

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW.

DATED: 24/1/94

Cause Title O. A. No 65 19906

Name of Parties.

L.P. Nigam Applicant

versus

Union of India Respondents.

PART -A

Sl.No.	Description of Documents	Page
1-	Check-List	A A1✓
2-	Order Sheet	A2 - A4✓
3-	Final Judgement (16-4-92)	A5 - A9✓
4-	Petition Copy	A10 - A24✓
5-	Annexure	A26 - A41✓
6-	Power	A25✓
7-	Counter Affidavit	A42 - A49✓
8-	Rejoinder Affidavit M.P. 847/92	A50 - A58✓ A59 - 464✓

PART -B

B65 B115

1 - Notice others papers - A

By this order, the documents are returned to the petitioner for his custody and safekeeping.

Part -C

RC 116 B120

Decreed and destroyed  
1/12/96

Certified that no further action is required. The case is fit for consignment to record room.

Section Officer

Court Officer

Incharge

RC 116  
28-1-94

80(5)

Signature of Dealt Assistant.

(RN)

27/2/90

A

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

Registration No. 65 of 1990(6)

APPLICANT(S) L. P. Nigam

RESPONDENT(S) C. M. E. (Laco)

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent?
2. a) Is the application in the prescribed form?  
b) Is the application in paper book form?  
c) Have six complete sets of the application been filed?
3. a) Is the appeal in time?  
b) If not, by how many days it is beyond time?  
c) Has applicant made for not making the application in time, been filed?
4. Has the document of authorization Vakalatnama been filed?
5. Is the application accompanied by B.D./Postal Order for Rs. 50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/plea made by the applicant and mentioned in the application, been filed?  
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?  
c) Are the documents referred to in (a) above neatly typed in double space?
8. Has the index of documents been filed and paging done properly?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of law or any other Bench of Tribunal?

ys

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ys

Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/same copies signed ?
12. Are extra copies of the application with Annexures filed ?
  - a) Identical with the Original ?
  - b) Defective ?
  - c) Wanting in Annexures
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

No

Yes

Sincerely

O A GS/90 (L)

8.3.90

Hon Mr. J. P. Sharma JM

Issue order to respondents.  
List. in case for admission on  
10.5.90

or  
Notice dismissed  
14/3/90

JM

OB

Notices were issued  
on 14.3.90

10/5/90

Hon. Mr. K. J. Ramani, A.M.  
Hon. Mr. B. K. Agrawal, J.M.

Further reply  
on any unanswered reply  
over has been taken  
back.

S. F. A.

L  
a/x

On the request of the  
learned counsel for the respondents  
the case is adjourned for admission  
on 18/9/90. Shri A. Sahai, the learned  
counsel for the applicant is present.

Dep  
A.M.

horr  
A.M.

18.9.90

- No sitting - Bar to 9.10.90

9.10.90

No sitting Adm to 22.10.90

22.10.90

No sitting Adm to 20.11.90

20.11.90

Hon Mr Justice K. Mathur  
Hon Mr. M. M. Singh, J.M.

Shri Anil Srivastava

files counter ADMIT.

Rejoinder may be filed within  
3 weeks. List before DR on

9.1.91 for fixing a date if

possible. Copy of the counter  
will be delivered by the counsel for  
respondents out of court

DR  
Shri Anil Srivastava files  
power on behalf of respondents. but  
no reply filed.

S. F. A.

L  
16/11

L  
15/11/90

No R.A.M.

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD/C.B. LUCKNOW

A3

No. CA 65/90L OF 19

L. P. Nigam Vs. L.P.I.

Sl.No.	Date	Office Report	Orders
M.P. 847/92 application for Extension of time has been filed by O.P. S.F.O. 21/9/92 Hand on Raymond K. K. Ray S. Anand 23/12/92		25.9.92  21-11-92	<p>No filing of D.O. adj to 21.11.92</p> <p>✓</p> <p>Hon. Mr. Justice U.C. Sinestane, V.C. Hon. Mr. K. Chayya, A.M.</p> <p>This is an application for extension of six months' time to implement the judgment dated 16-4-92. On 16-4-92 the tribunal directed the respondents to complete the enquiry within 3 months, but the enquiry has not been completed so far. It appears that the respondents are not interested in conducting the enquiry and they are delaying the matter unnecessarily. However, 4 months time from 16-7-92 is granted</p>

M. R. No. 847/92

O.A. No. 65/92(C)

Aty

3/2/93

Hon. Mr. Justice U. E. Srivastava, V. E.  
Hon. Mr. K. Dabgya, A. M.

