
गोडा गोडा 1-7-86

15) श्री लाल जो मिश्रा .. जो० सो०/शोहरतगढ़ प्रधान जो० सो०/शोहरतगढ़ 530/- 545/- 560/-
1-8-84 1-1-85 1-1-86

16) श्री एस० पी० मिश्रा .. गोरखपुर प्रधान जो० सो०/गोरखपुर

17) श्री बी० रम० शुक्ला .. कर्नेलाज प्रधान जो० सो०/कर्नेलाज/लखनऊ सिटी 545/- 560/- 580/-

18) लालक प्रसाद, भू० पु० प्रवर जो० सो०/गोबिन्दनगर दिनांक 30-11-84 से सेवा निवृत्त
330-560 नगर

19) श्री लालताराम जो० सो०/गोरखपुर .. गोरखपुर 425/- 440/- 455/-
(अ० जा०) (260-430) 1-1-84 1-1-85 1-1-86

क्रमपर:

A7C

(1) प्रेम, माल बाबू (330-560)

(1) श्री श्रीराम अग्रवाल जी०सी० 260-430 गोरखपुर प्रेम जी०सी० गोरखपुर 392/- 404/- 416/-
 2) श्री अकार नाथ जी०सी० 260-430 रामा 330-560

3) श्री जब्बार अहमद खान बलरामपुर बलरामपुर 452/- 464/- 476/-

4) श्री राम रती प्रसाद बदनी बदनी 452/- 464/- 476/-

5) श्री अशोक कुमार बालमीकी (अ०जा०) लखीमपुर खीरी लखीमपुरखीरी 330/- 340/- 350/-

6) श्री लल्लान (अ०जा०) कानपुर अनवरगंज कानपुर अनवरगंज 330/- 340/- 350/-

प्रोफेसर्स वेतन निर्धारण दिनांक 1.1.84 से देय है परन्तु वास्तविक वेतन का लाभ सरकार से देय है। उक्त पदों पर बने रहने अथवा वरीयता आदि का लाभ का कोई अधिकार नहीं रहेगा। उपरोक्त तदर्थ पदोन्नति/रिज रिशत के अन्तिम आदेश एवं सुप्रीम कोर्ट में लम्बित रिट पेटोशन के निर्णय पर आधारित होगा।

इसमें प्रमोशन का आदेश प्राप्त है।

कृते मंजूर रेल प्रबन्धक (का०), लखनऊ

दिनांक 11/12/10/15/नौजी/86 दिनांक 5-5-86

प्रतिलिपि सूचनार्थ एवं आवाक कार्यता हेतु प्रेषित:-

- 1) स्टेशन अधीक्षक/आनन्दनगर, बदनी, गोरखपुर, सीतापुर, पल्लिगंज, उरगांव, लखनऊ ज०, नौतनवां, सीतापुर, बहराइच, तुलसीपुर, गोंडा, रोहतास, कर्नालगंज, लखनऊ सिटी, गोबिन्दनगर।
- 2) सम्बन्धित कर्मचारी द्वारा सम्बन्धित स्टेशनों
- 3) प्रवर्ग/रोहतास, गोरखपुर (उत्तर), सीतापुर, मैलाना, लखनऊ ज०, रोहतास, बहराइच, गोंडा।
- 4) कार्यालय अधीक्षक/बिल सेवापुस्तिका ०८ वेतन वृद्धि लिपिक
- 5) प्रवर्ग/लखनऊ
- 6) प्रमोशन/लखनऊ
- 7) मंजूर मंत्रि / नम्र, पी० आर० २५०
- 8)

कृते मंजूर रेल प्रबन्धक (का०) लखनऊ

APC

Lalji Mishra

Applicant

Union of India & others

Respondents

ANNEXURE - 3

पूर्वोत्तर रेलवे
N. E. Railwayपू० उ०—जी० 354 (मंशोधित)
N. E.—G. 354 (R)आरोप पत्र का मानक-फार्म
Standard Form of Chargesheet.मानक फार्म नं० 5
Standard Form No. 5[रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 का नियम 9]
[Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968]संख्या... 9/55/57/88
No.(रेल प्रशासन का नाम) ... १०.१०.१० (१०)
(Name of Railway Administration)(जारी करने का स्थान) ... १०.१०.१०
(Place of issue)तारीख ... १०/१०/८८
Dateज्ञापन
MEMORANDUM

1. * राष्ट्रपति/रेलवे बोर्ड/निम्नहस्ताक्षरकर्ता रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 के नियम-9 के अधीन श्री ... को विवेक/जांच करने की प्रस्थापना करते हैं। अवचार या कदाचार के अभ्यारोपों का सार, जिनके सम्बन्ध में जांच करने की प्रस्थापना है, आरोप के अनुच्छेदों के विवरण (अनुबन्ध-I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के समर्थन में अवचार या कदाचार के अभ्यारोपों का विवरण संलग्न है (अनुबन्ध-II) जिन दस्तावेजों से और जिन साक्षियों द्वारा आरोप के अनुच्छेदों की पुष्टि की जाने की प्रस्थापना है, उनकी भी एक सूची संलग्न है (अनुबन्ध-III और IV) *दस्तावेजों की सूची में उल्लिखित दस्तावेजों की प्रतियां अनुबन्ध-III के रूप में संलग्न हैं।

1. The President/Railway Board/undersigned 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 misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or 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 (Annexures-III & IV). * Further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2. **श्री ... को एतद्वारा सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के 10 दिनों के भीतर कार्यालय समय में किसी भी समय दस्तावेज सूची (अनुबन्ध-III) में वर्णित दस्तावेजों का निरीक्षण कर सकता है और उनके उद्धरण ले सकता है। इस प्रयोजन के लिए इस ज्ञापन की प्राप्ति के बाद उसे तत्काल *** से सम्पर्क स्थापित करना चाहिए।

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 ten days of receipt of this Memorandum. For this purpose he should contact *** immediately on receipt of this memorandum.

3. श्री ... को आगे यह भी सूचित किया जाता है कि यदि वह चाहे तो दस्तावेजों का निरीक्षण करने तथा मौखिक जांच की स्थिति में जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता के लिए किसी अन्य रेल कर्मचारी/रेलवे ट्रेड यूनियन के किसी पदाधिकारी [जो रेल कर्मचारी (अनुशासन और अपील) नियम-1968 के नियम-9(13) और यथा स्थिति उनके नीचे नोट-1 और/अथवा नोट-2 की अपेक्षाओं को पूरा करते हों] की सहायता ले सकता है। इस प्रयोजन के लिये अधिमान्यता क्रम में उसे एक या अधिक व्यक्तियों का नाम निर्देशन करना चाहिये। सहायक रेल कर्मचारी (कर्मचारियों) या रेलवे ट्रेड यूनियन के पदाधिकारी (पदाधिकारियों) का नाम निर्देशन करने से पहले श्री ... द्वारा नामित व्यक्ति(व्यक्तियों) से वचन ले लेना चाहिये कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसकी सहायता करने के लिये तयार है/हैं। वचनबद्ध में ऐसे अन्य मामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाना चाहिये, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका है और नाम निर्देशिनी द्वारा दिया गया वचनबद्धनामांकन पत्र के साथ निम्नहस्ताक्षर कर्ता/सहायक ... रेलवे को भेजा जाना चाहिये।

3. Shri is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of Railway Trade Union [Who satisfies the requirements of rule-9(13) of the Railway servants (Discipline and Appeal) Rules, 1968 and Note-I

and/or Note-2 there under 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 alongwith the nomination.

4. श्री लालजी मिश्रा को एतद्वारा निर्देश दिया जाता है कि यदि उसे अपना प्रतिवाद तैयार करने के लिये किसी दस्तावेज का निरीक्षण करना अपेक्षित न हो तो इस ज्ञापन की प्राप्ति के 10 दिन के भीतर और यदि वह दस्तावेजों का निरीक्षण करना चाहे तो दस्तावेजों का निरीक्षण पूरा होने के 10 दिनों के भीतर निम्नहस्ताक्षरकर्ता को (महाप्रबन्धक रेलवे) के माध्यम से (अपने प्रतिवाद का लिखित कथन) (जो उक्त महाप्रबन्धक के पास पहुंचना चाहिये) प्रस्तुत करें और यह भी

4. Shri is hereby directed to submit to the undersigned (through General Manager Railway) a written statement of his defence (which should reach the 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 :—

(क) बताये कि क्या वह स्वयं पेश होकर कुछ कहना चाहता है, और

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

(ब) उन साक्षियों के, यदि कोई हों, नाम और पते बताये, जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है।

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

5. श्री लालजी मिश्रा को सूचित किया जाता है कि आरोप के केवल उस अनुच्छेदों के बारे में जांच की जायेगी जो स्वीकार नहीं किये गये हैं। इसलिए उन्हें चाहिये कि आरोप के प्रत्येक अनुच्छेदों को या तो विनिर्दिष्ट रूप से स्वीकार करें या अस्वीकार करें।

5. 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.

