

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 35 OF 89

NAME OF THE PARTIES S.P. Awasthi Applicant

Versus

U.O.I.

Respondent

Part A.

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CERTIFICATE

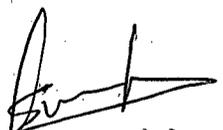
Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated 24/6/11 B.C. (D) 09-5-12.

Counter Signed.....



Section Officer/In charge



Signature of the
Dealing Assistant

check
on 02/11/12

2

ALB

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

....

Registration O.A. No. 35 of 1989

Shiv Prakash Awasthy Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

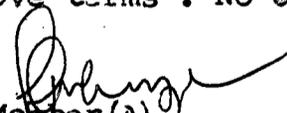
(By Hon. Mr. Justice U.C. Srivastava, VC)

The applicant while working as Driver was charge-sheeted because of an accident which was caused due to his negligence. An enquiry officer was appointed and the enquiry officer conducted the enquiry and after completion of the enquiry, the enquiry officer came to the conclusion that the charges against the applicant were not proved. The disciplinary authority did not agree with the findings recorded by the enquiry officer and has consequently, punished the applicant by reducing him from the Engine Driver (C) to the post of Shunter for the period of three years with postponing future increments. The applicant filed an appeal against the same and the appeal was dismissed, thereafter, he has filed this application.

2. According to the respondents, the applicant was responsible for causing an accident and only minor punishment was given to him. But, in this case, if the enquiry officer has exonerated the applicant, the disciplinary authority, in case disagrees with the findings of the enquiry officer, should have assigned reasons for his disagreement and he should have issued

a show cause notice to the applicant which ~~makes~~
~~him~~ enable ^{him} to file effective representation against
the same, but the same was not done and an opportunity
of hearing was not given to the applicant, which
violates the principles of natural justice. In this
connection, reference has been made to the case
of Naraini Mishra Vs. State of Orissa, 1969 3LR page
657 wherein it has been held that when the disciplinary
authority did not agree with the findings of the
enquiry officer, giving of the notice is must and
without giving him notice and an opportunity of
hearing no order can be passed.

3. Accordingly, this application is allowed and
the order of punishment dated 16.12.1987 and the
appellate order dated 2.3.1988 are quashed. However,
this will not preclude to the disciplinary officer from
disciplin
going ahead with the ~~enquiry~~ proceedings after giving
show cause notice and an opportunity of hearing to
the applicant. The application is disposed of with
the above terms . No order as to costs.


Member (A)


Vice-Chairman

Dated: 16.9.1992

(n.u.)

9-2-09
filed on 25/1/09

CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 85 of 19889 (C)

APPLICANT (s) S. P. Awasthy

RESPONDENT(s) G. O. 2

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Yes
2. (a) Is the application in the prescribed form ?	Yes
(b) Is the application in paper book form ?	Yes
(c) Have six complete sets of the application been filed ?	No
3. (a) Is the appeal in time ?	Yes
(b) If not, by how many days it is beyond time ?	-
(c) Has sufficient case for not making the application in time, been filed ?	-
4. Has the document of authorisation/Vakalat-nama been filed ?	Yes
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-	Yes C.P.O. No. DD 008922 Rs. 50 dt 23/1/09
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Yes
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Yes

O.A. 35/89 (c)

①

①

A3

Hon. A. John, A.M.

On the request of Counsel for applicant, the case is adjourned to 29.3.89 for admission.

3)

A.M.

h

Hon' Mr. D.S. Mishra, A.M.

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

②

29/3/89

On the request of the learned Counsel for the applicant the case is adjourned to 10-4-89 for hearing on admission.

J.M.

A.M.

③

10.4.89

Hon'ble Mr. Ajay Johri, A.M.

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

None is present for the applicant. Admit. Issue notice to the respondents to file reply by 10-5-89. The applicant may file rejoinder, if any, within 15 days thereafter and the case be listed for final hearing on 29-5-89.

J.M.

A.M.

(sns)

④

29/5

No sitting. Adjourned to 12/7/89 for orders

OK In compliance Court's order dt. No extract copies been filed by the Counsel for the re submitted

B.O.C

A4

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
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3/11/89

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

None appears for the parties.
 Shri V.P. Pal, Law Assistant, N.E. Railway present in the Court has been informed about the filing of this case against the Railway Administration. The spare copy of the application is not available on record. The respondents are directed to appoint a counsel for receiving notice in the case. The applicant is directed to file copy of the notice within 3 weeks. Let a notice be sent to the counsel for the applicant for the purpose. List this case for orders on 22-1-90.

J.M.

(sns)

9
2-1-90

No sitting. Adv. to 26.3.90.
Applicant in person is present.

10
6.3.90

No sitting. Adv. to 22.1.90.
Shri A.N. Varma, Adv. files power on behalf of O.P.N. 2 & 3.

11
29.1.90

No sitting. Adv. to 20.11.90 26/3/90

Hon. Mr. Justice K. Nath v. Hon. Mr. M. M. Singh AM

20-11-90

Due to sad demise of Sr. B.K. Srivastava case is adjourned to 29.1.91.

OR
notice issued
23/1/90

OR
Notice was issued on 23-1-90 as per court's order 3.11.89. No evidence reft. cover has been taken back S.F.O.

OR
Shri A.N. Varma files power on behalf of repts a 26-3-90 but No reply has been filed S.F.O.

Dinesh

10M

UC

19/1/91

3

O.A. 3. 8

19

5.8.91
D.R.

AS

Both the parties
are present today.
This case is listed
for final hearing
on 16/8/91 before
the Hon. Bench.

✓

20

6.8.91

Hon. Mr. Justice K. Nath - v.c.
Hon. Mr. K. Abayya - BM

None present for both the parties
due to strike of U.P. Bar Council
case is adjourned to 22.10.91
for hearing.


K. Nath


v.c.

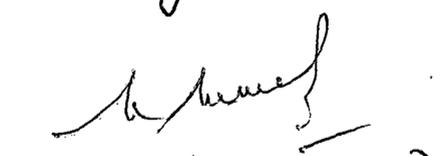
22-10-91.

Mr. H.P. Srivastava - Counsel for the
Applicant.

None for respondents.

May be listed for hearing on
18/12/91


(S.N. Prasad)
Member (Judl.)


(Kartal Kumar)
Vice Chairman

18.12.91

No. S. Ting adj'd 16.3.92
9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

AT LUCKNOW

ORIGINAL APPLICATION

Petition No.

of 1989

Between

Shiv Prakash Awasthy ... Petitioner

Versus

Union of India & others ... Respondents

I N D E X

.....

1. Memo of Petition	Page No 1 to 40
2. <u>Annexure No.1</u> True copy of impugned punishment order order dated 16.12.1987 alongwith enclosed form -3	41--43
3. <u>Annexure No.2</u> True/photostat copy of impugned Appellate order dated 2.3.1988 passed by DRM(Safety) but order signed by some-one else for DRM (Safety)	44-45
4. <u>Annexure No.3</u> True photostat copy of OP/T-79 No.996069.	46
5. <u>Annexure No.4</u> True copy of Charge sheet dated 11.3.1987.	47-67
6. <u>Annexure No.5</u> True copy of representation of petitioner dated 20.3.1987, denying the charges in the charge sheet, and demanded certified copies of documents and statements recorded by the inquiry committee prior to issuance of charge sheet.	68-69
7. <u>Annexure No.6</u> True copy of the reminder of the petitioner dated 5.6.1987 to supply copies of documents as well as to supply Hindi version of Charge sheet and copies of documents.	70-71
8. <u>Annexure No.7</u> True copy of letter xxxx of Shri Sukh Chain Singh received by the petitioner on 22.5.87 that he has been appointed Inquiry Officer and that he will hold an inquiry in the case.	72

Noted/checked
9/2/1989

Shiv Prakash
D. A. Rawat
25/1/89

(2)

9. Annexure No. 8

True/photostat copy of Amended instruction of S.R.8.15/1, 8.15/2 and 8.15/3 Special instructions. about shunting etc.

73

10. Annexure No.9

True/photostat copy of findings of the Inquiry Officer dated 8.7.1987 saying that no charge is proved against the petitioner.

74-84

11. Annexure No.10

True/photostat copy of appeal to the DRM(NER) Lucknow dated 19.1.1988 preferred by the petitioner against the punishment order dated 16.12.1987.

85-88

12. Vakalatnama (Power)

89

.....
PRESENTED TO DAY BY,

H. Srivastava

Lucknow,
Dated: 23rd January, 1989

(Harendra Prakash Srivastava)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

LUCKNOW.



BETWEEN

Shiv Prakash Awasthi, aged about 48 years,
son of Shri (Late) Mendi Lal Awasthi, R/O
26 Charas Mandi, Dugawan, Lucknow ... Applicant

AND

1. Union of India, through the Secretary
Ministry of Railways, New Delhi.
2. The Senior Divisional Mechanical Engineer,
DRM Office, ~~North~~Eastern Railway, Ashoka Marg,
Lucknow
3. The Divisional Railway Manager, North Eastern
Railway, Ashok Marg, Lucknow.

Shri Vindhyaachal Singh, adult, son of not known
to the applicant, at present posted as Senior
Divisional Engineer(Mechanical) N.E.Railway,
Ashok Marg, Lucknow.

... Respondents.

DETAILS OF APPLICATION:

1. Particulars of the Applicant:
 - (i) Name of the Applicant : Shiv Prakash Awasthi
 - (ii) Name of Father : Late Shri Mendi Lal Awasthi.
 - (iii) Age of the applicant : About 48 years.
 - (iv) Designation and particulars of office (Name & Station) in which employed or was last employed before ceasing to be in service. : Driver (Gods) Loco Shed, Charbagh NER Lucknow

Shiv Prakash Awasthi

(2)

- (v) Address of Office : Loco Shed Charbagh (NER) Lucknow.
- (vi) Address for service of all notices: 26-Charas Mandi, Dugawan, Lucknow.

2. Particulars of Respondents:

(i) name of the respondent : (i) The Union of India and designation/Office address for service of all notices: through the Secretary Ministry of Railways, New Delhi.

(ii) The Senior Divisional Mechanical Engineer, DRM Office, North-Eastern Railway, Ashok Marg, Lucknow.

(iii) The Divisional Railway Manager, North-Eastern Railway, Ashoka-Marg, Lucknow.

(iv) Shri Vindhychal Singh adult, fathers' name not known to the Applicant at present posted as Senior Divisional Engineer (Mechanical) NER, Ashok Marg, Lucknow.

(ii) name of father/husband -NA

(iii) Age of the Respondents -NA

(iv) Designation & Particulars of office (name & Station) in which employed As indicated in (i) above

(v) Office Address As indicated in (i) above

(vi) Address for service of all notices. As indicated in (i) above

3. Particulars of the orders against which the application

is made:

The application is against

na Prakash Prastha

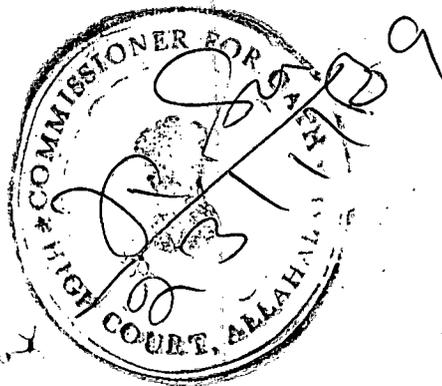


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THE following orders:-

- (i) Punishment order dated 16.12.1987 alongwith enclosed order Form-3 as contained in Annexure No.1 and Appellate Order dated 2.3.1988 as contained in Annexure No.2
- (ii) Dated: 16.12.1987 and 2.3.1988
- (iii) Passed by Senior Divisional Mechanical Engineer (NER) LucknowJN. and Appellate order passed by Divisional Railway Manager, NER, Lucknow
- (iv) Subject in brief : The grievance of the petitioner is against the orders of the disciplinary authority, reducing the petitioner from the post of Engine Driver(C) to the post of Shunter for a period of three years with postponing future increments and order of the appellate authority rejecting the appeal of the petitioner, both the orders being void ab initio and are discriminatory in nature, arbitrary, illegal, malafide and in gross violation of relevant rules, principles of natural justice, equity and good-conscience and violative of Articles 14, 16 and 311 of the Constitution of India.
- (v) Jurisdiction of the Tribunal: The applicant declares that the subject



Shiv Prakash Prasthi

matter of the orders against which he wants redressal is within the jurisdiction of Tribunal

(4)

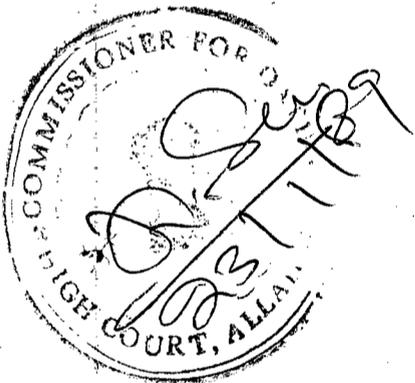
ALL

5. Limitation:

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

6. Facts of the case: The facts of the case are given below:

1. That the present application is directed against the punishment order dated 16.12.1987 passed against the petitioner, reducing the applicant from the post of Engine Driver (C) Grade to the post of Shunter from the scale of Rs.1350-2200 to the scale of Rs.1200-2040 at Rs.1200/- for a period of three years (with postponing future increments) by the opposite party No. 2/4 ~~xix~~ and rejection of appeal dated 19.1.1988 against the said punishment order by the opposite party No.3 vide order dated 2.3.1988, as arbitrary, illegal, malafide and in gross violation of relevant rules and principles of natural justice, equity and good conscience hence liable to be quashed by the Hon'ble Tribunal. The petitioner further submits that both the impugned orders are void ab initio and are discriminatory in nature and amount to the punishment of the petitioner



Shiva Prakash Prasthi

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(5)

without any reasonable basis and without following due process of law, hence violative of Articles 14,16 and 311 of the Constitution of India.

A true copy of the impugned punishment order dated 16.12.1987 alongwith enclosed order

Annex.No.1 Form-3 is being filed herewith as ANNEXURE NO.1, while the appellate order dated 2.3.1988 is being
Annex.No.2 filed herewith as ANNEXURE NO.2 to this petition .

The petitioner also seeks relief against the denial of promotion to him since the year 1985 and the grant of promotion to his juniors over and above him without any basis and in a most arbitrary and discriminatory manner.

2. That the petitioner was initially appointed in the employment of opposite party No.1 as Engine ~~Driver~~ cleaner on 16.2.1961. Since then he has been discharging his duties consciously, honestly and with hard work; that is why he has been given many promotions since then till the year 1985. The petitioner was first promoted to the post of Second Fire-man in the year 1963, then as First Fireman in 1966; then as 'A' Grade Fireman in the year 1976; and then to the post of Loco Shunter in the year 1978. He was promoted to the post of 'C' grade Engine Driver in the year 1983, thereafter the petitioner was promoted to the post of 'B' grade Engine Driver in January 1985 and was simultaneously transferred on promotion to be posted at Gorakhpur but the family condition of the petitioner were not such as to permit him to go to Gorakhpur hence



Shivra Prakash Arastha

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(6)

he exercised his option to defer the said promotion of B-grade Engine Driver on transfer for one year. It will be relevant to point out here that under rules, if an employee does not want to take promotion and thereby be transferred also, he may decline the same and this will act as a bar for one year for the purpose of next promotional opportunity; after one year such an employee as in the case of the petitioner, becomes entitled for promotion as and when next vacancies are caused.

3. That a Railway accident took place between Down Aishbagh Goods train and Marudhar Express between Unnao Junction and Magarwara Station on 27.12.1985. The petitioner was driving Down Aishbagh Goods train. As a result of frontal accident between the two trains, certain Wagons of Goods Train were derailed and net loss suffered was caused to denting, damage to certain empty Wagons only. No life or property or goods was damaged or lost in the said accident other than the said damage of empty wagons.

4. That the petitioner submits that he is not in anyway responsible for the accident and that he was dutifully obeying the written orders given to him at the time of accident. The accident has occurred primarily because of contradictory orders passed by the then Assistant Station Master Magarwara - Shri J.C. Tandon and secondly due to the over-shooting done by Shri Taran Singh, Driver of Marudhar Express. But,

Shri Prakash Arasth



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(7)

because the said Assistant Station Master (hereinafter referred to as 'ASM' for short) happens to be not favourite of opposite parties, he has been given no punishment while the petitioner, who had committed no fault, whatsoever, has been punished against the clear findings of the Inquiry Officer. The real facts about the accident are being submitted in the following paragraphs for a proper appreciation of the petitioner's grievances.

5. That on the date of the said accident i.e. on 27.12.1985, the petitioner was given duty to shunt Aishbagh Down Goods train. The petitioner drove the said train from Kanpur to the direction of Aishbagh Jn. Lucknow. During the process ~~of~~ he reached Magarwara Railway Station at about 3 P.M. Till 8 P.M. the petitioner continued to shunt his train and engine in different manners as per directions of the ADM Magarwara. In the process the petitioner's train was standing on Line No.6 at about 9.30 P.M. The petitioner's goods train comprised 65 Wagons which is a very heavy load.

6. That at about 2150 hrs, the petitioner was handed over written shunting order from ASM Magarwara through a porter Shri Ramesh Kumar alongwith train guard of the train, which is OPT-79. In the said shunting order No.996069, a true copy of which is being filed herewith as

Annex.No.3

ANNEXURE NO.3, it is mentioned as under:-

Silva Prakash Arasthi



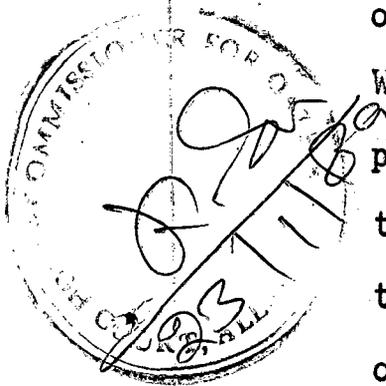
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(8)

" AS PER PNL ORDER, PLEASE TO BACK FROM
LINE SIX TO SEVER ALL LOAD."

Simultaneously with the receipt of the order, the petitioner's train was given lower starter of line No.6 indicating that the petitioner was required to take forward his train to the junction of the line No.6 and 7 and then after reaching common line, to back his train on line No.7 as per said OPT-79.

7. That the petitioner accordingly started off his train so as to take it to junction ~~AA~~/point of Line No.6 and 7 and thereafter to back it on line No.7 alongwith the entire load i.e. 65 Wagons of the petitioner's goods train. It is to pointout here that for making backward movement to line No.7, it would have been necessary to take the train to sufficiently advance position on the common line beyond the junction point so as to enable the last wagon i.e. break-van of the petitioner's goods train beyond the Junction point of the line No.6 and 7. The petitioner did the same which lead him to take his Engine upto the first stop signal on the common line and thereafter he stopped. When the petitioner's engine was just behind the first stop signal point, the last Wagon i.e. Break-Van of the train was just ahead of junction point of the line No.6 and 7. The petitioner had faithfully followed the shunting order OPT-79(Annex.No.3) as was permissible to him under the provisions of



S. Prakash Arora

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(9)

the OPERATIONAL MANUAL AND SHUNTING RULES.

8. That it would be relevant to submit that when in shunting movement, a train can be freely moved till the first stop signal but it cannot cross first stop signal until and unless a down signal allowing such train to pass beyond the first stop signal. There was no down signal nor was petitioner in need of taking it beyond that point hence the petitioner stopped at that point. However, under rules, in order to take back-movement, the petitioner was further required to receive back-movement signal or written permission for undertaking backward movement to line No.7 which is given by a Porter after obtaining instructions from the concerned cabin. The Porter who had given advance signal and OPT-79 to the petitioner; namely Shri Ramesh Kumar, accompanied the petitioner till the first stop signal. Thereafter, he told the petitioner that he is going to seek instructions from the Cabin behind and after getting permission he will give back movement signal(light). An extra precaution was required as the atmosphere was full fogged and mist.