This is an application for extension  
of six months' further time to  
implement the <sup>judgment and</sup> order dated 16-4-92.

The applicant moved the application  
on 21-9-92 and six months'  
time expires on 20/3/93. Accordingly,  
time for compliance of directions  
in the judgment is extended  
upto 20/3/93, beyond which  
it shall not be extended,  
provided efforts for implementation  
of the same is in fact made.  
List this case on 20/3/93.

(May)

A. M.

V. E.

OP  
SP  
2  
20/3/93

AS

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A.No.65/1990

Laxman Prasad Nigam

Applicant.

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon. Mr. A.B. Gorthi, Adm. Member.

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

The applicant was appointed as Engine Cleaner and promoted to the post of Fireman grade II in the year 1965 and when he was due for promotion to the post of Fireman Grade I in the year 1980, he was not promoted. Then in a disciplinary proceeding in January, 1982 he was awarded punishment of reduction in rank and in appeal the punishment was reduced, even then he was not promoted. In the mean time another chargesheet was issued to him for defrauding the administration along with several others. He was placed under suspension on 1.10.82, on 29.10.82 he was chargesheeted and major punishment was awarded. The applicant preferred an appeal on 22.9.83 and the charge sheet was withdrawn and cancelled by the order dated 4.2.86. Thereafter, again on 3.3.86 the applicant

4

was chargesheeted by the respondent No. 3 for the charges which were levelled in the year 1982 with the same evidence he was punished by the opposite party No. 2 and thereafter the the punishment was withdrawn vide order dated 23.6.1988. The applicant, thereafter represented for the promotion to the post of Fireman Grade I as the juniors to the applicant were promoted. In the mean time on 18.10.88 the applicant was required to discharge the duties of 'Telephone Clerk'. According to the applicant he was not imparted training for Telephone Clerk post and specially when he was required to discharge the duties of the post of Fireman, which is totally different than the duties of Telephone Clerk and has nothing to do with the post of Fireman as it required technical knowledge like the understanding the voices of 'Breath Analyser' to detect the intoxication of a Railway personnel and has to discharge other complicated ministerial duties viz. to receive and attend the telephone calls from those, who are connected with the running of trains and to transmit the same to all concerned immediately for averting any mishappening on the Railway tracks and trains etc. He was required training, for all this.

u

Then an inspection was made at about 11.00 hrs in the night when the train drivers Rama Deen and R.S. Misra came to the place where the petitioner was sitting and asked to which train their duty was and the applicant informed of the trains on which their duty was and also filled in the entries in the 'Signing on Register' which also contains the columns of 'Glass Test' and 'Intoxication Test' entries. The following note was made by the officer who inspected:

"Checked at 11.05 hours the entries had been made in advance. This is highly irregular and is in complete disregard of safety precautions."

There is no denial of the fact that consequently nothing wrong was found with the driver. The enquiry officer held that the petitioner without having tested the Driver filled the entries as O.K. only on the basis of his personal knowledge and experience as he had worked with them for very long time which was not proper and he found the petitioner guilty.

2. The grievance of the applicant is that without giving any opportunity or show cause the applicant was removed from service vide order dated 10.4.89. The applicant filed an appeal, which was partly allowed and the removal order was set aside. The applicant's

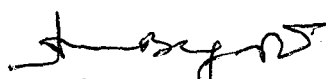
u

grievance is that the punishment awarded to the applicant is more severe, as not only he has been deprived of his future promotion and losing the benefit of entire service on the post of Fireman Grade II from 1965 upto the date of order as he was appointed again in the basis grade at the initial stage and will also lose his entire seniority of the post of Fireman grade II.

3. The respondents have tried to justify their order stating that the applicant could not be promoted due to disciplinary enquiry pending against the applicant and that while the applicant was performing the duty of phone Attendant, irregularities were detected in the 'Sign on Register.'