6. श्री लालजी मिश्रा को आगे सूचित किया जाता है कि यदि वह पैरा 4 में विनिर्दिष्ट अवधि के भीतर यदि वह अपने प्रतिवाद का लिखित कथन प्रस्तुत नहीं करता या जांच प्राधिकारी के समक्ष 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 अन्यथा विफल रहता है या इन्कार करता है तो जांच प्राधिकारी एक पक्षीय रूप से जांच कर सकता है।

6. Shri is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rule, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. श्री लालजी मिश्रा का ध्यान रेल सेवा (आचरण) नियम, 1966 के नियम 20 की ओर दिलाया जाता है, जिसके अधीन कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से सम्बन्धित मामलों के संबंध में अपने हितों को आगे बढ़ाने के लिये किसी वरिष्ठ प्राधिकारी पर कोई राजनीतिक या अन्य प्रभाव न तो डालेगा अथवा न ही डालने का प्रयास करेगा। यदि इन कार्यवाहियों से सम्बन्धित किसी मामले में, उसकी ओर से किसी अन्य व्यक्ति से कोई अभ्यावेदन प्राप्त होता है तो यह उपधारणा की जायेगी कि श्री लालजी मिश्रा को उस अभ्यावेदन की जानकारी है और वह उसके कहन पर दिया गया है और उसके विरुद्ध रेल सेवा (आचरण) नियम 1966 के नियम 20 का अतिक्रमण करने के लिये कार्यवाही की जायेगी।

7. 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 it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. इस ज्ञापन की पावती दें।

8. The receipt of this memorandum may be acknowledged.

ATC
A
A

* [राष्ट्रपति के आदेश और उसके नाम से]
[By order and in the name of the President]

संलग्नक : Annex I, II, III, IV, V
Encls: 3 copies of R.O. on for
Annex III

हस्ताक्षर
(Signature)
(31.05.74)

सक्षम प्राधिकारी का नाम और पदनाम
Name and designation of competent authority.

मण्डल वाणिज्य प्रशासक
पूर्वोत्तर रेलवे
लखनऊ

सेवा में,
To,

श्री लावणी निवासी.....

(पदनाम).....
(Designation) प्रधान जी.डी.डी. / सी.ए.ए. गढ़

(स्थान).....
(Place) हजाराबाद, सी.ए.ए. गढ़

@प्रतिलिपि श्री..... (उधारदाता प्राधिकारी का नाम और पदनाम) को सूचना प्रेषित।
Copy to Shri..... (Name and designation of the lending authority)
for information.

* जो लागू न हो, उसे काट दें।
Strike out whichever is not applicable.

** यदि ज्ञापन के साथ प्रतियां दी जाती हैं/नहीं दी जाती, तो यथा-स्थिति इसे काट दिया जायेगा।
To be deleted if copies are given/not given with the Memorandum as the case may be.

*** प्राधिकारी का नाम (इसमें यह विवक्षित होगा कि जब-कभी जांच प्राधिकारी द्वारा अनुशासन प्राधिकारी या किसी प्राधिकारी को आरोप पत्र जारी करने के लिये कोई मामला निर्देशित किया जाता है, तो उस प्राधिकारी को उस प्राधिकारी का उल्लेख करना चाहिए जिसकी अभिरक्षा में सूचीगत दस्तावेज हैं या जो दस्तावेजों के निरीक्षण की व्यवस्था करेगा ताकि उस प्राधिकारी का प्राप्त ज्ञापन में उल्लेख किया जाये।
Name of the authority, (This would imply that whenever a case is referred to the Disciplinary Authority by the Investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

££ जहां राष्ट्रपति अनुशासन प्राधिकारी है।
Where the President is the disciplinary Authority.

£ जहां कहीं राष्ट्रपति या रेलवे बोर्ड सक्षम प्राधिकारी है वहां इस रहने दिया जाये।
To be retained wherever President or the Railway Board is the competent authority.

@ जहां कहीं लागू हो इसका प्रयोग किया जाये..... रेल कर्मचारी (अनुशासन और अपील) नियम 1968 का नियम 16 (1) देखें। रेल कर्मचारी को भेजी जाने वाली प्रति में इसे न रखा जाये।
To be used wherever applicable-See Rule 16 (1) of the RS (D & A) Rules, 1968-Not to be inserted in the copy sent to the Railway servant.

AFC
M. A. C.

Lalji Misra

C.A. No. 186/194

Applicant

Union of India & others

Respondents

ANNEXURE 4

सी-6 (सी)

इ.प्र. प्रदेश इमारती लकड़ों और वन उपज का अभिवहन नियमावली १९७८ के अन्तर्गत

अभिवहन पास

जांचकर्ता के पास रहने वाली प्रति

पुस्तक सं० 42

पृष्ठ नं० 2

१-वन उपज की उत्पत्ति का अवस्थान- ग्राम लेखवां तथा वन जंरहा तप नौगाँव जि०

(क) वन का नाम और स्थिति - वन में आराजी न० ६०२ में बड़े ३० पेड़ शीशम
सेमल खैर परगिर सं० १/२५-११ ई० दिनांक
२०-१०-८७

(ख) वन स्वामी का नाम श्री चंदर

२-वन उपज के स्वामी का नाम और पता श्री चंदर श्री सुंदर

३-उपज का विवरण और परिणाम पाच के० सी० (चार पहिया) ५० वन भोकर
शीशम सेमल खैर कोरा

४-नस्पति चिन्ह आदि x

५-ग्राम/नगर का नाम जहाँ उपज का परिवहन किया जायगा। शौहरतगढ़ से मिचौरी, इडगाँव, दिल्ली सराफ
रोहतास, गुडगाँव, सहायतगंज।

६-मार्ग जिससे उपज का परिवहन किया जायगा। शौहरतगढ़ रेल मार्ग

७-डिपो जहाँ पर जांच के लिये वन उपज प्रस्तुत की जायेगी। शौहरतगढ़

८-पास की समाप्ति का दिनांक पंद्रह दिसम्बर उन्नीस सौ सत्तासी

९-कोई अन्य व्योरा ३३ न०/१८६०/१८६१ - २० दिनांक १५/११/८७

१०-निगमन अधिकारी का हस्ताक्षर, मोहर और दिनांक शे मु० ३७५/- राजिर शुल्क जमा किया।

११-जांच अधिकारी का हस्ताक्षर

प्रमाणित
सामाजिक न्याय के अन्तर्गत
१५/११/८७

ATC
[Signature]

Lalji Misra

Applicant

Union of India & others

Respondents

ANNEXURE - 5

उत्तर प्रदेश इमारती लकड़ी और अन्य वन उपज का अभिवहन नियमावली १९७८ के अन्तर्गत

सो-6 (सो)

अभिवहन पास

पुस्तक सं० 6 वन स्वामी के पास रहने वाली प्रति

1630

पृष्ठ सं०

१-वन उपज की उत्पत्ति का अवस्थान:-

(क) वन का नाम और स्थिति

(ख) वन स्वामी का नाम

२-वन उपज के स्वामी का नाम और पता

३-उपज का विवरण और परिणाम

४-सम्पत्ति चिन्ह आदि

५-ग्राम/नगर का नाम जहाँ उपज का परिवहन किया जायेगा

६-मार्ग जिससे उपज का परिवहन किया जायेगा

७-डिप्टी जहाँ पर जांच के लिये वन उपज प्रस्तुत की जायेगी

८-पास की समाप्ति का दिनांक

९-कोई अन्य व्याख्या

१०-निर्गमन अधिकारी का हस्ताक्षर, मोहर और दिनांक

११-जांच अधिकारी का हस्ताक्षर

AIC
Date

देना में To
स्टेशन मास्टर The Station Master
कुम्भ्या नीचे लिखा मान प्रार्थन करें और इसे मान गाड़ी और/या मिनी-बुकी-गाड़ी*/कोचिंग और/या मिनी-बुकी गाड़ी* से
Please receive the undermentioned consignment and forward by Goods and/or Mixed train* to
is consigned below

भेजने वाला By whom consigned.		मान भाला To whom consigned.		स्टेशन को Station to	वस्तुओं की संख्या No. of articles.	विवरण और निजी मार्क Description and private marks.	भेजने वाले के अनुसार Sender's weight.		दत्त/दिय भाड़ा Freight paid/to pay
नाम Name.	पता Address.	नाम Name.	पता Address.				विवरण Qls.	किलो. Kgs.	

- म प्रमाणित करता हूँ कि मैंने यह इन्फार्मेशन भर दिया है कि जो मान मैं भेज रहा हूँ उसका विवरण, मार्क और भार या परिमाण इस प्रकार नोट में सही सही भरा गया है।
I do hereby certify that I have satisfied myself that the description marks and weight or quantity of goods consigned by me have been correctly entered in this Forwarding Note.
1. (1) वस्तु के पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। Outer packing is defective as follows :-
(2) वस्तु के पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। Internal packing condition I. P. applicable has been complied with.
(3) मान खराब हालत में है, क्योंकि इस प्रकार है The consignment is in bad condition as follows :-
(4) Compulsory Packing Condition as I. P. and P. applicable to the commodity. have been complied with.
(5) मेरी प्रार्थना पर मान खराब/बुरी है। से भेजा जा रहा है। At my request the consignment is despatched in open.
(6) रेनर कोचिंग और मालिक कोचिंग की जानकारी नहीं है। I elect to pay the
(7) Alternative railway risk and owner's risk are being available. To be forwarded via
(8) सबसे सस्ता रास्ता पूरा*/अवगत।* बंद होने के कारण, मान पर भाड़ा के रास्ते का लगाया जाना जो उनके बाद का सबसे सस्ता रास्ता है।
The cheapest route being "closed"*/"partially closed" the charged via the next cheapest open route.

