IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Registration O.A.No. 231 of 1990(L)

Gur Prasad .... Applicant

Vs.

Union of India & Others.... Respondents

Hon'ble Mr.Justice U.C.Srivastava,V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

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

The applicant who was working as a Porter under the Station Master Nigohan,Northern Railway,Lucknow Division was chargesheeted under major penalty by the Assistant Operating Superintendent in which it was alleged that he has violated Rule 3 (i), (ii) and (iii) of the Railway Servants Conduct Rules. An Inquiry Officer was appointed and the inquiry proceeded against the applicant. The applicant submitted his reply to the said chargesheet. Thereafter Inquiry Officer held him guilty and the Disciplinary Authority on the basis of the report of the Inquiry Officer punished the applicant, and his pay was reduced. The applicant filed an appeal against the said punishment order which was also dismissed by a non speaking order.

2. On behalf of the applicant the inquiry proceedings has been challenged on variety of grounds, and it has also been contended that he was not allowed to engage a defence helper and further stated that the copy of the report of the Station Master was not supplied to him and he was deprived various other opportunities. It has also been stated that the Inquiry Officer's report was also not given to him to enable him to make a effective representation against the same, and the same violates the principle of natural justice, as has been held in the case of

Union of India & others Vs. Mohd.Ramzan Khan,AIR 1991 SC 471. All these are the matters which required attention of the Appellate Authority. The Appellate Authority here in this case also enjoined upon it to pass a speaking order but he did not pass the speaking order and it appears that no personal hearing was also given to the applicant. Accordingly this application is allowed and the Appellate order dated 28.12.89 is quashed. The Appellate Authority is directed to decide the application on merits after giving personal hearing to the applicant taking into consideration all the pleas raised by him. The Appellate Authority shall pass a reasoned and speaking order. Let appeal be decided by the Appellate Authority within a period of 2 months from the date of communication of this order.No order as to costs

Member(A)

Vice-Chairman.

27th January,1992,Lucknow.

(sph)

ANNEX

ministrative Tribunal
nch. Bench - Lucknow

1 /90
asae)

Versus

Applica

ding

Respondent

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distinguished

25/7/90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. [illegible] of 1989(S)

APPLICANT(S) [illegible]

RESPONDENT(S) [illegible]

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 ?	Yes
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/Vakalatnama been filed ?	Yes
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	Yes
6. Has the certified copy/copies of the order(s) against which the application is made been filed?	Yes
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
c) Are the documents referred to in (a) above neatly typed in double space ?	Yes
8. Has the index of documents been filed and paging done properly ?	Yes
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?	Yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	No

Particulars to be Examined	Endorsement as to result of examination
11. Are the application/duplicate copy/spare copies signed ?	Y
12. Are extra copies of the application with Annexures filed ?	Y
a) Identical with the Original ?	
b) Defective ?	
c) Wanting in Annexures	
fee _____ pagesNos _____ ?	
13. Are cost file size envelopes bearing full addresses of the respondents been filed ?	No
14. Are the given address the registered address ?	Y
15. Are the names of the parties stated in the copies tally with those mentioned in the application ?	Y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true ?	Y
17. Are the facts of the case mentioned in item no. 6 of the application ?	Y
a) Concise ?	
b) Under distinct heads ?	
c) Numbered consectively ?	
d) Typed in double space on one side of the paper ?	
18. Have the particulars for interim order prayed for indicated with reasons ?	No
19. Whether all the remedies have been exhausted.	Y

Sinesh/

(1) O.A. No. 231 of 1990 (L)

(1)

26.7.1990 Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. K. Obayya, A.M.

Heard the counsel.

Admit. Counter may be filed within 4 weeks, rejoinder within 2 weeks, list the case on 17.9.90 before D.R. FOR fixing a date.

Sd/- Sd/-
A.M. V.C.

rrm/

OR
Notice issued on 1-8-90

(2)

17.9.90

Put before Hon'ble Bench on 12.11.90

(3)

12.11.90 Hon Mr. Justice K Nath, V.C.
Hon Mr. M.Y. Prabhakar, AM

Shri Anil Srivastava appears on behalf of respondents and requests for and is allowed 4 weeks time to file counter. Rejoinder may be filed within 2 weeks thereafter. List before D.R.(J) on 1-1-91

AM

OR
Notices were issued on 1.8.90. Neither reply nor any unserved report cover has been received back.
S.F.O.
11/11/90

(4 weeks granted)

V.C.

(5)

30.1.91 - No sitting adj to 22.2.91

(6)

22.2.91 - No sitting adj to 10.4.91

CA filed

0.7231 80.C

20.5.1991

Hon'ble Mr.Justice U.C.Srivastava,V.C.
Hon'ble Mr.S.B.Sorthia,A.M.

~~Delay~~
Application for condoning delay in filing counter affidavit pd
Delay condoned. Keep it on record. Counter filed
today. Keep it on record. The case is now ready
for hearing. It may be listed for final hearing on
28-8-1991.

A.M. V.C.

(ss)

28.8.91 No sitting adjd to 1.11.91
Sd

1.11.91 — Nostitg of D.B. case is
adjourned for hearing to
27.1.92.

2

A7

25/7/90 / 82 Cy

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT LUCKNOW.

Registration No.: O.A. No. 231 of 90 (L)

Gur Prasad Vs. Union of India and others.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT 1985.

Compilation No.1.

INDEX.

S.No:	Description of documents relied Upon.	Page Nos.
1.	Application.	1 to 9
2.	Annexure No: A-4 Punishment Order of Disciplinary authority dated 4.9.89.	~~9~~ 10
3.	Annexure No: A-7. Appellate order dated 28.12.89.	11 ~~10~~
4.	Vakalatnama.	~~11~~ 12

Signature of the Applicant.

For use in Tribunal's Office.

Date of filing.

filed today
25/7/90

Signature
For Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
CIRCUIT BENCH.

C.A. No. 231/90(L)

Registration No. of 1990.

Gur Prasad, aged about 50 years son of Sri Sarju Prasad, resident of Village Karora, District Lucknow employed as Porter, Northern Railway, Nigohan Station, Lucknow Division.

..... Applicant.

Versus.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. Assistant Operating Superintendent, N.Railway, D.R.M.Office, Lucknow.

3. The Divisional Operating Superintendent-I, N.Rly., Hazratganj, D.R.M.Office, Lucknow.

..... Respondents.

DETAILS OF APPLICATION:

1. Of Punishment Notice No./Order No.TG74/Misc./G.Man/NHN/88 dated 04.9.1989 by reducing the Pay from Rs.995/- to Rs.775/- with effect from 1.9.89 passed by Assistant Operating Superintendent(M), N.Railway, Lucknow.

2. Appellate Order No.TG dated 28.12.89 rejecting the appeal of the applicant by Divisional - Operating Superintendent -I, Northern Railway, Lucknow.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION: The applicant further

Contd...2.

declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE:-

1. That The applicant is a Porter under Station Master Nigohan, Northern Railway, Lucknow Division.

2. That the Applicant was working in Grade Rs. Rs.775/- -1025/- .

3. That the applicant was issued chargesheet under Major Penalty by Assistant Operating Superintendent(General), N.Railway, Lucknow vide Memorandum No.TG74/Misc/G/Man/NHH/88 dated 19.5.88 in which it was alleged that the applicant has violated Rule 3(i),(ii) and (iii) of the Railway Servants Conduct Rules. Photo-stat copy of the said Memorandum is annexed as Annexure No.A-1.

Annexure No.A-1. Photostat copy of the Memorandum.

4. That the applicant ~~replied~~ submitted incomplete explanation and objection vide applicant's letter No.1/GP/Porter/NHH/88 dated 16.7.88.

5. That the applicant has stated in his incomplete explanation to the Memorandum that the Station-Master, Nigohan, was prejudiced against the applicant because the applicant did not co-operate with the illegal activities of the Station Master Shri B.B.Singh.

6. That the applicant has also stated in the aforesaid letter that the Chargesheet is illegal because date, year and period and time have not been given in the list of witnesses & imputation of Misconduct & misbehaviour. The report of the

Contd...3.

Annexure No:A-2. (Reply to charge-sheet).

station Master, a copy of which was asked for was not supplied to the Applicant. Photostat copy of the reply is annexed as Annexure No.A-2.

7. That the Chargesheet was not in order because on account of absence of specific points it is vague and indefinite.

8. That the Inquiry was conducted by the Inquiry Officer and the Inquiry Officer proceeded ~~with the help~~ in absence of the Defence Helper of the Applicant.

Annexure No.A3. Inquiry Report & evidences of witnesses.

9. That the Inquiry was conducted by the Inquiry Officer and held the applicant responsible in some of the allegations. Copy of the Inquiry Report and statements/evidences of the witnesses are annexed as Annexure No: A-3.

Annexure No: A-4. Punishment Order of the Disciplinary authority.

10. That the applicant was served with punishment order No.TG74/Misc/G.Man/NHN/88 dated 4.9.89 by reducing the pay of the applicant from ~~B.B.~~ Rs.995/- to Rs.735/- with effect from 1.9.89, by the Disciplinary Authority. Photostat copy of the punishment order is annexed as Annexure No A-4.

Annexure No.A-5. Defence Note.

11. That the applicant's defence helper gave defence note dated 19.5.88 but its contents were not considered by the Disciplinary authority Photo-stat copy of the Defence Note is annexed as Annexure No: A-5.

12. That aggrieved with the decision of the Disciplinary authority the applicant preferred an appeal to the Appellate authority on 18.10.89 challenging the punishment on various grounds i.e. Vagueness and indefiniteness of the charge-sheet, non-supply of documents (relevant) including report of the Station Master, non-supply of duty

Contd...4.

A11

list, denial of opportunity to the applicant to cross examination Sri B.B.Singh, Station Master, Nigohan, and cross examining of the applicant by the Inquiry Officer. Photo-stat copy of the appeal dated 18.10.89 is annexed as Annexure No.A-6.

Annexure No.A-6. Appeal dt.18.10.89.

13. That the ~~disciplinary~~ Appellate authority up-held the decision of the disciplinary authority saying that the arguments are not plausible. This order is not in speaking order as the Appellate Authority has not recorded the reasons on which the punishment was up-held. A Photostat copy of the Appellate Order dated 28.12.89 is Annexed as Annexure No.A-7.

Annexure No: A-7. Appellate Order dated 28.12.89.

14. That the Inquiry Report is vitiated because the Inquiry Officer proceeded against the Imputation of Misconduct & Misbehaviour and gave the facts in contravention of the chargesheet.

15. That the relevant documents including the report of the Station Master, Nigohan was not su plied to the Charged employee inspite of several requests.

16. That the Inquiry Officer cross examined the applicant which has vitiated the Inquiry.

17. That the Inquiry Officer imported his own version and facts in the Inquiry.

18. That the Inquiry Officer proceeded without the Defence Helper.

19. That the applicant was denied reasonable opportunity for not cross examining the witnesses.

19A- That the suspension order was not served on the applicant; the station master verbally communicated the suspension.

~~20. That the order of the Disciplinary~~

DR 5/2/11

A12

20. That the statement of the Station Master Nigohan Shri B.B.Singh, was not recorded by the Enquiry Officer and the Enquiry Officer only put certain questions which has vitiated the enquiry proceedings.

21. That a Statement of the Imputation of Misconduct or Misbehaviour in respect of each article of charge containing relevant facts, denial and admission by the applicant has not been shown in Annexure No.II of the Chargesheet.