4. When all the earlier punishments were cancelled, the applicant should have been promoted with retrospective effect from the date his juniors were promoted. The charge sheet was issued in respect of a particular irregularity and minor penalty and not the major penalty which was given to the applicant. The charges against the applicant, which were not <sup>of</sup> such a nature to impose the penalty of removal and the respondents did not proceed in accordance with law. The applicant was not given opportunity to defend himself. As a matter of fact the charges should have been <sup>be</sup> framed applying the mind. Thus, it can be said that ~~no~~ reasonable opportunity was <sup>not</sup> given.

not given to the applicant. Accordingly this application deserves to be allowed. The orders dated 20-4-89, 22-6-89 and 28-9-89 are quashed. However, it will be open for the respondents to impose ~~minor~~ penalty on the applicant in respect of charges after holding enquiry giving full opportunity to defend the applicant. The enquiry to be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

  
Adm. Member.

  
Vice Chairman.

Shakeel/

Lucknow:Dated: 16.4.92.

Administrative  
Circuit Bench, Lucknow  
Date of Filing 27/2/90  
Date of Receipt by Party  
A10

Before the Hon'ble Central Administrative Tribunal

(Additional Bench)  
Sitting at Lucknow.

Claim Petition No. 68 of 1989-90

Laxman Prasad Nigam ..... Petitioner

Versus  
Chief Mechanical Engineer (LOCO)  
and others... Opposite parties.

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contd..2/-

for 8/3/90  
afulal  
Advocate  
27/2/90

for 2/2/90

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*[Signature]*  
21/7/90  
Signature of the  
Applicant.

Before the Hon'ble Central Administrative Tribunal  
(Additional Bench)  
Sitting at Lucknow.

Claim Petition No. 65 of 1989-90 (L)

Laxman Pd. Nigam, aged about 45 years S/i Late Sri  
Parmatma Pd. Nigam, fireman Grade-II Loco Shed,  
N.E. Railway, Charbagh, Lucknow.

..... Petitioner.

Versus

- Union of Indian Railway (Loco)
1. Chief Mechanical Engineer, N.E. Railway, Gorakhpur.
  2. Divisional Railway Manager, (Yantrik) N.E. Railway,
  3. Divisional Mechanical Engineer (Loco) Ashok Marg,
  4. Asstt. Mechanical Engineer (Loco) Lucknow.

..... Opposite Parties.

Petition u/s 19 of the Central Administrative  
Tribunal Act, 1985, against the order dated 22.6.89 by  
Opposite Party No 2

The petitioner begs to submit as under :-

1. That the petitioner was appointed as "Engine Cleaner" and thereafter was promoted to the post of "Fireman" Grade-II in the year 1965 and when he was due for promotion to the post of "Fireman" Grade-I <sup>in 1990</sup> then instead of promoting him to the post of Fireman-Grade-I in spite of his request he <sup>was</sup> illegally without justification

contd..2/-

Laxman  
27/2/90

implicated from January 1982 in a disciplinary proceeding in which he was awarded punishment of Reduction in rank. After appeal the punishment was withdrawn by an order dated 29.3.1984 and during the pendency of the aforesaid inquiry he was again chargesheeted on the charge of defrauding the Administration along with <sup>several</sup> others, ~~more than once~~. He was suspended on 1.10.1982, <sup>in 29.10.82 and major punishment was awarded,</sup> chargesheeted. The petitioner preferred appeal dated 22.9.1983 <sup>hereafter</sup> the notice for imposition of penalty was cancelled by an order dated 5.12.1983 by opposite party no.2 and the chargesheet itself was ~~later~~ withdrawn and cancelled by an order dated 4.2.1986 by opposite party No.3. Thereafter again on 3.3.1986 the opposite party no.3 chargesheeted the petitioner for the charges which were leveled in 1982 and again with the same evidence he was punished by opposite party no.2 <sup>and thereafter</sup> not only the chargesheet was cancelled but punishment was also withdrawn after an appeal was preferred vide order dated 23.6.1988.

(2) That in the aforesaid inquiry ~~when~~ the disciplinary proceedings came to an end after it was found that the petitioner was not connected in any manner with the charge.

(3) That as the petitioner was already entitled to promotion on the date when the earlier disciplinary proceedings were started, hence after they came to an end <sup>and one of his incumbents ~~was~~ enquiry was promoted</sup> he again represented that as his promotion to the post of Fireman Grade I could not be granted because of the proceedings and several juniors were already promoted the names <sup>of</sup> few juniors known to the petitioner are Someshwar Pande, Rakesh Bahadur, Kamta Singh and Shyam Govind, who were appointed to the post of Fireman Grade-II much after the petitioner.