*जो लागू न हो, उसे काट दें।
Strike out where inapplicable.
इस फार्म पर हस्ताक्षर करने से पहले जो खराब लागू न हो उसे काट दें।
Strike out any clause inapplicable before signing this form.
मान भजने वाले या उसने एजेंट का स्थान रेनर की माल और कोचिंग दर-सूची में दी गयी उन मुख्य-मुहल्लों और नियमों की ओर दिखाना जाता है जो रेल द्वारा मान होने के सम्बन्ध में लागू है, और निम्नकी व्याख्या इस फार्म की दूसरी ओर दी गयी है।
The attention of the sender or his agent is invited to the principal terms and conditions applying to the carriage of goods by railway which are set forth in the Railways Goods and Coaching Tariffs and to the explanatory notes on the back hereof.
नोट :- ऊपर के इतराजों में यदि कुछ बढ़ाया या घटाया गया हो, तो उसे पूरा मान भेजने वाले या उसके एजेंट के पूरे हस्ताक्षर होने चाहिये, प्रमाणित नहीं।
Note :- Additions or omissions made in the above entries must be signed (not initialed) by the sender or his agent.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

L U C K N O W

ORIGINAL APPLICATION NO. OF 1989 (L)

C.M. An. No 205/89(L)

LALJI MISRA

... ..

APPLICANT

V E R S U S

UNION OF INDIA & OTHERS

...

RESPONDENTS

MISC. APPLICATION FOR TAKING SUPPLEMENTARY
APPLICATION ON RECORD :

The applicant most respectfully submits as
under:-

1. That it has been noticed that while stating that the respondent No.2 is not the appointing authority of the applicant, further details have been left to be mentioned regarding him inadvertently, hence the same is being furnished herewith which may kindly be taken on record for the sake of ends of justice.

2. That it is categorically mentioned that the respondent No.2 is not the appointing authority of the applicant and is also lower in rank to the Divisional Railway Manager (P), N.E. Railway, Lucknow, who passed promotion order of the applicant contained in Annexure No.2 to the application.

3. That the respondent No.2 is also lower in rank to Senior Divisional Commercial Superintendent, N.E. Railway, Lucknow and is fully incompetent to pass the impugned order.

Contd...2

.2.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to take the facts mentioned in paras 2 and 3 of this application on record as a supplementary application of the original application for all purposes for the sake of ends of justice.

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

LUCKNOW:

DATED: 27.10.1939.


(O.P. SRIVASTAVA)

Advocate,
COUNSEL FOR THE APPLICANT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

CIRCUIT BENCH, LUCKNOW.

Civil Misc. Application No. 317 of 1989. (2)

In Re :

Registration (O.A.) No. 298 of 1989 (L)

Lalji Misra.Applicant

versus

Union of India & others.....Respondents.

Fixed For : 10.11.89

APPLICATION FOR DISMISSAL OF CLAIM PETITION

AS PREMATURE OR IN THE ALTERNATIVE STAY

VACATION OF STAY ORDER DATED 27.10.89

PRAYER

That for the facts and reasons stated
in the accompanying short or counter reply,
it is most respectfully prayed that in the
interest of justice the said application may
be dismissed as premature or in the alternative
the stay order dated 27.10.89 granted by this
Hon'ble Tribunal may kindly be vacated.

Lucknow :

Dated : 10-11-89

Anil Srivastava

(ANIL SRIVASTAVA)
ADVOCATE

Counsel for Respondents.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW.

Registration (O.A.) No. 298 of 1989(L)

Lalji Misra;Applicant.

versus

Union of India and othersRespondents.


Fixed For : 10.11.89

SHORT COUNTER REPLY ON BEHALF OF RESPONDENTS
=====

I, Dr. R. Bharedwaj working as
Dist. Comm. Supd. in the office of Divisional
Railway Manager, North Eastern Railway, Ashok
Marg, Lucknow do hereby solemnly affirm and
state as under :-

1. That the official abovenamed is working under
the respondents and is fully conversant with
the facts and circumstances of the Applicant's
case and has been authorised by the respondents
to file this counter reply on their behalf -
2. That the answering respondents crave leave of

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16/11/89
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this Hon'ble Tribunal to point out that in utter violation of Section 20 of the Administrative Tribunal Act, 1985, the applicant has not preferred any departmental appeal as provided under Rule 18 (ii) of the Railway Servants (D and A) Rules 1968 before the departmental appellate authority as provided under Rule 19 of the said (D and A Rules 1968 and therefore this application is not maintainable as this stage being premature.

3. That it is stated here that at the time of initiation of disciplinary enquiry against the applicant, the applicant was working as Head Goods Clerk in scale Rs. 1400-2300 (RPS), old scale Rs. 425-640.
4. That initially the applicant was appointed as probationary Goods Clerk in scale Rs. 60-150 (odd scale) by Divisional Personnel Officer, Northern Railway, New Delhi and subsequently the applicant came on transfer to North Eastern Railway .

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नम्रदल शानिज्य अनीक्षक
पूर्वोत्तर रेलवे
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5. That the applicant was promoted as Senior Goods Clerk and there after as Head Goods Clerk in scale Rs.1400-2300 (RPS) with effect from 1.1.84 on adhoc basis vide order No.E/210/15/PBC/86 dated 5.5.86 against the post created as a result of restructuring of cader. The said promotion order was issued in the name of Divisional Railway Manager (P).
6. That here it may be clarified that all the executive orders are issued in the name of Divisional Railway Manager (P) but it does not mean that the Divisional Railway Manager (P) has actually ~~signed~~ ^{passed or issued} the said orders, but all such orders are issued in his name only.
7. That it is also stated here that the above rule does not apply in the case of disciplinary proceedings. The orders in respect of the same are issued by a particular authority under his own signatures.
8. That as far as the disciplinary proceedings

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against a Railway employee is concerned it is governed by the Railway Servants (Disciplinary and Appeal) Rules 1968.

9. That since the applicant is a group c staff having pay scale Rs.1400-2300 (RPS) old scale Rs.425-640, the disciplinary authority of the applicant who can impose major punishment against the applicant, as per rules is a 'Senior Scale Officers and Assistant Officers (Junior Scale and Group 'B') holding independent charge.'
10. That as stated earlier, the applicant's appointing authority was Divisional Railway Personnel Officer, who is equal in rank with Divisional Commercial Superintendent, under whom the applicant ^{is} was working and who ~~strictly~~ as per *Schedule of powers* ~~rules~~ is competent to impose any major penalty against the applicant.
11. That it may further be clarified that the Divisional Commercial Superintendent is a Senior *Schedule of powers* ~~Scale~~ Officer and as per ~~rules~~ he was and is competent to impose the punishment, under challenge in the Original Application upon the

applicant.

Lucknow :

Dated : 10.11.89

10/11/89
जिला न्याय अधिकारी
पूर्वांचल रेलवे
लखनऊ

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

=====

I, the official abovenamed do hereby verify that the contents of para 1 of this reply is true to my personal knowledge and those of paras 2 to 11 of this reply are believed by me to be true on the basis of records and legal advice.

Lucknow :

Dated : 10-11-89

10/11/89
जिला न्याय अधिकारी
पूर्वांचल रेलवे
लखनऊ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

M.P. NO. 205 OF 1991 (L)

In re:

O.A.NO. 298 OF 1989(L)

27.5.91

Lalji Misra Applicant

VERSUS

Union of India and others Respondant

APPLICATION FOR LISTING THE CASE FOR HEAR
BEFORE THE HON'BLE TRIBUNAL.

On behalf of the applicant it is most respectfully submitted as under:

1. That despite large number opportunities the Respondants have yet not filed any Counter reply to the application for amendment. This case has again been fixed on 16.4.1991 affording one more opportunity to the Respondants to file Counter reply.
2. That the Respondants have not filed any Counter reply even today i.e. 16.4.1991.
3. That the matter is urgent and has already been delayed due to seeking time by the Respondants for filing counter reply, hence the matter may be placed before the Hon'ble Tribunal for hearing of the case. The applicant has also moved application for interim relief which is also pending. The same may also be listed along with the Original Application.

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Filed today
16/4/91

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WHEREFORE It is most respectfully prayed
that the above noted case may kindly be fixed
for hearing before the Hon'ble Tribunal for the
sake of ends of justice.

Lucknow Dated
April 16, 1991.


COUNSEL FOR APPLICANT.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

LUCKNOW

M.P. Application No. 256 1990

In

O.A. No. 298 of 1989(L)

Lalji Misra

Applicant.

versus

Union of India & ors.

Respondents.

Application for condonation
of delay in filing counter reply

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Fixed for 27-5-1991

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

P R A Y E R

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

Anil Srivastava
(Anil Srivastava)
Advocate.

Lucknow. Dt.
25-4-91

Counsel for the Respondents.

Filed today
28/4
1/5/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

LUCKNOW

8/10/89

Registration O.A No. 289/1989(L)

Lalji Misra

Applicant.

versus


Union of India & others

Respondents.

Counter reply on behalf of
Respondents.

I, S.P. Kaushal working
as *Divl. Commr. Enclt* in the
office of Divisional Railway Manager (~~Personnel~~)
North Eastern Railway, Ashok Marg, Lucknow
do hereby solemnly affirm and state as under:

1. That the official above named is working
as *Divl. Commr. Enclt*, in the
office of Divisional Railway Manager (~~Personnel~~)
North Eastern Railway, Ahok Marg, Lucknow
and as such he is fully conversant with the
facts and circumstances of this case and he
has been authorized by all the respondents to
reply the above original application.


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प्रमाणित है
प्रमाणित

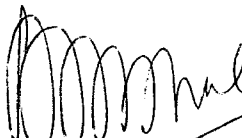
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2. That the contents of paras 1, 2 and 3 of the original application do not call for any reply.