9. That the petitioner was waiting for the back-movement signal and hardly four-five minutes had passed off, when he listened the whistle flowing of some incoming train. Though in the dense fog and mist in front of the petitioner and incoming train, it was not quite clear as on

Shiva Prakash Prastha

which line incoming train was coming still as a

A17

(10)

matter of precaution, the petitioner gave a strong reply whistle so as to inform the incoming train of his instant position. But not withstanding his reply-whistle, within few seconds, the petitioner saw head lights of incoming train on that very line on which his train was standing behind first stop signal.

10. That the petitioner was shocked and surprised to face such a situation as no incoming train should have been given permission to come on the same line on which the petitioner was sent under due shunting order. In any case, until and unless the petitioner had actually shifted and moved back to another line (line No.7) and the common line was cleared off, no incoming train should have been allowed to advance atleast beyond the first stop signal. Furthermore, after hearing the reply-whistle of the petitioner's train and also petitioner train's headlights, the incoming Marudhar Express Train ought to have stopped much earlier and in no case should have crossed the first stop signal when the petitioner's train was giving strong whistles putting others on alarm. But the fault had already taken place and the incoming train did not appear to be slowing down or stopping.



11. That ⁱⁿ the circumstances, giving repeated whistles in full throated manner, the petitioner warned his co-fireman that the head-on collision

Shiva Prakash Anandti

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(11)

seems to be unavoidable hence they should jump down. The firemen actually jumped down to save their lives. The petitioner could also have saved his life by jumping down but he took the risk of his life for the sake of lives and property of the passengers of income train as well as the goods that his train was carrying and decided to do whatever was possible in the circumstances, even by taking risk to his life in the apprehended collision.

12. That the petitioner thereafter lost no time in releasing the steam through the regulator to put his train into back-movement without even knowing what was the position in the back and without receiving the backmovement signal on line No.7. Despite his best efforts, as his train was very long one and was having load of 65 Wagons as indicated earlier, it took time for the train to catch back-movement with speed. It would be further relevant to point out that the incoming train i.e. Marudhar Express had not even slowed down and was in full speed when it ultimately collided with the petitioner's train which was already on backward movement. But because of petitioner's foresight, courage and selfsacrifice an occurrance which could have been one of the worst ever accident and would have resulted into hundreds of thousands of casualties and total destruction of the two trains, the petitioner's train received only a big zolt resulting into derailment of certain empty wagons adjacent to



Shiv Bakash Arasthi

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(12)

the engine in between the train while Marudhar Express having passengers practically suffered no loss. The result itself speaks for the commendable action of the petitioner. If it would have been otherwise and the petitioner would not have moved backward, the Marudhar Express ought to have suffered heavy casualties of its passengers and damage and would have been derailed.

13. That clearly, the petitioner's work and conduct was not only above the board but showed exemplary foresight and courage for which he deserved award. But since the accident has nevertheless taken place and some one was to be hounded for the same and since the Assistant Station Master, Magarwara who had ~~been~~ given contradictory orders resulting into collision of the two trains was higher in rank and hot-favourite of the opposite party No.2/4 who also subsequently yielded pressure on them, the said ASM has been spared and he is still working as ASM while the petitioner has been made scape-goat alongwith the driver of the Marudhar Express. However, even the driver of the Marudhar Express has been given comparatively very light punishment of stoppage of one year's increment only. But the petitioner has been given such a heavy punishment as indicated in Annexure No.1 above without any fault of him.



14. That an Inquiry was instituted in the circumstances of the accident and the petitioner was

Shiva Prakash Anandhi

A20

(13)

also served with a charge sheet dated 11.3.1987, a true copy of which is being filed herewith as ANNEXURE NO. 4.

Annexure No.4

15. That as the charge sheet was in English language and as time given in which the reply to the charge sheet was to be given very short, he took assistance of one of his colleague who vaguely explained all the contents of the charge-sheet.

16. That the petitioner submitted his representation dated 20.3.1987 a true copy of which is being filed herewith as ANNEXURE NO.5, Through this representation, the petitioner denied all the charges. He further demanded certified copies of essential documents without which he was not able to have ~~can~~ put his defence. In fact the charge sheet ought to have contained the copies of statements said to have been recorded by the Inquiry Committee prior to the issuance of the charge sheet alongwith the list of witnesses. But the petitioner was supplied instead only alleged summary of the statements which was quite insufficient and amounted to denial of adequate opportunity to the petitioner to defend himself and rebutt, if necessary, the evidence of the witnesses said to have been recorded by the Inquiry Committee. The petitioner also demanded original OPT-79 and SM/MGW which contain working rules for shunting movement enforced at the relevant time and also copies

Annexure No.5



Shiva Prakash Anandhi,

of subsidiary rules of the Northern Railway

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(14)

and Traffic Subsidiary Rules of MGW and ON for the period 1600 hrs to 2400 hours on 27.12.1985 and copies of log books as would be clear from the perusal of the said letter of the petitioner (Annexure No.5).

17. That the opposite parties did not meet with any of the requests made in the original letter dated 20.3.1987(Annex.No.5) nor even replied to them.

18. That the opposite parties did not reply to the petitioner's requests. The petitioner thereafter submitted another representation dated 5.6.1987 before the opposite parties submitting that since the charge-sheet and whatever documents were supplied were in English language, it was not possible for him to understand them or to reply to them properly. He, therefore, requested the opposite parties to provide him with Hindi translation of the documents to afford the petitioner due and adequate opportunity of defending himself. He also pointed out that whatever documents have been annexed with the charge-sheet were unsigned and uncertified ; hence could not be relied upon. The petitioner should, therefore, be provided with certified copies of the documents. The petitioner also referred to his earlier letter dated 20.3.87 (Annex.No.5) which remained unanswered till then and reiterated his request made therein for supply of essential documents which were necessary for his defence including unabridged evidence



Shiv Prakash Prasth

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(15)

OF WITNESSES on record. A true copy of the said reminder, dated 5.6.1987 is being filed herewith as ANNEXURE NO.6, to this petition.

Annex.No.6

19. That the petitioner's reminder dated 5.6.1987 also bore no fruits and remained unreplied. The opposite parties did not supply the petitioner with any of the documents as requested nor did they reply the original letter or reminder (Annex.No.5 and 6) Instead, the petitioner was communicated with the order signed by Shri Sukhchain Singh, informing the petitioner that he had been appointed Inquiry Officer and that he will be fixing the date for inquiry after receiving acknowledgement of the letter. A true copy of the letter of said Shri Sukhchain Singh, Inquiry Officer, received by the petitioner on dated 22.5.87 is being filed herewith as ANNEXURE NO. 7.

Annex.No.7

20. That the petitioner also pointed out in his said letter dated 5.6.1987 that Shri Sukhchain Singh was biased against the petitioner and as he was a closed relative of the Driver of Marudhar Express and the petitioner did not expect any justice of fair inquiry by him hence the petitioner requested change of the Inquiry Officer.

21. That the opposite parties neither changed the Inquiry Officer nor met with any requests made by the petitioner and instead proceeded with the Inquiry. The petitioner most respectfully submits that inquiry conducted in such a high-handed manner



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and without supplying any documents and in gross violation of principles of natural justice, equity and good-conscience, amounts to denial of adequate opportunity to the petitioner of defending himself.

22. That as referred to earlier, the article of charge as given in the charge sheet is being reproduced hereunder for a ready reference of the Hon'ble Court.

" On 27.12.1985, Shri S.P. Awasthy, Driver(C) son of Shri M.L.Awasthy while performing shunting operation of his Dn.Aishbagh Goods train at Magarwara, entered the Block Section without proper authority and thus violated G.Rs.3.81(3), 14.08 and 14.09 which tantamounts to misconduct. He thus failed to comply with the provisions of Rules 3(i) & (ii) of Railway Service (Conduct) Rules, 1966."



23. That the statement of imputations in support of the Article of charge, framed against the petitioner as contained in Annexure No.21 to the said charge sheet (as contained in ANNEX.NO.4) reads as under:-

" Statement of imputation in support of the Article of charge framed against Shri S.P.Awasthy son of Shri M.L.Awasthy Driver (C) Charbagh Shed.

On 27.12.85, during the course of shunting operation of Down Aishbagh Shunting Goods Train Shri S.P.Awasthy son of Shri M.L. Awasthy, Driver(C), failed to be vigilant and

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cautious and entered into the Block Section of MGW-ON without proper authority violating G.Rs. 3.81 and 14.08 and 14.09 which tantamount to misconduct. As a result of which when 513 Marudhar Express was approaching Magarwara Station from Unnao Station, its Diesel Engine collided with steam engine of Down Aishbagh Shunting Goods causing derailment of Passenger coach just behind the Diesel Engine and a body of First Class coach 4th from Diesel Engine ~~xxxx~~ hogged. On the Goods Train four wagons next but one were affected, the first three capsized and the other derailed. He thus failed to comply with the provision of Rules 3(1) and (ii) of Railway Service(Conduct)Rules, 1966. "



24. That it would be seen that the petitioner has been charged for violating rule 3.81 and 14.09 of the General Rules in as much as he could not proceed beyond the advance starter in terms of Rule 3.81(3) and that OP/T-79 issued to the petitioner did not authorise him to proceed beyond the last stop signal/advanced starter.

25. That this charge is wholly mis-placed and irrelevant because the train in question was under shunting operation and rules for shunting operation are different and separate from those applicable to General Train Movement. General Train Movement means movement of a train from the Block station to another Block-station

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and the rule for this movement are provided in Chapter-3, including rule 14.08 and 14.09. The authority to proceed defined in rule 14.08 is, ~~the~~ therefore, required only in the case of General Train Movement i.e. when the Train has to proceed from one block station to another block station. The validity of such authority to proceed has been defined in Rule 14.09. Both the rules are, therefore, not applicable where the train is not in General Movement but is in Shunting operation.

26. That the G.R.1.03(2) uses term "Authority to proceed", which is defined in Rule 14.08.

27. That "Shunting" has been defined in G.R.1.02(49) which reads as under:

"1.02(49) (SHUNTING) - Shunting means the Movement of a vehicle or vehicles with or without an engine or of any engine or any other self-propelled vehicle for the purpose of attaching, detaching or transfer or for any other purpose;"

28. That the running train or general train movement has been defined in the said definition clause G.R.1.02(48) as below:

"1.02(48)"Running Train" means a train which has started under an authority to proceed and has not completed its journey."



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29. That the classification of Block Stations have been defined in G.R.1.03, sub rule 1 and 2, which reads as under:-

" 1.03 - Classification of Stations:-

(1) Stations ~~for~~ shall, for the purpose of these rules, be divided into two categories -

Block Stations and Non Block Stations.

(2) Block Stations are those at which Driver ^h must obtain an authority to proceed under the system of working to enter the block section with his train; and under the Absolute Block System consist of 3 clauses :-

Class (A) Stations

Class (B) Stations - The stations in question (i.e. Magarwara Station is a class (B) Station) where line clear may be given for a train before the line has been cleared for the reception of the train within the Station Section;

and

Class (C) Stations"

30. That it would thus be clear that General Train Movement is quite different from shunting operation. In short, shunting operation is carried out within a Station limits while general train movement is between a Block Station to another Block-Station. The Train Movement Rules



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are contained in Chapter 3 while Shunting Operation Rules are contained in Chapter 8, particularly 8.09 to 8.15.

31. That OP/T-79 means Train Operating Order Form 79. The said OP/T-79 is referred and is defined in subsidiary rule 5.13/2(a) as below :-

" The Station Master shall issue form OP/T-79 which shall be signed by the Guard and the Driver for the Shunting of all Trains from running line to a siding and vice-versa, from one running line to another or the same line if such shunting fouls the facing and trailing points at either ends, unless such movement can be governed by fixed signals. When, however, one fixed signal governs movement from more than one line or siding, Form No.OP/T-79 must be issued. If the driver is illiterate the Guard shall personally handover and explain form OP/T-79 to him."



32. That it is an admitted fact that the train in question was issued OP/T-79 which means that admittedly the train was under shunting operation and not in general train movement. The particular OP/T-79 issued in the case was issued which bears No.690966 and which reads as under:-

" AS PER CNL(i.e. Control) order please back from 6 to 7 all load."

It clearly indicates that all load i.e. 65 Wagon

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in terms of ~~ii~~ four wheeler should be shunted from line No.6 to 7 in one hook, which obviously dragged ahead of the advanced starter for which the authority has already been obtained as duly signed by the Assistant Station Master on duty and Guard incharge of the Train.

A true copy of the OP/T-79 issued to the petitioner has already been filed as Annexure No.3 above.

33. That the order means an order which is in technical abbreviation in short, means that as per order given by the control room, the petitioner was required to back his train from line 6 to 7 with full load i.e. to say the entire train is to be moved back from line 6 to 7.



34. That in the circumstances the petitioner cannot be held guilty of violating rule 3.81 read with 14.09. So far as the rules governing shunting operations are concerned, the relevant rule is rule 8.15, which reads as under:-

"8.15. Authority for shunting or obstruction in block station : - While permitting shunting or obstruction in Block-section, the driver shall be given authority for shunting in the block section as prescribed under the special instructions which authority may be given -

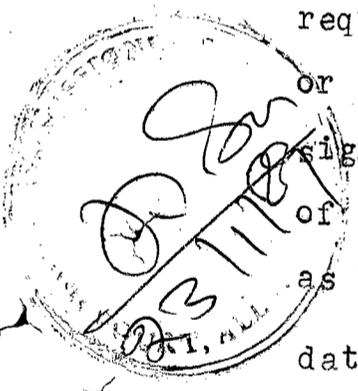
- (a) either a shunting arm of prescribed size and design on the same post as under and the last stop signal, or
- (b) a token of prescribed design, or
- (c) a written permission to shunt."

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35. That it would be relevant to point out that this rule 8.15 makes provision for issuing of special instructions visalately S.R.) for prescribing the mode of authority which may be given to ~~driver~~ driver for undertaking the shunting operation into Block-section after passing last stop signal. This rule is, therefore, only an enabling provision which enables the Railways to frame or issue any special instructions but no special instructions were actually issued under this provision till the date of accident. The only said special instructions or S.R. issued were on 27.2.1986 vide correction slip 15 and correction slip 20 dated 1.10.1986. While the accident took place on 27.12.1985. In the circumstances, there was no specific mode of shunting authority other than OP/T-79 operating on the date of accident and no other authority was either required or available to a driver to shunt his engine or train into a block-section beyond the last stop signal i.e. advanced starter. The petitioner's movement of train was, therefore, ~~rightly~~ justified and correct as it was in accordance with the OP/T-79 No.690966 dated 27.12.1985, already quoted above. Infact the petitioner was carrying out the orders received by him from the control to move back the entire train to which he was driving from line No.6 to 7.



36. That it may be interesting to note that it was only after Magarwara accident that for the first time, special instructions were framed and issued in the shape of;-

S.R. 8.15/1,

S.R. 8.15/2,

S.R. 8/15/3.

A true copy of the said amended special instructions

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Annex.No.8

is being filed herewith as ANNEXURE NO. 8.

Even according to this special instruction, the authority given to the driver is "an authority to shunt in the block section" and a specific written authority on shunting order (OP/T-79) S.R. 15/1 and S.R. 15/2. Thus, the petitioner even according to the S.R. now issued, which were not available at the time of accident, the driver is to act on OP/T-79 and not on the alleged authority to proceed as given in rule 14.08 read with rule 14.09. Thus, two facts emerged out quite distinct and clear; firstly the train at the time of accident was under shunting operation and the rule applicable to it at that time required the petitioner to act on simple OP/T-79 and no other form of authority was required for shunting his train beyond advanced starter to enter into a block section. Even according to the today's position, after issuance of special instruction 8.15, the driver is to be given in the circumstances an authority to shunt in the block-section which is quite different from the authority to proceed.

The second thing that emerges is that the authority to proceed is required only in the case of a train movement from one block station to another block station, which will not be an authority to shunt. In the general terminology, it may be said that a shunting operation is a movement of the train for checking fitness of the train before undertaking a voyage out of a block station.



A circular stamp containing a handwritten signature and the date 03/11/84. The stamp is partially obscured by a diagonal line.

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37. That it is, thus, an activity of the train prior to its steaming off from one block station to another block station. The train movement follows the completion of shunting operation and cannot be equated. Thus, whatever authority may be required to proceed under rule 14.08, the same was not relevant or required or called for in the case of present accident in which the petitioner's train was under shunting operation and not under general movement. It was operating within a station limit into block section and rule 14.08 was not relevant. In the circumstances the petitioner was not required to examine any such authority under rule 14.09 because rule 14.09 comes into operation only when authority to proceed is required under 14.08. The punishing authority's finding in this regard, as contained in para 1 is, therefore, void ab initio.



38. That so far as finding No.2 is concerned, the finding is self-contradictory. The punishing authority hold the petitioner guilty of failure to examine the validity of OP/T-79 as allegedly required under rule 14.09, but, as submitted earlier, rule 14.09 is meant for and casts duty on the driver to examine the "authority to proceed", i.e. authority to proceed for the train from one block station to another block station under general movement of train and has no relevance in the case of shunting operation. So far as the rules or instructions applicable in the case of a train

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under shunting operation is concerned, there was no rule or instruction existing at that time other than the requirement for a driver to follow the OP/T-79^{given} to the petitioner. The petitioner did it in letter and spirit and was, therefore, fully justified and acted in due discharge of his duty. Any negligence or fault was, therefore, of the authority, who issued OP-T/79 to the petitioner, or the control who had not given proper instructions to the other driver who collided with the train. It would be relevant to point out here that the driver of the other train has already been punished for violating G.R.3.80 i.e. passing signal at danger without any authority. He was in no case authorised to cross stop signal at danger, which was the case of the relevant signal at Magarwara railway station at the time of accident. This rule has been framed in order to provide room for shunting trains. Since a shunting train may go upto stop signal, therefore the other train which may be requiring to enter into the Railway Station may not be permitted to cross outer signal. But the driver of the other train violated the rule which was the root cause of the accident. However, the petitioner was not at any fault from any angle.



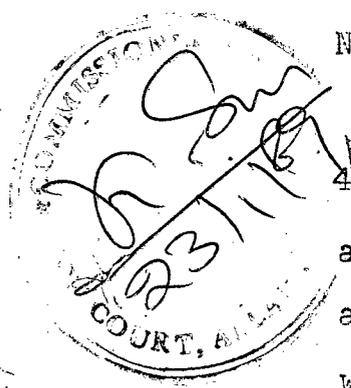
39. That the petitioner also craves leave of the Hon'ble Tribunal to clarify that the accident took place at Magarwara Railway Station, which is owned and controlled by Northern Railway and not the North-Eastern Railway. Therefore, the rules regulations and operation manual of Northern Railway

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is applied in the said station for train movement and for shunting operations. Since the train belonging to a particular Railway may use the station of the other railway also, as is normally done, it is a standard rule that the operating manual and the rules of the railway to which a particular station belongs or is maintained would be the operating norms and not of the originating railway. In the circumstances, even if North-Eastern Railway has got different special instructions on the subject, issued under the G.R.8.15, they would be wholly irrelevant and not applicable. The fault of the employee concerned can be gauged and measured only in terms of specific instructions of working railway i.e. Northern Railway, which have been given above.



40. That the charges were totally baseless and not maintainable at all. They were so arbitrary and far fetched that even the Inquiry Officer, who has been biased against the petitioner was compelled to come to the conclusion that no charge was proved against the petitioner at all. He, therefore, completely exonerated the petitioner in his detailed inquiry report alongwith his findings dated 8.7.1987, a true copy of which is being filed herewith as ANNEXURE NO.9.

Annex.No.9

41. That though some of the observations of the Inquiry Officer in the body are not correct and deserved to be expunged, the petitioner most

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respectfully submits that findings of the Inquiry Officer were in accordance with the Law and totally correct to the extent that he found that no charge was proved against the petitioner and he was not liable for any punishment. The opposite party No.2/4, therefore, ought to have accepted the same and exonerated the petitioner. In fact, he ought to have gone ahead and recommended the petitioner for some award. But accepting the report of the Inquiry Officer could probably have meant placing of guilt somewhere else, i.e. on A.S.M. Magarwara and other officials, who were ~~not~~ favourit of opposite party No.4. So, in order to save the skin of them and also to maintain a facade of inquiry and punishment, the opposite party 2/4 reversed the findings without showing any reasonable basis, whatsoever, through his impugned order dated 16.12.87 (Annexure No.1).



