

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT 267/90 of 20.....

Mohd. Ayub KhanApplicant(S)

Versus

U.O.-9Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

General Secy
Date of
Date of

22/

Deputy Secy

Registration No. 267 of 1989 90 (L)

22/8

APPLICANT(S) Mohd Ayub Khan

RESPONDENT(S) C.A. 9

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? | N.A |
| | c) Has sufficient case for not making the application in time, been filed? | yes |
| 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 putting done properly ? | yes |
| 9. | Have the chronological details of representation made and the outcome 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. |

A2

Particulars to be Examined

Endorsement as to result of examination

1. Are the application/duplicate copy/spare copies signed? *yes*
2. Are extra copies of the application with annexures filed? *yes*
 - a) Identical with the Original? *yes*
 - b) Defective? *x*
3. Wanting in Annexures
Nos. _____ pages Nos. _____?
4. Have the file size envelopes bearing full addresses of the respondents been filed? *N.A.*
14. Are the given address the registered address? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application? *yes*
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true? *yes*
17. Are the facts of the case mentioned in item no. 6 of the application? *yes*
 - a) Concise?
 - b) Under distinct heads?
 - c) Numbered consecutively?
 - d) Typed in double space on one side of the paper? *yes*
18. Have the particulars for interim order prayed for indicated with reasons? *yes*
19. Whether all the remedies have been exhausted? *yes*

dineest/

syuP
22/8

267/9

A3

21-9-90

No setting Adj to 30-10-90

Q

30-10-90

Due to Holiday Adj to 22-11-90

22-11-90

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

M

On account of the death of Sri
P.C. Saxena Advocate whose cremation
is likely to be ~~made~~ ^{held} prayer for
rejoinderment is made on behalf of
Advocate. List for Admission
26-11-90.

M M L
AM

VC

26.11.1990

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

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

Admit.

Issue notice to respondents to file
a counter within four weeks to which the
applicant may file a rejoinder within two
weeks thereafter. List before the D.R.(J)
on 14.1.91 for fixing a date & if possible
the
after the completion of record.

Sd/

Sd/

A.M.

V.C.

Sd/

Notices Issued
Q

29-11-90

O.A. 267/90 R.

26.4.91
D.R.

A)

No appearance has
been made on
behalf of the applicant
Shri B. K. Shukla files
his vakalatnama
on behalf of O.P.
Respondent to file
counter by 6/8/91

6.8.91
D.R.

counsel for the
respondent is
present. He will
file ~~by 29/10/91~~
counter by 29/10/91
Applicant is
absent today.

29.10.91
D.R.

Both the parties are
present. Respondent
to file counter by
11/12/91.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW
.....

AB

ORDER SHEET NO. _____

O.A./T.A. No. 207/92

OFFICE REPORT

DATE

ORDER

8 9 92

No Summary of the
adjournment 22.12.92

case is
S.F.H.

8
21/10/92

(Case summary)
21.12.92

h.c.

Dated: 7.12.1992.

Hon'ble Mr. Justice U.C.Srivastava, VC

Hon'ble Mr. K. Obayya, Member (A)

S.F.H.
21/11/92

As the counsel for the applicant
has not been able to come because of
curfew in the city. The case is
adjourned to 10.12.1992.

A.M.

V.C.

Dated: 10.12.92

Hon'ble Mr. Justice U.C.Srivastava, VC

Hon'ble Mr. K. Obayya Member (A)

The applicant is present in
person and prays that the case may be taken
up after lunch because his counsel will come
after lunch, ~~xxx~~ but his counsel will not
appear when case is taken after lunch. List
this case on 11.12.1992. On the date fixed,
the case may be disposed of even in absence
of the counsel for the applicant.

A.M.

V.C.

MANISH/-

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A. No. 267 of 1990

Mond. Ayub Khan

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

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

At the relevant point of time the applicant was working as Deputy Chief Controller, N.E. Railway, and was issued Memo dated 17.3.1989 requiring him to furnish his representation against the neglect of duty and irresponsible working on his part as per details given in the statement of imputations, according to which the Driver of up Ludhina Coal Special power No. 16030 WEM 2 with load of 82 served with a memo addressed to Train Controller, Power Controller and Train Examiner, Control, Lucknow J. through Station Master, Gonda on 21.12.88 in connection with the poor break but the applicant as Deputy Chief Controller, Lucknow-Gonda but on the said date failed to record the aforesaid message on Control Chart for onward relay to Train Examiner Control, Lucknow.

As

2. The applicant denies the charges altogether including the fact that the enquiry which was conducted without associating him, was conducted by one who was junior to him, further, neither the applicant nor the driver or the train was given opportunity to participate in the fact finding enquiry which contravenes the principles of natural justice and the representation filed by him did not find favour and he without any reason was punished by withholding increment till two years by the order dated 4.8.89. In the appeal, it appears that the personal hearing was given but the appellate authority was also not satisfied with the pleas raised by the applicant and consequently, the appeal was also dismissed.

3. Shri D.S. Chaube, learned counsel for the applicant contended that there was no proof whatsoever of any such transmission of message against the applicant and that he has been punished on imaginary ground. After preliminary enquiry was made, then the charge sheet was issued. The learned counsel for the applicant contended that without holding enquiry, the applicant could not have been held guilty and the increments could not have been stopped. It was within the domain of the disciplinary authority to punish the applicant if the disciplinary authority was satisfied with the fact finding enquiry. The learned counsel for the applicant then contended that the order is non-speaking

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Subsequently, the enquiry has also been made and if there was any short-coming, the same has been fulfilled by giving personal hearing to the applicant and he was of the view that what was done was regular and not irregular. The learned counsel for the applicant then contended that the punishment for such a thing ~~which~~ according to which, if charge is proved, was without any process and punishment imposed is excessive. That may be so, but the Tribunal has no jurisdiction to enter into the quantum of punishment and as such the punishment cannot be reduced by us. The learned counsel for the applicant/^{then} contended that the applicant proposed to file a review application.