That the reply to the contents of para 4 of the original application is as under:

3. That in reply to the contents of para 4.1 of the original application ^{is} it admitted that the applicant has been reduced from the post of Head Goods Clerk to Senior Goods Clerk by order No. NIP C/SS/5/88 dated 25.9.89 passed by Divisional Commercial Superintendent North Eastern Railway, Lucknow in the scale of Rs 1200-2040 fixing his pay at Rs 1200/- per month for a period of five years and his appeal against the said order was rejected by the competent appellate authority vide his order dated 12.12.89 .

4. That the contents of para 4.2 of the original application are also admitted. The applicant was appointed as Probationer Goods Clerk in the scale of Rs 60-150 by the then Divisional Personnel Officer, Northern Railway, New Delhi with effect from 1.5.1958 and subsequently the applicant came on transfer


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दुर्गेश्वर सिंह
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to N.E. railway in the year 1962.

5. That the contents of para 4.3 of the original application are not admitted as stated. The applicant was promoted as Senior Goods Clerk in the grade of Rs 330-560 with effect from 1.8.77 and thereafter Head Goods Clerk in the scale of Rs 1400-2300 (RPS) with effect from 1.1.84 on adhoc basis vide order No. E/210/15/PBC/86 dated 5.5.86 against the post created as a result of restructuring of cadre .

6. That the contents of para 4.4 of the original application are not admitted. As stated earlier, the applicant was promoted on adhoc basis as Head Goods Clerk in the grade of Rs 1400-2300 with effect from 1.1.84. His promotion was approved by Senior Divisional Commercial Superintendent as at that time he was free from punishment or any SPV/Vig/DAR cases. The applicant has been awarded following punishments since then:

a) withholding of increments permanently for a period of two years vide NIP No. T/22/SOT dt. 4.8.86 by Divisional Commercial Superintendent, Lucknow.


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पूर्वोत्तर रेलवे
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b) withholding of increments temporarily for a period of one year vide NIP No. C/ 7/SOT/Pt. I/10/83 dated 24.3.87 by Asstt. Commercial Superintendent, Lucknow.

7. That in reply to the contents of para 4.5 and 4.6 of the original application so far it is a matter of record, are admitted and the rest of the contents are denied.

8. That in reply to the contents of para 4.7 of the original application it is admitted that on receipt of report from Shri S.P. Srivastava, Divisional Commercial Superintendent ordered that the said matter be again enquired by Shri D.K. Asthana, Goods Superintendent. It was a preliminary enquiry and after the said enquiry the said memorandum was issued. It is also admitted that the aforesaid two persons have been indicated as relied upon witnesses in this case.

9. That the contents of para 4.8 of the original application are denied. However, it is true that Shri Ahmadullah, Assistant Commercial Superintendent I was appointed as Enquiry Officer in this case but due to his transfer to



अण्डल वाणिज्य अधिकारी

पूर्वोत्तर रेलवे

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Gorakhpur, Shri N.P. Singh, Assistant Commercial Superintendent was appointed as Enquiry Officer in place of Shri Ahmadullah.

10. That the contents of para 4.9 of the original application are not admitted. Shri S.P. Srivastava and Shri D.K. Asthana attended the enquiry on 25.1.89 and confirmed their respective reports.

11. That in reply to the contents of para 4.10 of the original application it is stated that on receipt of enquiry report the case was forwarded to the disciplinary authority i.e. Divisional Commercial Superintendent for his decision. The disciplinary authority, after going through the entire facts of the case and after applying his mind issued the N.I.P. dated 25.9.89 which was sent to the applicant along-with a copy of the enquiry report and findings. The applicant acknowledged the same on 7.10.89. Any allegation made contrary to it is denied.

12. That in reply to the contents of para 4.11 of the original application only this much is admitted that alongwith order of reduction in rank, a copy of the enquiry report was also

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also sent to the applicant but the rest of the contents of the para are denied.

13. That the contents of para 4.11(a) and (b) of the original application are wrong, hence denied. In the enquiry report, the facts mentioned are according to the irregularities as shown in Annexures Nos. I and II of the chargesheet. Any other allegation contrary to it are denied.

14. That the contents of para 4.11(c) of the original application are wrong hence denied. As mentioned against item No. 2 of the Annexure I of the chargesheet, the consignment booked by the petitioner according to permit was to load for Basti but it has been booked for Sikar Junction, as such the charges have correctly been levelled against the applicant. Any other allegation contrary to it are denied.

15. That the contents of para 4.11(d) of the original application are wrong and hence denied. The charge No. 3 has already been mentioned in the enquiry report. The reasons and basis on which the charges have been proved have clearly been mentioned in the enquiry


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report. Any other allegations contrary to it are denied.

16. That the contents of para 4.11(f) & (e) of the original application are ~~wrong~~ wrong hence denied. On the basis of documentary evidence the charges mentioned against item 4, 5 and I No. 6 of the Annexure/contained in the charge-sheet have been proved beyond doubt which is evident from the enquiry report.

17. That the contents of para 4.12 of the original application are categorically denied. It may here be clarified that all the Executive orders are issued in the name of Divisional Railway Manager(P) but it does not mean that the Divisional Railway Manager (P) has actually and personally signed the said orders. It is only a practice that the said orders are issued in the name of Divisional Railway Manager (P). It is further clarified that the said rule does not apply in the case of disciplinary proceedings. The orders in respect of the same are issued by a particular authority under his/own signatures and as far as the disciplinary proceedings against the railway employees are


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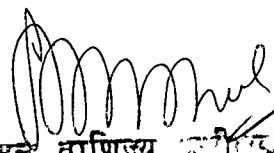
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concerned, it is governed by Railway Servants (Discipline & Appeal) Rules, 1968.

Since the applicant is a group C staff having pay scale of Rs 1400-2300(RPS) (old scale Rs 425-640), the disciplinary authority of the applicant who can impose the major punishment against the applicant as per rules is a 'Senior Scale Officer and Assistant Officers (Junior Scale and Group 'B') holding the independent charge'). It is further stated that the applicants appointing authority was Divisional Railway Personnel Officer who is equal in rank with Divisional Commercial Superintendent under whom the applicant is working and who, as per schedule of powers is competent to impose any major penalty against the applicant. The said Commercial Superintendent is a senior scale officer and as per schedule of powers he was and is competent to impose the major punishment including the punishment under challenge in this original application.

18. That the contents of para 4.13 of the original application are denied. The relevant instructions regarding booking of Forest products have already been issued to all the concerned employees including the applicant


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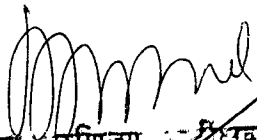
on 15.6.83 and 12.12.1987. The applicant acted in contravention of the said instructions and violated the instructions issued to him on the said dates and thus committed the irregularities, as mentioned in Annexures I and II of the chargesheet. Any other allegations contrary to this are denied.

19. That the contents of para 4.14 of the original application are denied. The instructions regarding forest product movement have already been issued to the applicant on 15.6.1983 and 12.12.87 and the applicant acted in violation of the same. Any allegations contrary to it are denied.

20. That the contents of para 4.15 of the original application are denied. The applicant has violated the provisions of booking of forest products as detailed in Annexure No. I and II of the chargesheet. Any allegations ^{it} made contrary to/are denied.

21. That the contents of para 4.16 of the original application are denied. The applicant's misconduct was proved beyond doubt.

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राजपुरा

22. That in reply to the contents of para 4.17 of the original application it is stated that the statements made are in respect of interpretation of the rules which do not require any admission or denial and can be judged by the facts of the case.

23. That the contents of para 4.18 of the original application are denied. The applicant was provided every reasonable opportunity to defend himself, and the proceedings were conducted strictly as per Discipline and Appeal Rules which are perfectly valid and legal. Any allegation made contrary to it are denied.

24. That the contents of para 4.19 of the original application are denied. The disciplinary authority was fully competent to ~~pass~~ pass the order of punishment against the applicant. The said punishment was passed against the applicant after holding the fulfledged enquiry in which the applicant was found guilty of charges which were proved beyond doubt.

25. That the contents of para 4.20 of the original application are denied. The applicant



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has already accepted in para 4.11 of his application that a copy of the enquiry report has already been supplied to him. Any allegation contrary to it are denied.

26. That the contents of para 4.21 of the original application are categorically denied. As per rules, respondent No. 2 was fully competent to pass the punishment orders against the applicant being the disciplinary authority in case of the applicant, hence any order passed by the said authority is perfectly legal and valid. A perusal of schedule of powers given in the Discipline & Appeal Rules 1968 would make it amply clear that the respondent no. 2 is the disciplinary authority in the case of the applicant.

27. That the contents of para 4.22 of the original application are categorically denied. The applicant had preferred an appeal after filing of the present original application. His appeal was considered and dismissed by the competent authority.

28. That the contents of para 4.23 of the original application are absolutely wrong,

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hence denied. As per applicant's own statement he has filed departmental appeal which was rejected.

29. That the contents of para 4.24 of the original application are denied.

30. That the contents of para 4.25 of the original application are denied. The applicant has been punished according to the gravity of the offence committed by him which is evident from a perusal of Annexure No. I and II of the chargesheet. Any other allegation made contrary to it are denied.

31. That the content-s of para 4.26 of the original application are categorically denied. The punishment has been imposed according to the gravity of the offence committed by the applicant and the said punishment has been imposed strictly as per rules by the competent authority after completion of the fullfleged disciplinary enquiry against the applicant in which the charges levelled against the applicant were proved beyond doubt while imposing the said punishment against the ~~xxx~~ applicant by the disciplinary authority, no

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illegality or arbitrariness whatsoever has been committed.

32. That in reply to the contents of para 4.27 of the amended original application it is stated that the applicant submitted departmental appeal on 17.11.89 which was considered by Senior Divisional Commercial Superintendent Lucknow and after applying his mind he rejected the same.

