

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT of 29 of 2010B. D. RaiApplicant(S)

Versus

U.O. 9.Respondent(S)

INDEX SHEET

| Serial No. | DESCRIPTION OF DOCUMENTS | PAGE |
|------------|--------------------------|----------|
| 1 | Check list | 1 to 2 |
| 2 | Order sheet | 3 to 5 |
| 3 | Judgment 16.4.92 | 6 to 9 |
| 4 | Petition copy | 10 to 32 |
| 5 | Power | 33 to 34 |
| 6 | Written statement | 35 to 39 |
| 7 | Supple C.A. | 40 to 47 |
| 8 | R.A | 48 to 54 |
| 9 | Supple. R.A | 55 to 58 |
| | | |
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Certified that the file is complete in all respects
B.C. file weed and destroyed

Signature of S.O.

Signature of Deal. Hand

96
CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW Bench.

U.A. No.29 of 1990 (L)

Shri J.D. Rai Applicant

vs.

Union of India & Others ... Respondents

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

Hon. Mr. A.B. Gorthi, Member (A)

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

The applicant was appointed as Lower Division Clerk by Commandant 11 BRG on 7-12-1976 against an existing vacancy at Jalapahar, Darjeeling. He was transferred to Lucknow in 1983 when the entire staff was shifted from Darjeeling to Lucknow. On 3-10-1984 he was reverted to Lower Division Assistant although he was promoted to the higher grade. The applicant's wife died on 23-1-1978 leaving behind two children. He married again in the year 1981 but the second wife also died after prolonged illness on 27-10-1983. The applicant's mother who was looking after the children also died and the second son became a victim of epileptic fits. Therefore, there was no aged member in the family to look after his son. So the applicant stayed back in Darjeeling for longer period to hospitalise and look after his son, for which, according to the applicant, he sent periodical applications from his address. Thereafter on 23-8-1987 a charge sheet was served upon

2X

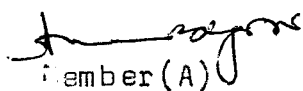
the applicant by Respondent No.3, who, according to him, is not the competent authority to charge sheet him. The charge levelled against him was regarding his long absence from duty. The Enquiry Officer submitted his report only after sending telegram in this behalf. Thus, according to the applicant, no opportunity was given to him. It appears that the disciplinary authority after holding an enquiry through Enquiry Officer passed an order dated 22-3-1989 retiring the applicant compulsorily.


2. Now the applicant has come before the Tribunal against retiring the applicant compulsorily. The respondents stated that more than one opportunity was given to the applicant. It was also stated by the respondents that the applicant is a habitual absentee from duty and once he was penalised by stopping 3 increments for remaining absent for 167 days, without cumulative effect. It was also incorporated in records that he was absent from duty from 24-11-84 to 19-11-85. According to the applicant he has sent application in this regard due to his family trouble. It was stated by the respondents that the applicant was present for long during the enquiry conducted by Maj.Gen. Shri Bhatia, who has submitted his enquiry report and thereafter the order was passed. The enquiry report has been placed on records. The signature of the applicant on enquiry report shows that the applicant has perused the same. The past absence of the applicant for which he was penalised was also taken into consideration and thereafter the finding was

recorded. According to the Enquiry Officer, no written statement was submitted by him. It was intimated to the applicant that in case no written statement is filed, exparte enquiry will be held. The applicant joined on duty on 5-7-1988 after the absence of one year six months and 12 days.

3. The entire report does not indicate that any enquiry was held and the applicant was associated with the same. Nowhere it was stated that the applicant was given an opportunity to appoint a defence assistant or to cross-examine any witness. The records which are produced before us ~~do~~ not show that any oral statement was recorded or any enquiry proceedings ~~has~~ taken place in which the applicant was present. These facts make it abundantly clear that the enquiry was not conducted in accordance with the rules. Though the applicant sent telegram stating that the written statement follows he was never given opportunity to submit his written statement. The disciplinary authority should have waited for the written statement of the applicant or should have asked the applicant as to whether he would file written statement or not. Even if the written statement was not filed, the disciplinary authority was not exonerated from the responsibility to hold an enquiry and **give** the Enquiry Officer's report to the applicant and ask for his version on the same. Nothing of the sort was done. Therefore, the enquiry was nothing but a sham enquiry. Accordingly the punishment given, based on such sham enquiry, cannot be legal and cannot stand. Therefore, the application is allowed and the

order of compulsory retirement is quashed. However, it will be open for the disciplinary authority to hold an enquiry in accordance with the law giving the applicant an opportunity of being heard. The applicant also cannot escape his responsibility altogether, for the period during which he has not worked. Though he will be deemed to be in service during this period he will **not** be entitled to back-wages ^{from} ~~upto~~ the stage of his compulsory retirement ^{to his responsibility.} No order as to cost.


Member (A)


Vice-Chairman

Dated 15th April, 1992, Lucknow.

(tgk)

25-1-50

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

29
Registration No. 29 of 1950 C.Y.

APPLICANT(S) N. C. Tewari

RESPONDENT(S) U. A.

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?
c) Have six complete sets of the application been filed?
3. a) Is the appeal in time? Yes
b) If not, by how many days it is beyond time?
c) Has sufficient cause 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 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? NA

Particulars to be Examined

Endorsement as to result of examination

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

yes

yes

No

yes

yes

NA

yes

yes

yes

ginesh/

| Serial number of order and date | Brief Order, Mentioning Reference if necessary | How complied with and date of compliance |
|---------------------------------|--|--|
|---------------------------------|--|--|

10/4/00

Hon. Mr. D K. Agrawal J.M.
Hon. Mr. P. V. Mahipal Mohammed, A.M.

Shri R. Midra, for the applicant
and Shri D. Chandra, for the respondents
are present.

The learned counsel for the
respondents want to file original
documents. Let they be taken on
record. The applicant's counsel
may inspect the documents and file
the supplementary rejoinder, by way
of reply within 4 weeks.

List it for hearing on 30/7/90.

[Signature]
J.M.

[Signature]
J.M.

30-7-90

no sitting. Adj. to 26/11/90

[Signature]

case not searched by court
4.2.91

[Signature]
Neelke RA
Sally RA
S. F. OK

1/4/91

4.2.91

29/90CS

Hon. Justice K. Vaidh, VC
Hon. K. S. Rana AM

Admit

list for further orders on 13.3.90. In the
matter of interim relief issue notice &
list for order on 14.2.90.

AM

V.C.

14.2.90

No Sitting. Adj to 13.3.90

OK Dr. D. Chandra
takes notices on behalf
of the respondents but no
reply has been
filed.

S. F. O.

13.3.1990

Hon. Mr. D.K. Agrawal, J.M.,
Hon. Mr. K. Chayya, A.M.

14/2/90

Shri R. Mitra, for the applicant
and Shri Dinesh Chandra, for the respondents
are present.

Shri Dr. Dinesh Chandra, appears on behalf
of the respondents No. 1, 2 & 3. However, no
reply has been filed yet. The records indicate
that Dr. Dinesh Chandra, took notice on behalf
of the respondents No. 1, 2 & 3 on 30.1.1990 vide
Orders ~~were~~ passed on 30.1.1990. —

- (a) For filing counter affidavit with 4 weeks &
- (b) To produce records on 14.2.1990.