22. That Annexure No.II is without charge in SF-5 However, the clarifications regarding the facts is given as under:

a) That the sick and fit certificates from 21.3.86 to 3.4.86 was given to S.M.Nigohan on which he allowed duties.

b) That the Safety Camp Course was to be started from 11.4.86 and the S.M.Nigohan told to the applicant to go in next course and the applicant availed leave for 9.4. and 10.4.90.

c) That the Asstt.Operating Superintendent/C,N.Rly., Lucknow allowed the applicant duty from 11.4.86.

d) That the period from 13.5.86 to 3.6.86 was agreed in the P.N.M.Meeting to be regularised and period from 5.6.86 to 13.6.86 proper P.M.C.was submitted and matter was decided in the P.N.M.Meeting. Period from 27.6.86 and 28.~~6~~7.86 to 12.7.86 has been admitted by the Railway Administration in the P.N.M.Meeting. Period from 13.8.86 to 21.8.86, the applicant was under the treatment of Railway Doctor. For the period 22.10.86 to 28.10.86 and also upto 21.11.86 the P.M.C.was accepted being in order. However, the payment for the ~~above~~ period have been received by me.

23. That the order of disciplinary

Contd...6.

Authority as well as the Appellate Authority suffer Legal informity as these orders are not in speaking order and the points mentioned in the applicant's Defence Note as well as the Appeal, have not been considered at all and these authorities did not apply their mind in considering the facts.

21. That the applicant always used to take medicine from D.M.O.,N.Railway,Rae Bareli because the medicine given by the D.M.O.,N.Rly.,Rae Bareli responded to the disease of the applicant. It was the duty of the Railway Doctor not to take the applicant in sick list and should have directed the applicant to the proper Doctor. After all the applicant reported sick under Railway Doctor the period of which was regularised.

5. GROUNDS FOR RELIEF: WITH LEGAL PROVISIONS:

1. Because the chargesheet for Major Penalty is vague and indefinite so the same is against Rule 9 of the D&A Rules of the Railway Servants 1968 and also contravenes 311 of the Indian Constitution.

2. Because the documents required by the charged employee were not supplied.

3. Because the Inquiry Officer cross-examined the applicant and did not afford the opportunity to the applicant to cross-examine the prosecution witnesses, and in this way there was complete violation of principles of natural justice.

Contd...6.

4. Because the cross-examination of the applicant by the Inquiry Officer on facts has vitiated the Inquiry.

5. Because the Inquiry Officer holding the charges as proved without any support of evidence is against the established Law of the land.

6. Because the Order of the Disciplinary authority as well as the Appellate Authority suffer from informity which was not looked by these authorities.

7. Because the punishment imposed by the Disciplinary Authority without supplying of copy of Inquiry Report and without affording opportunity has vitiated the Principles of Natural justice.

8. Because the conclusions have not been supported by these authorities by the reasons.

9. Because the Appellate Authority has not examined the appeal with due regard to the three essential requirements of Rule 27(2) of C.C.S, and C.C.A. Rules 1965.

10. Because the Appellate Order is bad as it contravenes Rule 22 of the D&A Rules 1968.

11. Because the Applicant has not contravened and violated the Rule 3(1)(ii) and (iii) of the Railway Servants Conduct Rules.

12. Because the Inquiry Officer cross-examined the Prosecution witness Sri B.B.Singh, Station Master Nigohan when his statement was not recorded during the proceeding.

Contd....7.

13. Because the Inquiry Officer imported his own version and mentioned six charges which were not given in the Memorandum for Major Penalty.

6. DETAILS OF THE REMEDIES EXAHUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant Service Rules.
The applicant preferred an Appeal against the Punishment Order passed by the Disciplinary Authority Annexure No: A-4, to the Appellate authority on 18.10.89- Annexure No.A-6.

That the Appellate Authority up-held the order of the Disciplinary authority on 28.12.89 Annexure A-7.

7. MATTERS NOT PREVICUSLY FILED OR PENDING WITH ANY OTHER COURT.

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

8. RELIEF SOUGHT:

In view of the facts mentioned in para 6 above the applicant prays for the following reliefs and legal grounds mentioned in paragraph 5 of this application.

1. To issue a writ or direction in the natur of certorari quashing the findings of the Inquiry Officer being perverse, order of

Contd...9.

Disciplinary authority as well as the Appellate authority as these orders are not in speaking order, suffer from legal informities, denial of reasonable opportunity, perversity of Inquiry and contravene the Article 311 of the Indian Constitution as already explained in paragraph 5 above.

2. Any other relief to the applicant as ~~the~~ this Hon'ble Court deem fit under the circumstances of the case.

3. To award the cost to the applicant.

9. INTERIM ORDER IF ANY PRAYED FOR: NIL.

10. NIL.

11. Particulars of Postal Order filed in respect of the Application fee:

i) No. of Postal Order DD 827171 for Rs50/

ii) Date: 24-7-90

iii) Name of the Issuing Post Office: Charbagh and Wafer Post Office Lucknow

iv) Payable at: Head Post Office, Allahabad.

12. LIST OF ENCLOSURES:

Annexure A-1 to Annexure A-7.

Verification.

I, Gur Prasad, son of Sarju Prasad, aged about 50 years, ~~resident~~ working as Porter at Station Nigohan, Northern Railway, Lucknow Division, resident of Village Karora, District-~~Unn~~ Lucknow, hereby verify that the contents of Paras 1 to 4, and 6 to 7 and 11 to 12 are true to my personal knowledge and paras 5 and 8 believed to be true on Legal advice and that I have not suppressed any material fact.

Lucknow.
Dated: 22/7/90

Signature of the ~~Applicant~~ Applicant.

(10

Amp. - A-1

उ०र०

सामान्य

रेल कर्मचारी (अनुशासन तथा अपील) नियम-1968 के नियम 6 (1) के अनुसार

शास्ति देने का आदेश

संख्या TG.74/MISC/G-Man/NHN/08 स्थान [illegible]

दिनांक 04/9/89

प्रति,

श्री गुरुप्रसाद - पोर्टर
निगोहाँ (उ०र०)

(मार्फत [illegible] निरी० रायबरेली)

आरोप-पत्र-ज्ञापन संख्या [illegible], दिनांक 19-5-88 के ~~पत्र~~ में जांच अधि० श्री [illegible] 10/89 के अभ्यावेदन पर मैंने ध्यानपूर्वक विचार किया है। ~~में आपके~~ दिनांक जांच रिपोर्ट मुझे आपका अभ्यावेदन निम्नलिखित कारणों से संतोषजनक नहीं मालूम होता :— [illegible]

अतः मैं आपके विरुद्ध लगाये गये आरोप (पों)-अर्थात [illegible] के लिए आपको दोषी ठहराता हूं और उसी समयमान में निम्नतर स्तर में अवनत करने की आपको शास्ति देने का निर्णय किया है। अतः ~~[illegible]~~ दि० 1-9-89 से (01) [illegible] साल ..... महीने के लिए आपको 775-में 1025 रु० वर्तमान में वे जिसमें आप अभी हैं 995/= रु० के स्तर से 775/= रु० के स्तर में अवनत किया जाता है जिसके कारण आपकी भावी वेतनवृद्धियां स्थगित हो जायेंगी/नहीं होंगी।

2. रेल कर्मचारी (अनुशासन तथा अपील) नियम 1968 के नियम 18 के अनुसार इन आदेशों के विरुद्ध मं० प० हा० I लखनऊ को अपील की जा सकेगी यदि :

(i) आदेश मिलने से 45 दिन के भीतर विधिवत् अपील की जाये, और

(ii) अपील की भाषा अनुचित या अभद्र न हो।

3. कृपया इस पत्र की पावती दें।

हस्ताक्षर .....

नाम (ब्रजभूषण सक्सेना)

अनुशासनीय प्राधिकारी का पदनाम। सहा० परि० अधि० (एम)
लखनऊ उ०र०

True Copy
attested
Kishor
Advocate

उत्तर रेलवे

Annexure A-7

पत्र संख्या टी०ए०टी० [illegible]/89

मण्डल कार्यालय
दिनांक 28/12/89

श्री गुरु प्रसाद
क्लर्क
बिजनौर - उ०प्र०

द्वारा यातायात निरीक्षक रायबरेली

विषय:- दण्ड संख्या [illegible] दिनांक 4/9/89
निमित्त दण्ड सामान्य द्वारा सहा० परि० अधि० (एम) लखनऊ
सामान्य वेतनमान से न्यूनतम (पा5) पर एक वर्ष के लिये अवनत।

सन्दर्भ:- आपका दिनांक 10/X/89 की अपील

रेल कर्मचारी एवं अनुशासन एवं अपील नियम 1968 के नियम 522(35) के अनुसार अपील अधिकारी [illegible] लखनऊ द्वारा उपरोक्त दण्ड के विरुद्ध आपके द्वारा की गई अपील पर ध्यानपूर्वक विचार करके निम्नलिखित निष्कर्ष व्यक्त किया है।

(क)- अनुशासन प्राधिकारी के निष्कर्ष अभियोग के लक्षण के अनुसार प्रमाणित है तथा आरोपित दण्ड

1- "Appeal is regretted since the arguments are not plausible."

2-

[illegible] 22/12/89
कृते मण्डल रेलवे प्रबन्धक
उ०रे०/लखनऊ

प्रतिलिपि आवश्यक कार्यवाही हेतु।

1- सम्बन्धित लिपिक कार्मिक विभाग/लखनऊ

True copy attested
Kaly Das

प/

Before Central Adm Tribunal Allahabad.
(Lucknow Circuit)

TA No 2-30/90

Gyan Pd — Applicant.
vs
Union of India and others.

The applicant most respectfully submits that few weeks time was allowed to file Counter on 17.9.90 but no Counter was filed. It was again fixed for 1-1-91 for order and few weeks time was allowed but no Counter was filed as yet.

Also

Wherefore it is prayed that the Honourable Court be pleased to hear the case on the basis of the facts available on record as the applicant is suffering

Put up before the Hon'ble Bench on 30.1.91 for order
1-1-91

KPS
Counsel for the applicant

1-1-91

(12)

ब अदालत श्रीमान् Central Administrative Tribunal महोदय
[वादी अपीलान्ट]
श्री Central Administrative Tribunal Lucknow Bench का

वकालतनामा

प्रतिवादी [रेस्पाडेन्ट]

COURT FEE INDIA TWO RUPEES

COURT FEE INDIA THREE RUPEES

Ejaz Prasad
VS
Union of India and Others

बनाम प्रतिवादी (रेस्पाडेन्ट)

न० मुकद्दमा सन् पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री K.P. Srivastava Advocate Lucknow वकील महोदय एडवोकेट

नाम अदालत .....
मुकद्दमा नं० .....
नाम फरीकैन .....

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकर को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted
K.P. Srivastava
Advocate

हस्ताक्षर एजाज प्रसाद

MC/23 Birdatta Marg Gokhale Marg Lucknow

साक्षी (गवाह) ..... साक्षी (गवाह) .....

दिनांक ..... महीना ..... सन् १९ ई०

स्वीकृत Janta Ka Sahara Lucknow

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT LUCKNOW.

Registration No O.A.No.231/90(L) of 90.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT 1985.

Gur Prasad Vs Union of India and others.

Compilation No.2.

INDEX.

Lucknow. Signature of the Applicant.

DATED: 22/7/90

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सामान्य 188
Genl. 188

आरोप-पत्र का मानक फार्म
STANDARD FORM OF CHARGESHEET

मानक फार्म सं० 5
Standard Form No. 5

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

No. NO. T/674/Misc/G/Misc/NHN/88.