42. That as the perusal of the impugned order (Annexure No.1) itself makes it clear, it only contains a balled statement of opposite party No.2/4 that he does not agree with the findings of the Inquiry Officer and held the petitioner guilty of Rule 3.81(3) and 14.09 of GSB. The reasons given, however, are more repetitive of the charge sheet.

43. That the opposite party No.2/4 has not given any reasons as to why he does not agree with the findings of the Inquiry Officer. He has not shown as in what manner the findings of the Inquiry Officer were not correct or vitiated. He has not even contradicted the position of rules stated by the Inquiry Officer in his Inquiry Report,

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or his findings that the rule, for violation of which the petitioner was being charged, was not applicable to him at all as they did not relate to the train which was in shunting movement; hence in applicable, in absence of any denial of correctness of this legal position. The petitioner could not be held guilty for violating or not following the rules or instructions which were not applicable to him at the relevant point of time. The impugned punishment order passed by the opposite party No.2/4 (Annexure No.1) is, therefore, clearly arbitrary, malafide, illegal and against the principles of natural justice, equity and good-conscience, hence liable to be quashed by the Hon'ble Tribunal.



44. That the opposite party No.2 and 4 have also not rebutted the factual position found out in the inquiry report. The petitioner most respectfully submits that the factual position being so, the conclusions in any way would have been the same as reached by the Inquiry Officer. Without rebutting the factual position, the opposite party No.2/4 could not, therefore, reverse the findings as they automatically followed and flow from out of the facts settled. The conclusions of the inquiry officer bear a cause and action relationship in the instant case and reasonable nexus is existing between the two. The reversal of findings by the opposite party No.2/4 alone thus do not

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bear the nexus with the facts of the case; hence also the impugned order is liable to be quashed by the Hon'ble Court.

45. That even if the opposite party 2/4 had found factual position to be different or the findings of the Inquiry Officer unrelated with the facts, he was under duty to have indicated so in the punishment order. In that case, he was also under obligation to have given to the petitioner also a fresh opportunity to defend himself. But simply reversal of the findings of the Inquiry Officer in a pre-conceived manner, without giving cogent reasons for the same amounts to the punishment of the petitioner without following due process of law, liable to be quashed by the Hon'ble Tribunal.



46. That feeling aggrieved from the said impugned punishment order on the above stated facts and pleas, the petitioner filed an appeal dated 19.1.1988 before the Divisional Railway Manager, a true copy of which is being filed herewith as ANNEXURE NO. 10. The petitioner craves leave of the Hon'ble Tribunal to refer and rely on its contents for showing the arbitrariness and illegality of the impugned punishment order as well as the need to quash the same by the appellate authority.

Annex. No.10

47. That a bare perusal of the appellate order makes it clear that it is a non-speaking order. In any case, the appellate authority has not applied.

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its own mind and has acted mechanically and arbitrarily in rejecting the appeal by merely repeating the impugned punishment order of the punishing authority. He has not even considered the facts, pleas and grounds raised against the impugned punishment order and no examination of them on merits has been done by the said Additional D.R.M. -opposite party No.3. The appellate order, which is also impugned is, therefore, liable to be quashed on the ground of non application of mind also.

48. That the impugned appellate order (Annex.No. 2) goes even beyond the punishment order. The punishing authority has nowhere found the petitioner guilty of violation of rule 3(i)(ii), but this ground has been added by the Appellate Authority without showing any reason for it. Further, the Appellate Authority has not given any reason whatsoever, as to why he considers findings/order of the punishing authority sustainable and correct, specially when it is against the findings of the Inquiry Officer, nor has he shown as for what reasons he did not find petitioner's objections tenable. This has further made the order totally arbitrary and the same is liable to be quashed by the Hon'ble Tribunal.

49. That further, though the petitioner had preferred appeal before the DRM who alone is the appellate authority under the rules and has been arrayed as opposite party No.3 in the petition also, the same appears ^{NOT} to have been considered by him at all. The order, disposing of the appeal dated 2.3.88 (Annex.No.2) has been signed by some clerk



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in the office of the DRM, though it has been mentioned below the signatures that it was being signed on behalf of the DRM(Safety). It is further pointed out that the signing authority has not disclosed either his name or his designation in the impugned order.

50. That the petitioner is advised to submit that the impugned appellate order has been vitiated and rendered void also because it has not been signed by the Competent Authority. The power to sign cannot be delegated to any one than the Appellate Authority and even if a delegation has been made in this regard by the Appellate Authority, the same would be void.



51. That the petitioner further submits that the impugned Appellate Order has purportedly been signed for DRM (Safety) which also is not the Appellate authority, Competent to dispose off the appeal under the rules. The said post is below the rank of DRM and even if such order would have been passed by the DRM (Safety) himself, the same would have been without jurisdiction; hence void ab initio, and liable to be quashed.

52. That the petitioner would suffer irreparable loss and injury which cannot be compensated in terms of money if the impugned punishment order as contained in Annexure No.1 and the Appellate Order as contained in Annexure No.2, is allowed to remain enforced and his implemented in any way,

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as the petitioner would have to work on reduced pay under his juniors and will also be missing the opportunity to be considered for promotion to the next higher grade and rank, which is going to be held within a month or so. The balance of convenience is also in favour of the staying the impugned order.

7. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, viz;

The petitioner filed an appeal dated 19.1.1988 before the Divisional Railway Manager, North-Eastern Railway, Hazaratganj, Lucknow against the punishment order dated 16.12.1987 which was rejected by order dated 2.3.88 passed by purportedly DRM(Safety) but the order has been signed by someone else 'For DRM (Safety)'



8. RELIEFS SOUGHT:

In view of the facts mentioned in Para 6 above, the applicant prays for the following reliefs:

- (i) To quash the impugned order of punishment dated 16.12.1987 as contained in Annexure No.1 (and enclosed form) and appellate order dated 2.3.1988 (As contained in Annexure No.2) after summoning the originals and to declare them to be inoperative;

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(ii) To direct the opposite parties not to implement the impugned orders (Annex.1 and 2) and to absolve the petitioner of all charges on the basis of findings of the Inquiry Officer as contained in Annexure No.9.

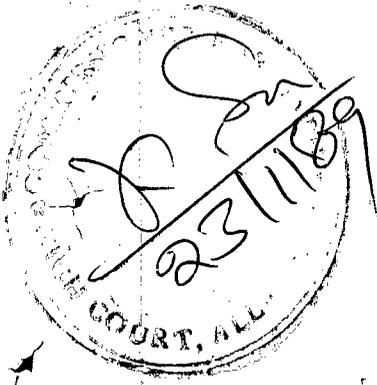
(iii) To reinstate the petitioner on the post of Driver Goods(C) with retrospective effect i.e. from the date of implementation of the impugned orders and to consider and grant him subsequent promotions that have been granted to his juniors in between alongwith all benefits of service including the payment of difference of salary that ought to have been paid to him as Driver (C) Goods and of the post of Driver(A) Grade with that of the shunter which has been paid to him by the opposite parties in pursuance of the impugned orders.

(iv) Any other relief, which the Hon'ble Tribunal may deem just and proper in the circumstances of the case.

(v) Cost of the petition may also be granted to the petitioner;

ON THE FOLLOWING GROUNDS :

(A) Because the impugned punishment order has been passed without giving the petitioner proper opportunity of defending himself and in gross violation of principles of natural justice, equity and good-conscience.



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- (B) Because the documents relied upon by the department were not supplied to the petitioner and the documents summoned by him which have been in the possession of the opposite parties were also denied to him, prejudicing the inquiry against the petitioner.
- (C) Because the impugned punishment order has been passed contrary to findings of facts recorded by the Inquiry Officer as contained in Annexure No.9, without giving any reason for differring from said findings by the punishing authority and the appellate authority.
- (D) Because ~~the~~ once the Inquiry Officer has found that no charge levelled against the petitioner was proved and that no action therefore could be taken against him. The petitioner ought to have been absolved of the charges levelled against him and the opposite parties, 2,3 and 4 could not have awarded punishment without unsetting the findings of facts or without showing illegality or perversity in the findings of the Inquiry Officer.
- (E) Because the opposite parties while sustaining ~~the~~ the findings of fact and not setting them aside, could not have given punishment to the petitioner and the punishment so granted is arbitrary



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malafide and without any reasonable
basis whatsoever.

(F) Because the impugned order was a result
of malafide, bias and prejudice of
opposite party No.4 against the petitioner
which has rendered it void, because
no reasonable man could have reached
to any other conclusion than absolving
the petitioner of all charges once
the findings of facts given by the
Inquiry Officer was accepted and in the
circumstances, the punishment order
is unjust, unfair, unequitable and
against facts on record; hence liable
to be set aside by the Hon'ble Tribunal.



(G) Because the petitioner is being charged
of violation of Rule 3.81 (3), OP/T-79
and rule 14.08 and 14.09 of GSR which
were not applicable to the facts of the
case at all, as the train was under
shunting operation and not in general
Train Movement. The punishment awarded
for violating general train movement
rules is, therefore, void ab initio and
liable to be quashed by the Hon'ble
Tribunal.

(H) Because the petitioner had committed
no fault and had scrupulously followed
the rules applicable to him at the
time

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strictly obeyed the orders of the superior and the ASM by which he was bound under the rules and, therefore, he could not be responsible in any possible manner for the accident.

(I) Because the petitioner in fact had done commendable work and took risk to his own life and to save the disaster and because of the petitioner's timely action and decision taken at the spur of moment in the most selfless spirit, the disasters were averted and loss of lives and property was averted, instead of rewarding the petitioner the opposite parties 2/4 and 3 have tried to make him scape-goat for the fault of superior's officers which is totally unjust.

(K) Because no negligence at all was shown by the petitioner as is apparent from the facts on record as well as findings of the Inquiry Officer himself. The impugned order based on imaginary presumptions that it was negligence of the petitioner which resulted in collision, are therefore without any basis and liable to be set aside by the Hon'ble Tribunal.

(K) Because the responsibility if any, for the accident lied on the ASM and the



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driver of the Marudhar Express but the said ASM has been spared with any punishment and the driver of Marudhar Express Express has also been given very minor punishment, while the petitioner who was totally innocent is being made scape-goat and is being punished for their fault.

(L) Because the impugned punishment order is based on totally perverse and baseless presumptions and conjectures unsupported by evidence on record and on the wrong application of rules, which has rendered it void.

(M) Because even otherwise, the accident took place at Magarwara Railway Station, which is within the Northern Railway and is governed by operation Manual of Northern Railway hence Operation Rules of N.E.R. were not applicable and any alleged violation of the same is illegal and liable to be set aside by the Hon'ble Tribunal.

(N) Because the impugned appellate order is discriminatory in nature as the real guilty employees have been left scot free and no punishment, while the petitioner is being subjected to major punishment of reduction in rank, stoppage of increments and financial losses.



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(O) Because in the impugned punishment order, no reasons have been given by the punishing authority as to why he did not agree with the findings of the Inquiry Officer nor any basis given for holding the petitioner responsible for violation of rules, which has rendered the whole order arbitrary.

(P) Because the appellate order as contained in Annexure No.2 was not passed by the competent authority, hence without authority of law and void ab initio.

(Q) Because the impugned Appellate order has been passed in most arbitrary fashion, mechanically and without applying its own mind by the Appellate authority hence void.

(R) Because the impugned punishment order is a nonspeaking order ^{/in} which the appeal has been rejected without considering facts and grounds taken in the appeal or grounds of rejection of the appeal.



9. INTERIM ORDER, IF PRAYED FOR:

Pending final decision on the application, the applicant seeks issue of the following interim order :-

For the facts, reasons and circumstances stated in Part (6) and (8) above, the Hon'ble Tribunal

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may be pleased to :

- (i) Stay the impugned punishment order dated 16.12.87 as contained in Annexure No.1 (with Form 3); and
- (ii) the appellate order dated 2.3.1988 as contained in Annexure No.2 till disposal of the petition and to direct the opposite parties to include the petitioner in line of consideration for future promotions over and above the original post of Train Driver (C) grade which he was holding before the passing of the impugned orders in the interest of justice and to save the petitioner from irreparable loss and injury.



10. MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal Order in respect of the Application fee:

- 1. Name of the Bank on which drawn
- 2. Demand draft No.

OR

- 1. Number of Indian Postal Order(s) ^{DD} 5 0 88 922
- 2. Name of the issuing post office P. O. High Court, Lucknow
- 3. Date of issue of Postal Order 23rd Jan '89
- 4. Post office at which payable. LU (KUN)

Shri Prakash Anand

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12. Details of Index:

An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of Enclosures:

1. Annexure No.1
2. Annexure No.2
3. Annexure No.3
4. Annexure No.4
5. Annexure No.5
6. Annexure No.6
7. Annexure No.7
8. Annexure No.8
9. Annexure No.9
10. Annexure No.10
11. Vakalatnama (Power)

IN VERIFICATION

I, Shiv Prakash Awasthy, Son of Late Shri Mendi Lal Awasthy, aged about 48 years, Working as Loco Shunter, LF/013, N.E.Rly, Resident of 26 Charash Mandi, Durgawan L.Koh Lucknow, do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place- Lucknow

Date : 23 January, 1989

Shiv Prakash Awasthy

Signature of the Applicant.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench (at Lucknow)

R. Soor
Advocate
Allahabad High Court
Lucknow Bench, Lucknow
No. 63, ... 23-1-89

Shiv Prakash Awasthy



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AUG

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
LUCKNOW BENCH

T.A. Case No. of 1988

Shiv Prakash Awasthi ... Petitioner

Versus

Union of India & others ... Opposite parties

ANNEXURE NO. 1

I have gone through the proceedings of the Enquiry in connection with memorandum No.T/537/Misc/Link/10/85 dated 11.3.1987 issued to Shri S.P.Awasthy, Driver (C) CB Shed I do not agree with the findings of the Enquiry Officer and hold Shri S.P.Awasthy, Driver guilty of violating rule 3.81 and 14.09 of G.R. for the following reasons:

- (i) Shri S.P.Awasthy has stated that he was issued shunting order for placement of load from line No.6 to line No.7 and that the load was heavy (for about 55 wagons) he was issued OPT-79 as he had to proceed beyond advance starter. His contention is incorrect. Under Rule 3.81 (3) OPT-79 did not authorised him to proceed beyond the last stop signal viz. advance starter.
- (ii) Shri S.P.Awasthy is also held guilty of failure to properly examine the OPT-79 before proceeding, thus violating the provisions of Rule 14.09 of GSR The negligence on his part resulted in HEAD ON COLLISION OF DOWN ASH SPL.GOODS AND 513 UP at MGW on 27.12.1985.

Shri S.P.Awasthy, Driver(goods) is, therefore, reduced to the post of Shunter in scale Rs.1200-2040 at Rs.1200/- for a period of three years with postponing future increment.

Sd/-XXX (VINDHYACHAL SINGH)
Sr. DME/LJN

16/12/1987

Awasthi
Shiv Prakash Awasthi

T.C. Hemvati



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

LUCKNOW BENCH

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T.A. Case No. of 1988
Shiv Prakash Awasthy ... Petitioner
Versus
The Union of India & others ... Opposite parties.

Annexure No. 1-A

Form No.3

NORTH EASTERN RAILWAY

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.T/537/TA/Misc/Link/10/85 dated 16.12.1987

To
Name : Shri S.P.Awasthy

Father's name Shri M.L.Awasthy

Designation Driver (C) Department Mech

Ticket No. Date of Appointment 16.2.1961

Station CB Shed Scale of pay 1350-2200

Shri S.P.Awasthy, Driver (C) C.B.Shed
(name, designation and office in which he is employed)

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

* On a careful consideration of the enquiry report aforesaid the undersigned for reasons stated in the Memorandum holds that article(s) of charge framed vide Memorandum even dated 11.3.87 which the Inquiry Officer has held as not proved, is also proved.

3. The undersigned has, therefore, come to the conclusion that the penalty of reduction to a lower post/service may be imposed on Shri S.P.Awasthy. Shri S.P.Awasthy is therefore reduced to the lower post/service of Shunter in the scale of Rs.1200-2040 fixing his pay at Rs.1200/-per month for a period of three years from the date of this order with



Awasthy
Shiv Prakash Awasthy

For undersigned
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postponing future increments.

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

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

5. Please acknowledge receipt of this letter.

Enclosure: 1) Report of Enquiry officer 6 pages
2) Note of disagreement of the disciplinary authority one page.

Signature sd/-XXX
(Vindhyachal Singh)

Name
Designation of Sr. DME/LJN
the disciplinary authority.

Copy to: O.S./Sn. DPO's office

* Strike out whichever is not applicable.



True copy T-6
 H. V. Van Loo
 ADV

Prasthi
 Shri Prakash Prasthi

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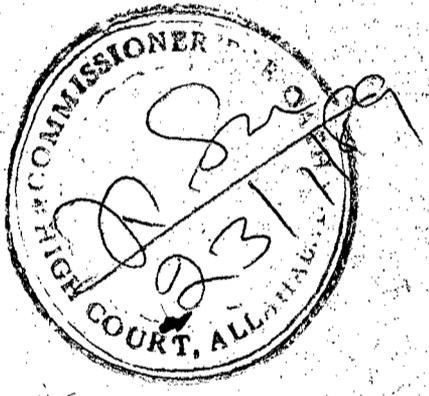
A 52

- 2 -

आपका डूरे 1 अक विरुद्ध लोपे गप आरिपनिवार्य
कोप ल विरुद्ध हो गार है 1 अक इस मामल में अनुशासन
अधिकारी द्वारा अकत दिमा जिया एड-योरमिन नका
आरिप को अकतु है 1 नकतुल अकत एरिन अकत
वदद को जित है 1

जन मरु (एरि) अकत

T.C.
H. R. Varshwa *am*



Arasthi
Shiva Akash Arasthi

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STANDARD FORM NO.-5

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STANDARD FORM OF CHARGE SHEET

(Rule No.9 of the Railway Servants Discipline & Appeal Rules, 1968)

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

(Name of Railway Administration) N.E.Railway.

(Place of issue)D.R.M. Office, Lucknow Dated 11.3.1987.

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri S.P.Awasthi under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of gross misconduct in respect of which the enquiry is proposed to be held is set out in the enclosed statement of article of charge(Annexure-I) A statement of the imputations of gross negligence of duty/misconduct/misbehaviour in support of each article of charge, is enclosed(Annexure II). A list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained are also enclosed as Annexure III and IV.

** Further copies of documents mentioned in the list of documents as per Annexure III are enclosed.

** 2. Shri S.P.Awasthy 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 No.III) at any time during office hours within 10 days of receipt of this memorandum For this purpose he should contact xxx immediately on receipt of this memorandum.

3. Shri S.P.Awasthy is further informed that he may if he so desires, take the assistance of any other Railway servant/an official of a Railway Trade Union (who satisfies the requirements of rule 9(13)



S.P. Awasthi
Shri S.P. Awasthi

T. C. *Abhinav Varma*

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of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference, before nominating the assisting railway servant(s) or Railway Trade Union Official(s) Shri S.P. Awasthy 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 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 alongwith the nomination.

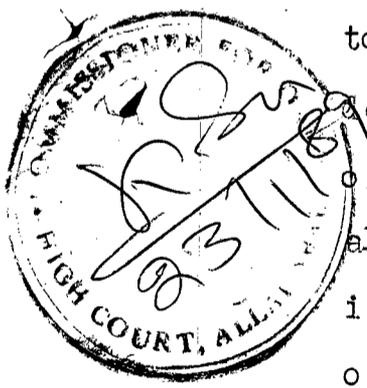
4. Shri S.P. Awasthy is hereby directed to submit to the undersigned (through LF/CB) written statement of his defence which should reach the undersigned within 10 days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within 10 days after completion of inspection of documents if he desires to inspect documents, and also (a) statement whether he wished to be heard in person, and (b) to furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence.

5. Shri S.P. Awasthy is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each articles of charges.

6. Shri S. P. Awasthy is further informed that if he

Shri S.P. Awasthy
Shri S.P. Awasthy

T.C.
H. Srinivasan
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does not submit his written statement of defence within the period specified in para 2/4 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rule 9 of the Railway Servants(Discipline and Appeal) Rules 1968 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri S.P. Awasthy is invited to rule 20 of the Railway Services(Conduct) Rules, 1968, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri S.P. Awasthy 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 Service(Conduct)Rules 1966.