On 14.2.1990, there was no such ^{sitting} court.
Therefore, the case was adjourned to 13.3.1990.
Neither, counter affidavit has been filed nor
the records has been produced. Dr. D. Chandra,
stated that the counter affidavit is in the
process of being prepared. As regards [&] the
records, he does not explained, why records
have not been produced. In this view of the
matter, we are of the opinion that, the case
can be decided ~~as~~ ex-parte as pressed by
learned

O.A. 29/90

15.7.91
D.R.

Both the parties are
present. Dr. D. Chandra
Id. counsel for the

O.P. files suppl. counts
Affidavit today. Now
this case is listed for
filing suppl. R.A. On

2/9/91 ✓

3.9.91
D.R.

Respondent's side is
present. Applicant
to file suppl. R.A. by

7/11/91. ✓

7.11.91
D.R.

Supplementary
Reminder to be filed
by applicant on
or before 9/1/92.
case is listed on 9/1/92

24-1-90
H10
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

Dal Bahadur Rai

...Applicant

Versus

The Union of India and others

...Respondents-

I N D E X

| Sl. No. | Details of the documents | Pages: |
|---------|---|--------|
| 1. | Application | 1-9 |
| 2. | <u>Annexure No.1</u> (Compulsory Retirement order) | 10-11 |
| 3. | <u>Annexure No.2</u> (Charge Sheet). | 12-15 |
| 4. | <u>Annexure No.3</u> (Finding of the Inquiry Officer without annexures). | 16-19 |
| 5. | <u>Annexure No.4</u> (Appeal of the applicant). | 20-22 |
| 6. | Power | - 23 |

[Signature]
Advocate
Counsel for the applicant.

P.T.
29/1/90
Mentioned in
the court

(A11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

NO. 29

OF 1990. (C)

Dal Bahadur Rai, aged about 38 years,
son of late Sri Hastadil Rai, resident
of Banda Khera, P.O. Dilkusha, Lucknow Cantt;
...APPLICANT.

Versus

1. The Union of India, through the Secretary,
Ministry of Defence, New Delhi.
2. Maj. General The Director General of Infantry/
Inf-6 (Pers), General Staff Branch, Army
Headquarters, DHQ, P.O. New Delhi-11.
3. Colonel The Officiating Officer Incharge
Records, 11 Gorkha Rifles, Chetak Lines,
Lucknow-2.

RESPONDENTS:

DETAILS OF APPLICATION:

1. Particulars of the applicant:

(i) Name of the applicant Dal Bahadur Rai Rai.

(ii) Name of the Father Late Sri Hastadil Rai

- iii) Designation and Office in Lower Division Clerk,
which employed: in the office of the
Records 11 Gorkha
Rifles, Chetak Lines,
Lucknow-2.
- iv) Office Address: Office of the Records
11, Gorkha Rifles ,
Chetak Lines,
Lucknow-2.
- v) Address for service of Banda Khara, P.O.
all notices: Dilkusha, Lucknow Cant

2. Particulars of the Respondents

- i) Name and / or designation of
the respondents:

1. The Union of India, through the Secretary,

Ministry of Defence , New Delhi.

2. Maj.General The Director General of Infantry/

Inf-6 (Pers), General Staff Branch, Army

Headquarters , DHQ, P.O. New Delhi-11.

3. Colonel, The Officiating Officer Incharge

Records, 11 Gorkha Rifles , Chetak Lines,

Lucknow -2.

- ii) ~~Name~~ Office address of the respondents:
As mentioned above.

- iii) Address for service of all notices:
As mentioned above.

3. Particulars of the order Order for imposing
against which application is major penalty of
made: compulsory retirement
of the applicant vide
order No. DBR/41 /IA
dated 2.11.89 received
on the same date.

The application is against
the following order:

- i) Order No. DBR/41/IA dated 2.11.89.
- ii) Date: 2.11.89
- iii) Passed by : The respondent No.3
- iv) Subject in brief: It has been ordered
by the opposite party
No.3 that the applic-
ant would compulsory
retire from service
with effect from
31.1.1990 which has
been made effective
from the date of the
order and which is
purported to have been
passed in exercise of
the powers conferred
by rule 12(2)(b) of the
Central Civil Services
(Classification,
Control and appeal)

ga

AM

Rules 1965. A true copy of the order is being filed as ANNEXURE No.1 to this application.

4. 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.

5. Limitation:

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

6. Facts of the Case:

The facts of the case are given below:-

That the applicant was appointed as Lower Division Clerk by Commandant 11 GRRC on 7.10.1976 against an existing vacancy at Jalapahar, Darjeeling.

That after serving for 5 years in the said department the applicant was promoted as Upper Division Clerk with effect from 27.2.1981.

That on 30th June 1983, the applicant was transferred to Lucknow alongwith the entire staff as the whole office

(AIS)

- 5 -

was shifted from Darjeeling to Lucknow.

That on 3.2.1984 the applicant was reverted to the post of Lower Division Clerk without affording any opportunity to him.

That the applicant's wife expired on 23rd Jun 1978 while the applicant was at Darjeeling after giving birth to second child.

That for the sake of my children the applicant had to remarry again on 13.2.1981, but the second wife also could not help the applicant for longer period and after prolonged sickness she passed away on 27.10.1983, while the applicant was at Lucknow and accordingly the applicant had to remain on long leave.

That the applicant's mother who was looking after my infants at Darjeeling also expired on 5th Aug. 1988.

That the second son of the applicant became the victim of eplaptic fits and there being no male member to look after my ailing son who remained in Hospital so the applicant had to stay at my Native place for a longer period for which the applicant submitted periodical applications from my leave address.

That a charge sheet bearing No.DBR/02/LA dated 22.8.87 was served on the applicant by the opposite party (respondent) No.3.A true copy of the charge sheet is being filed as ANNEXURE No.2 to this application. It is also stated that the respondent No.3 is not the disciplinary authority of the applicant.

That the applicant was never informed if any Inquiry authority was appointed in the case. He was also not informed if any presenting officer was appointed in the aforesaid case.

That the applicant was not allowed to avail the help of the Defence Assistant which is obligatory in terms of Rule 14(8). The applicant was never supplied the copies of the day to day proceedings recorded during the course of hearings.

That the applicant has shifted his ailing sons to Lucknow after the death of his mother and continuously attending my duties.

That the findings of the Inquiry Authority will reveal that it has been stated therein that the applicant remained absent during 1984-85 .But it is to be noted that the

said period has already been regularised by the competent authority long back. A true copy of the Finding is being filed as ANNEXURE No.3 to this application;

That ignoring all the legal and statutory provisions the Disciplinary authority has punished the applicant vide Annexure No.1 to this application retiring the applicant compulsorily from service with effect from 31.1.90.

7. Relief (s) Sought:

In view of the facts mentioned in para 6 above, the applicant prays for the following relief(s):

- i) To set aside and quash the order dated 2.11.89 as contained in Annexure No.1 of compulsory retirement passed by the respondent No.3 by summoning the original records from the respondents;
- ii) To direct the respondents to allow the applicant to continue to work on his post and pay him all his salaries and allowances due to that post ;
- iii) Any other reliefs just and proper in the circumstances of the case.

8. Interim order, if prayed for

It is most respectfully prayed that pending final decision of the application, the order dated 2.11.89 as contained in Annexure No.1 passed by the respondent No.3

be stayed and not given effect to and the applicant be allowed to continue to work as Lower Division Clerk on the post he ~~has~~ has been working after 31.1.90 without any interruption from the side of the respondents and the respondents be directed to pay all his salaries and allowances due to that post.

9. Details of the remedies exhausted:

The applicant declares that he has exhausted of all the remedies available to him under the relevant service rules etc. as will be borne out from a true ~~is~~ copy of the appeal dated 5.12.89, submitted through proper channel, a true copy of the appeal is being filed as ANNEXURE No. 4 to this application.

10. Matter not pending with any other court, etc:

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

...9

11. Particulars of Bank Draft/ Postal Order in respect of the application Fee:-

1. Number of Indian Postal Order(s) 02410326
2. Name of the issuing Post Office. Amnabad, Lucknow
3. Date of issue of Postal Order(s) 22.1.90
4. Post Office at which payable. To Registrar, Central Prison, Lucknow
* The Central Prison, Lucknow, Bihar

12. Details of Index:

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

13. List of enclosures:

In verification:

I, Dal Bahadur Rai son of late Shri Hastadil Rai, aged about 38 years, working as Lower Division Clerk, in the office of the ~~xxxx~~ Records, 11, Gorkha Rifles, Chetak Lines, Lucknow -2, resident of Banda Khara, P.O. Dilkusha, Lucknow Cantts, do hereby verify that the contents from

1 to 13 are true to my personal knowledge and belief

and that I have not suppressed any material facts.