(4) That before the petitioner's request for promotion could receive favour with the opposite parties then unfortunately on 18.10.1988 he was required to discharge a duty of the post known as 'Telephone clerk' for which post the petitioner was neither imparted any training nor any course in any of the Railway School specially when he was ~~required~~ required to discharge the duty of the post of Fireman, which is totally different than the duties of the Telephone Clerk. The duty of Telephone Clerk requires higher responsibility and technical knowledge knowing and understanding the ~~voices~~ voices

Contd..3/-

APM/gan  
21/2/90

of "Breath Analyser" to detect the intoxication of a Railway personel and has to discharge other complicated ministerial duties viz., to receive and attend the telephone calls from all those, who are connected with the running of trains and to transmit the same to all concerns immediately for averting any mis-happening on the Railway tracks and trains, besides entering detention note and the movement of trains and to transmit the information to the Power Control and also to arrange and see the requirement of the running staff from the Shed besides maintaining "Signing on Register" of the Railway employees who during the duty hours come and go for the purposes of trains on which they are to do their duty.

(5) That the "Signing on Register" contains several columns to be filled in by the employee on duty for which the petitioner never received any training for being aware of the technicalities of the machine viz., intoxication test for which the Breathing Analyser machine is to be used,

(6) That on 18.11.88 when the petitioner was required to discharge that duty then in obdience to the Superviors orders he was discharging the duties of Telephone Clerk from 0.8 hrs. to 0.16 hrs. and as per chart and the entries on several registers it will be evident that from 0.8 hrs. to the time the opposite party no.1 made inspection of the work of the petitioner he was so much overworked that at about 11:00 hrs. when the train drivers Rama Deen and R.S. Misra came to the place, where the petitioner was siting, and asked him

contd....4/-

*Langran*  
21/490

AIS

-4-

that to which train their duty was and then the petitioner informed of the trains on which their duty was and simultaneously also filled in the entries in the "Signing on Register" which also contains the columns of "Glass Test" and "Intoxication Test" entries. The petitioner also filled those entries by writing "O.K." as was the practice. Out of the above entries there was no dispute about the correctness of the entries filled by the petitioner i.e., the "Glass Test" entry and the "Intoxication Test" entry. But as general inspection was going on by opposite party no.1 and when he came to the place of the petitioner then the opposite party no.1 on the "Signing on Register" made the following inspection note :-

"Checked at 11:05 hours the entries had been made in advance. This is highly irregular and is in complete disregard of safety precautions".

Sd/-  
C.M.E.  
18.11.1988

(7) That the drivers about whom the aforesaid entries were filled went with the train and at no point of time it was found that drivers entry in the "Signing on Register" about their Intoxication Test entries were incorrectly filled as they carried the trains safely to the destination and the petitioner was never given any list or instructions that what safety precautions he has to take before filling the entries nor any safety precautions have ever been brought to the notice of the petitioner nor they were mentioned in the inquiry held against him mentioning therein the violation and disregard of particular safety precaution.

*Langani*  
*21/2/90*

contd....5/-

(8) That as he was never trained for having test for any particular safety test as such he was illegally suspended as the manner of working according to opposite party no.1 was highly irregular and is in complete disregard of safety precautions only, specially when the list of safety precautions to be adopted has not seen the light of day so far, as such the suspension of the petitioner on the basis of the aforesaid remark vide Memo no.Ya/275/1 dated 18.11.88 by opposite party no.4, who has no right to pass any order as the disciplinary and appointing authority is opposite party no.2 in any case <sup>no</sup> not only suspended but also issued chargesheet and the charge was "that while working as Phone Attendent in 8.00 hrs. to 16.00 hrs. shift on 18.11.88 in Charbagh Shed failed to maintain devotion to duty and acted in the manner unbecoming of the Railway Servant in as much as he recorded the "Signing on Time" of the driver of 160 Dn.(Signing on Time 12.20 hours) and the driver of 55 Up (Signing on Time 14.15 hrs.) in advance on 18.11.88 and also made entry that they have been tested on Breath Analyser and found O.K. well in advance of their going and the petitioner was charged of violating sub rule(ii) and (iii) of rule 3 (1) of Railway Service Conduct Rules 1966.