8. The receipt of this Memorandum may be acknowledged.

Sd/-XXX
Vindhychal Singh
Sr. DME(L/JN

Enclosures: Eleven pages (Name & Designation of Competent Authority)

To
Shri S.P. Awasthy -Designation -Driver(C)
Son of Shri M.L. Awasthy, place of working C.B. Shed
Through LF/CB

ACKNOWLEDGEMENT

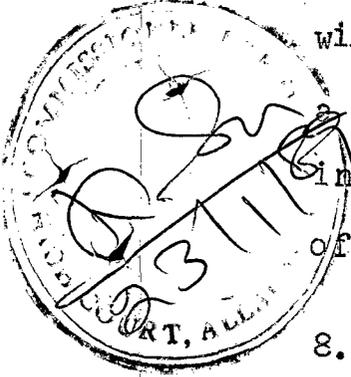
To, Div. Rly Manager(Safety) N. E. Rly. Lucknow.
Received Memorandum No. T/337/TA/Misc/Link/10/85,
dt. 11.3.87 alongwith annexure I to IV and inquiry report
in eleven pages.

Witness:.....

Signature
Date:

Shri Prakash Awasthy

Tic
H. Srinivasan



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Annexure No.1

Statement of Articles of Charge framed against Shri S.P. Awasthy son of Shri M.L. Awasthy, Driver (C) Charbagh Shed.

ARTICLE

On 27.12.85 Shri S.P. Awasthy, Driver(C) son of Shri M.L. Awasthy while performing shunting operation of his Aishbagh Goods Train at Magarwara, entered the Block Section without proper authority and thus violated G.Rs. 3.81 (3), 14.08 and 14.09 which tantamounts to misconduct. He thus failed to comply with the provisions of Rules 3(i) & (ii) of Railway Service (Conduct) Rules, 1966.

Sd/-XXX
(Vindhyachal Singh)
Sr. DME(L)/L JN.

ARTICLE-II

Statement of Imputation in support of the Articles of charge framed against Shri S.P. Awasthy son of Shri M.L. Awasthy Driver (C) Charbagh shed.

On 27.12.85 during the course of shunting operation of Down Aishbagh shunting goods train Shri S.P. Awasthy son of Shri M.L. Awasthy, driver(C) failed to be vigilant and cautious and entered into the Block section of MGW-ON without proper authority violating G.R 3.81(3), 14.08 and 14.09 which tantamount to misconduct. As a result of which when 513 Marudhar Express was approaching Magarwara Station from Unnao Station, its Diesel Engine collided with steam engine of Down Aishbagh Shunting Goods causing derailment of passenger coach just behind the Diesel Engine and a body of First Class Coach 4th from Diesel Engine hogged. On the Goods train four wagons next but one were effected the first three capsized and the other derailed. He thus failed to comply with the provision of Rule 3(i) & (ii) of Railway Service (Conduct) Rules 1966.

Sd/-XXX

(Vindhyachal Singh)
Sr. DME(L)/L JN.

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Shri. Debash Awasthy

T. L. Awasthy

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ANNEXURE -III

List of documents by which the Article of charge has been framed against Shri S.P. Awasthy son of Shri M.L. Awasthy, Driver (C) of Charbagh Shed.

- 1. A/C Accident Wire
- 2. GENL. 79
- 3. Summary Statements of staff.

Sd/- XXX
 11.3.
 (VINDHYACHAL SINGH)
 Sr. DME(L)/LJN

ANNEXURE -IV

List of witnesses by whom the Article of charge framed against Shri S.P. Awasthy, son of Shri M.L. Awasthy Driver(C) Charbagh Shed as proposed to be sustained.

- 1. Statement of Sri Ramesh Pd. ~~Shuntman~~ Shuntman/MGW
- 2. " " Ram Lal, Porter/MGW
- 3. " " Parideen, Switchman/MGW
- 4. " " Ram Swaroop, Gateman/MGW
- 5. " " J.C. Tandon ASM/MGW
- 6. " " Taran Singh Driver (A) Spl. of 513 Up Exp.
- 7. " " Jagat Narain, Asstt. Guard of 513 Up Exp.

Sd/- XXXX
 11.3.
 (Vindhyachal Singh)
 Sr. DME(L)/L Jn.



Awasthi
 Shri Prakash Awasthi

T. C.
 H. K. S. ...

Shiva Prakash Awasthi — Petitioner

VS

Union of India & others — Opp parties

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उत्तर रेलवे/NORTHERN RAILWAY एल.टी.ए.-2/LT-A

दुर्घटना सार फार्म/ACCIDENT TELEGRAM FORM एल.टी.-1U/LT-2A

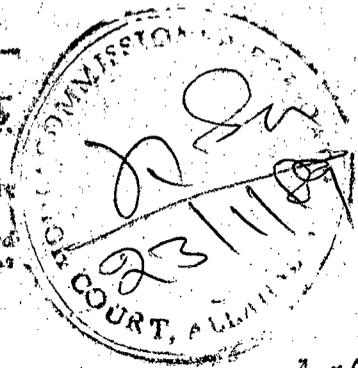
सार का दर्जा, ए. एच. आर./
ए. एच. एच. आर.
Class Prefix A.X.R./A.X.R.R.

क्रमांक/Serial No.....
कार्यालय मोहर/Office Stamp.....

MARACCHANA N.U

Sent at..... Hrs..... Mts. To..... By.....	Sent at..... Hrs..... Mts. To..... By.....	
Handed in at office of origin..... (ACDT Class)	Date 28/12	Time 10 : 5
Report not to be signalled (Marked with X)	Codes to be Signalled	Particulars of accident
No. of persons injured etc. Cause of accident (if known)	No. of persons injured etc. Cause of accident (if known)	Particulars of accident While on work train 2pc was being hauled from 406 to 407 (m/c). It collided with 512mp engine which entered upon signal at 407 in danger position. At 454.5pm Ensn no 349870. Driver SP Awasthi Guard VK Mishra 512mp Eng. Ensn no 637970M-4. At Tarraon Ensn Cdr. K Chandra

Signature in full.....



Shiva Prakash Awasthi

Sharma

ACCIDENT REPORT
 No. Class A/3

1. Distance at which the accident occurred and name of the nearest station to the spot.	Distance Kilometrage 56/10/16 Station Magaraura
2. Date and time of accident	Date 27.12.85 Time 9:17
3. Name and description of train	Down Ash Bagh Special S13 up express
4. Name of Driver	In Ash Spl. Driver S.P. Hesthi Guard V.K. Misra S13 up Driver - Nandan Singh
5. Engine No. and class	Eng. No. 34190 XG G3 71 XCM G
6. Speed of train	not ascertained
7. Was the accident on a straight road or curve, on level or on a grade? If on a grade whether it was with or against the grade?	
8. Nature of roads etc. ground, weather conditions and visibility	no very clear

9. Description of accident: While Down Ash Bagh special being backed from station 6 to station 7 from Unnao side train No. S13 up passed up station signal at danger and collided with Down Ash Bagh special which had also crossed Down, advance starter w/o any authority. Working was being supervised by Guard of Down Ash Spl Ash Bagh Spl. Sd V.K. Misra HQ Ash

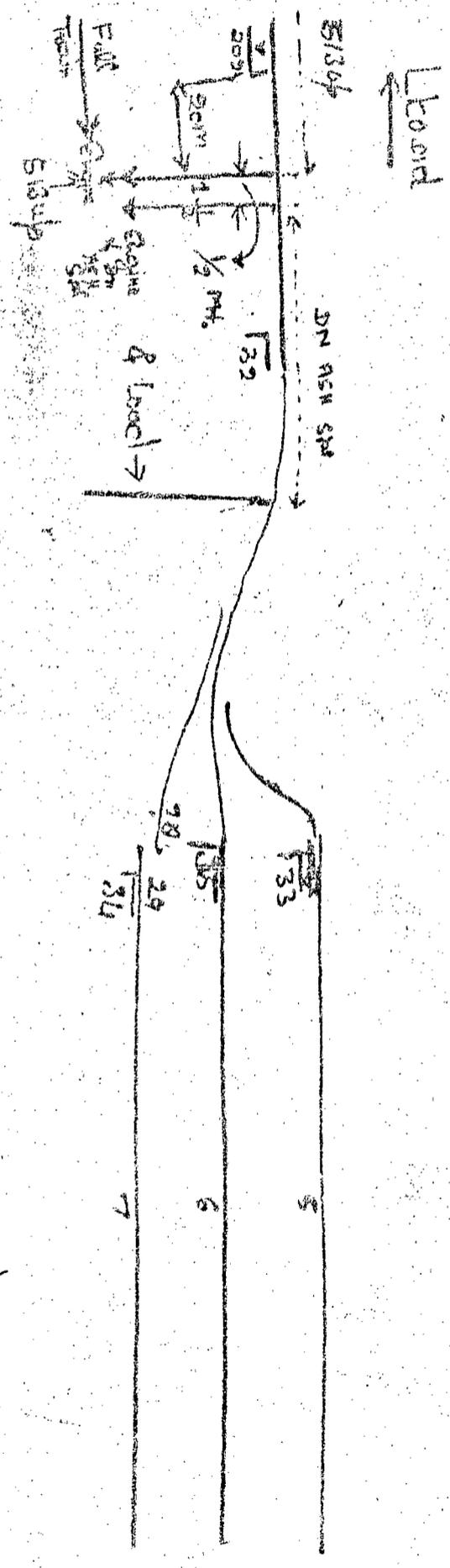
10. Probable cause of Accident:
 Cause shooting of signals by both drivers.

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23/1/85

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Shri Babash Arathi

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12. (a) मृतों की संख्या (a) Number of persons killed

(b) मृतों की विशेषताएं (b) Particulars of persons killed :—

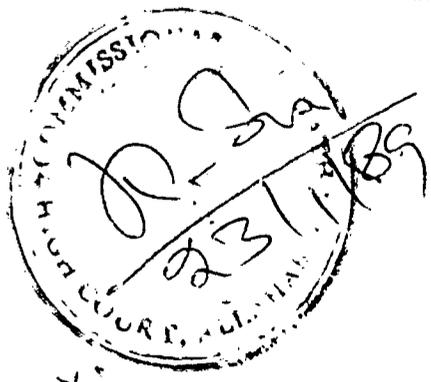
नाम Name	लिंग Sex	वयु Age	व्यवसाय Profession	पता Address	उत्के टिकटों का बीजा Particulars of ticket held	मृत का निपटारा किया कब और कहां किया गया How dead body was disposed of	संपत्ति की सूची और उसका निपटारा किस द्वारा किया गया List of property and how disposed of
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13. (a) घायलों की संख्या (a) Number of persons injured..... 3

(b) घायलों की विशेषताएं (b) Particulars of injured persons :—

नाम Name	लिंग Sex	वयु Age	व्यवसाय Profession	पता Address	उत्के टिकटों का बीजा Particulars of ticket held	घोट गंभीर है या साधारण Whether injury grievous or minor	उपचार किस प्रकार किया गया How dealt with
Prakash Kumar Cable	M				MSR 27930	minor	1st aid by Guard
Mr. Sharma	M	45 215 24	Services	Hindustan Zinc Xocher Indus Vadaiapur	1st class BPT M 1148 Dt 27/12	minor	1st Aid by Guard
Mr. Singh	M	45 127 45	VII/GKR		CRN 53085	not apparent but complaining of pain in chest	Sent to Rly Hospital as per Doctor memo

14. (a) लाइन पर पाए गए मृतों या घायलों की स्थिति के मामले में :—
 (a) Location of dead bodies or injured persons discovered on line or
 (b) स्थिति में कि शरीर किस स्थिति में पाया गया था। यदि उसके शरीर पर
 (b) Position in which the body was lying and give details of
 (c) घायलों की स्थिति, शरीर पर कौन से घाव थे या अन्य परिस्थितियां बताएं
 (c) Details of what position body was lying and give details of
 (d) क्या घाव, टाई ब्रेक, या अन्य कारणों से मृत्यु हुई या घायल हुआ
 (d) Whether passenger, railway servant, trespasser or suicide?



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Shri Prakash Prasthi

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<p>1. Did the engine crew see the person?</p>	
<p>2. Was the Driver's or Fireman's view at the site of the accident obstructed?</p>	No
<p>3. Was it day light or dark at that time?</p>	Dark
<p>4. It was not definitely known by what train the person had been run over, was the running Shred Foreman and both ends of the engine run told to examine engines for traces of blood marks, or other evidence?</p>	x
<p>5. Case of damage to railway property state to estimated value of damage.</p>	<p>रेल पथ की क्षति रु०..... To Permanent Way Rs. इंजन की क्षति रु०..... To Locomotive Rs. चल स्टॉक की क्षति रु०..... To Rolling Stock Rs. अन्य रेल सम्पत्ति की क्षति रु०..... To other Railway property Rs.</p>
<p>6. Particulars of damage to vehicles— Serial number of vehicle, damage, extent of damage.</p>	<p>5069 WRE 8803 NE 43816 NE 20472 SX GS 7386 NE</p>
<p>7. Position of vehicle or vehicles in relation to engine</p>	<p>2nd, 3rd, 4th, 5th form</p>
<p>8. How the disabled vehicle were disposed of?</p>	<p>Wagon GS 7386 rest to Equari After re-examination report no saving WGs sent to CWS.</p>
<p>9. What was the cause of obstructions?</p>	<p>Rail track on one side by derailed mtr wagons</p>
<p>10. Was the accident willful or accidental?</p>	
<p>11. Was any one suspected?</p>	

Shivra Bewalasth Ananthu



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<p>(17) क्या रेल के लाईनों को बाड़ लगाया था? यदि नहीं तो उसकी स्थिति का वर्णन करें। (b) Was the line fenced? If so, the state of the fencing</p>	<p>X</p>
<p>(18) क्या इंजन पर ब्रुकन धारक का बन्दूक लगा हुआ था? (c) Was the engine fitted with a cow catcher or cattle guard?</p>	<p>yes</p>
<p>(19) क्या बाधा हटा ली गई है? (f) Has obstruction been removed?</p>	<p>X</p>
<p>19. वाहनों विच्छेद टायरों, पहियों, धुरी पटरियों, अक्ष-धुरी की टूट-फूट और वाहनों में बाध बन जाने के मामले में :— In case of trains parting broken tyres, wheels, axles, rails, and axle flanges in trains :— (a) वाहनों की रचना और लोड का विवरण (a) Composition of train and details of load</p>	<p>X</p>
<p>(b) वाहन और इंजन के बीच की दूरी कितनी थी? वाहनों का विवरण दें। (b) How far was vehicle from engine? Give particulars of vehicles.</p>	
<p>(c) वाहनों में क्या भरा हुआ था? (c) Contents of vehicles?</p>	
<p>(d) वाहनों में कितने वाहन थे? (d) How many vehicles were on the train?</p>	
<p>(e) क्या इंजन पर विंगगार की रोबक लगा हुआ था? यदि था तो उसका पैटर्न बताएं। (e) Was engine fitted with a spark arrester? If so pattern</p>	
<p>(f) ईंधन का वर्ग (f) Class of fuel</p>	
<p>(g) टायरों, पहियों, धुरी और पटरियों की टूट-फूट का क्या कारण है? (g) What was the cause of the breakage of tyres, wheels, axle and rails?</p>	
<p>(h) टूटी हुई धातु की हालत और उसका निपटारा क्या था? (h) Condition of broken metal and how disposed of?</p>	
<p>(i) यात्री यात्री के व्यक्तियों के गिरने या उतरने का समय जाने यात्रियों के मामले में क्या खतरा था और लीवाई गई थी? (i) In case of persons falling out, or fires etc. in passengers' coaches, state if alarm chain was pulled?</p>	

Shiva Prakash Prastha



T. C. Komvarawa

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<p>10. (a) क्या बिजली के तारों को, या तो तारों पर लेने का उपकरण हो जाने के कारण, या— in case of derailments, trains put on a wrong line, collision, etc.</p> <p>(b) क्या बताया कि क्या बिजली और कांटे की तारों के कनेक्शन ठीक से किए गए हैं या बिजली के तार बिजली के तारों से टूटने से बचाए गए हैं? इनमें से कौन-सा तार भी बताया कि क्या तारों को बिजली से रोकने की व्यवस्था है या नहीं?</p> <p>(c) State whether points and signals were properly fastened or set in the right direction and signals respected, also whether light were visible, flags properly exhibited, etc.</p>	<p>Yes</p>
<p>(a) क्या बताया कि क्या कांटे या बिजली अवरुद्ध हैं।</p> <p>(b) State if points or signals were interlocked?</p>	<p>Yes</p>
<p>21. क्या जो भी तथ्य तथ्यों के मामले में यह बताया :— In case of averted collisions, state :— (a) गाड़ी में बिजली की क्षमता (a) Load of train</p>	
<p>(a) बिजली से हुए घातों की संख्या (b) Number of vacuum-braked vehicles</p>	
<p>(a) जब रोकथाम या खतरा देखा गया, तो गाड़ी की रफ्तार क्या थी ? (c) Speed of train when obstruction or danger was observed?</p>	
<p>(a) जब रोकथाम पहले देखा गया, तो रोकथाम स्थल और इंजन के बीच की दूरी क्या थी ? (c) Distance from engine to obstruction when letter was first observed?</p>	
<p>(a) समय और दृश्यता (a) Time and visibility</p>	<p>25/7 not very clear</p>
<p>22. इंजन द्वारा बिजली की स्थिति से बिजली पर किए जाने के मामले में :— In case of engine passing signals or danger :— (a) क्या बिजली अवरुद्ध है ? (a) If signals are interlocked?</p>	<p>Yes</p>

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<p>1. क्या ड्राइवर सिग्नल को खतरा की स्थिति में पार करके चिल्ली हुई निकल गया था ?</p> <p>2. What length did the driver pass the signal at danger ?</p>	<p>Blat - 50 metres</p> <p>164</p>
<p>3. खतरा के सिग्नल दिखाये गये थे ? यदि हाँ तो किसने दिखाये थे ?</p> <p>if danger signals exhibited and by whom ?</p>	
<p>4. क्या ब्लॉक सेक्शन कब्जा हुआ था और वहाँ से चिल्ली गाड़ी किस समय चली गयी ?</p> <p>5. Was the Block Section occupied and when did the last train leave ?</p>	
<p>23. स्टेशनों से बाह्य भाग निकलने के मामले में यह बताये कि बाह्य किस प्रकार से स्थिर किये हुए थे और वे कैसे अलग होकर भाग निकले।</p> <p>In case of vehicles blown away from stations, state how the vehicles were fastened and how they broke & drift.</p>	
<p>24. बाह्य भाग चिल्ली होकर एक बली रही और आगे चिल्ली होकर एक बली रहने की सम्भावना है ?</p> <p>Detention to trains affected and further probable detention ?</p>	<p>9 Hrs</p>
<p>25. सड़क किसने समय तक और कहाँ बली रही ?</p> <p>How long was road blocked and to what extent ?</p>	<p>B/G Dixon line block.</p>
<p>6. यदि आवश्यकता आवश्यक था तो इसके लिए क्या व्यवस्था की गयी ?</p> <p>If transshipment was necessary, what arrangements were made ?</p>	<p>B/G train express as well as passengers stopped out of course near the site & at station to on train the passengers.</p>
<p>7. कौनसा ब्लॉक प्रणाली प्रचलित है और क्या प्रत्येक काम नियमित था ? यदि नहीं था तो उसका विवरण दे।</p> <p>What system of block working is in force and was every day regular ? if not, give details.</p>	<p>Double Block System</p>
<p>8. वापसी के लिए कौन-कौन से कदम उठाये गये ?</p> <p>Measures taken to re-establish traffic ?</p>	
<p>9. सहायता मागने और पहुंचने का समय ?</p> <p>Time assistance sent for and time arrived ?</p>	<p>9/30 hrs</p>

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<p>20. कारणों के बिना देरी, या, सहायता देने में देरी Cause of delay, of any, in giving assistance</p>	
<p>21. कर्मचारियों द्वारा ली गई कार्रवाई के विषय में कर्मचारियों को जिम्मेदार माना गया Action taken in regard to staff considered responsible</p>	

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M. ARWASHA

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 हस्ताक्षर
 Signature *Sd-*

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 पदनाम
 Designation *45*



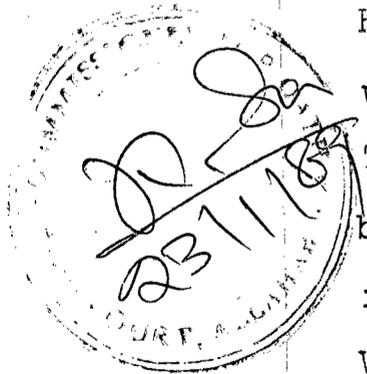
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5. Taran Singh, Driver of 513 Up stated that he came on duty after availing rest for 36 hours at 19.30 and the train started from Lucknow Jn. at 2040. He reached Unnao at 21.53 and was out 21.55. The starter and Advance starter were taken off properly. Approaching Magarwara he controlled the train due to thick fog and started whistling continuously. The warning and outer could be located only on reaching the foot of the signal post; because there was thick fog and signal lights had been extinguished. There were no fog signals put by the Station Staff. The locomotive was working with long hood loading. Finding the Outer signal in the ON position he applied the brakes. He then saw a goods train with very dim head light standing at a distance of a bogie length from the Outer and applied the brakes to avoid the collision but could not avoid it. It was 22.07 at this time. The coach next to the engine of his train derailed. The Wagons ~~on~~ the Goods train also derailed. Getting down from his engine, witness noticed that the Up track was infringed; he protected this track.