Luck

Applicant.

Dated: 24.1.90.

To
The Registrar,

(10)
(A28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL , LUCKNOW.

Dal Bahadur Rai

...Applicant

Versus

The Union of India and others

....Respondents.

ANNEXURE No.1

CONFIDENTIAL.

ORDER FOR IMPOSING MAJOR PENALTY

ORDER

WHEREAS Shri Dal Bahadur Rai , lower division clerk son of late Hastadil Rai has been charged sheeted for absenting himself from duty for the period for 167 days with effect from 05 October 84 to 19 April 85 and 1 year 6 months and 12 days with effect from 23 December 86 to 04 July 87 vide our memo No.DBR/02/LA dated 22 August 87.

AND WHEREAS it is considered that the conduct of the said Shri Dal Bahadur Rai , lower division clerk son of late Hastadil Rai has led to his conviction in such as to render his further retention in the public service undesirable.

NOW THEREFORE, in exercise of the powers conferred by Rule 12 (2)(b) of the Central Civil Services (Classification Control and Appeal) Rules ,1965 , the undersigned hereby order for compulsory retirement of Shri Dal Bahadur Rai lower division clerk son of late Hastadil Rai from service with effect from 31 January 90, which shall take effect from the date of signing of this order viz. 02 November 89 and after taking into account the statement of imputation of charges framed against the said individual and has come to conclusion that the said Shri Dal Bahadur Rai , lower

...2

*Attested
LKR/HK
ADW*

division clerk son of late Hastadil Rai is guilty of
absenting himself from duty without prior permission/
approval of the competent authority.

Sd/-

(BKD Badgel)

Colonel

Officiating Officer Incharge

Records

(Delegated Disciplinary Authority)

DBR/41/LA
RECORDS 11 GORKHA RIFLES
CHETAK LINES, LUCKNOW-2

o 2 November 89.

To,

Shri Dal Bahadur Rai, Lower Division Clerk
son of late Hastadil Rai.

Confidential.

Received on 2.11.89.

Attested
Lt Col HUK
Adv

(12) (A22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL , LUCKNOW.

Dal Bahadur Rai

..Applicant

Versus

The Union of India and others

...Respondents.

ANNEXURE No.2

CONFIDENTIAL

REGISTERED ACK DUE

Telephone Military :449

Abhilekh 11 Gorkha Rifles
Records 11 Gorkha Rifles
Chetak Lines, Lucknow-2
22 Aug 87.

DBR/2/LA

No.9412040
Shri Dal Bahadur Rai(LDC)
Pussimbling Lami Naya Busty
PO Ghoom
Dist Darjeeling (WB).

DISCIPLINE : CIVILIANS:

1. The undersigned proposes to hold an inquiry against Shri Dal Bahadur Rai ,P/LDC , under rule 14 of the Central Civil Services (Classification , Control and Appeal) Rules 1965.The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure 1).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 articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri Dal Bahadur Rai , P/LDC is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

...2

*Attested
L.F. Patil
Now*

(13) 423

- 2 -

4. Shri Dal Bahadur Rai , P/LDC is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails to or refuses to comply with the provisions of Rule 14 of the CCS (CC & A) Rules, 1965 or the orders /directions issued in pursuance of the said rules, the inquiring authority may hold the inquiry against him ex-parte.
5. Attention of Shri Dal Bahadur Rai, P/LDC , is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government . If any, representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Dal Bahadur Rai, P/LDC , is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.
6. The receipt of this Memorandum should be acknowledged.

Sd/-
(SK Singh)
Col
Offg Officer Incharge
Records.

CONFIDENTIAL.

...3

Attested.
L.K. R. H. K.
Adv

(14) (124)

CONFIDENTIAL.

(14) (124)

Annexure I

Statement of article of charge framed against No. 9412040 Shri Dal Bahadur Rai, P/LDC, of Records 11 Gorkha Rifles, Lucknow.

Article of Charge I

Absented himself from duty on expiry of sanctioned leave and remained still so absent in spite of issue of clear instructions to rejoin his duties immediately, as such failed to maintain devotion to duty.

Annexure II

Statement of imputations of misconduct or misbehaviour in support of the article of charge framed against No 9412040 Shri Dal Bahadur Rai, P/LDC.

ARTICLE OF CHARGE I

That the said No 9412040 Shri Dal Bahadur Rai, P/LDC while employed in Records 11 GR, absented himself from duty on expiry of Extra Ordinary Leave, wef 19 Feb 87 and remained still so absent without leave/ sanction. He failed to report on duty inspite of clear instructions issued to him to rejoin his duties, thus he failed to maintain devotion to duty.

Annexure III

List of documents by which the article of charge framed against No 9412040 Shri Dal Bahadur Rai, P/LDC, is proposed to be sustained:-

- (a) Records 11 GR letter No 01602/94/LA dated 06 May 87.
- (b) Records 11 GR letter No.01602/135/LA dated 25 Jun 87.
- (c) Shri Dal Bahadur Rai's letter No Nil dated 17 Jun 87.

*Attested
Lt Col
Rai*

Annexure IV

List of witnesses by whom the article of charge
framed against No 9412040 Shri Dal Bahadur Rai
Documentary.

Sd/~

(S K Singh)
Col
Offg Offr Incharge Records

DBR/07/LA

Abhilekh 11 Gorkha Rifles
Records 11 Gorkha Rifles
Chetak Lines, Lucknow-2

Dated: 22 Aug 87.

Attested
L.K. Rohik
AM

(16)

1726

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

Dal Bahadur Rai

...Applicant

Versus

Union of India and others

...Respondents.

ANNEXURE No.3

CONFIDENTIAL.

INQUIRY OFFICER REPORT

1. SL-2183 Maj ML Bhatia of 11 GRRC has been detailed as inquiry officer for a case of absence without leave Shri Dal Bahadur Rai , LDC of Records 11 GR vide 11 GRRC letter No. A2/1202/132 dated 11 Aug 88.
2. While going through the documents produced by Records 11 GR and statement of Shri Dal Bahadur Rai , LDC Records 11 GR attached Appendix 'A' the following facts have come to light:-
 - (a) Shri Dal Bahadur Rai ., LDC was gtd 5 days leave wef 23 Dec 86 to 29 Dec 86 with permission prefix / suffix 25 Dec and 28 Dec 86 being holidays .Copy of leave certificate attached as per Appendix 'B'.
 - (b) On expiry of above leave he requested for 20 days extra ordinary leave to look after his ailing son admitted in hospital .Copy of telegram dated 31 Dec 87 attached as Appendix 'C' and hospital discharge certificate dated 22 Jan 88 attached as Appendix 'D'.
 - (c) No request for another extension of 15 days leave for children treatment .Telegram dated 16 Jan 87 attached as Appendix 'E'.
 - (d) No again requested 15 days extra ordinary leave due to his son's illness . Telegram dated 05 Feb 87 attached as appendix 'F'.
 - (e) No informed Records 11GR telegraphically that his son is discharged from hospital and he shall be rejoining his duty.

*Attested
L/K P.H.K.
Adv*

(17)

A27

duty on 26 Feb 87. Telegram dated 18 Feb 87 attached as Appx 'G'.

(f) No put up an application showing his inability to join duties as his son Samir Rai is suffering from fits and is still in hospital. Application dated 26 Feb 87 attached as Appendix 'H'.