.....DRM. Off. LKO. - NRly..... रेल प्रशासन का नाम
(Name of Railway Administration)

निर्गम स्थान LKO ..... दिनांक .....
(Place of issue) ..... dated 19/5/88

ज्ञापन
MEMORANDUM

तत्पश्चात् रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 9 के अंतर्गत श्री ..... के विरुद्ध जांच करने की प्रस्थापना की गई है। अवचार या कदाचार के लांछनों का सार, जिनके संबन्ध में जांच करने की प्रस्थापना है। आरोप के अनुच्छेदों के विवरण (अनुबंध I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के समर्थन में अवचार या कदाचार के लांछनों का विवरण संलग्न है (अनुबन्ध II)। जिन प्रलेखों और साक्षियों द्वारा आरोप के अनुच्छेद संपुष्ट किये जाने की प्रस्थापना है उनकी भी एक सूची संलग्न है (अनुबन्ध III और IV)।

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

2. श्री ..... को एतद् द्वारा सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के पांच दिन के भीतर कार्यालय समय में किसी भी समय प्रलेख-सूची (अनुबन्ध III) में लिखित प्रलेखों का निरीक्षण कर सकता है और इसके उद्धरण ले सकता है। यदि वह ऐसे किसी अन्य प्रलेखों तक पहुंच चाहता है, जो रेल प्रशासन के पास हो परन्तु जिनका संलग्न प्रलेखों की सूची (अनुबन्ध III) में उल्लेख न किया हो, तो निरीक्षण के लिए अपेक्षित प्रलेखों की सुसंगति बताते हुए इस ज्ञापन की प्राप्ति के दस दिन के भीतर उसे निम्नहस्ताक्षरी ..... रेलवे के महाप्रबन्धक को इसकी सूचना देनी चाहिए। अनुशासनिक प्राधिकारी उन प्रलेखों के निरीक्षण की अनुमति देने से इंकार कर सकता है, जो उसकी राय में, मामले के सुसंगत न हों या जिन तक पहुंच की अनुमति देना अनहित या राज्य की सुरक्षा के विरुद्ध हो। उसे चाहिए कि अतिरिक्त प्रलेख उपलब्ध किये जाने के पांच दिन के भीतर उनका निरीक्षण पूरा कर ले। जिन अतिरिक्त प्रलेखों के निरीक्षण की उसे अनुमति दी जायेगी उनसे उद्धरण लेने की उसे अनुमति होगी।

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

3. श्री ..... को सूचित किया जाता है कि जांच के बाद के प्रक्रमों में प्रलेखों को प्राप्त करने के लिए किया गया अनुरोध तब तक स्वीकार नहीं किया जायेगा जब तक उचित निर्धारित समय सीमा के भीतर विलम्ब से अनुरोध करने का पर्याप्त कारण न बताया जाये और उन परिस्थितियों से स्पष्ट रूप से यह प्रकट न हो जाय कि अनुरोध इससे पहले के प्रक्रम में नहीं किया जा सकता था। जांच पूरी हो जाने के बाद अतिरिक्त प्रलेख प्राप्त करने के संबंध में कोई अनुरोध तब तक स्वीकार नहीं किया जायेगा, जब तक पहले अनुरोध न कर सकने का पर्याप्त कारण न बताया गया हो।

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

4. श्री ..... को सूचित किया जाता है कि यदि वह चाहे तो मौखिक जांच होने की स्थिति में प्रलेखों का निरीक्षण करने तथा जांच में सहायता ग्रहण के लिए किसी अन्य रेल कर्मचारी, रेल व्यवसाय संघ के किसी पदाधिकारी (जो रेल सेवक अनुशासन और अपील नियम, 1968 के नियम 9 के उपनियम (9) की अपेक्षाओं को पूरा करते हों) की सहायता ले सकता है इस प्रयोजन के लिए उसे अधिकतम तीन व्यक्तियों का नामन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारियों) अथवा रेल व्यवसाय संघ के पदाधिकारी द्वारा नामित व्यक्ति व्यक्तियों से वचन ले लेने चाहिए कि वह (वे) अनुशासनिक कार्यवाही में उसकी सहायता करने के लिए तैयार है (हैं) और नामन में ऐसे अन्य मामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाना चाहिए, जिसमें नामित व्यक्ति ने अन्य कार्यवाही में सहायता करने का वचन दिया है और नामित व्यक्ति (व्यक्तियों) द्वारा दिया गया वचन नामन-पत्र के साथ निम्न-लिखित रूप में देना चाहिए

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

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उत्तर रेलवे
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श्री गुरुप्रसाद-पोर्टर/निगोहां के विरुद्ध विरचित अनुबन्धों की सूची। — अनुबन्ध-I

ज्ञात हुआ है कि श्री गुरुप्रसाद-पोर्टर/निगोहां अपने कार्य का सम्पादन सुचारु रूप से नहीं करते हैं। यह ऐच्छिकांशतः अपने प्रदत्त कार्य की उपेक्षा करते हैं। तथा बिना किसी पूर्व सूचना के अनाधिकृत रूप से कार्यस्थल से अनुपस्थित रहते हैं। यह अपनी ड्यूटी बिना किसी पूर्व सूचना एवं पूर्व अनुमति के छोड़ कर चले जाते हैं। यह अक्सर अभद्र भाषा का भी प्रयोग करते हैं।

स्पष्टतया यह इनकी कार्य के प्रति घोर उपेक्षा का परिचायक है तथा इंगित करता है कि इनकी कार्य के प्रति कोई रुचि नहीं है। इस प्रकार इन्होंने रेल कर्मचारी आचरण संहिता 1966 के अनुच्छेद संख्या 3(i)(ii)&(iii) का स्पष्ट उल्लंघन किया है।

19/5

(देवी लाल)
सहा० परि० अधी० (सा०) लखनऊ

अनुबन्ध-II

श्री गुरुप्रसाद-पोर्टर/निगोहां के दुर्व्यवहार एवं दुराचरण के आरोपों का विवरण।

श्री गुरु प्रसाद पोर्टर निगोहां को 'सक्षमता परीक्षण उत्तीर्ण करना था तथा दिनांक 11/3/86 को उनको एतदर्थ आदेश दिये गये थे किन्तु इन्होंने इसके लिये दि० 21/3 के लिये प्रार्थना की। इन्होंने दिनांक 20/3/86 तक कार्य किया तथा इसके उपरान्त दि० 3/4/86 तक यह अवैध रूप से अनुपस्थित रहे। इसी प्रकार इनको दिनांक 11/4 को सक्षमता परीक्षण के लिये कहा गया किन्तु नहाने के लिये दिनांक 9/4/86 को पुनः अवैध रूप से अनुपस्थित हो गये। परिणाम स्वरूप इनको कार्य करने की पूर्व स्थिति में दे दी गई। तब यह HOS(G) के पास गये तथा आगे वाले कार्य के लिये स्वीकृति ले आये।

शेष (2) पर क्रमशः

उत्तर रेलवे
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[illegible] पुनः यह पत्र 21/4/86 से प्रारम्भ होने वाले कोर्स के लिये [illegible] उसी [illegible] रहे निलम्बित भी रखा गया। इसके [illegible] अनेक आदेश [illegible] कोर्स में नहीं भेजा। फिर यह दिनांक 23/5 [illegible] 86 से अनोधित रूप से अनुपस्थित रहे और फिर 5/6 [illegible] 86 तक अनुपस्थित रहे। इनका यह अनोधित अनुपस्थित [illegible] क्रम चलता रहा। तथा 27/6/86 एवं 8/7 से 12/7/86 तक तथा दिनांक 13/8/86 से 21/8/86 तक यह पुनः अनोधित रूप से अनुपस्थित रहे तथा वेतन के लिये चिकित्सा अधि० [illegible] के स्थान पर चिकि० अधि० रायपुरिया का चिकित्सा प्रमाण पत्र प्रस्तुत किया।

इसी प्रकार फाटक पर कार्य करते हुये भी सहायक अनोधित अनुपस्थित की "फाटक सं० 186 C" दि० 5/10/86 को यह प्रति: काल से ही अनुपस्थित हो गये। इसके अतिरिक्त अनोधित अनुपस्थित की सूचना यह किसी को प्रदान [illegible] तथा अनुशासनात्मक आदेशों की अवहेलना करते रहे। इसी प्रकार वे अनोधित अनुपस्थित दि० 27/10/86 से [illegible] के लिये चिकित्सा प्रमाण पत्र प्रस्तुत किया। [illegible] से सहयोग न करते हुए चिकि० अधि० रायपुरिया [illegible] दिनांक 27/10/86 से 4/11/86 तक किया।

उपरोक्त विवरण से यह स्पष्ट है कि श्री [illegible] प्रकार यह [illegible] तथा [illegible] बिना परिणाम [illegible] रहे। यह उनकी कार्य के प्रति घोर उपेक्षा एवं [illegible] उत्पन्न करने का [illegible] 140 [illegible] आचरण संहिता के [illegible] (ii) के अन्तर्गत दोषी उत्तरदायी ठहराता

19/5

(वी० [illegible])
सहायक अभि० (स)
[illegible]

उत्तर रेलवे
NORTHERN RAILWAY

(16)

सूची A/1

साक्ष्यों की सूची।

अनुलग्नक - III

स्टेशन मास्टर विभागों की विभिन्न रिपोर्ट
[illegible] - 11/18

19/5
(हरदयाल)
सहा० पी० अधि० (सा०)
लखनऊ

साक्ष्यों की सूची :-

अनुलग्नक IV

(1) स्टेशन मास्टर विभागों को बो. बो. [illegible]
(11) [illegible]

True Copy
attested

19/5
(हरदयाल)
सहा० पी० अधि० (सा०) लखनऊ

(17)

Petitions/NHH/88
dt 16.7.87

From: Shri A2
Gurprasad - Porter
N Rly NIGOHAN.

To

The AOS (G)
DRM
Office Headquarters N.Rly Lucknow

Subj: - INCOMPLETE Explanation and objection
Cum-defence under DA Rule No 9 of 1968 &
Art 311 of Constitution of India

Ref -- (1) Your memorandum No TG74/MISC/G Mem/
NHH/86 dated 19/5/86

(2) My several letters of different date for supply of
copies of documents relied upon

Sir

Most respectfully I beg to inform your
honour as under: --

1) That I have been working in the Railway
since 1971 and performing duties entrusted to me
honestly and strictly in accordance with the
rules in force to the entire satisfaction of my
superiors and high authorities without
prejudice, during the year 1986 I had
been Porter Cum Gateman at NHH stn N Rly

Pto

True Copy
attested
KRS

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2) That the SM/NMH Shri B B Singh has forged bad views and deep enmity with me due to my Non Cooperation with his illegal demands and actions for which proper reports had been sent to the higher and Competent Authorities, but no Consideration at all due to being bribed by the Unions

3) That to take revenge of his enmity the SM/NMH showed times being present on duty shown me absent and also not allowed duties knowingly and intentionally to make me absent with the view to put me under irreparable losses etc so that being pressed and also being under such type of high handedness I would fall in him, but I being a faithful and honest servant facing the trouble.