Answering questions, witness stated that at the time of collision, speed was of the order of 15/20 KMPH. He had attained a speed of 60 KMPH. The brake power was 100%. The lamp of the Outer Signal was extinguished. There was no synchronisation between the vacuum and air brakes of the locomotive. On the Lucknow-Kanpur Section it is very common to come across defective signals. Visibility was poor and it was not possible to see beyond a distance of 90 (one telegraph post). The Collision occurred because he did not see the obstruction (the goods train) in time as he was busy trying to locate the aspect of the signal. It was not possible to see the signal (The driver of the steam locomotive ran



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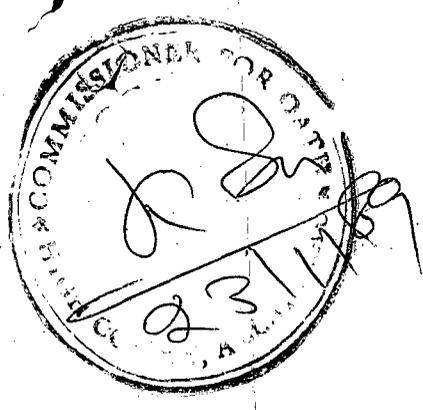
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away when the collision occurred.) The Assistant
~~Dike~~ Driver was available. The Goods train engine
was one coach inside the Outer. The Locomotive
driver by witness advanced by about half a bogie length.
Witness could not say whether the driver of the
steam engine made efforts to back at the time
of the collision.

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12. Ram Lal, Porter stated that he had lit signals for the Unnao side. When he went in the morning to take down the lamps, he found that all signals were lit except the Outer and Warner of the Metre Gauge (for the Unnao side) which were found disturbed. Witness had advised the Station Master about this on return to the Station.

Answering questions, witness stated that on the Unnao side the back light of Outer Signal was visible upto about 21.00 hrs. Witness was not aware whether they were visible afterwards.

13. Switchman on duty at the East Cabin of Magarwara Parideen stated that the ASM gave him instructions under exchange of private numbers to back the Down Aishbagh Spl. on line No.7. After this, the Station Master got the line clear for 513 recorded by him. Witness saw that the Signals were burning properly. After a short while, the head light of 513 became visible and then witness heard the sound of collision.

Gateman of Gate No.36, Ram Swaroop, stated that his Gate is situated about 14 kms from the site of the accident. At the time 513 Up passed his gate, there was heavy fog; he was not able to see the signals. Private numbers for this train were not exchanged with him. He closed the gates hearing the sound of the locomotive. Though he tried to contact the Magarwara Station on the telephone when he heard the sound of collision, there was no response. The head light of the train (513 Up) became visible to him about 3 telegraph posts away. Witness saw the Driver who was wearing the turban and who was on his side of the locomotive. The speed of the train was as usual. The locomotive was whistling.



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3. Asstt. Station Master/Magarwara J.C. Tandon stated that he was on duty at 21.15 since the regular ASM was not feeling well. At 21.20 the Metre Gauge control told him to transfer the goods load from line No. 6 to line No. 7 for shunting due to shortage of water. Witness issued OPT 79 to the Driver of the Goods Train through shuntman Ramesh Pd. at 21.20. All Signals were running properly. Line clear for 513 was given at 21.35 and Private Number exchanged with switchman of East Cabin. Signals were not lowered because of the shunting of the Goods Train at 22.10 the switchman informed witness of the collision. Both the controls and his station Superintendent were informed.

8. Jagat Narain, Assistant Guard 513 Up stated that five or six minutes after departure from Unnao, the train slowed down; he opened the door and saw it was foggy. After four or five minutes, the collision occurred and he felt a shock. Then he got down from the Brake, went ahead and saw both both the Engines standing face to face. He started back to inform the Guard, who met him on the way and told him to inform the Station about the Broad Gauge Down Line being infringed. He started from there and he saw the guard of the goods train coming with S.S. Unnao whom witness informed. Returning to his Guard, witness assisted him in first aid.

Answering questions, witness stated that he was sitting in the Brake, four or five coaches from the Engine. The speed was about 60 KMPH and it slowed after 4 or 5 minutes from Unnao. He looked out and saw there was fog. The collision occurred 4 or 5 minutes after he opened the door. The speed of the train was 40 or 45 KMPH at the time of collision. As the distance of one coach, witness saw Outer Signal red. He could not



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see other signals due to fog. Witness did not feel use of Brakes before the collision.

11. Ramesh Prasad, shuntman, MaGarwara station stated that S.M. on duty gave him a shunting order and told him that the load on line No.6 should be transferred to line No.7. Witness was asked to get the signature of the Guards Witness did this and went to the Driver and gave the shunting order. The starter was lowered and the Driver started the train. The guard set witness down at the points and told him to show red signal when the points were clear. This was done and the train stopped. The Cabin then changed the route and witness gave the green signal; then he went to where the guard was standing. The Guard asked him to go ahead and find out why the driver was not moving. Witness had gone half way along the load when he saw the head light of 513 Up. Witness ran shouting to the Driver to move quickly as there was a train coming, but the collision occurred before he could reach the Engine. Witness then ran back and told the Switchman and Station Master.



Answering questions, witness stated that he was called by the Assistant Station Master at 09.15. The Guard was already sitting there. Witness and the Guard came to the driver of the Goods train and made him sign the shunting memos. The load went ahead of the trailing point by about 50 feet and stopped. The Guard had got on the Engine saying that because the load is long he will get down somewhere ahead. Since the load was long he would have passed the advanced starter. The advanced starter was burning

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red. Witness was standing near the home signal and did not ~~not~~ notice whether the back light of the outer signal was visible. The East Cabin was about 100 M. from where he was getting the shunting done and the signals given by the Cabin were visible to him. The visibility was such that witness could see the ~~red~~ signal given by the Guard. The Guard was at the middle of the Goods train. When the collision occurred he was proceeding towards the Engine and was more than half way ahead. Witness did not see the Guard of the goods train after the accident. He also did not observe the Outer Signal. The Goods load stopped after the trailing point on ~~the~~ his exhibiting the red signal. The Guard also accepted the red signal.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW BENCH.

T.A. Case No. of 1988

Shiv Prakash Awasthy ... Petitioner

Versus

Union of India & others ... Opposite parties

ANNEXURE NO. 5

To

The Sr. Divl. Mechanical Engineer,
North Eastern Railway,
Lucknow.

Through - Proper channel

Sir,

with due respect I beg to state the following facts for your kind perusal and solicit that you would arrange for supplying the documents listed below for preparation of my defence.

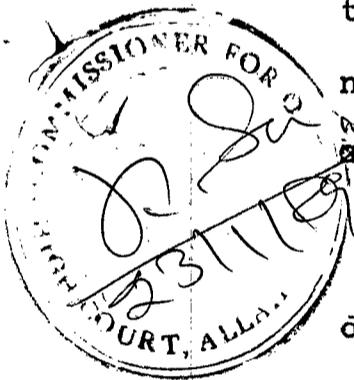
At the out-set I deny the alleged charges so framed against me as those charges do not base on any truth and the list of documents so supplied are incomplete and not the copies of the statement recorded by the enquiry ~~enquiry~~ Committee.

I may please be supplied with the following documents so that I may prepare the defence maintaining letter and spirit of those documents:-

1. True copies of statement recorded by the enquiry committee from: List of witnesses as mentioned in the Annexure -IV of the Memo under reference. Summary of the statement is not at all sufficient as those are privilege documents of the Administration and also contrary to the extent rules.

2. Original copy of the OPT-79 issued by SM/MGW for shunting movement of ASH Goods Spl(Dn) and handed over

to LI/CB.



Shiv Prakash Awasthy
to LI/CB.

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3. Copies of SwR/MGW in respect of shunting movement enforced during 27/28-12-85.
4. Copies of SRs of N.Rly; particularly the portion where the procedure for granting of OPT-79 had been prescribed. This is purely a domestic rule and have not been supplied to us.
5. Copies of TSR of MGW & ON for the period 16-00 to 24-00 hrs. of 27.12.85.
6. Copies of Log-books maintained by SM & E/Cabin MGW for the period of 16-00 hrs to 24-00 hrs of 27.12.85

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

with kind regards,

Yours faithfully,

Sd/- Shiv Prakash Awasthi
Driver/B
CB Shed/Lucknow.

Dated: Lucknow.
20th March 1987

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उद्देश्य तफल नहीं होता । काशीनाथ बीक्षित बनाम भारत सरकार । सु० कोर्ट । 1985 अपील केस पर न्यायालय का सुस्पष्ट मत है कि सरकारी कर्मचारी जब डी. ए. आर प्रोत्तीड़िंग केस कर रहा है उसे बांछित दस्तावेज व अन्यान्व सूचनाएँ जो केस के मुतालिक हों बचाव हेतु प्रतिवादी को डी नाव जिनके बगैर वह प्रभावी ढंग से पैरवी न कर सकेगा और दोष मुक्त ताबित न कर सकेगा जो " नैतर्तिक न्याय " के सिद्धान्त के विपरित होगा ।

वह कि अपने पत्र संख्या तमयक दि० 11.3.87 का अवलोकन करे जितने आपने श्री तुषेन सिंह ईधन निरीक्षक को बिबेचना अधिकारी नियुक्त किया है मुझे निम्न लिखित आधार पर मान्य नहीं हैं :-

1. श्री तुषेन सिंह स्वभाव से अत्यधिक पथ तवेदनशील व्यक्ति हैं और श्री बारन सिंह चालक । अभियोजन साक्ष्य । के निकट तम्बन्धी है उनके परिवारिक तम्बन्ध, आना जाना, खाना पीना, सामाजिक, पारिवारिक व धार्मिक उत्तवों एक साथ सम्मिलित होने से दोनों भावनात्मक रूप से एक ही रेती दशा में बिबेचना निष्पक्ष नहीं होगी उसके उद्देश्य को विफल कर देगी ।

2. श्री सिंह से मेरे तम्बन्ध सामान्य नहीं है क्योंकि उनके फोरमैनरनिश के काल में मेरे लिए बिबादास्पद बिषय रहें हैं ।

अतः आपसे उपरोक्त तथ्यों पर बिचार करने की अपील है और अब से समस्त कार्यवाही हिन्दी में किए जाने की अपील है ।

सादर

भवदीय

ह०/-

श्री प्रकाश अवस्थी ।
चालक भा. शा,
चारबाग रोड़

प्राप्त एक प्रति

ह०/- अष्टनीय

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F.C.
H. Srivastava
Sd/-

Arasthi
Shiva Prakash Arasthi

इन दि तेन्दूल रडमिनिस्ट्रेटिव ट्रिब्यूनल

रडमिनिस्ट्रेटिव बेंच लखनऊ

अप्लीकेशन नं०

आक 1989

शिव प्रकाश अवस्थी

अप्लीकान्ट

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बुनिबन आक इन्डिया व अन्य

तिषान्डेन्द्त

अनेक्जर नं० - 7

प्रेषक:- तुष्येन तिंड

जांच अधिकारी

प्र.ई.निरीक्षक, लखनऊ जं०

तेबा में, श्री रत०पी०अवस्थी

चालक-तबारी,

चारबाग रोड़

द्वारा लो.बने/चारबाग

विषय:- डिफेन्त काठन्तेल का चबन ।

निम्न हस्ताक्षरी आषके बिरुद केत नं० /537/ / / /10/
85 दिनांक 11.3.87 की जांच हेतु जांच अधिकारी नियुक्त किये गये ।

अतः आषके अनुरोध हे कि आष इत बत्र का पाबती के इत बिन के
अन्दर आषका केत का प्रतिरक्षा हेतु तीन डिफेन्त काठन्तेल का नाम
प्राथमिकता के आधार पर उनके अनुमोदन के साथ जांच अधिकारी को
भेजे ।

आषके उक्त मिलने पर जांच की तिथि निर्धारित किया जावगा ।

शिव प्रकाश अवस्थी

22.5.87

प्रतिलिपि -

म.रे.प्र. संरक्षा /लखनऊ के सूबनार्थ प्रेषित ।

द०
तुष्येन तिंड

जांच अधिकारी

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शिव प्रकाश अवस्थी

Shiv Prakash Awasthi

T. C.
H. Srivastava

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Shiva Prakash Awasthi — Petitioner
vs
Union of India & others — Opponent

Annexure No 8

3. Add the following as S. Rs. 8.12/1, 8.12/2 and 8.12/3.

S. R. 8.12/1.—When in terms of G. R. 8.12 shunting is permitted outside the Station Section and up to the first stop signal, the Station Working Rules shall include a specific mention to this effect and also contain suitable instructions authorising such movements.

S. R. 8.12/2.—Where shunting is permitted under G. R. 8.12, it should be specifically mentioned on Form O.P.T.-79 indicating the limit of such shunting, issued to the Guard and the Driver.

S. R. 8.12/3.—The Station Master will recover written authority on (Form O.P.T.-79) before giving line clear for a train to approach from the direction referred thereon.

4. Add the following as S. Rs. 8.15/1, 8.15/2 and 8.15/3.

S. R. 8.15/1.—When permitting shunting in the Block Section, the Driver shall be given an authority as detailed below in addition to Blocking Back and blocking forward as given in the Block Working Manual which shall be—

(i) Both on double & single line.—By taking off shunt signal provided as per clause (a) of the G. R. 8.15, when the Driver has to pass key stop signal both on double line and single line and a specific written authority on shunting order Form O.P.T.-79.

(ii) On single line.—By handing over the concerned token or tablet where Neal's Ball token or tablet instruments are provided or shunting occupation key in tokenless Block territory to the Driver as an authority to shunt in the Block section and a specific written authority on shunting order (O.P.T. 79).

(iii) On double line.—By handing over occupation key where Daido's Block instruments are in use and by issuing specific written authority to shunt on Form O.P.T.-79 to the Driver. In case of other instrument, specific instructions on O.P.T.-79 should be issued.

S. R. 8.15/2.—The Station Master will recover the token/tablet shunting occupation keys or written authority before giving line clear for a train to approach from the direction referred to thereon.

S. R. 8.15/3.—When in terms of G. R. 8.15 shunting is permitted in Block Section, the Station Working Rules shall contain suitable instructions governing such movements.

S. P. Singha
Chief Traffic Safety Super

G.R.P./R. Rd. (T. Bg.), Delhi-35—10,008/4—4-86—15,000 C.

Handwritten signature and date: 23/11/89

Handwritten signature: T. C. K. S. N. S. T. S. A. A.

Handwritten signature: Shiva Prakash Awasthi

Central Board of Secondary Education
New Delhi-110 022

इन दि तेन्त्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल
एडीशनल बेन्च लखनऊ

AS

अप्लीकेशन नं०

आर्क 1989

शिव प्रकाश अवस्थी

अप्लीकान्ट

बनाम

यूनियन आफ इन्डिया व अन्य

रिस्पान्डेन्ट

अनेक्जर नं० - 7...

Case No. T/537/TA/Misc./Link/10/85 dated 11.3.87

Suspected Public Servant

- श्री शिव प्रकाश अवस्थी

। रस.पी. अवस्थी ।

चालक । गुडत । लोको रोड - चारबाग

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श्री रस.पी. अवस्थी चालक "सी" । अब चालक गुडत । जो कि लोको
कोर मेन पूर्वोत्तर रेलवे चारबाग । लोको रोड । के अधीन कार्यरत हैं के
बिरुद्ध ज्ञापन संख्या : T/537/TA/Misc/Link/10/85 दिनांक : 11.3.87
द्वारा आरोप लगाया गया है कि जब वे दिनांक 27.12.85 को डाइन
रेशबाग स्पेशल के चालक थे तथा मगरबारा स्टेशन पर शनिटिंग कर रहे थे,
तो वे ब्लाक सेक्शन में बिना किसी उचित अधिकार के चले गये और और
इस प्रकार उन्होंने सामान्य तथा सहायक नियम पुस्तिका 1978 के निम्न
लिखित नियमों का उलंघन किया है ।

1. G.R.3.81(3)
2. G.R.14.08
3. G.R.2.09

उपरोक्त उलंघन कदाचार का द्योतक है और इस प्रकार वे रेलवे
सर्विसिज । कन्डक्ट । रूलस 1966 के नियम 3.11, 11.11 में उल्लिखित
प्रावधानों के बालन करने में विफल रहें ।

संक्षेप में केस का बिबरण इस प्रकार है कि दिनांक : 27.12.85 को
श्री रस.पी. अवस्थी लोको नं० 3498 ब.दि.जी. से डा0 रेशबाग स्पेशल
कार्य कर रहे हुये कानपुर अनवर गंज से मगरबारा लगभग 15/30 बजे आये ।
लगभग 20/- बजे तक साइडिंग आदि का शनिटिंग होने के बाद गाड़ी रल/0
में बढ़ी थी कि 21/30 पर श्री जे.टी. टंडन ने ट्रेन गार्ड के पास शन्त
मेन द्वारा लिखित आदेश मेजा । OP/T-79 । कि गाड़ी के लोड को
में ब्रेक होना है । उस आदेश के अन्तर्गत गाड़ी का लोड जो 65 गा

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Shiva Prakash Anand
Shiva Prakash Anand

T. C.
Kumar

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का था L/6 से L/7 में ब्रेक होने हेतु आगे बढ़ाया गया। L/7 का प्वाइन्ट ताक करने हेतु लोड लगभग आउटर तक बढ़ाया गया। अभी लोड ब्रेक नहीं हो पाया था कि 513 अब रुककर रक्तवेस के अन्नाओं से मगरबारा आने हेतु, जो मगरबारा से थू जाती हैं, ASM श्री टंडन ने लाइन क्लियर Permission to approach दे दिया और 513 अब अन्नाओं से बल दी उस रात कोहरा काफी बढ़ रहा था तथा कोहरा सिग्नल Fog signal मगरबारा आउटर सिग्नल के बाहर नहीं लगाये गये थे। चालक 513 अब सिग्नल [आउटर] की स्थिति देख न सका और रेशमाग स्पेशल के इंजन से 513 अब के ट्रेन इंजन की आउटर सिग्नल के पास टक्कर हो पसई। ASM श्री जे. सी. टंडन ने 513 अब को Permission to approach नियम बिरुद्ध दिया था नियमानुसार जब तक आउटर सिग्नल से रडबांत स्टार्टर के बीच की दिकानजती कासला ताक न हो, उस ओर से आने वाली गाड़ी को permission to approach नहीं दिया जा सकता।

श्री एच. बी. अबस्थी ने ज्ञापन में बर्णित आरोपों को मानने से इनकार कर दिया और कहा कि नियमानुसार शनिटिंग आदेशों का पालन करते हुये शनिटिंग कर रहे थे। ASM ने गलत रूप से गाड़ी को 513 अब को आने की इजाजत देकर दुर्घटना कराई। उन्होंने अपने defence notes में यह भी कहा कि श्री रमेश प्रताप शन्ट मेन उनके इंजन को आउटर तक बढ़ाकर उड़ा कर गये और फिर न तो ब्रेक करने का कोई संकेत दिया और न स्वयं आकर कोई स्थिति बताई, जिसके कारण लोड समग्र रहत ब्रेक नहीं हो पाया।

इस से पहले कि गवाहियों के बयानों पर चर्चा की जाय यह देखलेना परम आवश्यक है कि श्री एच. बी. अबस्थी पर जिन नियमों के उल्लंघन का आरोप है, वे उनके बिरुद्ध किस प्रकार लागू होते हैं। इस पर विचार करने हेतु ज्ञापन में बर्णित नियमों को यहाँ उद्धृत समीचीन होगा।

G.R.3.81: Duties of driver when departure stop signal is 'ON' or defective:

1. The driver of a train shall not pass a departure stop signal that refers to train, when it is 'on' or defective unless his train has been brought to a stop at the station where the defective signal is situated and he is authorised to do (a) by a written permission from the station master on; (b) by "taking off" the calling 'one' signal, if provided and approved special instructions vide sub rule (2) of rule 3.13.