(g) He was directed to join his duties forthwith failing which disciplinary action shall be taken against him. Records 11 GR letter No. 01602/94/LA dated 06 May 87 attached as Appendix 'J'.

(h) ^{He} ~~No~~ requested for extra ordinary leave for indefinite period for the treatment of his two sons. He stated that he shall be joining his duties in the month of Jul 87. Application dated 17 Jun attached as Appendix 'K'.

(j) ~~No~~ He was again advised to join duty. Records 11 GR letter No 01602/135 /IA dated 25 Jun 87 attached as Appendix K1'.

(k) He was served with Article of charge Annexure I, II, III and IV under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. He was directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence. Records 11 GR letter No DBR/02/LA dated 22 Aug 87 attached as Appendix 'L'. Letter was acknowledged by the individual on 07 Sep 87. Acknowledgement attached as Appendix 'M'.

(1) He failed to submit the written statement as required vide para (k) above.

(m) He was informed that despite provision of all the opportunities to submit the written statement he failed to do so and was asked to submit within 30 days of receipt of

Attested
L.K. P. H. K.
gwh

letter failing which exparte inquiry will be held .Records 11 GR letter No. DBR/06/IA dated 09 Apr 88 attached as Appendix 'N'.

(n) ~~He~~ He informed telegraphically that written statement has been already sent on 04 Sep 87. Telegram dated 07 May 88 attached as Appendix 'O'.

(o) Ultimately he joined his duties on 05 Jul 88 after absence of 1 year 6 months and 12 days.

(p) On an earlier occasion also he was absent without leave for 167 days wef 05 Oct 84 to 19 Apr 85 for the similar reasons and situation and was punished. His 3 years increment were with-held.

Finding of Inquiry Officer:

1. Dal Bahadur Rai , LDC Records 11 GR is an ex-servicemen. He was discharged from service at his own request on extreme compassionate ground.

2. He was appointed LDC against existing vacancy in Records 11 GR on 07 Oct 86.

3. His wife Smt Parmila Rai died on 13Feb 81 .He married second time and his second wife Smt.Sumitra Rai also died on 27 Oct 83.

4. He has two minor sons who are ailing children and have been under constant treatment. A medical certificate issued by a medical practitioner is attached as Appendix 'P' and OPD slips as Appendix 'Q', 'R', 'S', 'T', and 'U'.

5. He absented himself earlier for 167 days wef 05 Oct 84 to 19 Apr 85. His ~~three~~ three years increments were with-held as a punishment for the above offence.

6. He absented himself again for 1 year 6 month and 12 days wef 23Dec 86 and 04 Jul 87 without sufficient cause.

*Arrested.
LIC File
Ad*

(19)

127

Opinion of the Inquiry Officer:

Shri Dal Bahadur Rai is a habitual absentee and has little regard for his service. His personal problems keep him occupied mentally and emotionally.

Station: Chetak Lines,
Lucknow-2

Dated: 23 Jan 89

Sd/ xxxxxxxx
(ML Bhatia)
Major
Inquiry Officer

CERTIFIED TRUE COPY

Station : Chetak Lines,
Lucknow -2

Dated: 24 Nov 89.

Sd/-
(IMK Murthy)
Major
Senior Record Officer
for Offg.OIC Records.

22/11/89
As estd.
L.K. P. H. K.
[Signature]

(20)

130

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW.

Dal Bahadur Rai

...Applicant

Versus

The Union of India and others

....Opp. parties.

ANNEXURE No- 4

From: Ex No 9412040 LDC
Dal Bahadur Rai, Records 11 GR
Chetak Lines, Lucknow-2

To
Director General of Infantry(Inf-6(Pers)
General Staff Branch,
Army Headquarters,
DHQ PO New Delhi -11
(Through Proper Channel).

Appeal against punishment awarded by disciplinary authority
in the case of LDC No 9412040 Shri D B Rai of Records 11 GR
Chetak Lines, Lucknow (UP)

Sir,

With due respect and humble submission I beg to submit
the following for your favourable considerations:

That I was appointed as LDC by Commandant 11 GRRC on
7th Oct 1976 against an existing vacancy at Jalapahar ,
Darjeeling.

That after serving 5 years in the department, I was
promoted to UDC wef 27th Feb 1981.

That on 30th Jun 1983, I was transferred to Lucknow
alongwith entire staff as the whole office was shifted
from Darjeeling to Lucknow.

That on 03rd Feb. 1984 , I was reverted to the lower
post of LDC without affording any opportunity to me.

That my wife expired on 23rd Jun 1978 while at
Darjeeling after birth of my 2nd Child. The first child
was born on 03 Oct 1976.

That stricken by unfortun~~at~~ and for sake of my
both infants , I had to remarry on 13 Feb 1981 , but

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Attest-ec
LK RAI
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(21) A31

because of annoyance of 'ALMIGHTY' my second wife also could not help me for longer period and after prolonged sickness she passed away heavenly on 27 Oct 1983 while I was at Lucknow and accordingly I had to remain as long leave.

That my old mother who was the only a sumble to me and to my infants at Darjeeling also left as on 05th Aug 1988.

That having motherless and left only on the mercy of 'ALMIGHTY' my 2nd son became the victim of eplaptic fits and there being no male member and my old mother bring too week to look after my ailing son who remained in Hospital, I had to stay at my Native Place for a longer period.

That only because of circumstances beyond my control I had to remain on leave, the periodical applications for which were submitted from my leave address.

That the prolonged leave availed by me has given an understanding in the mind of my superiors that I am not interested in my service.

That a chargesheet bearing No .DBR/02/LA dated 22 Aug 87 (Copy enclosed) was served on me and that too by offg. Commandant (being not my disciplinary authority).

That I sent telegraphic representation informing my superiors the circumstances which forced me to stay at Darjeeling ,and alternative I joined my duty on 05 Jul 1988.

That the aforesaid chargesheet was progressed by department without affording me proper opportunity Viz:-

- (a) I was never informed if any Inquiry authority was appointed .
- (b) I was not informed if any presenting officer was appointed.

...3

Agreed
IKP
24/

(c) I was not allowed to avail the help of my Defence Assistant in term of Rule 14(8).

(d) I was never supplied the copies of proceedings of day to day proceedings recorded during the course of hearings.

That ignoring all legal ,statutory provision or even human consideration. the Disciplinary authority has now punished me and served me notice that I would be retired wef from 31st Jan.1990.The copy of Commandant 11 GRRC letter No. DBR/41/LA dated 02 Nov 89 enclosed for ready reference.

That after death of my mother on 05Aug 1988 I have shifted my ailing ~~sons~~ sons to Lucknow and on continuously attending my duties.

That one can imagine the mental / physical agonies of an unfortunate man of my status , who has lost almost every thing during the past few years.

That the findings of Inquiry Authority (enclosed) will reveal that he has stated that , I remained absent, during 1984-85, which was regularised by competent authority longback.

PRAYER

In view of the irregularities that have taken place and there being no proper opportunity afforded to me, I pray your Honour to set aside the punishment ordered by Offg.Commandant 11 GRRC , who has wrongly and illegally awarded the punishment.

Thanking you,

Yours faithfully,

Sd/-

(Ex No 9412040 LDC D B Ra

2040/4/P/DBR
Dated: 05 Dec 89.

Advance copy forwarded to :-

Director General of Infantry/ Inf 6 (Pers)
General Staff Branch
Army Headquarters
DHQ PO New Delhi -11

Attested
H. K. P. S.
R. V.