4) That not allowing duties, marking me absent and also placing me under suspension without any lawful authority frequently is a simple and left handed working of Shri B B Singh SM/NMH

That as for statement of allegation attached with memorandum as Annexure II, Safety Camp Gurgaon was to be started on 21/4/86 for which I have been asked not attended the same and th I was placed under suspension. P.T.O

True Copy
attested

(Page 28) Bry A2

but it is not mentioned when and by whom I was placed under suspension and when and by whom suspension was revoked, Under such circumstances the mis inherent powers of the SM/NHH against the law are proved beyond all doubts

Similarly it is also said the with effect from 21/1/88 I had been again placed under suspension, but no order of suspension has yet been served upon me It is also not known who suspended me so that an appeal under DA rule No. 5 of 1960 would be preferred to the Authority Competent infact all these actions are concocted plannes of SM/NHH himself without any Authority Etc to harm me and also to put me under trouble and highhandedness

6) That when against such illegal & unwarranted actions of SM/NHH was taken up by Union then this concocted story of suspension without any Authority, came forward and these all arrangements were made to issue SFS which was issued on 19/5/88 as referred above

7) That the memorandum of dated 19/5/88 referred above issued by AOS (G) LKO is illegal unwarranted and based on prejudiced views Etc on the following grounds,

PTO

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GROUNDS:

A) Because according to DA rule No 9 of 1968 and Art 311 of Constitution of India the charge is neither definite and clear on the following points

(i) No Date year, period and time etc are mentioned.

(ii) No work and duty entrusted is given and thus no body can understand what is charged and alleged and what is to be defended.

(iii) remains absent, when and from which date to which date from what Time to which Time under such circumstance absence in aff trans is illegal and lawful.

(iv) leaves the duty without being relieved etc. No date Time is mentioned

(v) Abusive language - Etc is not sufficient is neither supported by statement of allegations nor it is detailed as what words in this way and read said

note under the above noted circumstances it is not clear and defendi as what is charged and what is to be defended. hence the memorandum is liable to be cancelled under DA rule No 9 of 1969 and direction given by the following courts on Art 311 of Constitution of India

etc

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[Page No 5]

1957 Cal 662 (669)
— 1957 Mad 223 (224)
— 1957 Assam 18 (22)
— 1963 Tripura 20 (28)

ILR (1954) 6 Assam 107
CRLJ 1954 31 (DB)

A3

According to DA Rule No 9 (6) (1) the substance of the [illegible] in to definite and clear article of ~~the~~ charge to be framed, but in my case no such charge is framed at all and only Annexure I is framed as per memorandum of dated 19/5/88, which is not provided ~~for~~ under any rule of DAR 1968.

(ii) A statement of the [illegible] in respect of each article of charge, containing relevant facts, any admission or confession made by the delinquent, shall be framed, but in my case nothing is done but an Annexure II is framed against the D.A Rule of 1968

Note when no charge is framed no statement of charge stands alone limits the but relevant facts of charge sheet dated 19/5/88 are liable to be ended

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C) Because in my case in the list of the witnesses the witness Shri BB Singh SM/NHH is given and Serial No is " Written Evidence which is not provided under any Law and rules Etc

Hence Under the above noted facts and Circumstances the memorandum (charge Sheet SFS) is totally illegal and is liable to be Cancelled under D.A Rule No 9 of 1968 and Art 311 of the Constitution of India.

D) Because according to SFS of dated 19/5/88 list of the Annexure I is said to be violation of Conduct rule No 3(i) (ii) & (iii) of Rly Servant of 1966 in Conduct rule, which does not provide such things seeing according to Conduct rule actions can be taken by the GM and Rly Board Ans(C) has no Jurisdiction at all. Hence SFS become unwarranted, illegal and without Jurisdiction to be

E) Because this rule No 3 of Conduct rule was been abolished by Justice Shri MA Baig of A/Court Hyderabad in his Judgement of dated 17/3/70 in Appeal No 240 of 1969 Shri Comptroller vs Union of India. Hence No offence at all stands SFS is liable to be Cancelled under Art 14, 16 and 311 of the Constitution of India

Pto

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F) Because in SFS in lieu of Annexure II use of Abusive languages is alleged, but in Anc. II in the statement of charge No where it is supported at all. Hence SFS is self Explanatory for the Cancellation beyond all doubts Under DA Rules

G) [illegible] Camp Course in Annexure II [illegible] SFS

(I) Safety Camp Course starting from 11/3/86 was not attended due to sic unavoidable circumstance for which request was made in legal way, which was granted and allowed not to attend the same - This action does not amount any offence at all.

(II) Absences from 21/3/86 to 3/4/86 in Sick and proper certificates were given to SM/NIHIT then he allotted duties otherwise he would have not given me duties and had treated me after taking my statement to DRM office for duty. Since it was not done it is a conclusive and concrete proof of my sick and fit certificates having properly made over to SM/NIHIT who later on to harm me misplaced them, resulted marked me absent and no pay allowed I made so many reports, but no consideration at all.

(III) Safety Camp Course was to be started from 11/4/86 SM/NIHIT told me to go on next course and avail leave for 9/4, 10/4 & ~~[illegible]~~ acted accordingly. PTO

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Annex A2 (24)

(Page No 8)

when I came on 11/4/86 Sm/NHH told me to submit Pme for three days then I did so Then Sm/NHH directed me to see AOS(a) who allowed me duties from 11/4/86 finding nothing wrong with me and also after observing all legal process Etc these facts are admitted in this Annexure II

(III) It is alleged that in next course starting from 21/4/86 was not attended for which I was placed under Suspension as per SF 5 Ann II and taken up and punished accordingly this thing can not be further taken up under Art 20 of Cog Order as no body can be prosecuted and punished more than once for the same offence

(IV) for the period 23/5/86 to 31/6/86 matter was agreed with PNM and one inspector was to be deputed to obtain necessary sick and fit certificate from ADO/RBL. which proves this period was on Rome beyond all doubts

For period 5/6/86 to 13/6/86 proper Pme was submitted and matter dealt with PNM

Such period of 27/6/86 and 8/7/86 to 12/7/86 has been admitted Pe in ~~Pme~~ PNM. Pme was submitted for this period.

(V) period from 13/8/86 to 21/8/86 was also on Rome admitted itself in SF 5 in this Annexure II

(VI) For the period 22/8/86 to 28/8/86 and use up to 21/11/86 Pme was submitted which Pte

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[Page No 4]

in receipt and payment was accordingly honour does not amount any offence at all.

(VI) There is no date on which I did not perform duty and pay received. Under such circumstances it is also not supported by any offence of Arm I.

(H) Because no copy of the documents relied upon is given to me even on my Several requested for which I am legally entitled under DA Rule No 9 of 1968 and Art 311 of Constitution of India. Hence remained badly prejudiced in having proper defence of my case under the decision of following Court

AIR 1966 HP 3

— 1958 Se 30

(I) Because no fact finding Inquiry was conducted on the report of SM/NIHH as per Art 311 of Constitution of India and report of SM/NIHH has been taken as correct and final against the law. Hence I remained badly prejudiced in having proper defence of my case

(J) Because I was placed under Suspension with effect from 21/1/88 without any authority & to

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the date from which suspension took place, and order no as to all as authority, suspended me is not known hence suspension is totally illegal and unwarranted and liable to be set aside.

k) Because it is stated that I left duty on 8/8/86 while I was on gate no 186 C/1 - totally false on that day I was present on duty and SM/ MHH marked me absent. If I was absent then who performed duty at the gate. my presence is also written in the diary. This plea is totally false and concocted one

L) Because I have not been given facilities and opportunities provided under the DA Rule of 1968 and due to which remained badly prejudiced in having proper defence of my case

Prayer

It is therefore most respectfully prayed that Your honour may be kind enough to cancel the S.O.S of dated 19/9/88 on the facts and grounds given here in and also should be allowed. [illegible]

It is also further prayed that it is my [illegible] here and complete explanation due to the facts and grounds, [illegible] my explanation is pending authority [illegible] of my charges I should be [illegible] personal hearing with my defence helper [illegible] Yours faithfully Sd/ Ams

(Ams Prasad)
Ex Sepoy
Posts MHH
Dt 16/7/88

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Anx. A-3 (2)

(68)

उत्तर रेलवे
NORTHERN RAILWAY

Enquiry Report by TI/SCN (Enquiry Officer) in DAR proceeding against Shri Gur Prasad Porter NIGOHAN in SF-5 case No. TG/T4/MISC/G.Man/NHN/88 dt 19.5.88

1- Name of delinquent Employee — Shri Gur Prasad - Porter.
2- Name of defence helper — Shri BL Verma - Retd. SM/ANG.
3- Date of issue of SF-5 — 19.5.88.
4- Date of issue of SF-7 — 23.8.88.
5- Name of Enquiry officer — R.S. Pandey - TI/SCN.
6- First date of DAR Enquiry — 21.9.88.
7- The first date when Shri Gur Prasad attended — 15.1.89.
8- List of prosecution witness as per SF-5.
(I) Shri B B Singh SM/NHN.
(II) Written documents:

Articles of charges and statement of imputation of misconduct and mis-behavior against Shri Gur Prasad Porter NHN as laid down in annexure - (I) and (II) of SF-5.

Following charges were framed against Shri Gur Prasad Porter NHN:—

(I) श्री गुरु प्रसाद पोर्टर निगोहाँ अपने कार्य का संपादन सुचारु रूप से नहीं करते, अधिकांशतः अपने विहित कार्य की उपेक्षा करते हैं तथा बिना किसी पूर्व सूचना के अनाधिकृत रूप से कार्य स्थल से अनुपस्थित रहते हैं।

(II) वे अपनी ड्यूटी बिना किसी पूर्व सूचना एवं पूर्व अनुमति के छोड़कर चले जाते हैं।

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(III) ये अक्सर बहुत अभद्र भाषा का प्रयोग करते हैं।

(IV) ये फाटक पर काम करते हुए अनाधिकृत रूप से अनुपस्थित रहते हैं, तथा जान बूझ कर आदेशों की अवहेलना करते हैं।

(V) अपने व्यक्तिगत चिकित्सा प्रमाण पत्र विहित चिकित्सा अधि. लखनऊ, से अग्रसारित न करवाकर चि. अ० रायबरेली रायबरेली से करवाते रहे हैं।

(VI) विभिन्न तिथियों में इन्हें ~~सरसा शिविर~~ सक्षमता हेतु DTTS LKO जाने के लिए कहा गया, परन्तु ये आदेशों का अवहेलना करते हुए सरसा शिविर में भाग नहीं लिया।

Brief History of the Case :— Shri Gur Prasad while working as porter at Nigohan station was booked to attend his refresher course from 11.3.86, but he did not attend the course on one or the another reasons and remained absent on the following dates and absconded from duty :—

(I) 21-3-86 to 3-4-86.
(II) 9-4-86 to 10-4-86.
(III) 23-5-86 to 3-6-86.
(IV) 5-6-86 to 13-6-86.
(V) 27-6-86
(VI) 8-7-86 to 12-7-86.
(VII) 13-8-86 to 21-8-86.

To afford his refresher course, he absented himself in above periods and a stage came when he was sent to DCS who suspended him wef. 22-4-86. His suspension was revoked on his assurance that he will attend the next course, but he again avoided.

Station Master NHN has reported that Shri Gur Pd. Porter always submitted PMC/RMC of DMO RBL, where as NHN station comes in the jurisdiction of DMO LKO. SM instructed him to report sick with DMO LKO, whenever required, but he did not pay any heed to the instructions of SM NHN and always submitted PMC/RMC from DMO RBL to cover his absence.