33. That in reply to the contents of para 4.28 of the original application, so far it is a matter of record it is admitted; the rest of the contents of the para are denied.

34. That the contents of para 4.30 of the amended original application are denied. The competent authority, after going through the entire record of the case and applying his mind rejected the appeal of the applicant which is perfectly legal.

35. That the grounds mentioned in para 5 of the original application are vague, irrelevant misconceived, illegal and not applicable to the instant case.



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36. That in reply to the contents of para 6 of the original application it is stated that the applicant has exhausted the departmental remedies after filing the present original application. He did not prefer any departmental review application against the said appellate order.

37. That the contents of para 7 of the original application do not call for any reply.

38. That in reply to the contents of para & 9 of the original application it is stated that this original application is devoid of merit and as such deserves to be dismissed with costs in favour of the answering respondents and against the applicant.

Lucknow

Dt. 25/4/91

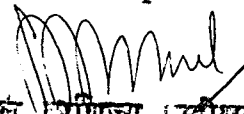

अण्डल बागिज्य मनीषा
पूर्वोत्तर रेलवे
बलनर

Verification

I, the official above named do hereby verify that the contents of paras 1 to 3 are true to my personal knowledge and paras 4 to 38 are believed to be true by me based on record and legal advice. No part of it is false, and nothing has been concealed. so help me God.

Lucknow

Dt. 25/4/91


अण्डल बागिज्य मनीषा
पूर्वोत्तर रेलवे
बलनर

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

Central Administrative Tribunal
Lucknow Bench
C.M.P. NO. 1512 OF. 1995 of Filing 16.8.95
Date of Receipt by Post

In Re:

O.A. NO. 298 of 1989

f6 Dy. Registrar (14)

Lalji Mishra Applicant,

Versus

Union of India & Others Respondents,

APPLICATION FOR CONDONATION OF DELAY

The respondents, most respect-fully beg to
submit as under:-

1. That some delay has been occurred in filing
supplementary counter reply due to want of necessary
records and instructions.
2. That the supplementary counter reply is ready
and is being filed herewith.
3. That the delay in filing supplementary counter
reply is bonafie. inadvertently and unintentional
and. therefore , in liable to be condoned.

4. That it is expedient in the interest of justice that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing supplementary counter reply.

P R A Y E R

WHEREFORE, IT IS MOST respectfully prayed that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing supplementary counter reply in the interest of justice.

Lucknow:

Dated: 31/5/1995
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AK
(ANIL SRIVASTAVA)
Advocate

Counsel for the respondents,

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

Central Administrative Tribunal

Lucknow Bench

Date of Filing 16-8-95

Date of Receipt by Post 16/8/95

C.M.P. NO. 1513 OF 1995

In Re:

for Dy. Registrar (J)

O.A. 298 of 1989

Lalje Misra Applicant,

Versus

Union of India & Others Respondents.

APPLICATION FOR TAKING ON RECORDS

The respondents, most respectfully submit as under:-

That for the facts and circumstances disclosed in the accompanying supplementary counter reply, it is most respectfully prayed that the present supplementary counter reply may be taken on record in the interest of justice.

Lucknow:

Dated: 31/5/1995
16/6

AR
(ANIL SRIVASTAVA)

Advocate

Counsel for the respondents,

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

Central Administrative Tribunal

Lucknow Bench

Date of Filing 16.09.95

Date of Receipt by Post 16.09.95

C.M.P. NO. 1514 OF 1995

In Re

O.A. NO. 298 of 1989

By Registrar

Lal-je Misra

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Applicant,

Versus

Union of India & Others

Respondents,

APPLICATION FOR DISMISSAL

The respondents, most respectfully submit as under:-

That for the facts and circumstances disclosed in the accompanying supplementary counter reply is is most respectfully prayed that this Hon'ble Trivunal may kindly be pleased to dismiss the original application with costs in facour of answering respondents and against the applicant.

Lucknow:

Dated: 31/5 /1995
16/8

(ANIL SRIVASTAVA)
Advocate

Counsel for the respondents,

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH LUCKNOW

O.A. NO. 298 of 1989 (L)

Lalji Mishra

..... APPLICANT

Versus

Union of India

..... RESPONDENT

SUPPLEMENTARY COUNTER IN REPLY TO REJOINDER FILED BY
APPLICANT


I, *K M Inpatlu*, working as Divisional Commercial Manager, in the Office of Divisional Railway Manager, North-Eastern Railway, Ashok Marg, Lucknow, do hereby solemnly affirm as under :-

1) That the official above named is working as Divisional Commercial Manager in the office of Divisional Railway Manager, North-Eastern Railway, Ashok Marg, Lko. and as such he is fully conversant with the facts and circumstances of this case and he has been authorised by all the respondents to reply the above original application.

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

3) That the contents of paras 3,4 and 5 of the rejoinder are denied and those of paras 5,6 and 7 of the

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संयुक्त रेलवे प्रबन्धक (वाणिज्य)
पूर्वांचर रेलवे, लखनऊ

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of the counter reply are reiterated as correct.

4) That the contents of para 6 of the rejoinder do not call for comments.

5) That the contents of paras 7 and 8 of the rejoinder are denied and those of paras 9 and 10 of the counter reply are reiterated as correct.

6) That the contents of para 9 of the rejoinder are denied and those of para 11 of the counter reply are reiterated as correct. It is further submitted that after completion of discipline and appeal inquiry, the applicant submitted his defence brief also which was duly taken into account by the Inquiry Officer, the same was duly considered by the Disciplinary Authority, who after carefully considering all the material on record and after applying his mind duly passed the punishment order which is under challenge in the present original application. Sub rule(5) of Rule 10 of the Railway Servants (Discipline and Appeal) Rules provide that if the disciplinary authority, having regard to the findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (V) to (IX) of the rule 6 should be imposed on the Railway Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway Servant any opportunity of making representation on the penalty ~~proposed to be imposed. The order of punishment~~ imposed on the applicant was

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served on him alongwith a copy of the inquiry report on 7/10/89.

7) That the contents of para 10 and 11 of the rejoinder are denied and those of para 12 and 13 of the counter reply are reiterated as correct.

8) That the contents of para 12 of the rejoinder are denied and those of para 14 of the counter reply are reiterated as correct. It is further submitted that the transit pass issued by the Forest Department clearly indicated the name of Village/Town to which the produce is to be transported with a view to restrict unauthorised movement of the Forest produce. To maintain this object, the Railway Administration issued instruction to all the goods sheds not to book any forest produce consignment unless the transit pass issued by the Forest Department has been produced. Any averment made in the rejoinder as well as in the original application which are contrary to the above facts are categorically denied.

9) That the contents of para 13, 14 and 15 of the rejoinder are denied and those of paras 15, 16 and 17 of the counter reply are reiterated as correct. The applicant has admitted in para 15 of the rejoinder that his appointing authority is Divisional Personnel Officer who is equivalent in rank with the Disciplinary Authority of the applicant i.e. Divisional Commercial Suprentendent, Lucknow.

10) That the contents of para 16 of rejoinder are

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denied and those para 18 of the counter reply are reiterated as correct. It is further submitted that an employee is supposed to know the instructions issued from time to time by the Administration. The relevant instructions were issued on 15/6/83 which were again repeated/reiterated on 12/12/87, which were circulated to all the concerning office including the office of the applicant.

11) That the contents of para 17 of the rejoinder are denied and those of para 19 of the counter reply are reiterated as correct. It is further clarified that instructions issued from time to time in this respect were addressed to the Station Superintendent of the concerning Station and not to the individual staff in his personnel capacity. These circullers/instructions are duly maintained in the file of circullers/instructions at all the stations for guidance of staff. The same was also maintained at the station where the applicant worked. Accordingly the applicant was supposed to know the said instructions.

12) That the contents of paras 18 to 24 of the rejoinder are denied and those of paras 20 to 26 of the counter reply are reiterated as correct.

13) That the contents of para 25 and 26 of the rejoinder are denied and those of paras 27 and 28 of the counter reply are reiterated as correct. The Appellate Authority after going through entire material on record passed the speaking order rejecting the appeal which is

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perfectly valid, just and legal.

14) That the contents of paras 27 to 31 of the rejoinder are denied and those of paras 29 to 33 of the counter reply are reiterated as correct.

15) That in reply to the contents of para 32 of the rejoinder, it is submitted that as per existing instructions no forest produce should have been accepted for booking in the absence of transit pass issued by the forest department in terms of U.P. Transit of Timber and Other Forest Produce Rule, 1973. The applicant in contravention of those instructions booked the forest produce and thereby committed serious mis-conduct.

16) That the contents of paras 33, 34, 35 and 37 of the rejoinder are denied and those of paras 34, 35, 36 and 38 of the counter reply are reiterated as correct.

17) That in view of the facts averred in the counter reply as well as in the present supplementary counter, the original application lacks merit as such deserves to be dismissed with costs in favour of answering respondents and against the applicant.

Lucknow
Dated: 31-5-95

[Signature]
सहायक प्रबन्धक (वाणिज्य)
पूर्वोत्तर रेलवे, लखनऊ

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

That the contents of para 1 of this supplementary counter reply is true to my personal knowledge and those of paras 2 to 17 of the same, are believed to be true on the basis of records and legal advice.

Lucknow
Dated: 31-5-95

[Signature]
सहायक प्रबन्धक (वाणिज्य)
पूर्वोत्तर रेलवे, लखनऊ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. 298 OF 1989(L)

Lalji Misra APPLICANT

V E R S U S

Union of India and others .. . RESPONDENTS

REJOINDER REPLY TO THE COUNTER REPLY OF
RESPONDENTS.