Arasthi
Shiva Prakash Arasthi

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H. S. Sivanbawa

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(2) In the case of a starter or advance starter protecting points, he shall not pass such signal when "ON" ~~defective~~ or defective unless he also receives proceed hand signal from a duty authorised member of the station staff posted at the signal.

(3) In the case of a last stop signal he shall not pass such signal when 'on' or defective unless he is also in possession of a proper authority to proceed under the system of working.

उपरोक्त नियम का वर्णन निम्न विषय

बूट 60 के संदर्भ में, जो नियम 3.68 से 3.85 तक वर्णित

हैं, किया गया है।

F.R.14.08: Authority to proceed: The driver shall not take his train from a block station unless he has been given an authority to proceed.
 (a) On the double line by taking "Off" of the last stop signal, and
 (b) On the single line either-(i) by a token for the block section taken from an electrical block instrument or (ii) By a line clear ticket duly signed by the Station Master, or (iii) By any document prescribed in this behalf by special instructions, or (iv) by the 'taking off' of the last stop signal in line of tangible authority as mentioned in sub clause (i) to (iii) as sections provided with electrical block instruments of token less type or track circuits or angle counters.

G.R.14.09: Driver to Examine authority to proceed :

- (1) The driver shall ensure that the authority to proceed given to him is the proper authority under the system of working and refers to the block ~~xxxxx~~ section, he is about to enter, and if the said authority to proceed is in writing that it is complete and duly signed in full in ink.
- (2) If the conditions mentioned in sub -rule(1) are not complied with the driver shall not take his train or start from the station until the mistake or omission is rectified.



इस केस में चालक 65 गाड़ी के लोड को L /6 से L/7 में

Transfer कर रहा था, अतः वह उस समय शन्टिंग कर रहा था क्योंकि

नियमों के अन्तर्गत "बी" क्लास स्टेशन पर या कहीं अन्य स्टेशन पर भी एक लाइन से लोड को दूसरी पर ले जाना ; Transfer करना ; shunting कहलाता है । और इस प्रकार की शन्टिंग को एक ब्लॉक स्टेशन से लोड

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Aravathi
shiva Prakash Aravathi

T. C.
H. S. Narayan

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लेकर जाने में वरिभाषित नहीं किया जा सकता ।

ज्ञापन में उल्लिखित Article of Charges में भी साफ लिखा है
while performing shunting operation of line Up Aishbagh
Goods train at Margarwara
इससे भी साफ सिद्ध है कि चालक मगरबारा में शन्टिंग कर रहा था , और
बहुत पुनः सुनिश्चित है कि इसे एक ब्लॉक स्टेशन से लोड लेकर जाने की स्थिति
नहीं कहा जा सकता ।

"बी" क्लास सिग्नल लाइन स्टेशन पर जिसमें " दो सेल्फेक्ट " वाले
" लोअर इन्टरेन्ट " सिग्नल लगे हो :-

1. GR 3.10 के अन्तर्गत स्टेशन सेक्शन में शन्टिंग का प्रावधान है ।

शर्त यह है आवश्यक आने वाले सिग्नल "ON" की दशा में है ।

2. GR 3.11 के अन्तर्गत आवश्यक आगमन सिग्नलों को "आन" की दशा

में रखकर तथा जिस ओर शन्टिंग करना हो, उस ब्लॉक सेक्शन में कोई
उस स्टेशन की ओर आने वाली गाड़ी न हो, तो " स्टेशन सेक्शन से
बाहर आउटर सिग्नल तक " शन्टिंग किया जा सकता है ।

3. GR 3.13 के अन्तर्गत out side the first stop signal शन्टिंग

तब ही किया जा सकता है जब लाइन ब्लॉक बैक करदी गई हो ।

"बी" क्लास स्टेशन की विशेषता भी तही है कि इस पर शन्टिंग करने
की आधिक छूट व सुविधा होती है । परन्तु चालक श्री एम.बी. अवस्थी के
विरुद्ध जिन विषयों के उल्लंघन का ज्ञापन में उल्लेख किया गया है ।

GR 3.81 (3) / 14.08 and 14.09 के शन्टिंग करने से सम्बन्धित नहीं हैं । G.R.3.81(3)

की बर्णन विषय "H - defective final signals & points जैसे सन्दर्भ

में किया गया है IGR 3.81 का विषय है "Duties of driver when
signal is 'on' or defective
departure stop और चालक को निर्देश देता है " The driver of a
train shall not pass a departure stop signal that refers to
him, when it is 'on' or defective and so on

इस का पैरा 3 उक्त निर्देश को और अधिक साफ करते हुये कहता है "

"In the case of a last stop signal he shall not pass such
signal when 'on' or defective unless he is also in possession
of a proper authority to proceed under the system of working

उक्त विषय का सम्बन्ध उस ट्रेन से है जो "बी" स्टेशन से "बी"

स्टेशन हेतु ब्रजा रही हो अथवा "र" स्टेशन से साथ पास हो रही हो । इस का
सन्दर्भ शन्टिंग करने हेतु नहीं है ।

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Shri Prakash Anasthi



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इसी प्रकार नियम 14.08- " Authority to proceed: The driver shall not take his train from a block station unless he has been given an authority to proceed.

तथा नियम 14.09 " Driver to examine authority to proceed

इसके पैरा 2 का अन्तिम भाग है - The driver shall not take his train passed or start from the station until the mistake of the omission is rectified. यह सुनिश्चित करते हैं कि यह नियम उस ट्रेन के चालक के दिशा निर्देशक हैं जो एक स्टेशन से अपनी गाड़ी के साथ या तो " रन थ्रू " पास हो रहा हो, या फिर स्टार्ट होकर दूसरी स्टेशन को जा रहा हो ।

इस प्रकार यह साफ़ जाहिर है कि नियम 3.013, 14.08 तथा 14.09 शन्टिंग करते समय चालक पर लागू नहीं होते । विशेष कर जब कि शन्टिंग "बी" क्लास सिंगल लाइन पर दो हेल्फेक्ट वाले स्टेशन पर आउटर सिग्नल तक हो रहा हो § सा.नियम 8.11 के अन्तर्गत §

इस केस में चालक सा.नियम 8.11 के अन्तर्गत शन्टिंग कर रहा था अतः सा.नियम 3.013, 14.08 तथा 14.09 के उलंघन का बंध ही नहीं उठता । वास्तव में इस केस का निष्कारा बही हो जाता है क्योंकि चालक के बिल्कुल उन नियमों के उलंघन का आरोप सिद्ध नहीं होता जिनका उल्लेख उसे दिये गये ज्ञापन में किया गया है । परन्तु केस को बन्द करने से पूर्व यह देख लेना समझिनि होगा कि चालक श्री रस.बी.अबस्थी जिन नियमों के अन्तर्गत मगरबारा स्टेशन पर शन्टिंग कर रहे थे, उनके अनुपालन में उन्होंने अपनी ओर से कोई कोताही § लापरवाही § तो नहीं की ।

चालक श्री रस.बी.अबस्थी जिस प्रकार की शन्टिंग मगरबारा में कर रहे थे उसका प्राबधान जी.आर. 8.11 में किया गया है । जी.आर. 8.11 निम्नप्रकार है ।



GR 8.11: Obstruction outside station section at a class 'B' single line station- Equipped with two ~~xxx~~ aspect signals

The line outside the station section and upto the out signal shall not be obstructed unless a railway servant specially appointed in this behalf by the station master is in range of the operation and unless - (a) The block section into which the shunting is to take place is clear of an approaching train and all relevant and necessary signals are at 'on' position or, (b) if an approaching train has arrived at the outer signal the station master has personally satisfied himself that the train has been brought to a dead stand at the signal.

Provided that the line shall not be obstructed under Clause (b) in thick, foggy or tempestion weather impairing visibility or in any case unless authorised by special instructions.

Arastu
Shiva Prakash Arastu

T.C.
Koswanawa

जी०आर ३.११ के मुख्य टेस्ट तथा बैरा ११२ के अन्तर्गत स्टेशन सेक्शन के बाहर तथा आउटर सिग्नल तक लाइन शन्टिंग हेतु ब्लाक की जा सकती है। जब शन्टिंग प्रारम्भ हुई थी तो स्थितिबाँ जी०आर ३.११, ११२ के आधीन थी।

जी०आर ३.११, ११२ के अन्तर्गत उपरोक्त प्रकार की शन्टिंग वर्जित है, परन्तु शन्टिंग प्रारम्भ होने पर स तो कोई गाड़ी उन्नाओ की ओर से लाइन क्लियर पर थी १ चालक की अथवा शन्टिंग कराने वाले की जानकारी में १ और न कोई गाड़ी आउटर पर आकर खड़ी ही थी। अतः उपरोक्त शन्टिंग में जी०आर ३.११, ११२ के प्राबधान चालक अथवा शन्टिंग स्टाफ पर लागू नहीं होते।

उत्तर रेलवे की सामान्य तथा सहायक नियम पुस्तक जिस क्षेत्र में चालक कार्य कर रहा था, जी०आर ३.११ के आधीन कोई सहायक नियम ऐसा नहीं है जिसमें चालक को उपरोक्त प्रकारकी शन्टिंग का कहीं वर्जन हो। तत्कालीन प्रिंटे में एस. आर. ३.११/१, जी०आर ३.११, ११२ से सम्बन्धित है जब कि शन्टिंग जी०आर ३.११, ११२ के अन्तर्गत हो रही थी।

तत्कालीन जी०आर ३.१५ के अन्तर्गत कोई एस. आर नहीं था जबकि अब ११२ के बाद ११२ correction slip No. 20 dt. 1.10.१९६६ द्वारा विभिन्न प्राबधान किये गये हैं। इन शुद्धि पत्रियों का कोई सम्बन्ध तथा प्रभाव तत्कालीन परिस्थितियों या व्यक्तियों पर नहीं पड़ता।

वैसे जी०आर तथा एस०आर ३.१५ का प्राबधान जी०आर ३.१३ के सन्दर्भ में है, जी०आर ३.११ के सन्दर्भ में नहीं। यदि जी०आर ३.१५ को जी०आर ३.११ से सन्दर्भित किया जाता है तो फिर "बी" ब्लास स्टेशन की विशेषता पर ही प्रश्न चिन्ह लग जाता है।

जी०आर ३.११ अथवा एस०आर ३.११ में कोई ऐसे प्राबधान नहीं हैं कि चालक को स्टेशन सेक्शन के बाहर तथा आउटर तक शन्टिंग करने हेतु कोई अलग से अधिकार पत्र लेने की आवश्यकता हो। फिर भी एक परम्परा convention के अन्तर्गत रडवांस स्टार्टर को लाल की हालत में वास करने हेतु एक लिखित मेमो आदि लेना पड़ता है। यह मेमो सादे बेषर पर भी स्टेशन

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सील के अन्तर्गत दिखा जा सकता है ॥ जैसा कि एन०ई०रेलवे में प्रचलित ॥ हैं बा
फिर लिखित छुके हुये फार्म पर ॥ जैसा कि एन०आर में ओ.पी/टी-79 के रूप
में प्रचलित हैं ॥ इसके अतिरिक्त कोई टारनजीबीली रथोरिटी लेने का निर्देश
रूल के अन्तर्गत नहीं हैं ।

जी०आर ८. 15 के प्रावधान हालांकि जी०आर ८. 13 के सन्दर्भ में हैं,
फिर भी यदि जी०आर ८. 15 के प्रावधानों की देखे तो जी०आर ८. 15 ॥सी॥
में निर्देश हैं " A written permission to shunt "

भी ब्लाक सेक्शन में shunting/obstruction करने का अधिकार पत्र हैं ।
दुर्घटना के समय तक एन०रेलवे द्वारा प्रचलित सामान्य तथा सहायक नियम
पुस्तक में जी०आर ८. 15 के आधीन कोई रस. आर अल्लिखित नहीं हैं । और
1. 10. 86 को correction slip द्वारा निर्देशित रस. आर का प्रभाव बालक पर
उस समय के सन्दर्भ में लागू नहीं होता ।

देखना यह है कि क्या जी. आर ८. 15 ॥सी॥ के अन्तर्गत चालक के पास
कोई शनिंटिंग करने की इजाजत थी । गार्ड श्री बिजय कुमार मिश्रा, शन्ट मैन
श्री रमेश प्रसाद तथा चालक श्री रस. पी. अवस्थी के ध्यान से साफ जाहिर हैं
कि उन्हें शनिंटिंग करने की इजाजत/आज्ञा ओ. पी/टी-79 द्वारा 21/30 पर
दी गई । शन्ट मैन श्री रमेश प्रसाद ने अपने cross examination में
यह भी कहा है कि दुर्घटना की तिथि तक ओ. पी/टी-79 पास ही रडबांस को
बार करके शनिंटिंग होती थी, रडबांस को पास करने हेतु कोई अलग से अधिकार
नहीं दिखा जाता था । गार्ड श्री बिजय कुमार मिश्रा ने भी अपने
cross examination में बताया है । कि एएसएम तथा शन्ट मैन ने उन्हें बताया
कि ओ. पी/टी-79 पर लोड बैक करने का ही आदेश काफी है, कोई अलग से
अधिकार नहीं दिखा जाता । कैबिन मैन ॥स्वीच मैन ॥ श्री धरोदीन ने अपने
Cross examination में बताया कि वह जानता था कि यदि ब्लाक
सेक्शन में कोई आने वाली गाड़ी न हो तो आउटर तक शनिंटिंग हो सकता है ।
टोकन पोर्टर श्री राम लाल ने अपने cross examination में कहा है कि
कभी भी शनिंटिंग के मध्य रडबांस पास करने हेतु चालक को लाइन बिलयर दिखा
है " । केवल गाड़ी जाने के लिये ही लाइन बिलयर दिखा है " । रल/6 से
रल/7 में बैक होने वाला लोड 65 गाड़ी का था और यह तर्कवित है कि उक्त
लोड रडबांस तक नहीं आ सकता अतः ओ. पी/टी-79 में यह निहित होना
स्वाभाविक है कि रडबांस भी लाल की हालत में पास करना है । जी०आर ८.
॥सी॥ के प्रावधान भी जैसे भी ओ. पी/टी-79 से पूरे जाते हैं । जब कि जी. आ

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Arasthi

8. 15 सी के इस केस में लागू भी नहीं होता । शनिंटिंग 8. 11 रू के अन्तर्गत ही रही थी । जी. आर 8. 11 में कहीं भी कोई ऐसा निर्देश नहीं है कि रडबांसा को वास करने हेतु ऐसी शनिंटिंग में कोई लिखित आदेश दिया जाय । फिर भी जिस convention परम्परा के अन्तर्गत ऐसा लिखित मेमो एन. ई रेलवे में दिया जाता है । उसका निर्वाह एन. रेलवे में ओ. पी/टी-79 द्वारा किया जाता है। कोई ऐसी मिसाल गवाहियों द्वारा नहीं दी जा सकी जिसके अन्तर्गत ओ. पी/टा-79 के साथ-साथ अतिरिक्त लिखित अधिकार रडबांसा स्टार्टर को वास करने का मिला हो या कभी भी दिया जाता रहा हो ।

ऐसी सूरत में यह भी सिद्ध नहीं हो पा रहा कि चालक ने मगरबारा में शनिंटिंग करते समय किसी नियम या परम्परा convention का उल्लंघन किया हो । इन्हीं तथ्यों के साथ-साथ यह भी उल्लेखनीय है कि मगरबारा के तत्कालीन स्टेशन बरकिंग रूल में शनिंटिंग के सन्दर्भ में लिखा है कि मगरबारा स्टेशन पर स्टेशन सेक्शन के बाहर तथा आउटर तक शनिंटिंग जी. आर 8. 11 के अन्तर्गत किया जा सकता है । एम. डब्लू. आर में भी अन्य कोई अनर्देश नहीं है कि इस प्रकार की शनिंटिंग में चालक को क्या-क्या दिया जायेगा और न ही, जी. आर. 8. 15 के प्रावधानों के पालन करने का कोई निर्देश है ।

उपरोक्त तथ्यों से साफ है कि चालक ने ज्ञापन में उल्लिखित नियमों के प्रावधानों का उल्लंघन तो नहीं ही किया है, अन्य शनिंटिंग सम्बन्धी नियमों के प्रावधानों का भी कोई उल्लंघन नहीं किया है ।

इस केस का निष्कारण इसी आधार पर किया गया है ।

सार तथ्य समरी :-

1. श्री एम. पी. अबस्थी चालक गुड्स बारबाग रोड दिनांक 27. 12. 85 को डा० रेशबाग स्पेशल के चालक थे लोको 3498/रू
2. यह गाड़ी मगरबारा में 15/30 पर लगभग आई और 20/- बजे तक साइडिंग में शनिंटिंग हुई ।
3. चालक को 21/30 पर ओ. पी/टी-79 शनिंटिंग आर्डर द्वारा एल/6 से अपनी गाड़ी 65 गाड़ी का लोड एल/7 में बैक करने का आदेश ए. एम. एम/एम. जी. डब्लू द्वारा दिया गया ।

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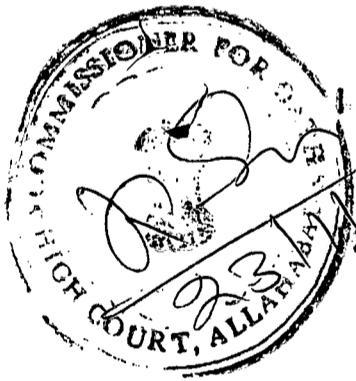
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4. चालक ने गार्ड तथा शन्ट में के सुपरवीजन में लोड आगे बढ़ाया और आउटर के पास जाकर खड़ा हो गया ।
5. इससे पूर्व कि लोड बैक होकर एल/7 में आ बाला और निब्रानुसार आउटर से रडबांस स्टार्टर तक की दूरी साफ हो जाती, ए. एस. एम/एम. जी. डब्लू श्री जे. सी. टंडन ने 513 अष को आने हेतु लाइन क्लियर उन्नाओ से मगरबारा हेतु दे दिया ।
6. सभी साक्षियों के अनुसार बह एक कोहरा भरी रात थी और ए. एस. एम/एम. जी. डब्लू ने आउटर के बाहर कोहरा सिग्नल कोम सिग्नल नहीं लगवाये थेक ।
7. 513 अष के चालक को कोहरे के कारण, घटाखा सिग्नल न लगा होने के कारण और एषरोज सिग्नल मुझे होने के कारण एषरीदीन को छोडकर सभी साक्षियों के कान आउटर सिग्नल की स्थिति बजा न चल सकी और 513 अष का ट्रेन इंजन शान्तिंग करली गाड़ी के ट्रेन इंजन से टकरा गया ।
8. चालक ए. एस. एम. अवस्थी को सामान्य नियम 3. 81. 3, 14. 08 तथा 14. 09 के उलंघन हेतु दोषी ठहराया गया हैं ।
9. उपरोक्त सामान्य नियम रडबांस तथा आउटर के मध्य शान्तिंग करने हेतु लागू नहीं होते । यह सामान्य नियम एक बर्किंग ट्रेन को एक स्टेशन से दूसरी स्टेशन ब्लॉक स्टेशन ले जाने हेतु बहली स्टेशन से थू पास होने या स्टार्ट होने पर लागू होते हैं ।
10. मगरबारा स्टेशन बी ब्लॉक सिंगिल लाइन स्टेशन है जहाँ दो संकेत बाले लोअर रबाडरेन्ट हत्था सिग्नल लगे हैं ।
11. इस प्रकार की स्टेशन पर स्टेशन सेक्शन के बाहर और आउटर सिग्नल तथा शान्तिंग हेतु सामान्य नियम 8. 11 में प्राबधान हैं ।
12. जी. आर 0. 11. 1 के अन्तर्गत यदि ब्लॉक सेक्शन आने वाली गाड़ी से सा हो और आवश्यक सिग्नल लाल हो तो इस प्रकार की शान्तिंग की जा सक हैं ।
13. जी. आर 8. 13 के अन्तर्गत "बी" ब्लॉक सिंगिल लाइन पर प्रथम रोक सिग्नल के बाहर आउट साईड दि फसट स्टौष सिग्नल लाइन में बाधा उस समय तक नहीं डाली जा सकती शान्तिंग नहीं की जा सकती जब तक कि लाइन "ब्लॉक बैक" न हो गई हो ।