(23)
1371

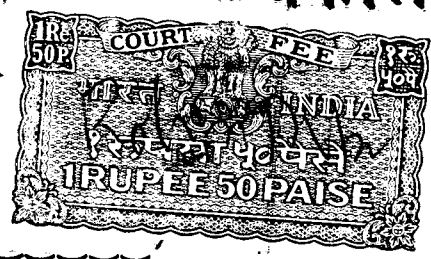
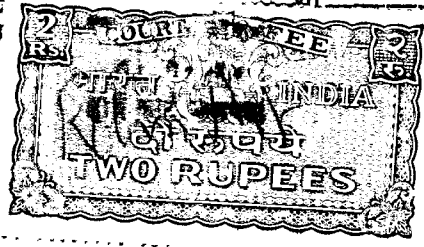
बे अवलत श्रीमान Central Administration Tribunal
Alameda, Wagon Bench

महोदय

[वादी] अपीलान्ट

प्रतिवा

का **वकालतनामा**



Dal Bahadur Rai

बनाम Union of India प्रतिवादी (रे)

मुकदमा नं०

सन्

पेशी की ता०

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ऊपर लिखे मुकदमा में अपनी ओर से श्री Robert M. A. Advoca

Yogen M. Advoca. Adv. L.K. Patnaik Adv. - वकील

महोदय
एडवोकेट

नाम अवलत
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 सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को मेजता रहूंगा खयर मुकदमा अबम 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।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६ ई०

Accepted
Y. M. Advoca. Adv.

Accepted
L.K. Patnaik Adv.

वेकालतनामा

टिकट

वादी (अपीलान्ट)

Shri Bahadur Rai Vs Cunningham ^{बनाम} 5 Nov

प्रतिवादौ (रेस्पॉण्डेंट)

नं० मुकद्दमा 29 सन् 1990 पेशी की ता०

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री L. Vinod Chandra

Adm. Com. Gene. Standig Council
Luccena

वकील

महोदय

एडवोकेट

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 जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावे या हमारी ओर से डिगरी जारी करावे और रुपया लसूब 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 हारो 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 होमा में यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजना 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 ।

हस्ताक्षर...

साक्षी (गवाह) साक्षी (गवाह)

दिनांक सहोना — — — — — सन १९ ई०

स्वीकृत

In the Central Administrative Tribunal At Allahabad,

Circuit Bench at Lucknow

Written statement on behalf of all the Respondents.

In

Case No 29 of 1990

Dal Bahadur Rai

.....

.....

Applicant

Versus.

Union of India & Others

.....

Respondent

I, Lieut Farlok Singh, aged about 38 years son of Shri Gurdéep Singh Asst Record Officer, 11 Gorkha Miles, Chetak Lines, Lucknow do hereby solemnly affirm and state as under :-

1. That the deponent is competent to file the written Statement on behalf of the all the respondents.
2. That the deponent has read the application filed by Shri Dal Bahadur Rai and has understood the contents thereof.
3. That the deponent is well conversant with the facts of the case deposed herein after.
4. That it will be worthwhile to give a brief history of the case as under :-

BRIEF HISTORY OF THE CASE

Shri Dal Bahadur Rai was appointed as Lower Division Clerk in Records 11 Gorkha Miles on 07 Oct 1976. He was promoted to Temporary UDC with effect from 27 Oct 1981 in an existing vacancy. He was subsequently reverted to Lower Division Clerk on 03 Feb 84 by Army Headquarters vide their letter No B/50963/Crg 8 (I or R)(c) dated 03 Jan 1984.

He was granted five days Casual Leave from 23 Dec 86 to 29 Dec 86 excluding 25 Dec and 28 Dec being holiday and sundays. He did not join duty on expiry of Casual Leave despite numerous telegrams. He rejoined duty on 05 Jul 1988 after unauthorised absence of one year six months and 12 days.

During his absence, Officiating Officer Incharge Records had issued a Memorandum No DM/02/LA dated 22 Aug 1987 under Rule 14 of CCS (CC & A) Rules 1935 intimating him to either to present himself before inquiry or forward written statement within 10 days from the date of the receipt of this memorandum otherwise ex parte inquiry was to be held against him. The Memorandum was acknowledged by him but neither he reported for duty nor sent any statement. He was again reminded on 07 Apr 88 to do the needful but he did not take any action.

On his rejoining duty after an absence of one year six months and 12 days, the disciplinary proceedings was completed. The inquiry Officer was of the opinion that LDC Dal Bahadur Rai a habitual absentee, had little regard for service and his personal problems keep him occupied mentally and emotionally. A copy of Inquiry Report was given to him on 24 Nov 1989 and the petitioner was compulsorily retired on 31st Jan 1990 (AN).

It is pertinent to mention that LDC Dal Bahadur Rai was also absent from 04 Nov 84 to 10 Apr 85 for a period of 137 days. He was awarded the penalty of stoppage of increments or pay for a period of three years without having cumulative effect. His absence was regularised with the above penalty and the absence was treated as DCA without pay.

5. That the contents of para 1 to 5 need no comments.

6. That in reply to above contents of para 6 of the application it is stated that the application was appointed as Lower Division Clerk in Records 11 Gorkha Rifles on 07th Oct 1976. He was promoted as a Temporary Upper Division Clerk on 27 Feb 1981 in an existing vacancy. Subsequent upon promotion of Shri Narendra Kumar Sharma as Temporary UDC the applicant was reverted to his permanent post as LDC w.e.f. 3rd Feb 1981.

6.2 After the death of his wife on 2nd Jan 1978, the applicant married again on 18.2. 1981 but his second wife also expired on 27-10-1983. He informed the administrative authority on 18 Sep 89 about the demise of 2nd wife and personal occurrence return

was published on 17 Oct 89.

- 6.3 The death of the applicant's mother is not recorded in the personal record of the applicant as no declaration to this effect was given by him. Hence, no comments in this regard.
- 6.4 The petitioner was granted five days casual Leave from 23 Dec 86 to 29 Dec 86 excluding 25 Dec 1986 and 28 Dec 1986 being holiday and Sunday. He did not join duty on expiry of Casual Leave despite numerous telegrams from this office. He re-joined duty from absence on 05 Jul 1988 after a period of one year six months and 12 days. During his absence, Conciliating Officer Incharge Records had issued a Memorandum No DBR/02/LA dated 22 Aug 87 under Rule 14 of Central Civil Service (Conduct, Control and Appeal) Rules 1955 intimating him to either present himself for the inquiry to justify his absence or forward written statement within 10 days from the date of receipt of this memorandum otherwise ex-parte inquiry will be initiated against him. The memorandum was acknowledged by him on 07 Sep 87 but neither he reported in person nor any statement. He was given another opportunity to forward his statement vide our letter No DBR/06/LA dated 09 Apr 1988. He neither forwarded the statement nor reported for duty.
- 6.5 On his rejoining from absence of one year six months and 12 days the case was referred to Headquarters Lucknow Sub Area to detail an inquiry Officer vide letter No DBR/14/LA dated 19 Jul 1988. SL-2183A Major M L Bhatia, Quartermaster of 11 GARC was detailed as inquiry Officer to investigate all the circumstances of his absence. Shri M. Seymour, Office Supt of Records 11 Gorkha Rifles was appointed as defence assistance on request of No 9412040 LDC Dal Bahadur Rai. The applicant was all along present during the inquiry conducted by Major M L Bhatia. Major M L Bhatia opined in his Inquiry report (copy attached as Annexure-III of the application) that No 9412040 LDC Dal Bahadur Rai is a habitual absentee and has little regard for his service. He further stated that his personal problems keep him occupied mentally and emotionally. The report of the inquiry was given to him on 24 Nov 89. It is pertinent to mention that No 9412040

LDC Bal Bahadur Rai was also absent from 24 Nov 84 to 19 Nov 1985 for a period of 157 days. He was awarded the penalty on stoppage of increments for a period of three years without cumulative effect. This was also incorporated in Records 11 Gorkha Rules Part II Order No 9/1/85 dated 27 May 85 (copy attached as annexure-I). The absence or thus was regularised with above penalty and the absence was treated as EOL without pay.