(9) That the petitioner submitted his reply to the charge wherein he has categorically stated that the concern Drivers had reached at about 11.00 A.M. and the petitioner when saw in the shed filled the entries because the petitioner thought that they are coming for

contd....6/-

*Amr*  
21/2/90

-6-

reporting for the trains in question and as such he filled the "Signing on Register" and before the concern Driver could come and sign the Register after obtaining their kits and instructions from the shed the inspection was made by the opposite party no. 4 who after making a note in the Register without asking about the fact or reason left the place for going to other Department for Inspection and the petitioner could not explain to him that under what circumstances and for what reasons the entires were filled in the "Signing on Register" and signatures could not be obtained, specially when those drivers mentioned in the signing on register took the same train for which they were booked in the "Signing on Register".

(10) That after the submission of the reply by the Petitioner the suspension order was revoked vide number YA/275/1 dated 10.2.89 and the petitioner during the enquiry has not only stated that on noticing the concern Drivers just before the Inspection by the opposite party No. 4 the entries in the name of Drivers were filled as the petitioner personally knew them from much before because he had worked with them and knew about their habits of <sup>not</sup> taking any intoxication as they never took any <sup>drink</sup> prohibited when they are to work.

(11) That Sri R.S.Misra of 55 Up and Sri Rama Deen of 160 Dn. who went with the same trains, which were filled by the petitioner <sup>Filed their affidavits and</sup> in their statement <sup>too</sup> have

Contd...7/-

*Shigam*  
21/4/90

-7-

already stated as below :-

"18-11-1988 को मेरी 55 अप में बुकिंग थी । मैं लगभग 11 बजे स्टोर्स में आया था क्यों मासिक स्टोर्स लेना था । उसी के बाद मैं सहायक लोड फोर्स्परिस् के कार्यालय में इंजन की बुकिंग आदि निश्चित करने आया था । उसी समय शोड में कुछ अधिकारीगण कार्यालय की ओर आ रहे थे तो मैं बाहर चला गया और अपने क्वार्टर पर चला गया" ।

हो आरओ एसओ मिश्रा

मैं दिनांक 18-11-1988 को 160 डायो डेन में बुक था । मैं शोड में 11:00 बजे के लगभग आया था तब श्री एलओपीओ निगम फोन पर ड्यूटी कर रहे थे । मैंने उनसे पूछा कि मेरी बुकिंग 160 डायो है अथवा नहीं । उन्होंने मेरी बुकिंग 160 डायो बताई । मैं अपनी बुकिंग कन्फर्म करके क्वार्टर चला गया ताकि सामान ला सकूँ । फिर मैं धार से वापस आकर समय से अपनी गाड़ी लेकर चला गया ।

हो रामा दीन

(12) That inspite of the <sup>affidavits and</sup> statement of the petitioner and the <sup>affidavits and</sup> statement of the drivers concern who have also deposed on oath during enquiry supporting the affidavits filed by them in the enquiry before the enquiry officer but enquiry officer submitted the report holding that the petitioner without having tested the Driver filled the entries as O.K. only on the basis of his personal knowledge and experience as he had worked with them for very long time which is not proper and he concluded that the petitioner is found guilty of the ~~provision~~ Charge

Shigam  
21/2/90

Contd...8/-

-8-

for which he has been chargesheeted, had submitted his report <sup>dated</sup> 31.03.1989.

(13) That thereafter without giving any opportunity to explain or show cause the opposite party no. 4 <sup>who has no authority or jurisdiction</sup> passed the removal order with immediate effect i.e. from 20.04.1989 vide YA/275/1 dated 10.4.1989. The photo copy of the order is filed with schedule ~~B~~ of the petition.

(14) That the petitioner thereafter preferred the appeal pointing out the ~~allegations~~ <sup>irregularities</sup> and violation of the principle of natural justice during the disciplinary proceedings till the passing of the Removal order.

(15) That the appeal preferred by the petitioner was partially allowed by setting aside the Removal orders but the punishment awarded to the petitioner is much more severe as not only he has been deprived of his <sup>future</sup> promotion and losing the benefit of entire service of the post of Fireman Grade-II from 1965 upto the date of order as he was appointed again in the basic grade at the initial stage and will also lose his entire seniority of the post of Fireman-Grade-II when the appellate order as conveyed appears to be based on non consideration of <sup>the questions raised in</sup> ~~long unblemished~~ <sup>the appeal</sup> ~~service~~ and is with a view to give an opportunity to improve the petitioner in the discharge of his duties, although the actual order passed by the Appellate authority has not been conveyed so far. The Photo Copy of the order passed in appeal is filed with ~~contd...~~ <sup>contd...</sup> ~~schedule B~~ <sup>of</sup> the petition.