On 5-10-86 he absconded from LC No 186-C, where he was working as gateman without any information

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(68/2) (8) (29) A-3 A30

On 6-10-86, he turned up at Gate at 18/00 hr. and on being told that he was required to see SM NHN for his 2 days absence, he did not come to SM NHN and forcibly took over charge of Gate. The relief arranged by SM reported this matter to ASM on duty Shri P.C. Verma LR ASM. He again forcibly took charge of gate on 7-10-86 at 18/00, and SM NHN reported this matter to all concerned including the G.R.P./LKO. On 8-10-86 Shri Gur Pd. closed the gate without any information to SM NHN and made over keys to ASM on duty at 15/02 hr. SM arranged relief to open the gate, but he again took charge of gate at 18/02 forcibly. When GRP staff came NHN to enquire the case, Shri Gur Pd. absconded from duty and later on submitted RMC from DMO/RBL & PMC from 22-10-86 to 28-10-86 issued by a local doctor of NHN was to be verified by DMO LKO, but Shri Gur Pd. attended DMO/RBL.

Shri Gur Pd. also absconded from gate duty on the following dates:-

(I) 5-10-86 to 6-10-86

(II) 11-10-86 to 26-12-86

From 7-10-86 to 10-10-86, Shri Gur Pd. was busy in forcible fightings, abusing for performance of duty at his own accord, defying every order of SM NHN for which SM NHN has lodged F.I.R. in GRP/LKO. He had also taken away two P.No sheets of Station Record with him for proving his attendance.

PREAMBLE:-

In above case Shri Gur Pd. has been charged for violation of Rly. Service conduct Rules 1966 Para No. 3 (i), (ii) and (iii). During the course of enquiry Shri Gur Pd. requested for postponement of DAR proceedings on 16-1-89, 25-2-89 and 10-3-89 as his Defence Helper Shri B.L. Verma Retd. SM/AMC did not turn up for inquiry inspite of the facts that he was always well informed in time and Shri Gur Pd. also requested him. The whole case was returned to ADS (N) on 26-4-89 as it was required in some court case. Again case was given to undersigned on 22-5-89 and inquiry date was fixed for 3-6-89. Shri B.L. [redacted] Verma Defence Helper of Shri Gur Pd.

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had given me written assurance that he will attend the DAR Proceedings on 3-6-89, but he did not attend. Shri Gur Pd. attended proceedings on 3-6-89 without his defence helper. Shri B.L. Verma Defence Helper submitted Defence Note by registered letter.

Grounds of Defence :-

1- Shri Gur Pd has written in his statement that he is suffering from "रोग की बीमारी". He remains absent only for his treatment.

2- As regards the second charge of leaving duty without prior permission and information to Sm NHN Shri Gur Pd. has stated that on 5-10-86 RC Gateman Shri Amar Bahadur was due for duty and he availed rest on the instructions of rest giver gateman.

3- As regards the IIIrd charge, Shri Gur Pd. has denied the charge and there is no documentry proof also, except the evidence of Shri B.B. Singh SM NHN.

4- As regards the 4th charge, while answering to Q No. 1 Shri Gur Pd. has said that Sm NHN always wanted to utilize substitute Porter Shri Shailendra Singh on gate No. 186-C for his personal gains and this is the only cause of ~~any~~ above false report against him.

5- As regards the fifth charge Shri Gur Pd. has stated that not only he, but all the staff of MLT and UTR were attending DMO RBL for their sick and fit certificate and he always got memo for DMO/RBL.

6- As regards the sixth charge of not attending refresher course, the delinquent employee has claimed that he never got the proper memo from Sm NHN.

In the absence of defence helper the prosecution witness Shri B.B. Singh and the delinquent employee Shri Gur Pd. were cross examined by undersigned in the DAR proceedings. Shri B.B. Singh SM NHN, while answering to various questions has supported the charges.

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which are as under:-

1- As regards the first charge, Shri B.B. Singh-Sm NHN while answering to Q. No. 1 and 2, has supported the charge.

2- While answering to Q. No 3 at S.No. 59 Shri B.B. Singh has supported the second charge.

3- While answering to Q. No. 4, Shri B.B. Singh Sm NHN has quoted few examples of using unparliamentary words by Shri Gur Pd.

4- As regards the fourth charge of leaving gate duty without prior information / permission, Mr. Singh, while answering Q. No. 6 at S.No 59 has supported the charge.

5- As regards the fifth charge, the delinquent employee has accepted the charge.

6- As regards the sixth charge, Mr. B.B. Singh has stated that his original report may be seen in which he had clearly written that Shri Gur Pd. always avoided his repetition course.

Provision of reasonable opportunity to delinquent employee

The first date of DAR inquiry was fixed on 21.9.88, but neither the delinquent nor his defence helper attended the inquiry. The next date was fixed for 15.1.89 when Shri Gur Pd. attended, but his defence helper did not attend. Shri Gur Pd. Porter himself took the letter from undersigned on 15-1-89 S.No. 58 and assured me that he will bring his defence helper on 16.1.89, but failed. He requested for postponement of DAR inquiry for 29-1-89, which was accepted, but Shri B.B. Singh Sm NHN did not attend. Again inquiry was fixed on 24.2.89 and 25-2-89, but the Defence helper did not attend the inquiry on 25-2-89. Shri Gur Pd. delinquent employee again requested for postponement of enquiry which was accepted and the next date was fixed for 10-3-89 as per his request, but again defence helper did not participate. On 3-6-89, Shri Gur Pd gave in writing that he is ready to participate in enquiry proceedings without his defence helper and also gave in writing (after the DAR was closed) that he has been provided with all possible reasonable opportunity for natural justice. S.No. 64

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Defence Note by Shri B.L. Verma Defence helper:-

Shri B.L. Verma the defence helper of the delinquent employee has sent his defence note of 3 pages quoting various rule numbers and articles of constitution of India, but has failed to write anything regarding the charges which were framed against Shri Gurbd. As regards the contention of defence helper that Shri Gurbd. was not allowed to produce his defence witness or was not given reasonable facilities and opportunities provided under the DA Rules and Article 311 of the constitution — (S.No. 65/3 Para XV and XVI) - all seems to be baseless and after thought, because Shri Gurbd. had never given any list of his defence witness and had given a certificate at the close of DAR proceedings that he had received all reasonable opportunity to defend his case and had no complaint against the Inquiry Officer.

FINDINGS:—

After going through the records, statements, various answers of questions and cross questions and also the circumstances, I conclude that:-

(1) All the charges framed against Shri Gurbd. except the charge No. (III) are proved and Shri Gurbd. is responsible for all the lapses mentioned in S.F.5 except No. III.

(2) The charge No. III is not proved, because Shri B.B. Singh SM NHN did not produce any written documents i.e. statements of S/Shri Shailendra Singh substitute Porter and Ram Jeevan Gateman to prove the charge.

(3) It is also very much surprising that how DMO/RBL is entertaining the sick memos of staff posted at stations which do not fall in his jurisdiction?

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Inquiry Officer.
(TI/SGN)

उत्तर रेलवे
NORTHERN RAILWAY

प्रश्न:- क्या रेल-मंत्री श्री जे. के. सिंह से आपकी मुलाकात हुई थी ?

उत्तर:- श्री जैनेन्द्र सिंह पानीपत पोस्टर की फाइल पर लगाया था उसमें मैंने रेलवे के अधिकारियों से रेल-मंत्री सहित चाहते थे कि ये फाइल को बेहतर किया जाये। क्या वे इसे और आगे फाइल पर लगाया है। इसी कारण से मेरी रिपोर्ट किया करते थे।

प्रश्न:- जब श्री जे.के. सिंह चौधरी थे तो क्या रेल रिपोर्ट की आपकी मुलाकात हुई थी ?

उत्तर:- जब श्री जे.के. सिंह जी चौधरी थे तो मैं एक दिन रिपोर्ट न मानने के कारण मीटिंग की मुलाकात करते थे। जब मैंने डायरी लेकर CR मांगा तो श्री मनोज गुप्ता साहब ने मुझे से मुझे जोर से डांटा था, क्या मुझे रिपोर्ट पर पेंडिंग मामला था ही नहीं, परन्तु जब मैंने SR DEN और मनोज जी को मामला उन्हें सही बात बताया तो उन्होंने मेरा स्थानांतरण निरस्त कर दिया।

प्रश्न:- क्या S.K. सिंह का विभाग बदले और आपका मुकाबला करने के लिये ये सभी कारण रेल मंत्री पूर्व जानते थे ?

उत्तर- रेल मंत्री बदलने के बाद मैंने कई बार लिखा कि मेरी प्रताड़ना का, इसी कारण मैंने ये सभी प्रश्न।

प्रश्न. जब आप ADRM/KSBL रहते थे तो क्या आप ADRM/KSBL के पास कोई शिकायत जाती थी ?

उत्तर - S.K. सिंह साहब मुझे ADRM/KSBL की शिकायत पर ~~मुझे~~ श्री मनोज गुप्ता जी ADRM/KSBL के पास जाया था।

इस बीच श्री जे.के. सिंह से रिश्वत मांगने की शिकायत

प्रश्न श्री जे.के. सिंह जी द्वारा यह बात सामने में लिखा था कि मुरादाबाद से Sirhind या PMC पर काउंटर पर मिलने का दिया ADRM/KSBL के पास भेजा जाता था ? गुरुप्रसाद

उत्तर - कभी नहीं।

Truth is
affected

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उत्तर रेलवे
NORTHERN RAILWAY

Genl.Secl.

इस बात की पुष्टि करता है कि रेल मं. ... [illegible] ... नहीं किया गया है।

प्रश्न - क्या [illegible] Advertise [illegible] हेतु जारी रहे थे ?

उ. - जी हां।

प्रश्न - जो जो की [illegible] बनाने के लिए उपरोक्त [illegible] कार्यवाही की [illegible] Advertise [illegible] नहीं [illegible] जारी [illegible] जबकि [illegible] Advertise [illegible] नहीं [illegible] था ?