Obviously we have decided the case and our judgment will not stand in the way of filing review. But for the above observations, the application is dismissed.

No order as to costs.


Anil Kumar
Memor.


Vice Chairman.

Shakeel/-

Lucknow: Dated: 17.12.92.

In the Hon'ble Central Administrative Tribunal.

Additional Bench, Allahabad.

Circuit Bench, Lucknow.

Registration No. 267 of 1990(1).

Mohd. Ayub
Respondent.

Applicant.

Versus.

Union of India
and others.

Respondents.

COMPLAINT - A.

COMPLAINT - B.

*Filed to day
22/8/90*

[Signature]
Applicant.

[Signature: D. S. Chaube]

Witness: Dated:

(D. S. Chaube)
Advocate.

August
22, 1990.

Counsel for Applicant.

Noted for 21-9-90

B. K. Verma

Chief Clerk

Sri D. S. Chaube Ad.

A9

In the Hon'ble Central Administrative Tribunal.

Additional Bench: Allahabad.

Circuit Bench, Lucknow.

Registration No. 247 of 1990(L).

Central Administrative Tribunal
Lucknow
Date of Filing 22/8/90
Date of Receipt by Registrar
7/11/90
Deputy Registrar

Application under Section 19 of the
Administrative Tribunal Act, 1985.

22/8

Mohd. Ayub Khan.

Applicant.

Versus.

Union of India
and others.

Respondents.

COMMISSION - A.

<u>Sl. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Application under Section 19 of the Central Administrative Tribunal Act.	1-11
2.	Order dated 4-6-1989 of Senior Divisional Operating Superintendent North Eastern Railway, Lucknow to withhold increment till 2 years (Annexure-1).	12-13
3.	Order dated 19-10-1989 of Additional Divisional Railway Manager, North Eastern Railway, Lucknow rejecting appeal (Annexure-2).	14-15

Lucknow: Dated:
August 22, 1990.

Mohd. Ayub Khan
Applicant.

D. S. Chaube

Lko. Dated:
August 22, 1990.

(D. S. Chaube)
Advocate.
Counsel for Applicant.

In the Hon'ble Central Administrative Tribunal.
Additional Bench Allahabad.

Circuit Bench, Lucknow.

Registration No. _____ of 1990(L).

PARTIES NAME

Mohd. Ayub Khan, aged about 47 years, son of Late Shri
 Mohd. Ibrahim Khan, Deputy Chief Controller, North
 Eastern Railway, Office of Divisional Railway Manager,
 Ashok Marg, Lucknow.

----- Applicant.

Versus.

1. Union of India through General Manager, North Eastern
 Railway, Gorakhpur.
2. Additional Divisional Railway Manager, North Eastern
 Railway, Lucknow.
3. Senior Divisional Operating Superintendent, North
 Eastern Railway, Lucknow.

----- Respondents.

Lucknow: Dated:

August
~~June~~ 22, 1990.

M. K. Chandra
 Applicant.

Lko. Dated:

August
~~June~~ 22, 1990.

D. S. Chandra
 (D. S. Chandra)
 Advocate.
 Counsel for Applicant.

-: 2 :-

4. Subject in brief: - by means of the impugned order, ~~given~~ the applicant has been punished by withholding increment till two years.

(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 this Hon'ble Tribunal.

(3). Limitation:

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

(4). Facts of the case:

The facts of the case are given below:-

1. That the applicant while holding the post of Deputy Chief Controller, North Eastern Railway, Lucknow was issued Memo. by the Senior Divisional Operating Superintendent vide his No.1/61/Memo/98/89 dated 17-3-1989 requiring him to furnish his representations against the neglect of duty and irresponsible working on his part as per details given in the statement of imputations. According to details given, the Driver of up Luckhna Coal special power No. ¹⁶⁰³⁰ ~~10350~~ ¹⁶⁰³⁰ with a load of 62 served

[Handwritten signature]
D. S. Chauhan

-: 3 :-

a memo addressed to Train Controller, Power Controller and Train Examiner Control, Lucknow Jn. through Station Master, Gonda Railway on 21-12-1983 in connection with poor break power but the applicant while working as Deputy Chief Controller, Lucknow-Gonda Board on the said date failed to record the aforesaid message on Control Chart for onward relay to Train Examiner Control, Lucknow Jn. for next train examination point. A true copy of this memo. is enclosed as Annexure-3 to this application.

2. That the applicant in reply, submitted his representation on 26-3-1984 in which he pointed out that the Memo. issued to him on the basis of illegal fact finding enquiry is untenable in law. The fact finding enquiry was conducted by a non-gazetted employee is not only equal ⁱⁿ rank to the applicant, but he is also junior to him as Deputy Chief Controller. ~~As was given~~ The applicant was given the scale of 1.2000-3200/- with effect from 1-1-1984 ~~by~~ ^{by} Shri A.M. Pandey, Traffic Inspector who conducted the enquiry, ~~as~~ he was given this scale later on

[Signature]
DSC in Charge

-: 4 :-

3. That the applicant in his representation further pointed out that neither the applicant nor the Driver of the train was given opportunity to participate in the fact finding enquiry which contravenes the principle of natural justice. The applicant further pointed out that the telephone of Gondal Autohery ^{was} ~~is~~ not in order and the message was not at all given to the applicant. Hence the charge levelled against him is imaginary and baseless. A true copy of representation dated 26-3-1939 is enclosed as annexure-4 to this application.