6.3 Officer Incharge Records is the appointing authority who has all the powers to deal with the disciplinary cases of civilian staff of Records 11 GR in terms of Army Headquarters letter No A/43320/Crg 8 (I or II) (c) dated 15 Nov 84 (copy attached as annexure-II). Moreover the case giving all the comprehensive details was referred to Army Headquarters who directed that the individual be compulsorily retired in terms of Rule 11 (vii) of Central Civil Service (Conduct, Control and Appeal) Rules 1965 vide their letter B/05006/54/Inr-6 (Pers) dated 25 Oct 89 (copy attached). He has thus been compulsorily retired on 31 Jan 90 (AM) based on the decision given by Army Headquarters referred to above.

6.4 That in view of the submission made in the above paragraphs the relief sought for in para 7 and interim relief prayed for in para 8 is not admissible.

6.5 That the contents of Paras 10 to 13 of the application need no comments.

Encknow :

Dated : 17 Apr 90



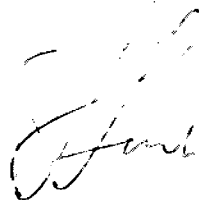
(Tarlok Singh)

Lieut
Asst Record Officer
(Deponent)

Verification

I, the above named deponent do hereby verify the contents of
Paras 2 of the written statement are to my own knowledge
and those of Paras 4 & 5 are believed by me to be true on
records and as per legal advice of my counsel.

Signed and verified this the 22 day of Mar 1990
at Lucknow.



(Tarlok Singh)
Lieut
Asst Record Officer

(Deponent)

Thy D. J. Singh
D. J. Singh

140

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

M.P.NO. 387 of 1991 (L)

APPLICATION FOR FILING SUPPLEMENTARY COUNTER AFFIDAVIT AND DISMISSAL
OF THE CLAIM PETITION.

By Respondents 1 to 3.

In

O.A.No.29/90

Dal Bahadur RaiApplicant.

Versus

Union of India & OthersRespondents.

To,

The Hon'ble Vice Chairman and his companion members of the
aforesaid Tribunal.

The humble application of the applicant above named most
respectfully sheweth :-

- Filed today
15/7/91*
1. That certain aspects of the case have been stated in the Rejoinder-affidavit which are necessary to be clarified in the interest of justice by filing the accompanying supplementary counter-affidavit.
 2. That it is in the interest of justice that the supplementary counter-affidavit may kindly be taken on record and the claim and the claim petition may be dismissed with cost as the same lacks merit & is not sustainable in the eyes of law.

Contd..2/-

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-: PRAYER :-

Wherefore it is respectfully prayed that this Hon'ble Tribunal
may be kind enough to take the supplementary counter-affidavit on
record & dismiss the application with costs.

Date 12-7-91

D. S. Chandra

(Dr. Dinesh Chandra)

Counsel for Respondents/applicant.

17/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH
LUCKNOW

Original Application No. 29/90

Dal Bahadur Rai

Applicant.

versus

Union of India & others

Respondents.

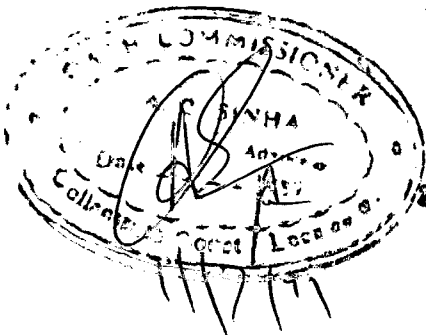
Supplementary Counter-affidavit on behalf
of all the Respondents.

....

I, SL-3151K Capt PL Sharma aged about 38
Late
years, son of Shri Ram Sahai Sharma Asstt.
Record Officer, II Gorkha Rifles, Chetak Lines,
Lucknow do hereby solemnly affirm and state as under:

1. That the deponent has read the Rejoinder Affidavit filed by the applicant and has understood the contents thereof.
2. That it has become necessary in the interest of justice to file this Supplementary counter affidavit to clarify certain aspects of the case ~~related to~~ stated in the Rejoinder affidavit.
3. That in reply to para 2 of the Rejoinder Affidavit it is stated that SL-3345 M Lieut. Trilok

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Singh is Commissioned officer in the Indian Army and has filed the written statement on behalf of Union of India and others. It is maintained that the officer is fully conversant with the facts of the case.

4. That the contents of para 3 are denied. All the facts of the case have been indicated in the brief history of the case.

5. That in reply to para 4 it is ^{clarified} ~~stated~~ that the petitioner was absent from November 4, 1984 to April 19, 1985 for a period of 167 days and was awarded the penalty of stoppage of increment of pay for a period of three years without commulative effect. He absented himself again for one year six months and 12 days (i.e. from December 12, 1986 to July 4, 1988). An inquiry was ordered. Inquiry Officer opined that LDC Dal Bahadur Rai is habitual absentee, had little regard for service and his personal problems kept him occupied mentally and emotionally. Based on this, disciplinary proceedings were completed by the competent disciplinary authorities. The question of disciplinary proceedings against the applicant was vitiated, as stated, does not arise as the Inquiry officer gave his opinion taking into account all the pros and cons based on which disciplinary proceedings have been finalized.

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Keenley
Capt



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6. That the contents of paras 5 to 7 need no comments., submissions made in para 6, 6.2 to 6.4 in the ~~books~~ written statement are reiterated.

7. That in reply to para 8 it is clarified that it is a fact that the petitioner who was ~~also~~ absent from November 4, 1984 to April 85 for a period of 167 days for which, of course, he was awarded the punishment of stoppage of increment for a period three years without cumulative effect. Moreover, an independent inquiry was detailed by Headquarters Lucknow sub Area, Lucknow enquiry into the circumstances under which the applicant became absent for a period one year six months and 12 days (i.e. from 23 December 86 to to 4 July 88) year ~~six months and 12 days~~ Based on the proceedings, disciplinary action was instituted by Lt. Gen. R.K.Gaur, Director General Infantry vide Army Headquarters letter No. B/05006/54/Inf-6(Pers) dated 25 Oct 89. The punishment awarded by Director General Infantry is not vitiated by any other fact ~~except~~ ^{was} the Court of Inquiry₂ held to inquire into the circumstances for absence from 23 Dec 86 to 04 July 1988. The period of absence, from 23 Dec 86 to 04 July 88 is substantial proof, which has been supported with findings of the court of inquiry for-
~~warded~~ award of punishment by the Director General

Recd
capt



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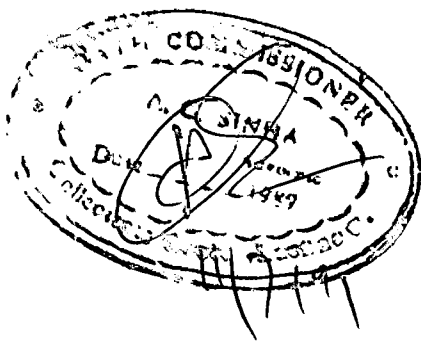
02/11/4

Infantry at Army Headquarters. The punishment awarded has not been influenced, by any of other facts except the absence of one year six months and 12 days which has been proved by the Court of Inquiry proceedings held to inquire into the circumstances of the petitioner's absence.