*Amritham*  
27/4/90

(16) That against the Appellate order dated 22.6.1989 the petitioner preferred a Revision Petition on 27.7-1989 before opposite party no.2 who rejected the Revision Petition vide even no. dated 25.9.1989 and the order was communicated on 12.10.1989 without considering the fact that the petitioner who had no experience of the duties of telephone clerk discharged the duties in obedience of superiors orders but his irregular working pointed out by opposite party no.1 resulted in such a <sup>a</sup>penalty which marred the entire career of the petitioner as he has been deprived of the benefit of 25 years of service for all purposes by the order of those who have passed the orders against the departmental rules and orders.

(17) That being aggrieved from the aforesaid orders the petitioner having left with no other adequate and alternative remedy and the cause of action *within the territorial jurisdiction of the Tribunal at Lucknow* accrued on 20.4.1989 when he was removed with immediate effect and thereafter on 22.6.1989 when the ~~impugned~~ punishment was awarded and lastly on 12.10.1989 when the order rejecting the Review Petition was received by the petitioner *and now no other departmental remedies are available under the departmental rules*

(18) That there is no bar of limitation as the claim is being filed within the period of limitation as provided under the Central Administrative Tribunal Act, 1985

(19) That the orders imposing punishment are

contd..-10/-

*L. Singhani*  
*21/2/90*

-10-

being challenged <sup>for the first time in the Honble Tribunal</sup> on the following grounds :-

(A) Because as rule 3(1) (ii) and (iii) of the Railway Services (Conduct) Rules, 1966 under which punishment has been awarded is as below -

"3-General (1) Every Railway Servant shall at all times :-

(i) x x x

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of availing or Government Servant.

The aforesaid rules are applicable only in respect of Railway Servant's Conduct as provided in these Rules only, and not in respect of those actions which are covered by Railway Servants Conduct and Appeal Rules as the irregularity in making the entries relating to drivers in the "Signing on Register" can not be the subject matter of the Rules and as such the punishment awarded is against the provisions of Rules of 1966.

(B) Because the conduct to which the Rules of 1966 relate are provided in these Rules and the conducts provided in it have not been violated which may give a cause for invoking sub rule (ii) and (iii) of Rule 3(1) of the Rules.

(C) Because the proceedings have been started only on the ground of alleged irregularity noted by opposite party no.1 on the "Signing on Register" said to have been committed by the

*L. S. G. M.*  
*21/2/90*

Contd..11/-

-11-

the petitioner hence the proceedings for major punishment were unwarranted and uncalled for under the Rules specially when the drivers of the train went with the same trains for which they were booked and during their duties they were not detected by anyone under intoxication and ended their duties safely.

(D) Because the petitioner who was due for his promotion from the post of Fireman Grade-II to the post of fireman Grade-I as far as in 1980 when the juniors to the petitioner were promoted without considering and ignoring the petitioner from the consideration.

(E) Because the petitioner is requesting for his promotion and whenever he strongly pressed for his promotion then some how or the other he has been dragged in some disciplinary proceedings as is apparent from the documents filed with the schedule.

(F) Because the petitioner is already discharging the duties of Fireman Grade I from the year 1980 but on one ground or the other no promotion order has been issued when the juniors have been issued promotion order and are receiving the benefits of Fireman I

(G) Because the punishment awarded by opposite party no.4 was without <sup>authority and</sup> jurisdiction and the punishment awarded by the opposite party no.2 in appeal is to the effect that he is appointed in the basic of the grade amounts to wipe out the entire period from 1965 till 22.6.1989 depriving him of the total loss of service on the alleged irregularity

contd..12/-

*Dr. Jagann*  
*21/2/90*

without specifying that which of the Railway Safety Rule has been violated.

(H) Because the proceedings and order are against the Disciplinary Appeal Rules and the punishment awarded is only with the intention to deprive the petitioner to have his promotion to the post of fireman Grade-I specially when the petitioner is discharging the duties meant for Fireman Grade-I from long ago and the entire proceeding are invitation of the principles of natural justice.