4. That it appears that the representation made by the applicant was not given proper consideration and he, ~~was~~ without any proper reason was punished by with-holding increment till two years by the order dated 4-8-1939. A true copy ~~of~~ thereof already enclosed as Annexure-1 to the application.

5. That the punishment order dated 4-8-1939 is violative to the principle of natural justice inas much as the punishing authority again got a fresh enquiry conducted by Assistant Operating Superintendent Movement but again ~~xxx~~ neither the applicant was asked to participate in the said enquiry nor the finding given in the 2nd enquiry was

Handwritten signature:
D. S. Chauhan

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disclosed to the applicant. Further-more, the statements of Assistant Station Master, Maijapur was taken in the absence of applicant and the same was utilised against him without giving a chance to make representation against the same which further violates the principle of natural justice.

6. That the applicant made appeal to the opposite party No.2 on 18-9-1989 in which he furnished detailed reasons and grounds to show that the punishment imposed upon him is unlawful and unjustified. A true copy of appeal dated 18-9-1989 is enclosed as Annexure-5 to this application.

7. That the applicant in his appeal specifically pointed out that the order of punishment is not only non-speaking but is based on extraneous materials in violation of the principle of natural justice and also the statutory provisions contained in discipline and appeal rules 1960 have been violated.

8. That the appeal made by the applicant was not given proper consideration and the same was rejected in summary and mechanical manner by order of opposite party No.2 passed on 19-10-1989 already filed as Annexure-2 to this application. The applicant in his

M. K. S.

D. K. S.

-: 7 :-

10. That the punishment imposed being unjustified and unfair deserves to be quashed.

(5). Grounds for relief with legal provisions.

1. Because the applicant has been held guilty for imaginary charge not supported by any proper evidence.
2. Because the enquiry was conducted by Senior Subordinate (non-gazetted) who was junior to the applicant and thereby instructions contained in Railway Board letter No. 2 (D & A 71AG6-4 dated 2-3-1971) were violated and Railway Board letter No. 255AG-6-1 of 18-7-1958 were violated.
3. Because there has been violation of natural justice in as much as the enquiry was conducted in the absence of applicant and important witness the driver of the train was also not called to participate in the enquiry and thereby Rule 70C of the Discipline and Appeal Rules, 1968 was violated.

M. K. A.

DSli Aukh

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-: 8 :-

4. Because the order of punishment is non-speaking and is violative to Railway Board letter No.2 (D & L 78AG6.11 of 3-3-1978).
5. Because the fresh documents were relied upon without disclosing the same to the applicant.
6. Because the punishing authority went beyond jurisdiction to hold fresh enquiry with the intention to escape evidence to penalise the applicant without giving him any chance to defend his cause.
7. Because the appeal was rejected without consideration of all the points raised therein and without giving proper appreciation of facts.

46) Details of the remedies exhausted.

The applicant declares that he has availed of all the remedies available to him and his appeal made was rejected by the order dated 19-10-1989 of opposite party No.2.

[Signature]
Dilnauke

A19

-: 9 :-

- (7). Matters not previously filed or pending in the other courts.

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 filed, before any court or any other authority or any other Bench of the Tribunal nor any such application writ petition or suit is pending before any of them.

- (8). Reliefs sought:-

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

1. The punishment order dated 4-8-1989 passed by the opposite party No.3 contained in Annexure-1 with-holding increment till two years of applicant may be quashed with consequential benefit.
2. The appellate order dated 19-10-1989 passed by the opposite party No.2 contained in Annexure-2 rejecting appeal may be quashed.
3. The applicant may also be awarded cost of the application.

M. K. S. Chandra
D. S. Chandra

-: 10 :-

(9). Interim relief, if any, prayed for:

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

1. The opposite parties may be directed to allow the applicant to get his usual allowances ~~and~~ and increments during pendency of this application and the punishment may be directed not to be taken into account for considering any service matters including promotion.

(10). In the event of application being sent by registered post.

Since the application is not being sent by registered post, hence no information is required.

(11). Particulars of Bank Draft/Postal Order filed in respect of the application fee.

1. No. & Amount of the Indian Postal Order.
2. Name of the Office.
3. Date of issue of Postal Order/Bank Draft.
4. Post Office at which payable:

B 02 46 7992 dt 21/8/90
Rs 50/-

G.P.O, Metnaw

G 21.8.90.

Allahabad

[Signature]
D. S. Chauhan

(12). List of Enclosures.


1. Order dated 4-8-1989 of Senior Divisional Operating Superintendent, North Eastern Railway, Lucknow.
2. Order dated 19-10-1989 of Additional Divisional Railway Manager, N.E.R., Lucknow rejecting appeal.
3. Memo. dated 17-8-1989.
4. Representation dated 18-8-1989.
26-3-
5. Appeal dated 18-9-1989.

VERIFICATION

I, Mohd. Ayub Khan, aged about 47 years, Son of Late Shri Mohd. Ibrahim Khan, ~~xxxxxx~~ Deputy Chief Controller, North Eastern Railway, Office of Divisional Railway Manager, Ashok Marg, Lucknow do hereby verify that the contents of paras 1 to 4, 6 & 7 are true to my personal knowledge and the contents of paras 5 are believed by me to be true on legal advice and that I have not suppressed any material fact.