8. That in reply to para 9 it is stated that the orders of compulsory retirement issued by the competent authority i.e. Director General Infantry at Army Headquarters was correctly disseminated by officiating officer Incharge Records 11 Gorkha Rifles, appointing authority under the provisions of Rule 12(2) (b) of the Central Civil Services (Classification, Control, and Appeal) Rules, 1965. The Court of Inquiry was correctly held under the order of Headquarters Lucknow Sub Area, Lucknow to inquire into the circumstances of absence of petitioner for one year six months and 12 days and has correctly brought out in the finding that the petitioner was absent without sufficient cause. He opined that the petitioner is a habitual absentee, has little regard for his service and his personal problems keep ^{him} occupied mentally and emotionally. Based on it, the punishment of compulsory retirement has been correctly passed by Director General Infantry at Army Headquarters vide letter No. B/05006/54/Inf-6(Pers) dated 26 Oct 89. The petitioner appealed to the Director

.....5

Praveer
Capt



445

General Infantry vide his petition dated 5 December 89 to set aside the punishment of compulsory retirement awarded by Director General Infantry and disseminated by Officiating Officer Incharge Records vide letter No. DER/41/LA dated 02 November, 89. The appeal was rejected by Lt. Gen R.N. Mahajan, Deputy Chief of the Army Staff vide his letter No. B/05006/54/Inf-6(Pers) dated 03 August, 90 (copy attached) It would thus be seen that the case of the petitioner has been thoroughly scrutinized before awarding him the penalty of compulsory retirement from service by Director General Infantry.

9. That in reply to para 10 it is stated that the ~~penalty~~ penalty of compulsory retirement from service was awarded by Director General Infantry at Army Headquarters after taking into account all aspects of the case based on the Court of Inquiry proceedings for the absence of the petitioner for one year ~~six months~~ six months and 12 days.

General
capt

CMA

General
Deponent. capt

Verification

I, the deponent named above do hereby verify that the contents of paras 162 are true to my personal knowledge, those of paras 4 & 9 are believed to be true based on legal advice and the paras are true based on record. No part of it is false and nothing has been suppressed. So help me God.

General
capt

General
Deponent. capt

I identify the deponent who has signed before me.

General
Advocate.

File : 3011539

Dte Gen of Infantry/Inf-6 (Pers)
General Staff Branch
Army Headquarters
DHQ PO New Delhi - 110011

B/05006/54/Inf-6 (Pers)

03 Aug 90

ORDER

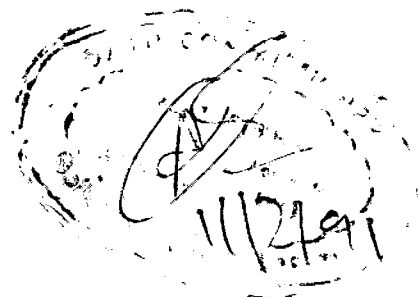
WHEREAS, the penalty of 'Compulsory Retirement from service' imposed on Shri Dal Bahadur Rai, LDC, by the Disciplinary Authority vide Order No DBR/41/LA dated 02 Nov 89, on the grounds of absentsing himself from duty without prior permission/ approval of the Competent Authority.

AND, WHEREAS, Shri Dal Bahadur Rai, LDC, preferred on appeal dated 05 Dec 89 to the Appellate Authority against the penalty imposed on him.

AND, NOW THEREFORE, the undersigned after examining the appeal and documents on file and taking an overall view of the facts and circumstances of the case, in exercise of powers vested in him under Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby rejects the appeal.

Sd/- x x x x
(RN Manajan)
Lt Gen
Deputy Chief of the Army Staff

Shri Dal Bahadur Rai, LDC
Recd as The 11 Gorkha Rifles
Lucknow



249

- 2 -

2. That in regard to para 1 of the written Statement , it is stated that it is not correct that Lt.Tarlok Singh who filed the writtens Statement on behalf of the respondents is competent to file the written statement .It may be also noted as its is stated on legal advice that in view of the law declared by the Hon'ble High Court at Lucknow, as reported in 1989 Lucknow Civil Decisions ,Page 294- Iqbal Bahadur Vs District Judge Sultanpur .It is also stated that Lt.Tarlok Singh's claim that he was conversant with the facts of the case is also not correct.

3. That it is stated that the brief history of the case as stated in the written statement is not correct . It contains many inaccuracies , but those will have no material effect in deciding the matter in issue to be adjudicated in this Claim Petition. It is also submitted that the brief history has been prepared not in a fair manner but with an idea to give a prejudiced version of the case.

...3

- 3 -

4. That one thing emerges from a perusal of the brief history as stated in the written statement is that the disciplinary proceedings against the applicant was vitiated because of the fact that his earlier period of absence that is from 4.11.84 to 10.4.85 which was already penalised influenced the disciplinary proceedings against him.

5. That in regard to para 5 of the written Statement, it is stated that it needs no reply as it has not made any comments regarding paras 1 to 5 of the claim petition.

6. That in regard to paras 6.6.2 and 6.6.3 of the written statement, it is stated that the averments in the paras under reply are of no consequences as they have no bearing in the matter in issue.

7. That in reply to para 6.4. of the written Statement, it is stated that the facts as contained in the para under reply are not correct, it is distorted. The applicant sent a telegram.

8. That in reply to para 6.5. of the written Statement, it is stated that the disciplinary inquiry

[Handwritten signature]

CONFIDENTIAL

Tele : 3018553

Dte Gen of Infantry/Inf-0 (Pers)
General Staff Branch
Army Headquarters
DHQ PO New Delhi - 110011

D/00000/54/Inf-0 (Pers)

25 Oct 89

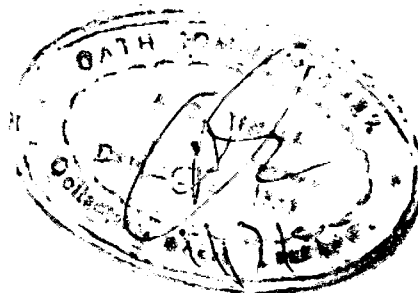
Records
11 Gorkha Miles
Chetak Lines, Lucknow

DISCIPLINE : CIVILIANS

1. Reference your letter No DBR/30/LA dated 03 Feb 89.
2. On perusal of the case it is observed that Shri Dal Bahadur Rai, LDC, is a habitual absentee and has no regard for his service. Therefore, it would not be in the interest of service to allow him to continue in service any longer.
3. In view of Para 2 above, your recommendation for compulsory retirement of the individual as per Para 11 (vii) of Appendix 4 of CCS (CO&A) Rules, 1965, indicated in Para 4 of your ibid letter, is approved.

Sd/- x x x x
Lt Gen RK Gaur
DG Infantry

[Handwritten signature]



4. That one thing emerges from a perusal of the brief history as stated in the written statement is that the disciplinary proceedings against the applicant was vitiated because of the fact that his earlier period of absence that is from 4.11.84 to 10.4.85 which was already penalised influenced the disciplinary proceedings against him.

5. That in regard to para 5 of the written Statement , it is stated that it needs no reply as it has not made any comments regarding paras 1 to 5 of the claim petition.

6. That in regard to paras 6.6.2 and 6.3 of the written statement , it is stated that the averments in the paras under reply are of no consequences as they have no bearing in the matter in issue.

[Handwritten signature]

7. That in reply to para 6.4. of the Written Statement, it is stated that the facts as contained in the para under reply are not correct , it is distorted. The applicant sent a telegram.

8. That inreply to para 6.5. of the written Statement , it is stated that the disciplinary inquiry

proceedings taken against him was vitiated as will be discern_ned from the statement " That No.9412040 LDC Dal Bahadur Rai is a habitual absentee and has little regard for his service". Again it may be extracted " It is pertinent to mention that No. 9412040 LDC Dal Bahadur Rai was also absent from 4.11.84 to 10.11.85 for a period of 167 days.He was awarded the punishment of stoppage of increment for a period of 3 years without ~~any~~ cumulative effect".At this stage , it will be relevant to mention that the charge sheet as contained in Annexure No.2 Confidential Memo No.DBR/2/LA, which contains the articles of charge never made any imputation against the applicant being a habitual absentee or regarding his absence from 4.11.84 to 10.11.85 .Thus it will be seen that the applicant was charged for the absence only for the period 23.12.86 to 4.7.87 and for no other period but the enquiry report and the ~~imputation of punishment~~ impugned punishment of compulsory retirement passed against the applicant shows that his punishment order was given on 2

952

- 5 -

charges one for the absence from 4.11.84 to ~~19.11.85~~ 19.11.85 and another for absence from 23.12.86 to 4.7.88. The applicant submits that the punishment is vitiated having taken into consideration and being influenced by the fact of absence from 4.11.84 to 19.11.85, for which the applicant was ~~punished~~ punished earlier. It is, therefore, infringement and hit by the principles of double - jeopardy as provided under Article 20 of the Constitution of ~~India~~ India.