20. Wherefore, the petitioner prays :-

- (a) that the entire disciplinary proceedings starting from 18.11.1988 starting with the suspension of the petitioner till the orders dated 20.4.1989, 22.6.1989 and also the order dated 25.9.1989 be set aside and to direct the opposite parties to issue his promotion order to be effective from the date when the first junior to the petitioner was promoted by the opposite parties ignoring the claim of the petitioner.
- (b) to pass orders directing the opposite parties to treat the petitioner in continuous service as he was on 18.11.1988 and not to deprive him of the benefits of continuous service which will result in non promotion of the petitioner for a long period again and to allow him the benefits which have been deprived because of the illegal orders.
- (c) To allow the petition and award the cost of the petition against the opposite parties.

*Blue Gan*  
21/2/90

21. That as required by rule 7 the Postal Order no.E02 409863 dated 20.2.1990 issued by High Court Post Office at Lucknow in favour of Registrar, Central Administrative Tribunal Additional Bench, Allahabad Sitting at Lucknow towards the required fee of Rs 50/= for filing claim petition before the Tribunal.
22. List of enclosures :
- (1) Compilation no.1-16 pages.
  - (2) Compilation no.2-~~16~~ pages.

Lucknow:

Dated: 21.2.90

*L.P. Nigam*  
21/2/90

(L.P. Nigam)  
Petitioner.

#### VERIFICATION

I, Laxman Prasad Nigam S/o Late Shri Parmatma Pd. Nigam aged about 45 years working at Lucknow in the Office of Loco Shed, N.E.Railway, Charbagh, Lucknow resident of Dugawan, Lucknow do hereby verify that the contents of paras of the petition are true to my own knowledge and those of paras of the petition are believed by me to be true. Nothing material has been concealed so help me GOD. Signed and verified this day on in the chamber of my Advocate at Naubasta, Lucknow.

Lucknow:

Dated 21.2.90 1990.

*L.P. Nigam*  
21/2/90

(L.P. Nigam)  
Petitioner.

Before Central Administrative Tribunal (M.D. Bench)  
बअदालत श्रीमान sitting at Lucknow महोदय

वादी (मुद्दे)

मुद्दे (मुद्दालेह)

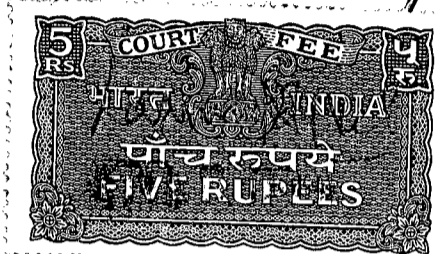
का

वकालतनामा

Laxman Pd. Nigam

versus

Chief Mechanical Engineer, N.E. Ry. and others



प्रतिवादी (रेस्पान्डेन्ट)

नं० मुद्दमा

१९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Atul Kishan Sahar and

Nareesh Chandra Roy, Nabasta, Lucknow

वकील

एडवोकेट महोदय

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

नाम अदालत

नं० मुकद्दमा

नाम फरीकन

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

19th

महीना

February

सन् १९९० ई०

Atul Kishan Sahar  
N.E. Ry.  
Nabasta

NORTH EASTERN RAILWAY

FORM NO. 1

ORDERS OF IMPOSITION OF PENALTY OF DISMISSAL/REMOVAL/COMPULSORY RETIREMENT FROM SERVICE UNDER RULE 6(VII), (VIII) AND (IX) OF THE RAILWAY SERVANTS (D/A) RULES, 1968.

No. 14/175/4 P.C. II Dated 25/8/03  
 To, Name L. P. Nigam  
 Father's name P. P. Nigam  
 Designation Fireman II Cashed Department Mechanical  
 Ticket No. xxx Date of Appointment                       
 Station C/B Scale of pay 210-270  
 Shri L. P. Nigam

(Name, designation & Office in which he is employee),  
 (\* Under suspension) is informed that the Inquiry Officer/Board of Inquiry appointed to enquire into the charge(s) against him has/have submitted his/their report. A copy of the report of the Inquiry Officer/Board of Inquiry is enclosed.

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

OR

\*On a careful consideration of the enquiry report aforesaid, the undersigned agrees with the findings of the Inquiry Officer/Board of Inquiry in so far as it relates to article(s) of charge No.(s)                      and for reasons stated in the attached Memorandum holds that article(s) of charge No.(s)                      which the Inquiry Officer/Board of Inquiry has/have held as not ~~proved~~ proved, is also ~~proved~~ proved.