1. That the contents of Paras 1 and 2 of the Counter Reply need no comments..
2. That the contents of paras 3 and 4 of the Counter Reply need no comments.as the contents of Paragraph 4.1 of the Original Application have been admitted.
3. That the contents of Para 5 of the Counter Reply are denied to the extent they are contrary to the contents of Para 4.3 of the Original Application which are reiterated.
4. That the contents of Para 6 of the Counter Reply are denied to the extent they are contrary to the contents of para 4.4 of the Original Application which are reiterated. It is submitted that the service record of the applicant is unblemished and no such punishment has been awarded as alleged.
5. That the contents of Para 7 of the Counter Reply need no comments to the extent the contents of Para 4.5 and 4.6 of the Original Application have been admitted. Rest contents of para under reply are denied.

11/11

6. That the contents of para 8 of the Counter Reply need no comments as the contents of para 4.7 of the Original Application have been admitted.
7. That the contents of para 9 of the Counter Reply are denied to the extent they are contrary to the contents of para 4.8 of the Original Application which are reiterated.
8. That the contents of para 10 of the Counter Reply are denied and in reply thereto the contents of para 4.9 of the Original Application are reiterated.
9. That the contents of para 11 of the Counter Reply are denied to the extent they are contrary to the contents of para 4.10 of the Original Application which are reiterated. It is further submitted that after the statement of the aforesaid witnesses the impugned order of reduction in rank was passed on 25.9.1989 without affording an opportunity to the applicant to produce his defence. No enquiry report was supplied to the applicant to make representation assailing the findings of the Enquiry Officer made in the ¹enquiry report. The Order of reduction in rank was straight away passed after the statement of the witnesses and was ^{served} on the applicant on 7.10.1989.
10. That the contents of para 12 of the Counter reply need no comments to the extent the contents of para 4.11 of the Original Application have been admitted. Rest contents of para under reply are denied.

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11. That the contents of para 13 of the Counter Reply are denied and in reply thereto the contents of para 4.11(a) and (b) of the original application are reiterated. The charges considered by the Enquiry Officer ^{were} ~~was~~ different from the charges levelled through the chargesheet and as such the Enquiry Officer has considered entirely extraneous material on which no punishment can be imposed.
12. That the contents of para 14 of the Counter Reply are denied and in reply thereto the contents of para 4.11(c) of the Original Application are reiterated. The consignment was not to be booked as per the instructions contained on permit ~~box~~ but as per the demand made by the Consignor. No instructions have ever ~~been~~ been issued by the Railway Administration that the consignment may be booked only upto the destination mentioned in the Permit. Indeed ~~was~~ the permit was issued to get the wood out of forest. ~~The~~ The answering Respondents have not shown any instructions which can be said to have been violated by the applicant in any manner whatsoever.
13. That the contents of para 15 of the Counter Reply are denied and in reply thereto the contents of para 4.11(d) of the Original Application are reiterated. ~~The~~ The enquiry report is itself evident for the averments made in para 4.11(d) of the Original Application.
14. That the contents of para 16 of the Counter Affidavit are denied and in reply thereto the contents of para 4.11(g) of the Original Application are reiterated. It is further submitted that there is

Conrad A. M. R.

absolutely no evidence to establish the allegations in any manner whatsoever. The Answering Respondents have not pointed out the evidences on which the allegations have been substantiated. A true copy of the chargesheet indicating the charges framed against the applicant is being filed herewith as annexure-Ra1 to this Rejoinder Reply.

ANNEXURE-RA1

15. That the contents of Para 17 of the Counter Reply are denied to the extent they are contrary to the contents of Para 4.12 of the Original Application which are reiterated. It is further submitted that the Respondent No. 2 is neither the appointing authority of the applicant nor any power has been delegated to him for initiating disciplinary proceedings and imposing the punishment impugned. No authority equal in rank can impose such punishment under the scheme of 1968 Rules. It is further submitted that the appointing authority of the applicant is Divisional Railway Personnel Officer who is only competent to institute and impose the punishment impugned. Sri Bharadwaj who has passed the impugned order is not a Senior scale officer holding independent charge, hence he cannot act as disciplinary authority. Only in cases of compulsory retirement, removal and dismissal from service an authority of equivalent rank ~~is not~~ competent to pass the orders. As a matter of fact no disciplinary enquiry could have been instituted against the applicant for the alleged allegations, which do not constitute misconduct for the purposes

Chandrasekar

of Rule 9(2) of 1968 Rules.

16. That the contents of para 18 of the Counter Reply are denied as incorrect and in reply thereto the contents of para 4.13 of the Original Application are reiterated. It is further submitted that the applicant has never been supplied with any such instructions dated 15.6.1983 and 12.12.1987. The Respondents have also not filed any copy of these instructions to indicate as which part of these instructions were violated. The only instructions which are available for the purpose of taking a forest produce is dated 3/4.1.1985, a copy of which has already been filed as annexure-6 to the Original Application. It is further submitted that neither any instructions have been found violated by the applicant in any manner nor violation of any instruction as alleged would constitute a misconduct for the purposes of holding a disciplinary enquiry under Rule 9(2) of 1968 Rules. The answering Respondents have not filed the copy of annexure-1 to the charge sheet being relied upon in para underreply.

17. That the contents of para 19 of the Counter Reply are denied as incorrect while those contents of para 4.14 of the Original Application are reiterated. Neither any instructions dated 15.6.1983 and 12.12.87 were supplied to the applicant nor the applicant violated them in any manner whatsoever tantamounting to misconduct for the purposes of 1969 Rules.

corrected

18. That the contents of Para 20 of the Counter Reply are denied as incorrect while those contents of Para 4.15 of the Original Application are reiterated. A copy of the chargesheet has been filed as annexure-3 to the Original application but as the annexures attached with the Memorandum of the chargesheet was left to be filed inadvertently a complete chargesheet including the Memorandum and the annexures attached therewith has been filed as annexure-R1 to this Rejoinder Reply herein before. The subsequent corrigendum to the Annexures No.1 and attached with the chargesheet has already been filed alongwith annex-ure-R1 to this Rejoinder Reply, a perusal of which will candidly reveal that neither it refers any violation of the so called instructions dated 15.6.1983 and 12.12.1987 nor it refers the violation of any ~~other~~ other provisions which may constitute misconduct for the purposes of institution of disciplinary enquiry and imposition of a punishment under the provisions of 1968 Rules.
19. That the contents of Para 21 of the Counter Reply are denied and in reply thereto the contents of Para 4.16 of the Original Application are reiterated. It is further submitted that any omissions or commissions will not constitute misconduct empowering the disciplinary authority to hold an enquiry and impose punishment. It is further stated that the disciplinary proceedings can be instituted and punishment can be imposed under 1968 Rules only for such commissions and omissions which constitute
- Corrected*

misconduct or misbehaviour under the Railway Servants Conduct Rules 1966. The Respondents are not at liberty to take any conduct as misconduct for the purposes of 1968 Rules.

20. That the contents of Para 22 of the Counter Reply are denied and in reply thereto the contents of Para 4.17 of the Original Application are reiterated
21. That the contents of Para 23 of the Counter Reply are denied as incorrect while those contents of Para 4.18 of the Original Application are reiterated. As a matter of fact the charges are based on no evidence hence no action can be taken against the applicant. The alleged irregularities referred in the chargesheet as contained in Annexure-RA1 to this Rejoinder Reply do not constitute misconduct.
22. That the contents of para 24 of the Counter Reply are denied and in reply thereto the contents of Para 4.19 of the Original Application are reiterated. Such a dis-proportionate major punishment could not be imposed upon the applicant for the alleged irregularities which neither constitute any misconduct nor warrants and disciplinary action under 1968 Rules.
23. That the contents of Para 25 of the Counter Reply are denied as incorrect while those contents of Para 4.20 of the Original Application are reiterated. It is further submitted that the Enquiry report was not supplied to the applicant before imposition of the punishment to enable him to make a representation against the findings of the Enquiry Officer.

STANLEY MOY

In ^{Para} 4.11 of the Original Application it has stated that the enquiry report was supplied along with the impugned ^{order} and not before.

24. That the contents of Para 26 of the Counter Reply are denied and in reply thereto the contents of Para 4.21 of the Original Application are reiterated as has already been stated earlier the Respondent no. 2 cannot impose punishment of reduction in rank to the initial scale as the formula of any authority of equivalent rank of the appointing authority is not applicable to such cases under 1968 Rules. Moreover Sri R. Bhargdwaj, the Respondent No. 2, who has passed the impugned order was not a senior scale officer holding independent charge.
25. That in reply to the contents of Para 27 of the Counter Reply it is submitted that the departmental appeal of the applicant has been rejected arbitrarily without applying mind in accordance with the Rule 22 of 1968 Rules which is liable to be quashed by this Hon'ble Tribunal.
26. That the contents of Para 28 of the Counter Reply are denied and in reply thereto the contents of Para 4.23 of the Original Application are reiterated. It is further submitted that the applicant filed a departmental appeal to complete the legal formalities on the basis of his knowledge and reminiscence which too has been rejected arbitrarily without application of mind vide ^I order dated 12.12.89, a true copy of which has already been filed as annexure-1A to the Original Application.