Lucknow: Dated:

Aug 22, 1990.


Signature of Applicant.

Lko. Dated:

Aug 22, 1990.


(D. S. Chandra)
Advocate.
Counsel for Petitioner.

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A22

जन गण मनरेवुन तेन्रन सनमरेवुन तेन्रन
सरनरेवुन तेन्रन, सनमरेवुन

रखिरनेन नं० :

1990 एन०

नो० अथुन ता

समरेवुन

समरेवुन

पुनियन ताक सनमरेवुन सनमरेवुन

प्रतिवादागन

एन० नं० : 1

पूर्वोत्तर रेखे

अनुमान एवु अथुन समय 1968 के समय 11 के अथुन
अथुनरेवुन तेन्रन पृथक्ता सनमरेवुन तेन्रन तेन्रन सनमरेवुन सनमरेवुन
पदावनति के मानलो की ओरुवर दण्ड अनिरौयन पुनता ।

सख्या : टी/61/मेमो/98/89

दिनांक 4.8.1989

प्रेमक,

अथुन रेखे प्रनरेवुन सनमरेवुन,
पूर्वोत्तर रेखे, सनमरेवुन

तेन्रन ते,

नो० अथुन ता,
नो० अथुन ता, सनमरेवुन

उ.रा. : नो० अथुन ता, सनमरेवुन

स. अथुन ता सनमरेवुन : टी/61/मेमो/98/89 सनमरेवुन

17.5.1989 के उत्तर के अथुन तेन्रन सनमरेवुन तेन्रन सनमरेवुन

समरेवुन पुनता सनमरेवुन सनमरेवुन तेन्रन सनमरेवुन तेन्रन

M. S. S.

True
copy

DSL: anli

13

A23

-2-

आदेश पारित है:-

" After going through his defence, M.D. (..) was asked to enquire afresh and he also has confirmed that no defects was there in the phone at G.M. M./... has confirmed that he did not give L-001 of trains on behalf of G.M. It is clear that he has failed to perform his duty and is putting forth untenable excuses for this lapses, he punished with L-1T two years."

sd/- A. H. B. LAL
Sr. DOS/LM

प्रतिनिधि - प्रमोद/...

हस्ताक्षर तथा दिनांक

आदेश

=====

1. इन आदेशों के विरुद्ध अपील ए0डी0आर0एन0/एन0जे0एन0 की हो सकती है। आदेश पारित करने वाले अधिकारों से जातन। इनीडियेड उच्च अधिकारों।
2. यह अपील उस प्राधिकार द्वारा रोक जा सकता है जो आदेश देने वाले प्राधिकारों से भिन्न न हो याद
3. यह मामला ऐसा हो जिसमें तथ्यमाधान कोई अपाल न होतो हो। आदेश जितने विरुद्ध अपील जा जा रहा है, जो अपील द्वारा 45 दिन के अन्दर न प्रस्तुत किया गया हो और देरी के लिए अनुचित कारण न बताया गया हो।
4. अुरा उन संव 1968 के नियम 21 के प्राविधान का अनुपालन न किया गया हो।



Tone copy

D. S. Chandra
Advocate

15 A25

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की १० वर्ष की अवधि में उन लोगों को, जो कि
व्यक्तिगत रूप से उनका नाम है कि वह व्यक्तिगत रूप से
की ओर पर लाए गए लोगों के लिए व्यक्तिगत रूप से
के इलाके को देखते हैं। उक्त के आधार पर की गोपनीय
व्यक्ति की व्यक्तिगत आधार पर दिया गया दण्ड व्यक्ति-
गत रूप से है। उनकी व्यक्तिगत व्यक्तिगत रूप से की जाती है।

M. K. S.

१. व्यक्तिगत आधार पर
२. व्यक्तिगत रूप से
३. व्यक्तिगत रूप से

The Hon
D. S. Ranke
Advocate

1. Hon'ble Central Administrative Tribunal.
Additional Bench, Aligarh.

Circuit Bench, Lucknow.

Registration No. 26/ of 1990 (L).

1990. By the
Applicant.

Applicant.

Versus.

Union of India
and others.

Opp. Parties.

COMMISSION - B.

Sl. No. Particulars

Page No.

1. Memo. Dated
17-8-1989.

16-18

2. Representation
dated 20-8-1989.

19-20

3. Appeal dated
10-9-1989.


21-26

4. Power.

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Witness: Dated:

August
22, 1990.


Applicant.

Witness: Dated:

August
22, 1990.


(D. S. Chaube)
Advocate.
Counsel for Applicant.

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॥ विद्यादीनि ॥

உதாரணமாக, கருவியைப் பற்றித் தகவல் கொடுக்கிற பகுதி:

De la Roche

यदि देना हो, निम्न हस्ताक्षरी के द्वारा कु. गाड़ी निपटका/बेज
इस तरह प्रस्तुत किया जाना चाहिए ताकि वह आपन की प्राप्ति
के दस दिनों के भीतर निम्न हस्ताक्षरी के पास पहुँच जाय ।

3- यदि श्री मोहम्मद ख़ुब आन, पैरा 2 के विनिर्दिष्ट अधि
के भीतर लम्बावेदन प्रस्तुत नहीं करते तो वह जान लिया जायेगा कि
उन्हे कोई लम्बावेदन नहीं देना है और श्री मोहम्मद ख़ुब आन के
विरुद्ध एक पक्षीय आदेश पारित किया जा लेगा ।

4- श्री मोहम्मद ख़ुब आन इस आपन की प्राप्ति है ।

श्री मोहम्मद ख़ुब आन

पद- कु. गाड़ी निपटका

५ जमैनाम आदि ५

द्वारा, कु. गाड़ी निपटका

हस्ताक्षर ।

५ जमैनाम अधिकारी या नाम के सद.