उत्तर - [illegible] बनाने की वर्तमान [illegible] [illegible] Advertise [illegible] नहीं जारी [illegible]।

प्रश्न - क्या [illegible] Advertise [illegible] हुआ था [illegible] हुआ था [illegible]

उत्तर - Advertise [illegible] Technical [illegible] उन्होंने हुआ था। उन्होंने हुआ था [illegible] जारी [illegible]।

प्रश्न - क्या [illegible] Advertise [illegible] उत्तर - नहीं।

[illegible]

[illegible] - डॉ. [illegible]

[illegible]

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NORTHERN RAILWAY

बयान श्री गुरुप्रसाद पोर्टर हरौनी - Case No. [illegible]
[illegible] /G/[illegible]/NIIIN/80 दिनांक 23.6.89

मैं दिनांक [illegible] को पोर्टर [illegible] 82 से [illegible] था। श्री [illegible] के पहले मैं [illegible] था। [illegible] मैं [illegible] हुआ है। इसके पहले मेरे [illegible] हैं। प्रार्थी को [illegible] रोग [illegible] हैं। [illegible] कारण प्रार्थी [illegible] करने जाना पड़ता है। इन्हीं कारणों से प्रार्थी [illegible] अपना इलाज कराया जाता था। [illegible] प्रार्थी [illegible] जाया करता था। [illegible] अस्पताल [illegible] होने आज है [illegible] था। जहाँ तक [illegible] है, मैं [illegible] दिनांक [illegible] को [illegible] मैं [illegible] को [illegible] दिया [illegible] 5-10-84 को [illegible] 10A-C पर [illegible] प्रार्थना [illegible] उसे [illegible] दिया गया। [illegible] दिनांक [illegible] को [illegible] 10A-C पर भी [illegible] दिया [illegible] का [illegible]। अब तक मैं [illegible] में [illegible] हूँ। मैं अपनी इच्छा से अपना बयान [illegible] हूँ।

03/6/89

गुरुप्रसाद

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उत्तर रेलवे
NORTHERN RAILWAY

उत्तरेल 99/बी
GENL 99/L

DAR जांच श्री गुरु प्रसाद पोद्दार हवालदार के बारे में —
Case No. TG.74/2012/G.Man/NRLKN/100 दिनांक 03-08

उपरोक्त जांच के सम्बन्ध में श्री बी.एस.वर्मा, पूर्व सदस्य (यातायात) ने एक आरोपनामा, यातायातकार श्री गुरु प्रसाद पोद्दार के उपरोक्त केस के बारे में बताया सहायक है — वे पुनः निर्णीत यातायातकार ने बताया कि वे पीड़ित के उपरोक्त जांच के दौरान उपस्थित थे। उनका उपस्थित होना, परन्तु श्री उनकी उपस्थिति स्वीकार न है, रहा। श्री गुरु प्रसाद पोद्दार इसका खण्डन करते हैं। बी.एस.वर्मा जी के विरुद्ध लगाए गए आरोप पत्र में उनका नाम नहीं है। श्री गुरु प्रसाद ने बताया कि श्री वर्मा जी जांच के दौरान उपस्थित थे। उनके विरुद्ध कोई निर्णय नहीं, परन्तु यह साक्ष्य तक उनका पाया नहीं है। उनके [illegible] में अपना उत्तर दे सकूंगा।"

ह० — श्री गुरु प्रसाद
ह० — (श्री बी.एस.वर्मा)

श्री बी.एस.वर्मा से प्रश्न

1. [illegible]

उत्तर — [illegible]

प्रश्न — 2 — [illegible]

No specific charge

[illegible] not complete

श्री बी.एस.वर्मा

उत्तर रेलवे
NORTHERN RAILWAY

उत्तर रेल 99/1000
Gen. 99/L

प्रश्न सं. 3- [illegible]

उत्तर - [illegible]

प्रश्न सं. 4- [illegible]

उत्तर - [illegible]

प्रश्न सं. 6- [illegible]

उत्तर - [illegible]

प्रश्न सं. 7- [illegible]

उत्तर - [illegible]

31/6/09

03.6.09

(38)

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उत्तर रेलवे
NORTHERN RAILWAY

प्रमाणित किया जाता है कि Case No. TC 711/2002/
Comm/NHM/Bikaner 19.5.2003 की Further Order
में पूर्व जांच अधिकारी द्वारा बताया नुकसान कोई
नहीं हुआ था जो जेनुइन नॉन-जुडीशियल प्रूफ
से कहे गया जांच अधिकारी की पूर्व कोई अधिकार
नहीं है। गुरुप्रसाद

True Copy
Attested
KB

Defence Note in case No TG74/Misc/G Man/NHH/88 Dt 19/5/88.

① D/Authority = AOS (G) N.Rly Lucknow
② Enquiry officer = TI/SLN.
③ Accused = Shri Gurprasad Then Porter Nigohan NR
④ D/Cousel = B L Verma HN. F3933 Rajajipuram Lucknow

1) That a written report of without specific date of Oct 1987 was made by then station Master Nigohan Sh B B Singh against Shri Gurprasad Then Porter/NHH. No Fact Finding enquiry on this Complaint was done. Thus DA Rules of 1968 and Art 311 of Constitution of India was Knowingly Violated.

2) That on the basis of this Complaint SF/5 No TG74/Misc/G-Man/NHH/88 Dt 19/5/88 was served upon Shri Gurprasad without mentioning there in the clear and definite charges as required under DA Rule No 9 of 1968 and Art 311 of the Constitution of India.

3) That due to heavy documents in the charges Shri Gurprasad submitted his incomplete Explanation and objection under DA Rule No 9 of 1968 and Art 311 of C. of India under his letter No 1/GP/Porter/NHH/88 Dt 16/7/88 available on the file. He the facts and grounds with good and sufficient reasons and under the law mentioned there in disproving all the charges illegal unwarranted, based on prejudiced views and liable to be quashed, but no consideration at all. It was also Expressly requested there in for the submission of Complete Explanation under proper on Page 10, but the same was not at all considered, without any cause.

4) That Shri Gurprasad was placed under suspension without serving any suspension order upon him hence No exact date and authority who suspended can be known as yet.

5) That TI/SLN Conducted [illegible] under DA Rule of 1968 and Shri [illegible] badly prejudiced with the following [illegible]

(i) No fact finding Inquiry on the Complaint of Sh B.B. Singh of Oct/1987 was made as per para 1

(ii) No specific date of the Complaint is given in SF/5 hence the Complaint is useless and unjustified and no action upon which is warranted under the law.

(iii) No Suspension order was served upon Sh Gurprasad para — 4

(iv) No clear and defined charges were framed in SF/5 as per para — 2

(v) Defence was not allowed to be Considered without any Cause — para 3

(vi) What so ever defence submitted was satisfactory & warranting the end of the Case in the favour of accused as no reason for the same has been recorded — Can be used from the Case file

(vii) The Enquiry officer did not frame an Unaddressed charge and Explained to the accused as per DAR 9 of 1968 and Art 311 of the Constitution of India

NOTE — Dt 3/6/89 was fixed with my Consent and I attended Dhan office upto 11/30 hrs Thereafter I left twice previous dates, further proceeding Enquiry officer are accepted Justified and not prejudicial on this point

(viii) The statement of Sh B.B. Singh was neither recorded Nor the actual date of the Complaint was get known

(ix) During the Cross Examination of Sh B.B. Singh facts were not Verified from the Diary in which Sh Gurprasad was concerned present and Sh NITH marked absent. The attendance register was also not Examined. All the Answers of Sh B.B. Singh P/Witness are false and unreasonable and Cannot be taken into the consideration

(x) Sh Gurprasad was not allowed to submit his written statement as required under DAR Time by 9 of 1968 and Art 311 of the Constitution of India

(xi) The list of witnesses given in SF/5 was not attested according to DAR Rule of 1968 hence the remarks Kept are badly prejudiced — (P.T.O)

(xii) No document Exhibited at all

(xiii) No copy of relied upon document as supplied and DA Rule No 9 of 1968 and Art 311 of Constitution of India was badly violated

(xiv) Sri Gurprasad was not given any subsistence allowance admissable under the law without any cause due to prejudiced views for entire period except two months

(xv) Sri Gurprasad was not allowed to produce his defence witnesses without any reasonable cause

(xvi) Sri Gurprasad was not given reasonable [illegible]

[illegible]

[illegible] Inquiry officer [illegible]

[illegible] DA Rule No 9 [illegible] Art 311 [illegible] Constitution of India

8) That [illegible] read and [illegible] against the accused Sri Gurprasad from the statement of an accused [illegible] completely [illegible] pressed against himself

[illegible]

गुरप्रसाद

True copy attested

No. 1/G/Porter/Appeal/88/
Dated 18-X-89

(42)

Annx A-6

From
Gurprasad-Porter
N-Rly-Nighasan

To,
DOS (I)
DRM Office Hazratganj-NRLY-Lucknow
Through
AOS (M)/LKO

Subj - An Appeal under DAR 18 of 1968

Ref:- AOS (M)/LKO Punishment notice No TC/74/MISC/G-Man/NHN/88 of dated 4/9/89 Recd on 10/11/89 through SM/NHN

Respected Sir,

With due respect I beg to inform your honour as under:-

1) That I have been working in the railway since 1963 and performing duties entrusted to me honestly and strictly in accordance with the rule, in force to the entire satisfaction of my superiors and higher authorities. During the period 1986 I had been porter-cum-gatiman at NHN-NRY station

2) That the SM/NHN Shri B B Singh has prejudiced views with me due to my non-cooperation with his illegal demands and actions etc for which proper reports had been sent to the higher authorities, but no considerations at all, due to being influenced by the unions

3) That to take revenge of his enmity the SM-NHN marked me absent against present, also not allowed me duties for the motive of marking me absent, thus put me in heavy losses. He did all these with the views so that I should follow him, but I being honest and faithful faced all the troubles.

4) That not allowing duties, marking absent, placing under suspension, frequently was a left hand working of Shri B B Singh SM/NHN for me. In statement of allegation it is mentioned that due to non attendance of refresher course starting from 21/4/86 I was placed under suspension, but it not mentioned, within and by whom I was suspended and suspension revoked. Under such circumstances above facts are proved beyond all doubts.

5) Similarly I was suspended from 21/1/88 to Sept 1988 but no suspension order was served upon me due to which I could not prefer an appeal to the authority competent

(PTO)

5) That when I made approached Trade union against such illegal and unwarranted suspension, then arrangements were made for SF/5 which was issued on 19/5/88

6) That a proper incomplete Explanation and objection-cum-defence under DA Rule No 9 of 1968 and Art 311 of Constitution of India was submitted under my letter No 1/GP/Parts/NHN/88 dated 10/7/88 available on file of the case.

7) That my this defence was not at all considered and Sh RS Pandey was appointed as Enquiry officer and during the course of Enquiry I remained prejudiced with the following :—

(I) That the then SM/NHN Sh BB Singh made a report against me without showing date in OCT/1987 as per list of relied upon documents attached with SF/5. Neither any fact finding inquiry on this complaint was made nor it was shown or copy given to me as yet, this action has some motive behind it and provisions of DA Rule of 1968 and Art 311 of Constitution of India violated.

(II) That I was not allowed to complete Explanation without any cause, when expressly requested for the same.

(III) That whatsoever defence I submitted was more than sufficient to satisfy the authority complaint to end the case in my favour as the circumstances, grounds with law and rules are given there in proving the charges illegal and unwarranted based on prejudiced views. ~~Are~~ are available on the file

(IV) That whom and who suspended me is not yet known to me which proves the entire case false and concocted one for my false implication beyond all doubt.

(V) That no unadmitted charge was framed and established as required under DA Rule by the Enquiry officer

(VI) The statement of Sh BB Singh was neither recorded nor this second report came forward and gave no chance me to cross him in his examination in chief etc.