9. That the order of compulsory retirement as contained in Annexure No.1 also suffers from illegalities that it was not passed by the competent authority. It is based on an inquiry report which also suffers because it has referred to the past conduct of the applicant for which he was already punished but not removed from service.

10. That the punishment meted out to the applicant is dis-proportionate and it is stated that it

AS3

- 6 -

is against the law declared by Hon'ble Supreme Court of India in 1982(3) SCC -346 Rama Kant Misra Vs. State of U.P. , 1983(2) SCC -442 Bhagat Ram Vs. State of Himachal Pradesh ,1984(1) SCC -152 Management of HMT Limited Bangalore Vs. Mohd Uman, 1984(2) SCC- 569 Ved Prakash Gupta Vs. Delton Cable India Private Limited.

Lucknow:

[Signature]
Deponent

dated -3-1991.

Verification.

I, the deponent abovenamed do hereby verify that the contents of paras of the rejoinder-affidavit are true to my own knowledge and those of paras are believed to be true to the best of my information and legal advice. No part of it is false and nothing material has been concealed in it, so help me God.

Lucknow:

[Signature]
Deponent.

dated: -3-1991.

I identify the abovenamed deponent who has signed before me and is also known to me personally.

(L.K.Pathak)
Advocate .

954

- 7 -

Solemnly affirmed before me on

at

AM/PM by Shri Dal Bahadur Rai the

deponent who has been identified by Shri L.K.Pathak,
Advocate, High Court Allahabad, Lucknow Bench Lucknow.

I have satisfied myself by examining

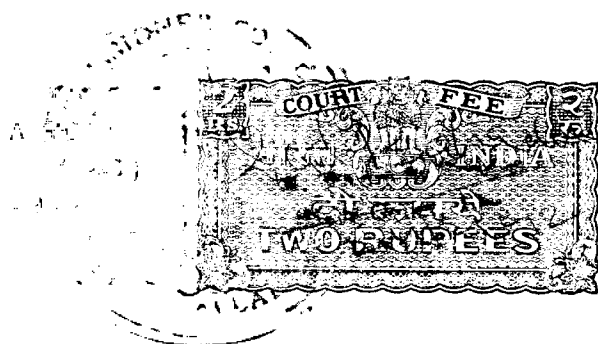
the deponent that he understands the contents of this
affidavit which have been read over and explained to
him by me.

OATH COMMISSIONER.

155

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ,
CIRCUIT BENCH AT LUCKNOW

CASE NO. 29 OF ^X~~XXXX~~ 1990.



Dal Bahadur Rai Applicant.

Versus.

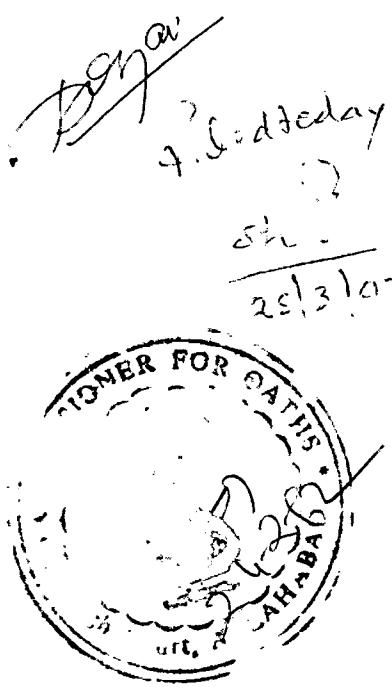
Union of India and others..... Cpp. Parties.

Supplementary Rejoinder Affidavit to the
Supplementary Counter Affidavit filed on
Behalf of ~~the~~ respondents No.1 & 2

I, Dal Bahadur Rai aged about 39 years,
son of Late Sri Hstdil Rai resident of Banda Khera,
Post Office Dilkusha, Lucknow Cantt. do hereby solemnly
affirm and state on oath as under :-

1. That the deponent is the applicant in the above
noted case. He has himself read the supplementary counter
affidavit of the respondents No.1 & 2 and understood
~~the~~ its contents. He has also been explained about the
same by his counsel and having understood the same and being
being personally conversant with the facts ~~the~~of the case
in reply thereto deposes as under :-

2. That the contents of para 1 and 2 of the
Supplementary Counter Affidavit need no reply.



956

:: 2 ::

3. That the contents of para 3 of the supplementary counter affidavit ~~xxxx~~ is denied. In reply thereto, para 2 of the rejoinder affidavit is reiterated.

4. That the contents of para 4 of the supplementary counter affidavit is not admitted. It is submitted that brief history of the case as prepared by the respondents was not done in a fair manner and it gave a prejudiced version of the case.

5. That the contents of para 5 of the supplementary counter affidavit is denied. In reply thereto para 4 of the rejoinder affidavit is reiterated.

6. That para 6 of the supplementary counter affidavit needs no comments.

7. That the contents ~~px~~ of para 7 of the supplementary affidavit is denied. In reply thereto para 8 of the rejoinder affidavit is reiterated.

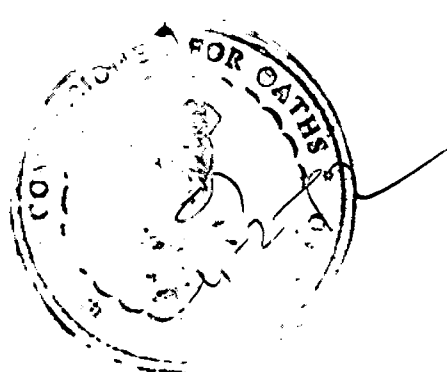
8. That the contents of para 8 of the supplementary counter affidavit is denied. In reply thereto, it is ~~stated~~ stated that the order of compulsory ~~retirement~~ retirement suffers from various illegalities.



AS7

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Firstly it has not been passed by the competent authority. Secondly it is based on an enquiry report which refers to the last conductor of ^{the} application ~~for~~ for which he was already ^h furnished . Therefore there was no reason and cause for this departmental punishment. The penalty of the compulsory retirement as awarded by Director General Infantry and communicated by ^h Officiating officer , ^h Records vide letter No. DBR/41/LA dated 2.11.89 is arbitrary and not in consonance with the law ~~as~~ declared by the Hon'ble Supreme Court of India in this regard.



Signature

9. That in reply to para 9 of the supplementary counter affidavit, it is stated that penalty of compulsory retirement from service was passed without taking into account all aspect of the case and is therefore violative of the provisions of law enunciated in the constitution of India.

Lucknow:

Dated: February ^h 24 , 1992.

Signature
Deponent.

VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 to 9 of the rejoinder

758

:: 4 ::

affidavit are true to my own knowledge. No part of it
is false. nothing material has been concealed in it.
So help me God.

Lucknow:

Dated: February 24, 1992.

Bulbul Godiyal

Deponent.

I identify the deponent who has signed
before me. and is personally known to me.

Bulbul Godiyal
(Smt. B. Godiyal)
Advocate.

Solemnly affirmed before me on Feb 24, 1992 at 9/5

A.M./P.M. by Sri Dal Bahadur Rai, the deponent who
has been identified by Smt. B. Godiyal, Advocate,
High Court Allahabad, Lucknow Bench, Lucknow

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

Oath Commissioner.

C. P. MISRA

Advocate, Lucknow

No. 2-1037
Date 24-2-92