Mohammed

True copy
DShanbe
Advocate

Statement of Imputations.

Driver of UP LSH coal special power 16030 D42 with a load of 82 served a memo to LIL/PLW/LR/Control/LJN through SM/GDK on 21.12.88 in connection with poor brake power.

Shri Mohd. Ayub Khan while working as DTL on LJN GD Board on 21.12.88 failed to record the aforesaid message on Control Charge for onward relay to LR /Control/ LJN for next train examination point.

This tantamounts to neglect of duty and irresponsible working on the part of DTL Shri Mohd. Ayub Khan in performance of his duty as a railway servant.

[Signature]

sd/-M. E. Khan LIL
Sr. DC/LJN.

D. S. Chauhan
Adv

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A29

In the Hon'ble Central Administrative Tribunal.
Additional Bench Lucknow.

Registration No. of 1990(L).

Mohd. Ayub Khan

Applicant

Versus

Union of India and others

Opp. Parties.

Annexure No. 4

The Mr. D.C.S.,
E.I. Railway,
Lucknow.

Sub: Representation against the charges.

Ref: Memorandum no. 1/61/Memo/98/89 dated 17.3.89.

Sir,

Respectfully I beg to state that I deny all the charges contained in the memorandum under reference and plead myself not guilty. The fact finding enquiry which is the basis of charges, is incomplete and also conducted in contravention of rule no. 9 of DAR 1968. due to the following reasons:

The driver and myself both were not allowed to participate in this fact finding enquiry. Secondly the enquiry officer who conducted the enquiry was equal in rank to me. The enquiry officer should be senior to me as per rule reproduced below:

Rule 9/A Appointment of inquiring officer(s):

In case of non gazetted staff, a senior group (C)

DS Chauhan
Associate

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A30

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staff in scale Rs. 550-750 (L.S.) and above may be appointed as an inquiring official provided he is higher in rank than the accused. (Authority Dy. Boards. letter no. 55 No-6-1 dated 13.7.56.

By not allowing myself and the driver to participate in the enquiry, the enquiry officer violated the principles of natural justice (see rule 9/c of DAR 1968). Besides this no mention of my name was pointed out and there is no time mentioned on the memo of the driver and endorsement of ASL.

On 21.12.83 receiver of control phone at JMA was defective since 5/30 hrs. and the voice of S- was not coming out. In & Out reports were recorded through JMA. A remark to this effect is noted on control chart on top right corner. The certificate of PCI/Control/15- is attached herewith for your kind perusal.

On the basis of above facts and cogent reasons the charges so levelled against me are baseless and the evidence in support of the charges is material. JMA did not receive any memo of driver from JMA upto 8/20 hrs. on 21.12.83 and made over charge to Sri M. S. Nayars at 8/20 hrs.

I therefore request you kindly to consider the representation with an open mind and issue orders for cancellation of the Memorandum for which I shall be grateful.

Dt. 23.3.89
Incl: 1.

True Echy

D. S. Chandra
Advocate

Yours faithfully,
sd/- M. S. Nayars
(200-3200) Dy. Secy. Control.

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A31

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

Registration no. of 1990 (L).

Mohd. Ayub Khan

Applicant

Versus

Union of India and others

Opp. Parties.

Annexure no.5.

To,

The A.D.M.,
M.S. Railway,
Lucknow.

Sub: Appeal against the orders of Sr. D.O.S./LJM who
awarded punishment of WIT 2 years.

Ref: (1) Memorandum no. 1/61/memo/93/89 dated 17.3.89.
(2) Representation against charges dt. 26.3.89.
(3) M.R. no. 1/61/memo/93/89 dated 4.8.89.
(4) Rule no. 18 of Mly. servants R.M. Rules 1968.

--

Respected Sir,

With reference to the above , I have honour to
submit the following lines as appeal for your kind
consideration and judicious orders.

The contents of above M.R. under reference are
reproduced below for ready reference .

M. K. Singh
After going through his defence, M.S., was
asked to enquire afresh and he also has confirmed that no
defect there in the phone of M.R. M.S./M.R. has confirmed

D. K. Singh
Advocate

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that he did not give in-out of trains on behalf of GDA
It is clear that he has failed to perform his duty and is
putting forth untenable excuses for this lapses, he is
punished with MIT 2 years."

Sr. D.O.S./LJA

GROUND OF APPEAL

1. The decision of Sr. DOS is not in good faith
and in also ~~mentix~~ one-sided hence violates principles of
natural justice.
2. The very language of NIP shows that the orders
are passed without application of judicial approach.
3. Defence documents referred to has not been seen
even while considering representation. This facts appears
clearly to the contents of Mr. 10 reasons for rejecting the
same or mentioned.
4. The decision of disciplinary authority is based
upon prejudiced grounds.
5. The orders of disciplinary authority are non
speaking orders.
6. The decision of disciplinary authority is based
upon extraneous matters which does not form the basis of
charges.
7. The enquiries conducted are all illegal and

M. C. I.

*D. S. Chandra
Advocate*

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-3-

against the provisions of Art 19(1). Besides this charged employee was not allowed to participate in both the enquires hence the opportunity given to prove his innocence was not reasonable.