(VII) From the report it is seen that Enquiry officer cross examined Sh BB Singh, but it is not known on what grounds he but such cross examination within the gave statement and also this report came forward

(PTO)

Inwardly

Ans A6 (45)

[Page No 3]

(viii) The charge in SF/5 was also not clear and definite as required under DA Rule No 9 of 1968 and are liable to be cancelled

(ix) The list of witnesses and document attached with SF/5 was not as per DA rule No 9 of 1968, hence entire process are liable to be quashed under DA Rule, and Art 311 of the Constitution of India

(x) That I was not allowed to produce my defence witness without any cause

(xi) No copy of relied upon document was supplied to me even several requests

(xii) That I was not given any suspension allowance as infact I was not suspended by any competent authority

(xiii) That No facility provided in DA Rules and Art 311 of Constitution of India was given details are given in the defence Note of my defence helper available on the file of this case

8) That the Inquiry officer in his report mentioned the charge not given in the charge sheet's charge and submitted concocted findings against the facts

9) That the AS (m) punished the applicant with reversion in time scale from Rs 950 to 750 after one year which is illegal and unwarranted on the following grounds,

GROUNDS

A) Because According to DA Rule No 9 of 1968 the charge must be clear and definite, but in my it was not at all clear with following

(i) No date, year, period and time etc mentioned

(ii) No work and duty entrusted is detailed thus nobody can understand as what is alleged and what is to be defended

(iii) for absence no date from and to is given and also time, whether this absence was of 1/2 hrs

(iv) leaving duty when and how arrangement was made and what dislocation occurred is not given

Note: Due to the above lacunas charges are not definite and clear and entire process are liable to be quashed under DA Rule of 1968 and Art 311 of the Constitution of India and following decisions

True Copy attested

Copy

AIR 1956 Cal 662 (665)
— 1956 MB 223 (224)
— 1955 Assam (V) (22)
— 1963 Tripura (28)

LLR (1954) 6 Assam 107
CRT (1954) 31 (DB)

PTO

Asy/ Amy A Bagenda

b) Because charges are in vague words and cannot be understood.

c) Because the Inquiry officer has framed charges in his report against which S.F/S is given. Thus no chance for clarification is given hence entire process and punishment is liable to be quashed under DA rules of 1960 and Art 311 of the Constitution of India

d) Because in his finding the Inquiry officer has mentioned 6 Sip charges, which are itself neither clear nor specific and also not given in the charge of S.F/S. Hence finding and punishment are liable to be quashed under rules and laws

F) Because I was not given the facilities and opportunities mentioned in foregoing para 7 under clause (1) to (XII) on pages 2 and 3 due to which remained badly prejudiced in having proper defence of his case

G) Because the details of facilities not given will be opened during the course of personal hearing.

Prayer

It is therefore most respectfully prayed that Your Honour may be pleased to set aside the punishment order No TG 74/Misc/G-Mon/NHN/88 of dated 4/9/89 on facts and grounds given here in

It is also further prayed that I shall be allowed to be heard in person with any defence Helper Sir P.L. Varma Retd Sqn/Ldr when consent is attached here with

Yours faithfully

(Surpassad) Parly
Nighahan
10-X-89

Defence Helper
Sir P.L. Varma

True Copy
attested
KSY/Karachi

In the Hon'ble [illegible] Court of [illegible],

Sheetla Mata, Lucknow

M.P. No. 160/91 (L)

Civil Misc. Application No. [illegible] of 1991 (L)

In re:

Revision (O.L.) No. 231 of 1990 (L)

Fixed 10-4-91

Dr. [illegible] ..... Applicant

Versus

Union of India and others ..... Respondents

APPLICATION FOR CONDONATION OF DELAY AT [illegible] STAGE

The delay in filing the revision is not intentional or deliberate but due to [illegible] bona fide reasons, which deserves to be condoned.

PRAYER

Therefore, it is most respectfully prayed that the delay of [illegible] days in filing the revision may be condoned and the revision be taken on record.

Lucknow.

Dated: 18.3.91

Anil Srivastava

([illegible])

Advocate

Counsel for the [illegible]

Filed today

12

3/4/91

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

Reg(O.A.) No. 231 of 1990 (L)

Gur Prasad ..... Applicant

Versus

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

COUNTER AFFIDAVIT ON BEHALF OF ALL THE RESPONDENTS

I, B.B. Saxena Working as Asstt. Operating Supdt. in the office ~~of Divisional Operating Superintendent, Northern Railway~~, Divisional Railway Manager Office, Hazratganj, Luc'now do hereby solemnly affrim and state as under:-

1. That the official abovenamed, is working as Asstt. Operating Supdt. in the office of Northern Railway, Divisional Railway Manager, Hazratganj, Lucknow, and has gone through the circumstances made in the present original application and as such fully conversant wit. the facts and circumstances of the case and also has been fully authorised on behalf of all the respondents to file the instent reply.

Asstt. Operating Supdt. (Chg.)
N. Rly., Lucknow.

Contd.....2

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

3. That the reply of para 4 of the original application is given as under:-

3. That the contents of paras 4(1) to 4(4) of the original application are admitted.

5. That the contents of para 4(5) of the original application are misconceived and as such categorically denied. It is further submitted that the applicant never remained sincere to his services.

6. That the contents of para 4(6) of the original application are incorrect and as such denied. It is stated that the charge sheet given to the applicant contained date, list of witnesses and imputation of charges as well. It is incorrect to say that the applicant was not supplied with the copy.

7. That the contents of para 4(7) of the original application are incorrect and as such categorically denied. It is stated that charge sheet contains each and every point specifically.

Contd.....3

7. That the contents of para 4(8) of the original application are incorrect and as such denied. It is submitted that applicant was given reasonable opportunity to produce defence. It is pertinent to mention here that the first date of D.A.R. enquiry was fixed on 21.9.88 but neither the applicant nor his defence helper attended the enquiry. Thereafter on next date fixed i.e. on 15.1.89/16.1.89 when applicant attended but the defence helper did not appeared. Also on 15.1.89 applicant himself took the letter and assured the enquiry officer to bring his helper on 16.1.89 but he failed.

Again on the request of the applicant DAR enquiry was postponed for 20.1.89 but Sri B.B. Singh SM/NHN did not attend the enquiry. Thereafter enquiry was fixed for 24.2.89 and 25.2.89 but defence helper did not bother to attend it on 25.2.89 too. Similarly on 10.3.89 old story repeated, lastly on 3.6.89 applicant gave in writing that he is ready to participate in the enquiry proceeding without his Defence helper and gave in writing that he was conferred with all reasonable opportunity to meet the ends of natural justice.

8. That in reply to the contents of para 4(9) of the original application, it is submitted

Contd.....P.4

that the enquiry officer held the applicant responsible for all the charges except charge No. 3 as mentioned in charge sheet.

9. That in reply to the contents of para 4(10) of the original application, it is submitted that the applicant has actually drawn his salary of Rs. 955/- from 3.10.89 to 2.12.89 only. Thereafter as a result of imposition of penality applicant's pay was reduced from Rs. 955/- to Rs. 775/- w.e.f. 3.12.89 till further orders.

10. That the contents of para 4(11) of the original application are wrong and as such categorically denied. It is further submitted that the applicant and his defence helper were given every reasonable opportunity to put their defence but they ignored it as is evident from the circumstances mentioned in para 8 of the present reply. It is stated that all relied upon documents were provided to applicant.

11. That the contents of para 4(12) of the original application are admitted to the extent that the applicant preferred an appeal dated 17.10.89 and rest of the contents are misconceived and as such emphatically denied. It is further submitted that from the circumstances mentioned in para 8 of the present reply it is crystal clear that the applicant was provided with every reasonable opportunity to meet the every corner

Contd....5

of natural justice but negligence is on the part of the applicant.

12. That the contents of para 4(13) of the original application are admitted to the extent that the appellate authority up hold the decision of judgement on the basis of circumstances and gravity of the case, with the remarks

"Appeal is regratted since the arguments are not plausible."

Any statement contrary to it is denied.

13. That the contents of para 4(14) of the original application are baseless and as such denied. It is further submitted that no specific or general contravention of the charge sheet has been indicated by the applicant and therefore any vague remark has got no meaning.

14. That the contents of para 4(15) of the original application are wrong and as such denied.

15. That in reply to the contents of para 4(16) to 4(19) of the original application, it is submitted that the averments made therein are mere imagination, without strict proof to it and as such not admitted. It is stated that Enquiry Officer provided every reasonable opportunity

Contd....6

to the Defence helper and lastly on the applicant's request in writing to proceed without Defence helper enquiry officer proceeded with the enquiry. It is also stated that the applicant was accomodated by the enquiry officer to a great extent and rendered him every reasonable opportunity to defend himself.

16. That the contents of para 4(20) of the original application are incorrect and as such denied. It is stated that there is no bar on enquiry officer to put more or less number of questions while recording statement, because enquiry is being made only to serve the purpose of enquiry.

17. That the contents of para 4(21) of the original application are misleading and as such categorically denied. It is submitted that Annexure II to the application is itself explanatory regarding each article of charge containing relevant facts, denied and admission of applicant.

18. That the contents of para 4(22) of the original application are misconceived and as such not admitted. It is further submitted that the applicant remained absent from duty and

Contd....7

avoided his refresher course on one pretext or other for which he was suspended on 22.4.86 but subsequently his suspension was revoked on his assurance that he will attend the next course but again he avoided the same.

19. That the contents of para 4(23) of the original application are incorrect and as such denied.

20. That the contents of para 4(24) of the original application are irrelevant and as such not admitted.

21. That in reply to the contents of para 5 of the original application, it is submitted that grounds taken are irrelevant, false, misconceived and mischeivous and as such present application is liable to be dismissed against the applicant and in favour of the answering respondents with cost.

22. That the contents of paras 6 and 7 of the original application do not call for any reply.

23. That in reply to the contents of paras 8 and 9 of the original application, it is submitted that relief soughts are baseless, irrelevant

Contd.....8

and devoid of any merit and as such the present original application is liable to be dismissed against the applicant and in favour of the answering respondents with cost.

Lucknow

Dated: 18 3 91

सहायक पर्सो. अधि. (Chg.)

VERIFICATION

I, the official abovenamed do hereby verify that the contents of para 1 of this reply is true to the best of my personal knowledge and those of paras 2 to 28 of this reply are believed by me to be true on the basis of records and legal advice.

Lucknow

Dated: 18.3.91

RA

Central Administrative Tribunal Allahabad.

Lucknow Circuit Lucknow.

O.A.No: 231/90 L.

Gur Prasad Vs U.C.I. and others.

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT.

INDEX.

S.No:	Documents relied Upon.	Page Nos.
1.	Annexure R-1. Photo-stat copy of Printed Serial No.8025 in connection with Passing of speaking orders indicating the reasons for the conclusion arrived at by the Disciplinary as well as the appellate authority, issued by the General Manager(Order of the Rly.Bd.	9

Lucknow.
Dated: 20/5/91

Signature of the Applicant.

Received copy of rejoinder affidavit today on behalf of Anil Srivastava

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

LUCKNOW CIRCUIT LUCKNOW.

O.A.No: 231/90 L.

Gur Prasad .... Applicant.

Versus

Union of India and others..... Opposite parties.

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT.

I, Gur Prasad, working as Porter under Station Master Nigohan, Northern Railway, Lucknow Division, do hereby solemnly affirm and state as under:-

1. That the contents of para 2 of the counter need no comments.

2. That the contents of para 5 of the counter, are denied as there is no specific denial of the facts, and the contents of para 4(5) of the application are reiterated as correct. The Station Master Nigohan Sri B. Singh had always been harassing the porter for his ill-designed activities. He was given chargesheets for major penalties several times. The Service Record of the aforesaid Station Master if called for and scrutinised, the Hon'ble Tribunal will come to the conclusion that the said Station Master harassed the the applicant. It is incorrect that the applicant was not sincere about his working and services. The diary maintained at the station Nigohan may kindly be called for which will clearly prove whether the applicant was working or not. He always marked the applicant absent in the attendance register at his own whims

Contd...2

whereas the performance of duties have been shown in the Diary maintained at station Nigohan.

3. That in reply to para 6 of the counter, its contents are denied and contents of para 4(6) of the application are reiterated as correct. It is further submitted that the charge-sheet given to the applicant is vague and indefinite because no date has been mentioned in the chargesheet, and the list of witnesses is also indefinite. The report of the Station Master Nigohan was also not given to the applicant nor it was attached with the Chargesheet . The applicant relies on case No.ATR 1987(1)CAT.~~/~~ 188 Mohammed Akhar Vs Union of India and others.

4. That in reply to para 7 of the counter, its contents are denied and the contents of para 4(7) of the application are reiterated as correct. It is further stated that chargesheet is vague and indefinite.