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14. उपरोक्त से साफ़ प्रकट होता है कि "बी" क्लास सिंगल लाइन स्टेशन पर आउट तक शनिंटिंग करने हेतु लाइन ब्लाक बैक नहीं करनी हैं ।
15. एन. रेलवे के तत्कालीन नियमों के अन्तर्गत भी ऐसा कोई प्रावधान नहीं हैं । अब करेशन स्लिप नं० 20 दिनांक: 1.10.86 द्वारा कुछ संशोधन किये गये हैं, परन्तु प्रभाव जी.आर 8.11 § 6 पर नहीं हैं ।
16. जी.आर 8.11 जिसको प्रावधानों के अन्तर्गत शनिंटिंग हो रही थी कोई ऐसा संकेत सहायक नियम में भी नहीं है कि शनिंटिंग करने हेतु, एडवांस स्टार्ट पास करने हेतु कोई अलग से अधिकार लेना होगा ।
17. मंगरवारा के तत्कालीन एस.डब्लू गोर. में भी शनिंटिंग हेतु केवल यही लिखा है कि इस प्रकार की शनिंटिंग जी.आर 8.11 के अन्तर्गत हो सकती हैं ।
18. कहीं भी एडवांस स्टार्ट और आउटर सिग्नल के मध्य शनिंटिंग करने हेतु टानिजिबिल रथोरिटी के दिये जाने का प्रावधान नहीं हैं ।
19. एन. ई. रेलवे में एक परम्परा § Convention के अन्तर्गत एडवांस स्टार्ट पास करने हेतु एक सादे कागज पर स्टेशन की सील के अन्तर्गत भेजा जाता है जो जी.आर. 85 में बर्णित जी.आर 15 § 6 के अन्तर्गत " ए रिटन परमिशन टू स्टार्ट" हैं, और एन. रेलवे. में इस परम्परा का निर्वाह ओ.पी/टी-79 देकर किया जाता हैं ।
20. हालांकि जी.आर. 15 का बालन जी.आर. 13 के सन्दर्भ में ही करना आवश्यक है, फिर भी यदि " ए रिटन परमिशन टू स्टार्ट" चालक को दे दिया जाता है, तो यह एक अतिरिक्त सतर्कता हैं ।
21. चालक के पास इस प्रकार की शनिंटिंग करने की आज्ञा ओ.पी/टी-79 के रूप में थी । गाड़ी का लोड 65 बैगन था जिसे बैक करने § 6 से § 7 में की आज्ञा देने का यह साफ अर्थ हैं कि एडवांस स्टार्ट पास करने की आज्ञा भी उसमें निहित हैं, हालांकि इस प्रकार की आज्ञा का जिक्र तत्कालीन किसी नियम में नहीं मिलता ।
22. वैसे चूँकि चालक को जी.आर 8.11, 8.13 अथवा 8.15 के प्रावधानों के अन्तर्गत हेतु ज्ञापन नहीं दिया गया हैं, अतः इन पर डिस्कस करना कोई अधिक प्रासंगिक नहीं हैं । परन्तु चूँकि इन्ही नियमों के अन्तर्गत विशेषकर जी.आर. 8.11 § शनिंटिंग हो रही थी, अतः इन नियमों के प्रावधानों का

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Shiva Prakash Amsthi

T.C.
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उल्लेख तथा डिस्कासन समिचिनि सम्झा गया ।

उपरोक्त सभी तथ्यों से साफ है कि साक्ष्य चालक के दृष्ट में हैं और इस केस का निपटारा इसी आधार पर किया गया है ।

निष्कर्ष § कन्डिग §

उपलब्ध साक्ष्यों तथा रिकार्ड्स की त्थोरेबार सम्पर्क छान-बीन के पश्चात् में इस निष्कर्ष पर पहुँचा है कि चालक श्री इस. श्री. अवस्थी के बिरुद्ध के आरोप, जो ज्ञापन संख्या टी/537/टी.ए./मिस/लिंक/10/85 दिनांक: 11.3.87 द्वारा लगाये गये थे, सिद्ध नहीं होते और उन्होंने ज्ञापन में उल्लिखित जी०आर०३.३१३, 14.०८ तथा 14.०९ के प्राबधानों का उलघन नहीं किया है ।

तदनुसार के रेलवे सर्विसिस् § कन्डन्ट § रूल 1966 के नियम 3११, ३२ के प्राबधानों के उलघन हेतु भी दोषी नहीं हैं ।

ह०/- अषठनीष/1.10.87

जाँच अधिकारी

§ लो०नि० § डीजल § लखनऊ



T. C.
K. Srinivasan
Adm

Arasthi
Srinivasan Arasthi

इन दि तैन्तूल रडामिनिसूत्रिब रिप्पुनल

रडीशनल बैन्च लखनऊ

अप्लीकेशन नं०

आफ 1989

शिव प्रकाश अवस्थी

अप्लीकान्ट

बनाम

मुनिबन आफ इन्डिया व अन्य

रिपयान्डेन्ट

अनेक्जर नं० - 10

देवा में,

मण्डल रेल प्रबन्धक,

पू०३०रे०, लखनऊ ।

द्वारा:-

उचित माध्यम ।

बिषय:-

पुनर्बिचार हेतु ।

तन्दर्भ:-

एन०आई०पी० संख्या टी०/537/टी०.र०/मित०/लिक/10/85

दिनांक 16-12-87 ।

महोदय,

निवेदन है कि मुझे उपरोक्त एन०आई०पी० द्वारा तीन बर्ष के लिये जालक मुद्त में शन्टर के बंद पर बंदच्युत कर दिया गया है ।

जित दुर्घटना के सम्बन्ध में मेरे विरुद्ध बह निर्णय लिया गया

उसका संक्षिप्त विवरण इस प्रकार है :-

* दिनांक 27-12-85 को मैं हाइन रेशबाग स्पेशल कार्य करते हुए मगरबारा लगभग 15 बजे आया । 20 बजे तक विभिन्न प्रकार की शंटिंग के बाद मुझे 21/30 पर अपनी गाड़ी के 65 डिब्बे के लोड को लाइन/6 से लाइन/7 में बैंक करने का आदेश ओ०पी० टी०/79 द्वारा ए.रत.रम./मगरबारा ने दिया । जो मुझे 21/50 पर मिला, तदनुसार शन्टिंग हेतु गार्ड व पैड के सहयोग से स्टार्टर "आफ" होने पर आगे बढ़ा । लोड लम्बा होने के कारण आठतर तक बढ़ना पड़ा ।

बीडे का प्वाइन्ट तोक होने की स्थिति ज्ञात नहीं हो रही थी, क्योंकि काहाता था । अभी मैं बीडे बैंक करने



क०रे०प्र०/मा०

उचित कार्यवाही हेतु

अज्ञातरित

ह०/-बी.के. पाण्डेय
एल. एफ./एल. बी.

रितीबड

ह०/- अमठनीय

25/1

Shiva Anand
Shiva Anand

T. C.
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हेतु सिग्नल का इन्तजार ही कर रहा था कि आगे से कौड़ा ता घीरती हुई हेड लाइट दिखाई दी तथा सीटी की भी आवाज लगातार सुनाई दी, जिसका प्रति उत्तर भी दिया किन्तु तीन तमानान्तर लाइनों के कारण कोई स्थिति बता नहीं लग रही थी कि गाड़ी किस लाइन पर आ रही थी। 513 अफ के आउटर के निकट आने पर बता चला कि गाड़ी उती लाइन पर आ रही है। मैंने और तुरन्त सीटी मारते हुये ब्रेक करने हेतु रेगुलेटर खोल दिया, परन्तु लोड के मूब होते ही आने वाली गाड़ी के ट्रेन इंजन की मेरे ट्रेन इंजन से आउटर के अन्दर टक्कर हो गई।

मेरे विरुद्ध आरोप पत्र में जी०आर० 3.0131, जी०आर० 14.00 तथा जी०आर 14.09 के उलंघन का आरोप लगाया गया था, जिसका मैंने उत्तर दिया था तथा मेरे आरोप न मानने की स्थिति में डी०ए०आर० जांच हुई। जांच के मध्य मे निर्वोध पाया गया, जेता कि जांच अधिकारी की रिपोर्ट से भी साफ है।

श्रीमान्जी, जिन नियमों के उलंघन का मुझ पर आरोप लगाया है, वे नियम गाड़ी काम करते समय जब ट्रेन को एक स्टेशन से दूसरी स्टेशन ले जाना होता है, तब लागू होते हैं। मैं नियम शान्तिंग करते समय लागू नहीं होते।

एक बी क्लास सिंगल लाइन स्टेशन पर, जहाँ लोअर क्वाडरेन्ट सिग्नल लगे होते हैं, शान्तिंग नियम जी०आर० 8.11 के अन्तर्गत होती है। "बी" क्लास सिंगल लाइन पर शान्तिंग का प्राविधान जी०आर 8.11 में है।

हालांकि ज्ञापन में उपरोक्त नियमों के उलंघन का आरोप मुझ पर नहीं है, फिर भी चूंकि मैं शान्तिंग कर रहा था, अतः इसका उल्लेख कर रहा हूँ क्योंकि उनका उलंघन एक अपराध होता है।

"बी" क्लास सिंगल लाइन पर स्टेशन तेक्शन में बिना रोक-टोक शान्तिंग का प्राविधान है। इस प्रकार के स्टेशन पर यदि ब्लॉक तेक्शन आने वाली गाड़ी से साफ हो तो आउटर सिग्नल तक शान्तिंग हो सकती है। इसमें आउटर तक शान्तिंग करने हेतु लाइन "ब्लॉक बैक" नहीं होती, यह "बी" क्लास स्टेशन की विशेषता है।

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T.C.
H. B. Vaslekar
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Arasthi
Shri Prakash Arasthi



इस प्रकार के स्टेशन पर अब आउटर के बाहर शनिंटिंग करनी होती है, तभी लाइन ब्लाक बैक करने का प्राविधान जी०आर० ३.१३ के अन्तर्गत है। जब ३.१३ के अन्तर्गत लाइन ब्लाक बैक करके शनिंटिंग करना हो तो जी०आर० ३.१५ के अन्तर्गत उल्लिखित अधिकारों में से किसी एक की आवश्यकता चालक को होती है।

जी०आर० ३.१५ के अन्तर्गत उल्लिखित अधिकारों में एक अधिकार " शनिंटिंग करने का लिखित अधिकार " भी है। हालांकि यह रूल मेरे रोल से सम्बन्धित नहीं है, फिर भी मुझे आउटर तक शनिंटिंग करने हेतु भी उत्तर रेलवे में प्रचलित लिखित अधिकार ओ०पी०टी०/७९ मिला हुआ था।

शनिंटिंग करने हेतु उल्लिखित नियमों में कहीं भी रडबांत स्टार्टर को पास करने हेतु अलग से लिखित अधिकार प्राप्त करने का उल्लेख नहीं है। न तो यू०ड० रेलवे में और न तो ड०रेलवे में। यू०ड० रेलवे में एक परम्परा के अन्तर्गत ऐसी शनिंटिंग करने हेतु चालक को एक तादे फार्म पर लिखकर दे दिया जाता है। यदि यह नियमों से आवद्ध होता तो कोई निश्चित प्रोफार्म होता, पर ऐसा नहीं है। इस परम्परा का निर्वाह ड० रेलवे में ओ०पी० टी०/७९ द्वारा किया जाता है। हालांकि उसके बने का भी कोई प्राविधान तत्संबंधी तथा तात्कालिक जनरल रूल बुक में नहीं है। और न ही गगरबारा के स्टेशन बकिंग रूल में है।

बैते मुझे न तो कोई चूक हुई है और न मैंने किसी नियम का उलंघन ही किया है, जो उपरोक्त विवरण तथा तथ्यों से साफ बाहिर है, परन्तु फिर भी एक तत्त्व-कर्मनिष्ठ कर्मचारी को असहनीय आघात इस दण्ड के माध्यम से दिया गया है।

अतः आपसे नम्र निवेदन है कि आप न्याय के मासदण्ड द्वारा तत्त्व तथा निष्ठा का आंकलन कर न्याय प्रदान करने की कृपा करें। जिस हेतु मैं तदा आपका आभारी रहूँगा।

निवेदन है कि यदि मेरे स्पष्टीकरण से कहीं आप असहमत हो तो कृपया मुझे व्यक्तिगत साक्षात्कार द्वारा अपना पक्ष प्रस्तुत करने की अनुकम्पा

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H. S. R. S. R. S. R.

Anasthi
Shiva Prakash Anasthi



A95

प्रदान करें, ताकि मैं सत्य साक्षित कर सकूँ।

" सत्य मेव जयते "

आपका विश्वासपात्र,

है/—

दिनांक: 19. 1. 88

§ सती अवस्थी §

चालक गुड्स

चारबाग रोड, पूठारे,

लखनऊ।

प्रतिलिपि प्रेषित :-

11 § प्रवर मांत्रिक अभियन्ता § मांत्रिक §

12 § लोको कोर मेन चारबाग रोड,

पूठारे, लखनऊ कार्यालय।



T. C.
H. S. Varshni
Adv.

Anasthi
Shiva Prakash Anasthi

In the Central Administrative Tribunal
Allahabad Bench
Sitting At Lucknow

19/6

89

बन्धुदालत श्रीमान

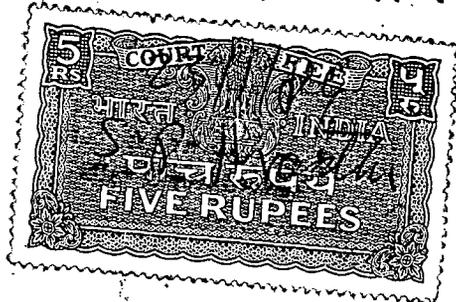
महोदय

वादी (मुद्दई)

~~मुद्दई~~ (मुद्दालेह)

का

वकालतनामा



SHIV PRAKASH AWASTHY

Applicant/Petitioner.

वादी (मुद्दई)

वनाम

opposite parties.

UNION OF INDIA AND OTHERS

प्रतिवादी (मुद्दालेह)

HARENDRA PRAKASH SRIVASTAVA

एडवोकेट

"Sriniketan", Gurdwara Road, Lucknow

महोदय वकील

नाम अदालत
नं० मुकद्दमा
नाम फरीकैन

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

हस्ताक्षर: शिव प्रकाश अवस्थी

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक 23/1/89

महीना

Accepted for
the applicant
Hon'ble Law
23/1/89
A.A. P. (T) De
23/1/89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW.

OIA No- 35
~~1990~~ OF 1990

A97

Sheo Prakash Awasthy Petitioner.

Versus

Union of India and others. Opp-parties.

REPLY ON BEHALF OF OPPOSITE PARTIES 1 TO 3.

I, Keshav Deo aged about
44 years, son of D R Arya
presently working as So DME / ME Rly
in the office of Dist Rly manager Lucknow
do hereby solemnly affirm and state on oath as under:

1. That I have been duly authorised on behalf of the respondent to file the instant written reply and is fully conversant with the facts of the case deposed to hereunder.

2. That in reply to the contents of paragraph no. 1 of the application ~~is~~ it is submitted that the same is directed against the order of punishment dated 16.12.1987 whereby the petitioner has been reverted from the post of Engine Driver (C) to the post of Shunter. Rest of the averments as made are not admitted. Punishment is perfectly

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*Filed today
16/1/91*

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justified and as such it does not warrant interference by this Hon'ble Court in any manner. The said order of punishment as such does not suffer from any illegality . ^{Principle} ~~Subject~~ of natural justice had been strictly observed and adhered to as in the case at hand.

3. That in reply to the contents of paragraph no. 2 of the petition only this much is admitted that the petitioner was initially appointed as Engine ~~xxxxx~~ Cleaner. Rest of the averments as made are not admitted as drafted. Since the petitioner was involved in an instant case therefore until enquiry under discipline and appeal rules was in progress. There was no question of promotion as alleged. The averments contrary to the same are denied.

4. That in reply to the contents of paragraph no. 3 accident as alleged is not disputed. Since, he was involved in the said accident ,his responsibility for the infringement of the rules can not be observed.

5. That the contents of paragraph no. 4 are denied. The petitioner was solely responsible for the said accident.

6. That the contents of paragraph no. 5 are not admitted as drafted. Load was within permissible limit of the schedule rules. Nothing contrary to the same are denied.

THE SECRETARY TO GOVT.

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7. That in reply to the contents of paragraph no. 6 it is submitted that shunting order was issued to the petitioner for backing the load from Line/6 to 7 and the line starter for the purpose of shunting was also taken off. The driver i.e. petitioner, however, was not given any authority to pass the Advance Starter in "ON" position and as such he was not authorised to go beyond Advance Starter irrespective of the facts whether the load can be ~~back~~ backed or not. Driver is permitted to pass the Advance Starter only when authorised to do so. The petitioner in the case at hand was not authorised to pass the Advance Starter.

8. That the contents of paragraph no. 7 are not admitted as drafted. He violated the rules and was not careful as a result of which the accident occurred. It was solely on account of the negligence shown by the petitioner that the mishap occurred for which the petitioner is fully liable.

9. That in reply to the contents of paragraph no. 8 it is not disputed that shunting upto 1st stop signal can be performed but only after getting authority to pass the advance starter in "ON" position which the petitioner failed to comply and as such pass the signal at danger.

10. That the contents of paragraphs no. 9 and 10 are not disputed.



11. That the contents of paragraphs no. 11 and 12 are not admitted as drafted. The averment appears to be just an after thought. It has been established that the weather was ~~g~~ foggy and the speed of Marudhar Express was more than 30 kms. per hour which otherwise would have resulted in a serious accident . It was not as result of efforts by the petitioner, as alleged but was due to the controlled speed of 513 up that the accident could not take a serious shape.

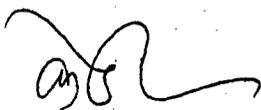
12. That the contents of paragraph no. 13 are not admitted as such are denied.

13. That the contents of paragraph no. 14 do not call for reply.

14. That in reply to the contents of paragraph no. 15 it is not disputed that chargesheet was in English. The petitioner being a matriculate was in position to read and understand the same.

15. That the contents of paragraph no. 16 are are denied. All the relevant papers which form the basis of the charge and demand were timely supplied to the petitioner during the course of enquiry.

16. That the contents of paragraph no. 17 are not admitted.



A101

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17. That the contents of paragraphs no. 18 are not admitted as drafted. Since the documents which formed the basis of the charge and it was said to be related upon, was made available to the petitioner, therefore, the article as alleged was meaningless. The petitioner, in order to delay the proceedings from time to time, made futile request^{and} the documents whatsoever demanded were supplied during the course of enquiry.