ARGUMENT OF APPEAL.

Before framing the charges, the disciplinary authority ordered a fact finding enquiry without any intimation to charged employee and deputed Mr. A.M. Pandey who submitted his reports. I was not allowed to participate in that enquiry hence on getting the memorandum, I challenge the enquiry so conducted as illegal in my representation to the memorandum. - also proved that the phone of GDK station was defective and enclosed the certificates of AOI/Control/L&L and also referred the noting on control chart but the disciplinary authority is not satisfied with it and also failed to mention any reason in his decision regarding non acceptance of these two documentary evidence in support of defence.

He further deputed Mr. A.M. Pandey for his version to enquire afresh but again I was not allowed to participate and the outcome of fresh enquiry was not communicated to me and my fresh explanation was not obtained as such this practice is a denial of reasonable opportunity guaranteed by the constitution. No materials should be relied on against the charged employee without his being given an

M. K. Pandey

D. S. G. Advocate

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A34

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opportunity of explaining them (reference judgement of the Supreme Court in Civil Appeal No. 118 of 1957). In the present case statement of 104/111 and report of 105(1) formed the basis of decision whereas these are not at all related to the charges and no opportunity was given to me to explain these new documents before decision.

There are three types of enquires under DIL 1968- One under rule 10/C, the other under rule 11(1)(B) and lastly under sub rules 6 to 25 of rule 9 but it is surprising that both the enquires do not come under the purview of these rules hence illegal and decision based upon these enquires is basically wrong and not maintainable. The charges are only for not recording the memo of driver on control chart. The reason for not recording the same has already been recorded on control chart but still disciplinary authority is not satisfied. This is a trivial matter but much attempt is made in this respect to penalise myself which clearly proves the prejudiced attitude of the disciplinary authority who has already awarded WIT one year in case no. 1/547/misc./LJM dated 28.7.88, WIT 3 months in case no: T/61/memo/95/88 dated 2.9.88 and WIT 2 years in case no. 1/6./memo/28/89 dated 20.5.89. He also proposed a verse entry in my C.I. during period ending 31.3.89. This type of harassing attitude

Handwritten signature/initials

*Deharve
Advocate*

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-5-

has not been adopted in respect of others who work in the same manner as I do . I am enclosing herewith more than one dozen instances in which lapses on the part of different controller have not been taken up. This goes to prove that the punishment awarded to me is less affected by facts and reasons but more by prejudice. The disciplinary authority accepted the report of AOS(I) in this case because this goes against me but he rejects the report of AOS(C&) in case no. 1/61/memo/28/89 dated 20.5.89 because it is in my favour and gave no reasons for it. He is silent regarding outcome of enquiry conducted by Mr Sri A.K. Pandey when challenged. Charges are always framed after fact finding is conducted but fact finding enquiry does not take place when defence has been received . Besides this AOS(II) is not a technical authority nor a witness to the case hence he can not confirm the defect ~~the~~ of the phone in this way the entire course of action is far away from justice and fair play . This is all due to prejudice, partiality and discrimination.

Mishra
I, therefore request you kindly to look into the matter with an open mind and issue orders for setting

D. S. Chauhan

2/2
A36

=6-

aside the punishment of 2 years awarded to me
I further request you kindly to allow me personal
hearing before disposal of this appeal.

Thanks.

Yours faithfully,

sd/-Mohd. Ayub Khan
Dy. Chief Controller
N.I. Hly. Lucknow Train Control.

Dated: 18.9.69.

Encl: 3

Mohd. Ayub Khan

*True copy
D. S. Anwar
Advocate*

ब अदालत श्रीमान

[वादी] अपीलान्त

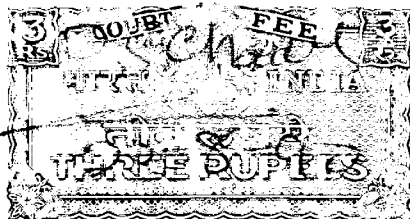
प्रतिवादी [रेस्पान्डेन्ट]

के दीप प्रशासनार्थ करण
सचिव बैंक मालिक
श्री रमेश रं. रवा का

महोदय 1137

वकालतनामा

रमेश रं. रवा



श्रीमान कां. इ. इ. इ.

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

सन्

पेशी की ता०

१६

ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

डी. रं. रवा

वकील

महोदय

एडवोकेट

नाम अदालत

मुकदमा नं० नाम

फरीकन बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वशः स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजना रहूँगा ऊपर मुकदमा अवम 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

D. S. Chandra

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

Advocate

दिनांक

महीना

सन् १६ ई०

22/8/20

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench Lucknow

O.A. no. 267 of 1990 (1)

A38

MOHAMMAD AYDOOB KHAN

.....

APPLICANT

Vs.

UNION OF INDIA & OTHERS

..... OPPOSITE PARTIES

(RESPONDENTS)

COUNTER REPLY ON BEHALF OF THE OPPOSITE PARTIES.

I, SK Budhulakoti
S/O Sri. G.D Budhulakoti, aged about 39 years
working as District Super-
in the North Eastern Railway Lucknow, duly authorised
by the opposite parties, do hereby solemnly affirm
and state as under:-

I have read the contents of the application
and have understood the same well. As such I am fully
conversant with the facts and circumstances of the
case deposed to herein~~under~~ as under:-

1. That the contents of para-1 of the application
need no comments.
2. That the contents of para-2 of the application
need no comments.
3. That the contents of para-3 of the application
need no comments.
4. That the contents of para-4 of the application
are being replied as under:-

4(1) That the contents of para-4(1) of the appli-

Filed today
11/12/91

11/5/91

A 29

cation need no comments.