5. That in reply to para 7 of the counter, its contents are denied and the contents of para 4(8) of the application are reiterated as correct. It is further submitted that ~~#~~ the applicant was not given reasonable opportunity to produce his defence helper. The Enquiry Officer obtained the signature of the applicant on a plain paper saying that every-

Con d....3.

thing will be in the favour of the applicant. The defence helper attended the enquiry on all dates because the enquiry Officer did not come in time left for his residence. On 20.1.1989 also the Defence Helper attended the Enquiry but Sri B.B.Singh, S. Nigohan, did not attend the enquiry so the enquiry was postponed to 24.2.1989 and 25.2.89 . The applicant did not give in writing that he will attend the enquiry and participate in it without defence helper. The enquiry proceeded without defence helper which is a denial of reasonable opportunity.

6. That in reply to para 8 of the counter, its contents are denied and contents of para 4(9) of the application are reiterated. It is submitted that the Enquiry Officer framed the charges according to his own and different from the chargesheet issued by the Disciplinary Authority. In this way the enquiry proceeding is perverse.

7. That in reply to para 9 of the counter, it is submitted that the Opposite Party is put to strict proof that the applicant had drawn pay from 3,10.89 to 3.12.89 whereas the applicant's pay was reduced from Rs.955/- to 775/- with effect from 1.9.89 as is shown in the punishment.

8. That the contents of para 10 of the

Contd...4.

counter are denied and contents of para 4(11) of the application are reiterated as correct. It is submitted that the copy of the documents were not supplied to the applicant and no reasonable opportunity was afforded to the applicant. The Plaintiff/Applicant was cross-examined by the Enquiry Officer on facts which vitiated the enquiry. The Enquiry Officer put incriminating and leading questions from the applicant and tried thereby to trap the charged employee. The applicant relies on (1990)14 AT cases 99 V.D.~~Exm~~ Joseph Vs.U.C.I. and others. Moreover, the charge was also not supported by the evidence.

9. That in reply to Para 11 of the Counter its contents are denied and the contents of Para 4(12) of the application are reiterated as correct. It is further submitted that the applicant was not provided with reasonable opportunity and thereby there was a denial of natural justice to the applicant.

10. That the contents of para 12 of the counter are denied, and contents of para 4(13) of the application are reiterated as correct. It is further submitted that the appellate order is also not in speaking order . The Appellate authority did not consider the points raised in Appeal and Defence Note submitted by the

by the applicant. The appellate authority has only written in deciding the appeal that Appeal is regretted since the arguments are not plausible. The appellate authority has a legal obligation to pass speaking order and detailed application of mind to the various points raised in the appeal. The said order is not in speaking order, as provided in Rule 27 (2)CCS and CCA rules 1965. The applicant is placing reliance on A.T.R. 1987(i)CAT 298 Yashpal Laxman Dass Midha Vs.U.O.I. and others.

11. That in reply to para 13 of the Counter, its contents are denied and the contents of para 4(14) of the application are reiterated as correct. It is further submitted that the Enquiry Officer framed six charges in his report whereas there is no mention about six charges in the chargesheet thereby the Enquiry Officer proceeded against the charges not mentioned in the chargesheet which was also vague and indefinite. The charges in the chargesheet are of general nature and not specific.

12. That in reply to para 14 of the counter, its contents are denied and contents of para 4(15) of the application are reiterated as correct. It is submitted that the report of the Station Master, Tiruvan, was neither annexed with the

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chargesheet nor the copy of the same was supplied to the applicant.

13. That in reply to para 15 of the counter, its contents are denied and contents of para 4(16) to 4(19) of the application are reiterated as correct. It is further submitted that the defence helper always attended the enquiry but sometimes due to late arrival of the Enquiry Officer and witnesses the defence helper came back to his residence. The applicant did not give in writing that he would participate in the enquiry proceedings without defence helper. Moreover the Enquiry Officer, did not record the statement of the Station Master, Nigohan and only put some questions to the Station Master. As no statement was recorded of the Station Master Sri B.B.Singh, so the applicant was not in a position to cross examine the prosecution witness. In this way the applicant was also denied the reasonable opportunity of cross examining the prosecution witness. The proceeding of the Enquiry Officer is therefore, perverse and vitiated. The opposite party has not stated and replied about ~~19~~ Para 19-A of the application which goes to prove that the facts are correct.

14. That in reply to para 16 of the counter, its contents are denied and contents of para

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4(20) of the application are reiterated as correct. It is further submitted that the Enquiry Officer, examined the P.W. Witness without recording the statement of the P.W. Witness Sri B.B.Singh, Station Master, Nigohan, and the applicant was denied the opportunity to cross examine the P.W. witness as the statement of the P.W. was not available being not recorded thereby the Enquiry proceeding is vitiated and perverse.

15. That in reply to para 17 of the counter its contents are denied and the contents of para 4(21) of the application are reiterated. Annexure No.2 only is based on the relevant charges framed by the Enquiry Officer, who has exceeded his powers and not based on the charges in the chargesheet.

16. That in reply to para 18 of the counter its contents are denied and contents of para 4(22) of the application are reiterated as correct. It is submitted that the applicant never remained absent from duty without sufficient cause or application and the applicant did not avoid to the refresher course. In this connection the diary maintained for the year 1986 at the Nigohan station may be called for which will prove, the facts. Side by side the attendance register which was manipulated by the Station-

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Master Sri D.B.Singh, who is the custodian of that register. may also be called for.

17. That in reply to para 19 of the counter, its contents are denied and the contents of para 4(23) of the application are reiterated.

18. That in reply to para 20 of the counter, its contents are denied and contents of para 4(24) of the application are reiterated.

19. That in reply para 21 of the counter, its contents are denied and contents of para 6 of the application are reiterated. The impugned order is liable to be quashed.

20. That in reply to para 23 of the counter, its contents are denied and the contents of paras 8 and 9 of the application are reiterated

The date of 21/5/86 & 3/4 9/9 & 10/9 23/5 & 3/6 5/8 & 13/6 2/6, 8/2 & 12/2 13/8 & 21/8 & 28/10 & 24/11 of MC was not fabricated

LUCKNOW

DEPONENT

DATED: 20/5/91

Verification.

I, the above named deponent do hereby verify that the contents of paras 1 to 20 of the rejoinder are true to my knowledge and legal advice.

Deponent.

Lucknow.

Dated: 20/5/91

P S No. 8025

No. 52E/0/26VII (D&A) 40(L) Dt. 8.4.1982

Sub :- Railway Servants (Discipline & Appeal) Rules 1968 Serving of "Speaking orders" on the Railway Servants in disciplinary cases.

Ref :—Railway Board's letter No. E(D&A)78 RG6-11 dated 3.3.1978.

Attention is invited to this office letter No. 52E/0/26-VIIE(D&A) dated 11.4.78 (P.S. 6966) where in a copy of Railway Board's letter No. E(D&A) 78 RG6-11 dt. 3.3.78 was circulated to all concerned for information and necessary action. It was clearly mentioned by the Board in their above letter that in all disciplinary cases (whether of minor penalty or major penalty), the Disciplinary Authority should invariably pass speaking orders indicating the reasons for the conclusion arrived at. The same procedure should also be adopted by the Appellate Authority while passing orders on the appeals of the Railway servants.

2. The following two court cases have come to the notice of this office wherein speaking orders were not passed by Disciplinary/Appellate Authority. As such Hon'ble Justice delivered the judgement in favour of employees quashing the orders of disciplinary/appellate authorities.

1. Regular second appeal No. 1520 of 1972 in the High Court at Chandigarh. Union of India V/s Shri Krishan Kumar S/o Shri Ratti Ram. Ticket No. 885B-Type Jagadhri W/Shop.

2. L.P.A. No. 185 of 1981—Union of India V/s Shri Jugal Kishore Sharma and others in the High Court, Delhi.

3. Law requires that the Disciplinary Authority imposing the penalty must apply its mind to the facts, circumstances and record of the case and then record its findings on each imputation of misconduct & misbehaviour. The Disciplinary Authority should give brief reasons for its findings so as to show that it has applied its mind in the case. The reasons recorded by the Disciplinary Authority should be comprehensive enough to give a chance to the delinquent Railway Servent to explain his case in his appeal. All the relevant provisions of D&AR Rules should be ensured to be complied with and this fact where deemed necessary may be recorded also in the orders. All the points raised by the delinquent railway servant in his defence/appeal be considered and it should be recorded by the Disciplinary Authority/Appellate Authority as to why the said points are not tenable.

This fact must be brought to the notice of all officers for compliance in D&AR cases.

पृम संख्या 8025-A

सं० 52-ई/0/26/VII (डी एण्ड ए)-40 (d) दिनांक 8-4-1982

विषय :— रेल कर्मचारी (अनुशासन और अपील) नियम 1968 अनुशासनिक कार्रवाई

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH
Gandhi Bhawan, Opp. Residency, Lucknow

Registration No. 4071-73 dated the _____

Registration No. 231/90 of 1990

Sur Prasad _____ APPLICANT

VERSUS

Union of India _____ RESPONDENT

(1) Union of India through General Manager N.E.R. Gorakhpur House, New Delhi
(2) Divisional Operating Superintendent N.E.R. D.R.M. Office Lucknow

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal, and the Tribunal has fixed 17-1-90 day of _____ 1990 for the hearing of the said application. Reply within 4 weeks, Rejoinder within 2 weeks.

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

Given under my hand and the seal of the Tribunal this 30 day of 7 1990.

DEPUTY REGISTRAR

*****

(1) The Divisional Operating Superintendent N.E.R. Hazratganj, D.R.M. Office Lucknow

Enclosed copy of Judgment with Courts order dated 26.7.90 to be followed where on.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
LUCKNOW CIRCUIT LUCKNOW.

O.A.No: 231/90 L.

Gur Prasad Vs Union of India and others.

APPLICATION FOR SUMMONING OF DOCUMENTS.

The following documents are required to prove that the applicant either performed the duty or was sick with the Railway doctor:

1. Attendance register and diary maintained at Nigohan station, N.Railway, for the period 21.3.1986 to 26.12.86 and R.M.C. from 21.3.86 to 3.4.86, 8.4.86 to 10.4.86, 23.5.86 to 3.6.86, 5.6.86 to 13.6.86, 8.7.86 to 12.7.86, 13.8.86 to 21.8.86.

WHEREFORE it is prayed that the Opposite Parties may be directed to produce the above record at the time of hearing in the ends of justice.

(K.P.Srivastava)
Cousel for the Applicant.

Lucknow.

Dated: 28/5

A/76 B(41)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
LUCKNOW CIRCUIT LUCKNOW.

O.A.No: 231/90 L.

Gur Prasad Vs Union of India and others.

APPLICATION FOR SUMMONING OF DOCUMENTS.

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WHEREFORE it is prayed that the Opposite Parties may be directed to produce the above record at the time of hearing in the ends of justice.

(K.P.Srivastava)
Cousel for the Applicant

Lucknow.

Dated: 2/5

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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

T.A. No.231 of 1990 (L)

Guj Prasad ..... Applicant.

Versus

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

26.7.1990

Hon'ble Mr. Justice K. Nath, V.C.

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

Heard the counsel.

Admit. Counter may be filed within 4 weeks. Rejoinder within 2 weeks, list the case on 17.9.1990 before D.R. for fixing a date.

Sd/- Sd/-

A.M. V.C.

/// True Copy ///

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Tribunal