18. That the contents of paragraph no. 20 are not admitted as drafted and as such are denied. There was no relationship between Sukhchain Singh and Taran Singh as alleged.

19. That the contents of paragraph no. 21 are not admitted as drafted and as such are denied. There was absolutely no question of change of the enquiry officer. There was also no violation of principle ~~20x~~ of natural justice as alleged.

20. That the contents of paragraphs no. 22 to 24 are not disputed.

21. That the contents of paragraph no. 25 are denied. General Subsidiary Rules are the rules which are to be followed by the Railway Staff in the passage of the movement of the train. The petitioner has not adhered to the provisions of the said rules as a result of which the accident took place.



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22. That the contents of paragraphs no. 26 to 31 are not disputed.

23. That in reply to the contents of paragraph no. 32 it is submitted that the petitioner was not permitted or authorised to pass the advance starter in "ON" position. Authorisation for the said movement is given in writing.

24. That the contents of paragraph no. 33 are not admitted as drafted. No order whatsoever was given by anybody.

25. That the contents of paragraph no. 34 are denied. The petitioner is fully responsible for the accident and violating ^{the rules} of shunting operations.

26. That the contents of paragraph no. 35 are denied. The petitioner had no authority to pass the advance starter in 'ON' position unless authorise to do so in writing.

27. That the contents of paragraph no. 36 are not admitted as drafted. As already pointed out the driver has no authority to pass the advance starter in 'ON' position unless authorised to do so in writing.

28. That the contents of paragraph no. 37 are not admitted as drafted. Before proceeding the driver had to examine every instruction and satisfy himself



प्रवर मण्डल यांत्रिक इंजीनियर
पु. उ. र. म. म. म.

A103

~~xxx~~ as to whether the authority given to him is correct or not as per rules.

29. That the contents of paragraphs no. 38 and 39 are not admitted as drafted. Shunting upto utmost signal is permitted only in special circumstances. In the case at hand driver failed to observe the rules and as such was guilty, he cannot escape from the responsibility.

30. That the contents of paragraph no. 40 are not disputed.

in reply to
31. That the contents of paragraph no. 41 it is submitted that the disciplinary authority is not bound to accept the findings of the Enquiry Officer and he can give his own findings which in the case at hand has ~~xxx~~ rightly been done.

32. That the contents of paragraphs no. 42 to 43 do not call for reply.

33. That the contents of paragraph no. 44 are denied.

34. That the contents of paragraph no. 45 are not disputed.

35. That in reply to the contents of paragraph no. 46 it is submitted that the apparent authority after considering the entire facts and circumstances

शुभर मण्डल यांत्रिक इंजीनियर,
पुणे-४०, लखनऊ

A104

has rightly rejected the appeal.

36. That the contents of paragraph no. 47 are denied .

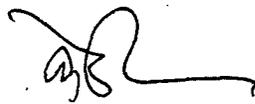
37. That the contents of paragraph no. 48 are denied. Proper reasons have been ~~xxxxxxxx~~ recorded by the reviewing authority.

38. That the contents of paragraph no. 49 are not admitted as drafted.

39. That the contents of paragraphs no. 50 and 51 are not admitted as drafted. The order has been passed by the Apparent Authority concerned but the result of the appeal has been conveyed to the petitioner by an officer of the Railway Administration which in no manner is bad.

40. That the contents of paragraph no. 52 are emphatically denied .

41. That it is submitted that none of grounds set-forth by the petitioner in his petition warrants any interference. ~~in xxxxxxxx of~~ Thus the petition is totally devoid of merit and is liable to be dismissed.



प्रमुख मण्डल यांत्रिक इंजीनियर,
पुणे-२०, लखनऊ

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A 105

42. That the punishment awarded to the petitioner is perfectly justified and as such no interference is called for. Thus the petition is liable to be dismissed with cost.

Lucknow, dated,
.4.1990


अवर मण्डल-यांत्रिक इन्जीनियर
Deponent
पुस्तकालय, लखनऊ

Verification

I, above-named do hereby verify that the contents of paragraphs of this written statement are based on personal knowledge and that of paragraphs are based on information derived from the records which are believed to be true and that of paragraphs are based on legal advice. No part of it is false and nothing material has been concealed. So help me Go

Lucknow, dated,
.4.1990


Deponent.
अवर मण्डल-यांत्रिक इन्जीनियर
पुस्तकालय, लखनऊ

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Before the Central Administrative Tribunal,
Circuit Bench, Lucknow

REJOINDER AFFIDAVIT
to the Reply on behalf of Opposite Parties No.1 to 3

IN re:

O.A.No. 35 of 1989

Shiv Prakash Awasthi Petitioner

Versus

Union of India & others..... Opposite Parties

*Filed today
16/7/91*

I, Shiv Prakash Awasthi, aged about 50 years, son of Sri Mehndi Lal Awasthi, R/o 26, Charas Mandi, Dugawan, Lucknow, do hereby solemnly affirm on oath and state as under:-

Awasthi

1. That the deponent is the petitioner in the abovenoted application, as such, he is fully conversant with the facts of the case. He has been also/read over and explained the contents of the reply/counter affidavit filed on behalf of Opposite Parties No.1 to 3 and having understood the same, he is in a position to submit parawise reply to the same as under.

2. That the contents of Paragraph 1 of the

counter affidavit/reply calls for no reply.

3. That in reply to the contents of paragraph 2 of the reply it is stated that the application is directed against the order of punishment dated 16.12.87 aswell as the order dated 2.3.88 passed by the appellate authority whereby the appellate authority has rejected the petitioner's appeal and up-held the order of reversion passed against the petitioner dated 16.12.87 without application of mind by means of a non-speaking order. Rest of the contents of paragraph under reply are denied as incorrect and in reply to the same contents of Paragraph 1 of the Original Application are reiterated. Order of reversion passed against the petitioner is absolutely illegal, arbitrary, malafide and is liable to be set-aside by this Hon'ble Court.

4. That the contents of Paragraph 3 of the reply are denied as incorrect, false and baseless and in reply to the same contents of paragraph 2 of the application are reiterated.

5. That ~~the~~ in reply to the contents of Para 4 of the reply contents of paragraph 3 of the application are reiterated as correct averments of the facts. The accident had occurred not on account of any negligence on the part of the petitioner but on account of the wrong directions issued to him by the authorities concerned for which he cannot be held responsible.

Arasthi

A108

6. That the contents of Paragraph 5 of the reply are absolutely false, baseless and incorrect and hence denied. In reply to the same contents of Paragraph 4 of the application are reiterated. The petitioner is in no-way responsible for the accident which had occurred on 27.12.1985. On the contrary it was on account of the wrong orders passed by Asstt. Station Master Sri J.C. Tandon and the overshooting done by the Driver of Marudhar Express Sri Taran Singh.

7. That the contents of Paragraph 6 of the reply ~~is~~ are denied as incorrect, false and baseless and in reply to the same contents of Para 5 of the application are reiterated as correct averments of the fact.

8. That the contents of Paragraph 7 of the reply are vehemently denied as incorrect, false and baseless and in reply to the same contents of Paragraph 6 of the application are reiterated. The Opposite Parties are liable to strict proof regarding the correctness of the averments made in the paragraph under reply. The petitioner was under the valid order (O.P.T.-79) to move his train to the junction line Nos 6 & 7 and then after reaching to common line to back his train on line No.7 as per the said order (O.P.T.-79).

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9. That the contents of paragraph 8 of the reply are denied as incorrect, false and baseless

A109

and in reply to the same contents of paragraph 7 of the application are reiterated. Opposite Parties has not stated the relevant rules which are said to have been violated by the petitioner and which action is said to have resulted in the accident which occurred on the said date. As a matter of fact, the Inquiry Officer had come to the conclusion that the petitioner had not violated any rule as alleged in the chargesheet dated 11.3.87 for which the petitioner can be held responsible.

10. That the contents of Paragraph 9 of the counter affidavit/reply are denied in so far as it is inconsistent with the averments made in Paragraph 8 of the application and in reply to this paragraph contents of paragraph 8 of the application are reiterated. The petitioner had in no-way been negligent in the performance of his duty and as a matter of fact he had complied with all the orders issued to him at the time of movement of his train.

11. That the contents of paragraph 10 of the reply needs no comments.

12. That the contents of Paragraph 11 of the counter affidavit/reply are denied as false, incorrect and baseless and in reply to the same contents of Paragraphs 11 & 12 of the application are reiterated. In reply to this paragraph, it is once again reiterated that/^{for}the fore-sighted courage and presence of mind shown by the petitioner the accident could not have been much serious in nature

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A110

otherwise there would have been great loss of valuable property of the Railways aswell as lives of certain individuals if the petitioner had not been vigilant in performance of his duties as the Driver of the train in question.

13. That the contents of paragraph 12 of the reply are denied as incorrect, and in reply to the same contents of paragraph 13 of the application are reiterated.

14. That the contents of paragraph 13 of the reply needs no comments.

15. That the contents of paragraph 14 of the reply are denied as incorrect in so far as they are inconsistent with the stand of the petitioner taken in paragraph 15 of the original application. The petitioner not being conversant with the English language, could not understand the contents of the chargesheet issued to him on 11.3.1987.

16. That the contents of paragraph 15 of the reply are denied as incorrect and in reply to the same contents of Paragraph 16 of the application are reiterated as correct. Despite persistent request made by the petitioner the relevant papers were not supplied to him during the course of inquiry in vioation of principles of natural justice, equity and good-conscience.

Arasth

17. That the contents of Paragraph 16 of the reply are denied as incorrect and in reply to the same contents of Para 17 of application are reiterated.

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18. That the contents of paragraph 17 of the reply are denied as incorrect, false and baseless and in reply to the same contents of Paragraphs 18 and 19 of the application are reiterated. All the requests made by the petitioner were bonafide and the same were made for the purposes of establishing his innocence in the matter. There is no question of petitioner's doing anything with a view to delay the inquiry proceedings as alleged in the paragraph under reply. Moreover, all the documents demanded by the petitioner which were necessary for the purposes of establishing the innocence, were not supplied to the petitioner in violation of principles of natural justice.

19. That the contents of Paragraph 18 of the reply are denied as incorrect and in reply to the same contents of Paragraph 20 of the application are reiterated.

20. That the contents of Paragraph 19 of the counter affidavit/reply are denied as incorrect and in reply to the same contents of Paragraph 21 of the application are reiterated.

21. That the contents of Paragraph 20 of the counter affidavit calls for no reply.

22. That the contents of paragraph 21 of the counter affidavit/reply are absolutely false and baseless and are, therefore, vehemently denied

Arasth

A112

and in reply to the same contents of paragraph 25 of the application are reiterated. The petitioner who was performing the shunting operation, was not governed by the general rules he is said to have violated as has been held by the Inquiry Officer. Hence, there is no question of the accident having been occurred on account of the violation of general rules as alleged in the chargesheet, as alleged in the paragraph under reply. On the contrary, the petitioner was under valid orders to shunt his train.

23. That the contents of Paragraph 22 of the reply needs no comments.

24. That the contents of Paragraph 23 of the reply are denied as incorrect and in reply to the same contents of paragraph 32 of the application are reiterated. Opposite Parties are liable to strict proof regarding the correctness of the assertions made in the paragraph under reply.

25. That the contents of Paragraph 24 of the reply are denied as incorrect and in reply to the same contents of Paragraph 33 of the application are reiterated as correct.

26. That the contents of paragraph 25 of the reply are denied as absolutely false, baseless and incorrect and in reply to the same contents of Paragraph 34 of the application are reiterated. The petitioner in no way can be held responsible

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A113

for the accident which had occurred specially in view of the fact that he had not violated any order or rule which could have resulted in the accident. On the contrary he had done his best to avert the accident which ^{have} might/had disastrous consequences.

27. That the contents of Paragraphs 26 & 27 of the counter affidavit are denied as incorrect and in reply to the same contents of Paragraphs 35 & 36 of the application are reiterated as correct. In reply to this paragraph it is once again stated that the petitioner had not violated any of the rules or order which could have been the cause of the accident. On the contrary, the petitioner was under valid order to do the shunting operation. Opposite Parties are liable to strict proof regarding the correctness of the assertions/^{made} in the paragraph under reply.

28. That the contents of Paragraph 28 of the reply are denied as incorrect, false and baseless and in reply to the same contents of Paragraph 37 of the application are reiterated. The petitioner has duly examined the O.P.T.-79 orders issued by the Station Master, Magarwara before starting his train. Hence it cannot be said that the petitioner had not satisfied himself as to the correctness of the order issued to him as per the Rules.

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29. That the contents of Paragraph 29 of the counter affidavit/reply are vehemently denied as

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incorrect, false and baseless and in reply to the same contents of Paragraphs 38 & 39 of the application are reiterated. There is no question of the petitioner having failed to observe any rule or order which could have resulted in the accident. Hence, he cannot in any way be held responsible or ~~pun~~ or punished for an act in respect of which he was not guilty.

30. That the contents of Paragraph 30 of the reply needs no comments.

31. That the contents of Paragraph 31 of the reply are denied as absolutely incorrect, false and baseless and in reply to the same contents of Paragraph 41 of the application are reiterated. The disciplinary authority has not at all applied its mind to the Inquiry report submitted by the Inquiry Officer, in holding the petitioner guilty of the charges levelled against him, specially in view of the fact that the Inquiry Officer had exonerated the petitioner of the charges and categorically held that the charges levelled against him were not approved and the petitioner had not violated any of the rules, in respect of which he can be held guilty. The disciplinary authority without applying its mind to the findings submitted by the Inquiry Officer has recorded his own findings ^{without appraising the evidence on record} by means of a non-speaking order which he cannot ~~be~~ do under the law as has been held by Hon'ble Supreme Court in a number of cases.

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A115

32. That the contents of Paragraph 32 of the reply needs no comments.

33. That the contents of Paragraph 33 of the reply are denied as incorrect and in reply to the same contents of paragraph 44 of the application are reiterated.

34. That the contents of Paragraph 34 of the reply needs no comments.

35. That the contents of paragraph 35 of the reply are vehemently denied and in reply to the same contents of Paragraph 46 of the application are reiterated. The ~~xxxxxx~~ appellate authority has rejected the petitioner's appeal in a most illegal and arbitrary manner by means of a non-speaking order without application of mind.

36. That the contents of Paragraph 36 of the counter affidavit are denied as incorrect and in reply to the same contents of Paragraph 47 of the application are reiterated.

37. That the contents of Paragraph 37 of the reply are denied as incorrect and in reply to the same contents of Paragraph 48 of the application are reiterated as correct. No cogent reasons whatsoever, have been recorded by the reviewing authority as alleged in the paragraph under reply.

Grashtu

38. That the contents of paragraph 38 of the reply are denied as incorrect and in reply to



same contents of Paragraph 49 of the application are reiterated.

39. That the contents of Paragraph 39 of the reply are denied as incorrect and in reply to the same contents of Paragraphs 50 & 51 of the application are reiterated. The impugned appellate order cannot be sustained in view of the fact that it has not been signed by the competent authority.

40. That the contents of Paragraph 40 of the reply are denied as incorrect and in reply to the same contents of Paragraph 52 of the application are reiterated as correct.

41. That the contents of Paragraph 41 of the reply are denied as incorrect, false and baseless and in reply to the same the deponent is advised to state that all the grounds raised by the petitioner in the application, are legally tenable in the eyes of law and the application filed by him is fully of merits and is liable to be allowed as such with costs.

42. That the contents of Paragraph 42 of the counter affidavit/reply are denied as incorrect and in reply to the same deponent is advised to state that the punishment awarded to the petitioner is absolutely illegal, arbitrary, malafide and is liable to be set-aside by this Hon'ble Court.

Lucknow:Dated:
January _____, 1991.

Deponent

[Handwritten Signature]

A17

VERIFICATION

I, the abovenamed deponent, do hereby verify that the contents of Paragraphs 1 to 30 of the rejoinder affidavit are true to the own knowledge of the deponent; and those of Paragraphs 31 to 42 of the same are believed to be true on the basis of legal advice received. No part of it is false and nothing material has been concealed.

So help me God.

Lucknow:Dated:
April____, 1991.



Deponent

VAKALATNAMA

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Before
in the Court of

The Central Administrative Tribunal Bench Lucknow

OA No. 35 of 1989 (L)

Shri Prakash Awasthi

Versus

Union of India and others

I/We. K. P. Singh Divisional Railway Manager
North Eastern Rly. Lucknow

do hereby appoint and authorise Shri. A. N. Verma

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.

I/We hereby agree to ratify all acts done by the aforesaid Shri. A. N. Verma
Railway Advocate. Lucknow

Filed today
26/3/90

in pursuance of this authority.

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

day of..... 198..

Accepted
Advocate

OA No 3

26/3/90
(K. P. Singh)
मंडल क्षेत्र के अध्यक्ष,
पूर्वोक्त रेलवे, लखनऊ

वकालतनामा

C-30

..... The Central Administrative Tribunal Bench के समक्ष

Lucknow

O A No. 35 of 89 (L)

वादी प्रतिवादी Shri Prakash Awasthi

दावेदार अपीलार्थी

तिवादी वादी Union of India & others

अर्जीदार प्रत्यार्थी

भारत के राष्ट्रपति इसके द्वारा श्री A. N. Verma Railway Advocate
Lucknow

को उपर्युक्त वाद/अपील/कार्यवाही में भारत संघ की ओर से उपसंजात होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने के लिए दस्तावेज दाखिल करने और वापस लेने, न्यायालय की आदेशिका स्वीकार करने, काउन्सेल, अधिवक्ता या प्लीडर नियुक्त करने और उन्हें अनुदेश देने, स्पष्ट वापस लेने और उसका निक्षेप करने तथा उपर्युक्त वाद/अपील/कार्यवाही में भारत सरकार का साधारण प्रतिनिधित्व करने और भारत संघ के लिए इस प्रकार उपसंजात होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने की अनुषांगिक सभी बात करने के लिए नियुक्त और प्राधिकृत करते हैं। किन्तु यह इस शर्त के अधीन रहते हुए होगा कि जब तक भारत सरकार के समुचित प्राधिकारी से उस निमित्त पहले ही स्पष्ट प्राधिकार प्राप्त नहीं कर लिया गया है, तब तक उक्त काउन्सेल/अधि वक्ता/प्लीडर या उसके द्वारा नियुक्त काउन्सेल/अधिवक्ता/प्लीडर सभी या किसी प्रतिवादी/प्रत्यार्थी/अपीलार्थी/वादी/विरोधी पक्षकार के विरुद्ध उस वाद/अपील/दावा/प्रतिरक्षक/कार्यवाही को पूर्णतः या भागतः न तो वापस लेगा, न उसका अधित्यजन करेगा, न ऐसा कोई करार करेगा या समझौता करेगा जिसके द्वारा वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित की जाए और न उससे उद्भूत या उसमें विवादग्रस्त सभी या किसी विषय को मध्यस्थ को निष्पन्न करेगा, परन्तु आपवादिक परिस्थितियों में जब भारत सरकार के समुचित प्राधिकारी से परामर्श करने के लिए पर्याप्त समय नहीं है और वाद में समझौता करने में लोप करना निश्चित रूप से भारत सरकार के हित के प्रतिकूल होगा तो उक्त प्लीडर/अधिवक्ता/ काउन्सेल ऐसा कोई करार या समझौता कर सकेगा जिसके द्वारा उक्त वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित हो जाय और ऐसे प्रत्येक मामले में काउन्सेल/अधिवक्ता/प्लीडर करार या समझौता करने के विशेष कारण बताते हुए उक्त अधिकारी को तत्काल संसूचित करेगा।

Filed today 20/1/89

राष्ट्रपति इस प्राधिकार के अनुक्रम में श्री A. N. Verma Rly. Advocate
Lucknow

द्वारा किए गए सभी कार्यों का अनुसमर्थन करने की सहमत है।

इसके साक्ष्यस्वरूप भारत के राष्ट्रपति के लिए और उनकी ओर से इस विलेख को आज तारीख को सम्यक् रूप से निष्पादित किया जाता है।

तारीख 19

Accepted

Received

No-2

(G. C. Budhlakote)
निष्पादन करने वाले अधिकारी का पदनाम
Sr DME/Lucknow