4(ii) That in reply to para-4(ii) of the application, it is stated that the representation dated 26.3.39 submitted by the applicant to disciplinary authority is only admitted and the rest of averments of the para under reply are not admitted, hence denied. It is further submitted that the statement of the applicant is not only incorrect but misleading in as much as Railway Traffic Inspector's (T.I.S.) are responsible for the maintenance and working of Station in their jurisdiction. They are also required to instruct the Stations and to conduct necessary inquiries in connection with any accident ^{or} failure on the part of the station staff including Station Master and Station Superintendent, irrespective of the grade of Station Master and the Station Superintendent, whereas ~~XXXX~~ Deputy Chief Controller or a Controller working in control office is only responsible for the movement of trains, clearing of traffic and record various informations conveyed to him by the various stations. As such the inquiry conducted by Sri A.K. Pandey T.I. was not at all illegally.

4(iii) That the contents of para-4(iii) of the application are wrong, hence denied. In reply thereto it is stated that the fact finding inquiry conducted by Traffic Inspector Sri A.K. Pandey is based on the evidence of the station records, as such Station Master's remark on memo of drivers and train signal register which reveals that the control phones of the Gonda Kachehri was in working order and the certificate of T.C.I control to this effect was not admissible as it does not contain date. The endorsement on control

chart was after ^{gh}thout that the control phone of Gonda Kachehri was defective.

4(iv) That the contents of para-4(iv) of the application are wrong, hence denied. It is stated that the representation submitted by the applicant was properly considered and the order dated 4.8.89 imposing the punishment of withholding^{vb} increment temporarily for two years is perfectly reasonable.

4(v) That the contents of para-4(v) of the application are wrong, hence denied. In reply thereto it is submitted that the fact finding inquiry was conducted by Assistant Operating Superintendent (M) only to judge the real position in which Assistant Station Master Gonda Kachehri clearly stated that the control phone of his station was in proper working order and according to Assistant Station Master Maijapur, he never relayed the arrival and departure of the trains of Gonda Kachehri Station to control. Therefore, the inquiry does not violate the principles of natural justice.

4(vi) That in reply to para-4 (vi) of the application it is clearly stated that only filing of appeal dated 18.9.89 is admitted and rest of the contents of the para under reply are denied as the punishment imposed upon the applicant is lawful and justified.

4(vii) That the contents of para-4(vii) of the application are wrong, hence denied. In reply thereto it is submitted that the each case is decided on its merits, facts and circumstances of the case. In the instant case there have been no violation of principles of natural justice and statutory provisions contained in discipline and appeal rule 1968.

4(viii) That in reply to para-4(viii) of the application it is stated that only appellate order dated 19.10.89 is admitted, rest of the averments made in the para under reply are denied, as those are wrong. It is further submitted that the appeal was properly considered and then only it was rejected by detailed order of the appellate authority.

4(ix) That the contents of para-4(ix) of the application are wrong, hence denied. In reply thereto it is stated that the order passed on appeal was given only after detailed and proper consideration, further the applicant was also given an opportunity for personal hearing on 4.10.89 to explain his case but the applicant could not convince the appellate authority about the control phone of Gonda Kachehri Station that it was not in working order, even then the appellate authority after having gone deeply and properly through evidence on record, which clearly prove that the control telephone of Gonda Kachehri Station was in proper working order and the message of driver was duly conveyed by Station Master Gonda Kachehri to Mohd. Ayoob Khan, Deputy Controller, who was on duty but he knowingly failed to convey the message to T.X.R./Control Lucknow. In view of the facts and circumstances stated here, after due consideration applicant's appeal was not found acceptable.

4(x) That the contents of para-4(x) of the application are wrong, hence denied. In reply thereto it is stated that the punishment imposed upon the applicant is justified and lawful, as such it deserves to be confirmed and uphold.

5- That the contents of para-5 of the application are incorrect~~d~~, and in reply thereto it is stated that the grounds for relief, which have been taken by the applicant, are false, frivolous and fabricated and baseless. As such, those are not sustainable in the eyes of law, hence application deserves to be dismissed.

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

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

8- That in reply to para-8 of the application it is stated that the applicant does not deserve any relief as prayed in view of facts and the circumstances mentioned in foregoing paras of this counter reply. The application has such deserves to be dismissed with cost throughout.

9. That in reply to para-9 of the application, it is stated that the applicant does not deserve any relief in view of the facts and the circumstances mentioned above.

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

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

12. That the contents of para-12 of the application need no comments.

Dated:- 9.8.91

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VERIFICATION

I S.K. Budhlakar the above named do hereby verify that the contents of paras _____ of this Counter Reply are true to my personal knowledge and those of paras 1 to 12 of this counter reply are true on the basis of the knowledge derived from the perusal of records relating to the instant case kept in the official custody of the answering respondents except legal averments which are believed by me to be true on the basis of legal advice. No part of this counter reply is false and nothing material has been concealed.

Dated:- 9.8.91

(9/8/91)
प्रवर मंडल परिचालन अधीक्षक,
पूर्वोत्तर रेलवे, लखनऊ

THROUGH



(B.K. Shukla)

Advocate

Counsel for the Respondents.

A44

In the Hon'ble Central Administrative Tribunal.
Additional Bench, Allahabad.