Corrected

27. That the contents of Para 29 of the Counter reply are denied while those contents of Para 4.24 of the Original Application are reiterated.
28. That the contents of Para 30 of the Counter Reply are denied as incorrect and in reply thereto the contents of Para 4.25 of the Original Application are reiterated. It is further submitted that the applicant has been discriminated in the matter of imposition of punishment. Sarvasri Mohd. Sayeed Khan, Station Superintendent, Dalrampur and Ram Shanker Singh, Station Kauwapur have also committed the same misconduct in the same manner as alleged in the case of applicant yet the former has been ~~penal~~ punished ^{by} for withholding of an increment for a period of one year on temporary basis while the applicant has been punished with the reduction of rank at the initial stage of pay.
29. That the contents of Para 31 of the Counter Reply are denied and in reply thereto the contents of Para 4.26 of the Original Application are reiterated.
30. that the contents of para 32 of the Counter Reply are not disputed except that the departmental appeal of the applicant has been rejected arbitrarily without application of mind in accordance with the provisions of Rule 22 of 1968 Rules.
31. That the contents of Para 33 of the Counter Reply need no comments to the extent the contents of Para 4.28 of the Original Application have been admitted. Rest contents of Para under reply are denied.

Consistent with

32. That the contents of Para 4.29 of the Original Application have not been ^{replied} reply by the answering Respondents which stood admitted are hereby reiterated.

33. That the contents of Para 34 of the Counter Reply are denied as incorrect and in reply thereto the contents of Para 4.30 of the Original Application are reiterated.

34. That the contents of Para 35 of the Counter reply are denied while those contents of Para 5 of the Original application are reiterated as correct. The grounds urged by the applicant are well tenable in the eye of law and the Original application deserves to be allowed with cost.

35. That the contents of Para 36 of the Counter reply are denied. The departmental appeal has already been rejected by the departmental appellate authority vide order dated 12.12.89, a true copy of which has already been filed

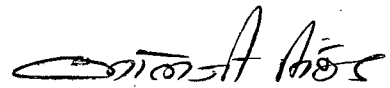
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as Annexure-1A to the Original Application.

36. That the contents of para 37 of the Counter Reply need no comments.

37. That the contents of para 38 of the Counter Reply are denied and in reply thereto the contents of paras 8 and 9 of the Original Application are reiterated.



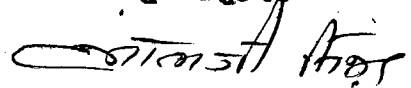
APPLICANT.

VERIFICATION

I, Lalji Misra, aged about 55 years, son of late Gmti Prasad Misra, resident of Station Road Pachpurwa, district Gonda, presently functioning as Head Goods Clerk, North Eastern Railway,

Sonratgarh, do hereby verify that the contents of paras 1 to 37 are true to my knowledge and that I have not suppressed any material fact.

LUCKNOW DATED:
JANUARY . 1993.



APPLICANT.



ADVOCATE.

Alji Misra

C.A. No.

Applicant

Union of India & others

Respondents

ANNEXURE-3

पूर्वोत्तर रेलवे
N. E. Railway

३०३०-जी० ३५४ (संशोधित)
N. E.-G. 354 (R)

आरोप पत्र का मानक-फार्म
Standard Form of Chargesheet.

मानक फार्म नं० ३
Standard Form No. 3

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

संख्या... ९८३/९१९८८
No.

(रेल प्रशासन का नाम)... ए. ए. ए. ए. ए. ए. ए.
(Name of Railway Administration)

(जारी करने का स्थान)... ए. ए. ए. ए. ए. ए. ए.
(Place of issue)

तारीख... ६/९/८८
Date

ज्ञापन
MEMORANDUM

1. * राष्ट्रपति/रेलवे बोर्ड/निम्नहस्ताक्षरकर्ता रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 का नियम-9 के अन्तर्गत श्री आलजी मिश्रा के विरुद्ध जांच करने की प्रस्तावना करते हैं। अर्थात् वा कदाचार के अम्यारोपों का सार। जिसके सम्बन्ध में जांच करने की प्रस्तावना है, आरोप के अनुच्छेदों के विवरण (अनुबन्ध-I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के अम्यारोप में अर्थात् वा कदाचार के अम्यारोपों का विवरण संलग्न है (अनुबन्ध-II) जिन दस्तावेजों से और जिन साक्षियों द्वारा आरोप के अनुच्छेदों की पुष्टि की जाने की प्रस्तावना है, उनकी भी एक सूची संलग्न है (अनुबन्ध-III और IV) * दस्तावेजों की सूची में उल्लिखित दस्तावेजों की प्रतियां अनुबन्ध-III के रूप में संलग्न हैं।

1. The President/Railway Board/undersigned 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 misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or 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 (Annexures-III & IV). * Further copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2. * श्री आलजी मिश्रा को सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के 10 दिनों के भीतर कार्यलय समय में किसी भी समय दस्तावेज सूची (अनुबन्ध-III) में उल्लिखित दस्तावेजों का निरीक्षण कर सकता है और उनके उद्धरण ले सकता है। इस प्रयोजन के लिए इस ज्ञापन की प्राप्ति के बाद उसे तत्काल से सम्पर्क स्थापित करना चाहिए।

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 ten days of receipt of this Memorandum. For this purpose he should contact*** immediately on receipt of this memorandum.

3. श्री आलजी मिश्रा को आगे यह भी सूचित किया जाता है कि यदि वह चाहे तो दस्तावेजों का निरीक्षण करने तथा मांगे जांच की स्थिति में जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता के लिए किसी अन्य रेल कर्मचारी/रेलवे ट्रेड यूनियन के किसी पदाधिकारी (जो रेल कर्मचारी (अनुशासन और अपील) नियम-1968 के नियम-9(13) और यथा स्थिति उनके नीचे नोट-1 और/अथवा नोट-2 की अपेक्षाओं को पूरा करते हों) की सहायता ले सकता है। इस प्रयोजन के निम्न अधिमार्गता क्रम में उस एक या अधिक व्यक्तियों का नाम निर्देशन करना चाहिये। तद्विषयक रेल कर्मचारी (अनुशासन और अपील) नियम-1968 के पदाधिकारी (पदाधिकारियों) का नाम निर्देशन करते से पहले श्री आलजी मिश्रा द्वारा नामित व्यक्ति(व्यक्तियों) से वचन ले लेना चाहिये कि वह (वे) अनुशासनिक कार्यवाही के दौरान अपनी सहायता करने में किसी प्रकार की बाधा न डालेंगे। वचनबद्ध में ऐसे अन्य मामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाना चाहिये, जिसमें नामित व्यक्ति(व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका है और नाम निर्देशनी द्वारा दिया गया वचनबद्धनामानांकन पर भी उचित विचार/निर्णय कर्ता/सहायक रेलवे को भेजा जाना चाहिये।

3. Shri..... is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of Railway Trade Union [Who satisfies the requirements of rule-9(13) of the Railway servants (Discipline and Appeal) Rules, 1968 and Note-1]

4. श्री कोषाजी पठाण
अपना प्रतिवाद तैयार करने के लिये किसी दस्तावेज का निरीक्षण करना अपेक्षित न हो तो इस तथ्य की प्रति 10 दिनों के भीतर और यदि वह दस्तावेजों का निरीक्षण करना चाहें तो दस्तावेजों का निरीक्षण पूरा होने के 10 दिनों के भीतर निम्न दस्तावेजों का निरीक्षण कर पड़ना चाहिये) प्रस्तुत करें और यह भी

(a) to state whether he wishes to

(b) to furnish the names and addresses of the witnesses if any, who are likely to be called to give evidence in support of the statement.

5. श्री को सूचित किया जाता है कि आरोप के संबंध में अभ्युपपन्न होने में जांच की जायेगी जो स्वीकार नहीं किये गये हैं। इसलिए उन्हें चाहिये कि आरोप के प्रत्येक अनुच्छेदों को पढ़ कर निवेदन पत्र पुरकार करें या अस्वीकार करें।

5. Shri

6. श्री..... को आम सूचित किया जाता है कि यदि वह पीता में चित्तिस्थ
के भीतर यदि वह अपने प्रतिवाद का लिखित कथन प्रस्तुत नहीं करता या जांच प्राधिकारी के समक्ष उपस्थित रूप से शपथ नहीं
या रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 के उपबन्धों या उक्त नियम के अनुसरण में जारी अफिसरी
को वा अनुरोध करने में अन्यथा विफल रहता है या इन्कार करता है तो जांच प्राधिकारी एक पंजीय रूप में जांच कर सकता है।

6. Shri.....
written statement..... is further informed.....

7. श्री का ध्यान रेल सेवा (आचरण) नियम, 1966 के नियम 20 और दिलाया जाता है, जिसके अधीन कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से सम्बन्धित मामलों के संबंध में अपने अधिकारों को बढ़ाने के लिये किसी वरिष्ठ प्राधिकारी पर कोई राजनीतिक या अन्य प्रभाव न डालेगा अथवा न ही दावतें का प्रस्ताव करेगा। इन कार्यवाहियों से सम्बन्धित किसी मामले में, उसकी ओर से किसी अन्य व्यक्ति से कोई अपवाद देना प्राप्त होता है तो यह अपवादणायोग्य किश्री का उम अपवाद देना की जानकारी है और वह उसके कहान पर गया है और उसके विरुद्ध रेल सेवा (आचरण) नियम 1966 के नियम 20 का अतिक्रमण करने के लिये कार्यवाही की जायेगी।

7. The attention of Shri

7. 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 it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. इस आपन की पावती दें।

8 The receipt of this memorandum may be acknowledged.

AFC

12-1

Chaitin G.J.