Circuit Bench, Lucknow.

4.8.92

O.A. No.267 of 1990 (L).

Mohd. Ayub Khan.

Applicant.

Versus.

Union of India
and others.

Opp. Parties/Respondents.

Rejoinder Reply on behalf of applicant.

I, Mohd. Ayub Khan, aged about 48 years, Son of Late Shri Mohd. Ibrahim Khan, Deputy Chief Controller, N.E. Railway, Office of Divisional Railway Manager, Ashok Marg, Lucknow do hereby solemnly affirm and state on oath as under:-

1. That the applicant has read the contents of the counter reply and has understood the same. He is submitting parawise reply thereto as under.

2. That the contents of paras 1 to 4 and 4(i) of counter reply need no comments.

3. That the contents of para 4(ii) of counter reply are misconceived and based on twisted facts. Shri A.K. Pandey, Traffic Inspector who is junior to the

Filed today

20/5/92

Mohd. Ayub Khan

A45

-: 2 :-

applicant was not competent to make preliminary/fact finding enquiry in respect of a matter in which any act committed by the applicant who is senior to him was involved. Even if it is admitted that he was made responsible to conduct enquiry in respect of the work pertaining to the station staff, it was obligatory on his part to make a reference for change of enquiry officer as soon as it came to his notice that the enquiry relates to some act committed by his senior employee. It is further submitted that the fact finding enquiry conducted by Traffic Inspector is also violative to the principle of natural justice in as much as neither the applicant nor Driver of the train who was material witness to the case was called to appear in the enquiry.

4. That the contents of para 4 (iii) of counter reply are also based on twisted facts. The report of fact finding enquiry as well as relevant documents were not disclosed to the applicant which makes the disciplinary proceeding as violative to the principle of natural justice. There is no basis to allege that the endorsement on control chart made to the effect that the control phone of Gonda Kachehri was defective was ~~farther~~ ^{after thought} ~~throughout~~. It is also baseless to allege that the

M. Chaw

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certificate of Tele-communication Inspector (Control) submitted by the applicant in support thereof was not admissible as it did not contain the date. In case, the certificate given by Tele Communication Inspector (Control) in any way found to be defective, the enquiry officer was obliged to summon the T.C.I (Control) who should have been examined in the presence of applicant and he should have been given opportunity to cross examine him. The memo. of Driver does not contain any remark about control phone and it appears that the allegation is being deemed as substantiated on mere surmises. The opposite parties may be directed to produce the memo. of Driver which will make the position clear.

5. That in reply to para 4 (iv) of counter reply, it is submitted that the order rejecting the representation does not furnish reason as to why the points raised in the representation were not found acceptable.

6. That the contents of para 4(v) of counter reply substantiate that the enquiry was conducted by the Assistant Operating Superintendent (A) also but in that enquiry too, the applicant was not given any opportunity to defend his cause which clearly violates the principle of natural justice.

M. K. Han.

A47

-:- 4 :-

7. That in reply to para 4 (vi) of counter reply, it is submitted that the applicant in his appeal clearly submitted specific cases showing discriminatory treatment given in this case but the order on appeal also does not furnish any reason to reject the same. The averments made in the said para of application is reiterated.

8. That the contents of para (vii) of counter reply are vague, evasive and denied. The averments made in para 4 (vii) of the application are reiterated.

9. That the contents of para 4 (viii) of counter reply are vague, evasive and denied. The averments made in para 4 (viii) of the application are reiterated.

10. That the contents of para 4 (ix) of counter reply are based on twisted facts. There is no evidence to support the allegation that the message given by Driver was conveyed by station master, Gonda Kachehri to the applicant and he deliberately failed to convey the message to train examiner (control), Lucknow. The allegation is imaginary and does not find support from the record of the case. It is reiterated that no such message was conveyed to the applicant by the Station Master as alleged. The appellate authority committed

M. Chandra

Ay8

-: 5 :-

wrong and acted illegally in placing reliance of those materials which were never disclosed to the applicant.

11. That the contents of para 4 (x) of counter reply do not ~~in~~ have any force. The averments made in para 4(x) of application are re-affirmed as correct.

12. That the contents of para 5 of counter reply are also based on misconception. The application deserves to succeed with cost.

13. That the contents of paras 6 and 7 of ~~in~~ counter reply need no comments.

14. That in reply to para 8 of counter reply, it is submitted that the opposite parties have failed to furnish any proper justification to their impugned action which is liable to be set aside by this Hon'ble Tribunal.

15. That the contents of para 9 of counter reply also do not have any force.

16. That the contents of para 10 to 12 of counter reply need no comments.


M. K. Chaudhary

A49

-: 6 :-

17. That the opposite parties have not been able to furnish any justification for their unjust and unlawful action of imposing punishment of withholding increment for two years which is liable to be quashed by this Hon'ble Tribunal. The application deserves to be allowed with cost.

Lucknow: Dated:


Deponent/Applicant.

February 29, 1992.


VERIFICATION

I, Mohd. Ayub Khan, the above named deponent, do hereby verify that the contents of paras 1, 2, 13 and 16 of the rejoinder reply are true to my personal knowledge and those of paras 3 to 12, 14, 15 and 17 are believed by me to be true on the basis of information received and derived from the records. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified this 29th day of February, 1992 at Lucknow.


Lko: Dated:

Feb. 29, 1992.


Deponent/Applicant.

Lko. Dated:

Feb. 29, 1992.


(D.S. Chaube)
Advocate.
Counsel for Applicant.