* [राष्ट्रपति के आदेश और उनके नाम से]
[By order and in the name of the President]

नक : - Annex 1, II, III, IV, V
Encls: ① copy of R.O. on per
annex III

(Signature)
श्री. जी. व. शेट्टी

सक्षम प्राधिकारी का नाम और पदनाम
Name and designation of competent authority.

सेवा में,
To,

श्री. लावली मिश्रा

(पदनाम).....
(Designation) प्रधान जी. व. शेट्टी / सी. ए. र. ग. ड.

(स्थान).....
(Place) धारि. रेल. सी. ए. र. ग. ड.

@प्रतिलिपि श्री..... (उपस्थिता प्राधिकारी का नाम और पदनाम) को सूचनाएं भेजिए।
Copy to Shri..... (Name and designation of the attending authority)
for information.

* जो लागू न हो, उसे काट दें।
Strike out whichever is not applicable.

** यदि ज्ञापन के साथ प्रतियां दी जाती हैं/नहीं दी जाती, तो यथा-स्थिति इसे काट दिया जायेगा।
To be deleted if copies are given/not given with the Memorandum as the case may be.

*** प्राधिकारी का नाम (इसमें यह विवक्षित होगा कि जब-कभी जांच प्राधिकारी द्वारा अनुशासन प्राधिकारी या किसी प्राधिकारी को आरोप पत्र जारी करने के लिये कोई मामला निर्देशित किया जाता है, तो उस प्राधिकारी को उस प्राधिकारी का उल्लेख करना चाहिए जिसकी अभिरक्षा में सूचीगत दस्तावेज हैं या जो दस्तावेजों के निरीक्षण की व्यवस्था करेगा ताकि उस प्राधिकारी का प्राप्त ज्ञापन में उल्लेख किया जाये।
Name of the authority, (This would imply that whenever a case is referred to the Disciplinary Authority by the Investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

££ जहां राष्ट्रपति अनुशासन प्राधिकारी है।
Where the President is the disciplinary Authority.

£ जहां कहीं राष्ट्रपति या रेलवे बोर्ड सक्षम प्राधिकारी है वहां इस रहने दिया जाये।
To be retained wherever President or the Railway Board is the competent authority.

@ जहां कहीं लागू हो इसका प्रयोग किया जाय..... रेल कर्मचारी (अनुशासन और अपील) नियम 1968 का नियम 16 (1) देखें। रेल कर्मचारी को भेजी जाने वाली प्रति में इसे न रखा जाये।
To be used wherever applicable-See Rule 16 (1) of the RS (D & A) Rules, 1968-Not to be inserted in the copy sent to the Railway servant.

NER-86871644-10,000-May, 87

ATC
R. P. S.

Handwritten signature

Handwritten signature

Statement of Articles of charges framed against
Shri Laljee Mishra HGO/SOT.

Shri Laljee Mishra while working as HGO/SOT during the period from 28.11.87 to 23.1.88 failed to maintain absolute integrity and devotion to duty in as much as under :-

- 1) The permit, for the consignments booked by Sri Mishra under Inv No.2/665746 dt. 28.11.87 and INV No.1/665746 dt. 30.11.87 was for seesam logs, but the party has loaded the 'SAMAL' logs & Khair wood respectively. 42/78
- 2) The consignment booked by Sri Mishra HGO/SOT under INV No.1/685758 dt. 13.1.88 according to permit was to load for BST but it has been loaded for Sakeran. 6/82
- 3) The permit for INV No.12/925699 dt. 28.11.87 prepared by Sri Mishra was for mango logs, but seesam logs have been loaded. 6/84
- 4) The permit (relating to Inv.No.14/925701 dt. 25.12.87 prepared by Sri Mishra) was for seesam logs and loaded 'AUKAT' logs. 41/82
- 5) The permit (relating to Inv.No.27/925714 dt. 23.1.88 prepared by Sri Mishra) was for Mango logs but loaded Seesam & Kukat. 6/1629
- 6) Loading against the Inv.No.28/925715 dt. 23.1.88 prepared by Sri Mishra, was done without permit. 6/1630

Thus the above act of Sri Laljee Mishra HGO/SOT amounts to serious misconduct in contravention to Sub-Rule 3 1(i) & 3 1(ii) of railway services (Conduct) Rule 1986.

(O.P. GUPTA)
DIVISIONAL S.O. & L. SUPDT. / HGO

MEASURE-II.

Statement of Imputation of misconduct in support of articles of charges framed against Sri Laljee Mishra, HGO/SOT.

Sri Laljee Mishra while working as HGO at JCT station during the period from 28.11.87 to 23.1.88 committed the serious irregularities in booking of Khair-wood/logs, consignments as detailed below :-

- 1) According to ~~permit~~ permit relating to invoice No.2/665746 dt. 28.11.87 and Inv.No.1/665746 dt. 30.11.87 only seesam logs were to be loaded but the party has loaded 'SAMAL' logs and Khair-wood respectively which is contrary to the permit. Sri Mishra who prepared the Invoices should have checked at the time of loading. But he did not do so which proves his connivance with the party.

Correctly done

- 2) The permit relating to Inv.No.1/685/66 dt. 18.1.86 prepared by Sri Mishra was for loading to SST cutters. It has been loaded for SHIKAR Jn., which is contrary to the permit.
- 3) In the same way, the irregularities as mentioned against item 3, 4, 5 & 6 in the Annexure-I, would also have been checked up if Sri Mishra had taken a least care of work. But he failed to do so which also proves of his connivance with the parties. Sri Mishra has thus violated the instructions of U.F. transit of forest & other forest produce rules 1972 circulated under DSA(3P.s.) letter No.T/208/Forest dated 15.6.85 and the office letter No.C/387/5 dt. 5/4.1.87 and also No.T/208/Forest dated 22.12.87.

(O.P.GUPTA)
DIVL.COMD. SUPDT. /JN.

Annexure-III.

List of documents relied upon by which articles of charge framed against Sri Laljee Mishra, HCC/SOT are proposed to be sustained.

1. Sri D.K.Asthana, GS/ADM Office enquiry report of 22.4.88.
2. Report of Sri S.P.Srivastava DGI/SOT dated 3.3.88.

(O.P.GUPTA)
DIVL.COMD. SUPDT. /JN.

Annexure-IV

List of witnesses by whose the articles of charges proved against Sri Laljee Mishra, HCC/SOT as proposed to be sustained.

1. Shri D.K.Asthana, GS/ADM/Office/JN.
2. " S.P.Srivastava, DGI/SOT.

(O.P.GUPTA)
DIVL.COMD. SUPDT. /JN.

const. No. 5

134

COMBINED DUN.

Signature L.

Statement of Articles of charges framed against
Shri Laljee Misra, Head G.C./Shohratgarh announced
with charge memorandum No.C/SS-5/88 dated 6/11-5-88,
addressed to the charged employee, Shri Laljee
Misra, Head G.C./Shohratgarh.

- Item 2 : Please read R.R. No. 1/685758 dated 19-11-87
instead of R.R. No. 1/685858 dated 19-11-87.
- Item 3 : Please read R.R.No. 12/925698 dated 28-11-87
instead of R.R.No. 12/925098 dt. 28-11-87.

Sd/-
(C.P. Gupta)
Divl. Commercial Supdr.
S.E. Railway, Lucknow.

No. C/SS-5/88
Dated 29th. June, 1988.

Copy forwarded to Shri Laljee Misra,
Head Goods Clerk/Shohratgarh, for information
and necessary action. This is in reference to
charge memorandum No.C/SS-5/88 dated 6/11-5-88
issued to him.

for Divl. Rly. Manager/General
Lucknow.

20/7/88

ANNE XORE-A

Registered A/D

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW.

Gandhi Bhavan, Opp. Residency,
Lucknow - 226 001.

(Registration No. 298 of 1989 (L))

NO. CAT /LKO/Jud/CB/

dated 30/10/89

Lalji Narayan

APPLICANT(S)

VERSUS

Union of India and others

RESPONDENT(S)

Please take notice that the applicant above named
has prescribed an application a copy whereof is enclosed
herewith which has been registered in this Tribunal and has
fixed under day of 11 1989
for order

If, no appearance is made on your behalf, your
pleader or by some one duly authorised to act and plead
on your behalf in the said application, it will be heard
and decided in your absence.

Given under my hand and the seal of the Tribunal
this day of 1989.

rrm/

FOR DEPUTY REGISTRAR

① The Union of India through General Manager
N.E. Railway, Gorakhpur.

Divisional Railway Commercial Suptt-
N.E. Railway, Askaniya Marg, Lko.

Inquiry officer Shri N.P. Singh, Asstt.
Commercial Suptt - N.E. Rly.

Askaniya Marg, Lko.

Copy of Petition with court, & order

dt- 27/10/89 passed thereon.

VAKALATNAMA

Before

In the Court of

In the Central Administrative Tribunal
Circuit Bench Lucknow

No. 298 of 1989 (L)

Lalji Misra

Versus

Union of India and others

I/We. S. P. Kaushal, Dist. Commr. Supdt and N.P. Singh
Asstt. Commr. Supdt Lucknow

Anil Kumar

do hereby appoint and authorise Shri.....

Railway Advocate, Lucknow.....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.

Anil Kumar

I/We hereby agree to ratify all acts done by the aforesaid Shri.....

Railway Advocate, Lucknow.....

in pursuance of this authority.

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

day of.....

1989

(N. P. Singh)

Assistant Commr. Supdt

Dist. E. Ry., Lucknow

(S. P. Kaushal)

महोदय वरिष्ठ न्यायिक

दूरस्थ सेवा केंद्र

Accepted
Anil Kumar
Adv