3. The undersigned has, therefore, come to the conclusion that Shri L. P. Nigam is not a fit person to be retained in service (Name of the Railway servant) and has decided to impose upon him the penalty of dismissal/removal/compulsory retirement from service, Shri L. P. Nigam, therefore, (Name of the Railway servant) dismissed/removed/compulsory retired from service with effect from 8-8-03.

4. Under Rule 18 of the Railway Servant (D/A) Rules, 1968 an appeal against these orders lies to DM/STN provided:-

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

5. Please acknowledge receipt of this letter.

Certified that Photo-Stat copy is true copy of the copy received by me  
L. P. Nigam  
21/2/90

Signature Sr. - S. P. Singh  
 Name & Design. Sr DME/STN 20/8

T. G. Ayal

(2)

~~(1)~~FINDINGS

On going through the record maintained at GKP Shed & GKP R/Room showing present of staff, and after going through the statement of cross examination of all witness, and the employee involved in this case. I do find all these members of the Crew VIZ. P.O. Nigam, Azmat Ali & L.P. Nigam booked to bring the light Engine 2562/YP from GKP Shop are held responsible for charges contained in memorandum.

1) In as much they were not present either in shed or R/Room or GKP Shop, but have shown them selves as on duty by claiming "WAITING DUTY" in Engine Tickets from 9.7.82 to 19.7.82.

2) That the engine Tickets from 9.7.82 to 19.7.82 shown to have been signed by supervision are all false and they have defrauded the administration with mala fide extension by forged illegible signature of these tickets.

Sd/- Jogender Singh(L.L.)  
Enquiry Officer  
Charbagh.

*Certified that Photo  
State copy is  
True copy of the  
copy received by me*

*Chaudhary  
21/2/90*

*Te  
afal  
Adhwal*

No. 1175/4 Part II.

Dated : August 25, 1983.

To

Shri L.P. Nigam  
Father's Name : Late P.P. Nigam  
Designation : Fire-man II, Department- Mech.  
Ticket No. : Nil. Date of appointment  
Station : Oharbagh, Scale 210/- to 270/-

Shri L.P. Nigam/Fire-man II./OB Shed (Under Suspension) is informed the Enquiry Officer/Appointed to enquiries into the charge(s) against him, has submitted his report. A copy of this report of the enquiry office enclosed herewith.

2. On careful consideration of the enquiry report aforesaid the undersigned agrees with finding of the Enquiry Officer hence that the Articles of charges are proved.

3. ~~Since~~ The undersigned has, therefore, come to conclusion that Shri L.P. Nigam/F/M II/OB is not fit person to retained to impose upon him the penalty of Removal from service.

Shri L.P. Nigam/Fire-man II/OB Shed is, therefore, removed from service with effect from 8.83.

4. Under rule 18 of Railway Servant (D&R) 1968 an appeal against these order's lies to DRM provided.

5. The appeal has not contain in proper or disrespectful language.

Please acknowledge receipt in letter.

Certified that  
Photostat copy is  
True copy of the  
copy received by me  
Shreejani  
21/2/90

(S.P. Singh)  
Senior DME (L)  
N.E. Railway, Lucknow.

T. G. Agarwal



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

4. श्री ..... को यह भी सूचित किया जाता है कि यदि वह चाहे तो मौखिक जांच होने की स्थिति में प्रलेखों का निरीक्षण करने तथा जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता करने के लिए किसी अन्य रेल कर्मचारी/रेल व्यवसाय संघ के किसी पदाधिकारी जो रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 (9) और यथा स्थिति उनके टिप्पण एक और/अथवा टिप्पण दो की अपेक्षाओं को पूरा करते हों, की सहायता ले सकता है। इस प्रयोजन के लिए अधिमाम्यता क्रम में उसे एक या अधिक व्यक्तियों का नामन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारियों) अथवा रेल व्यवसाय संघ के पदाधिकारी/पदाधिकारियों का नामन करने से पहले श्री ..... द्वारा नामित व्यक्ति (व्यक्तियों) से वचन ले लेना चाहिए कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसकी सहायता करने के लिए तैयार हैं। वचन में ऐसे अन्य मामले/मामलों का, यदि कोई हो, विवरण भी देना चाहिए, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका हो और नामित व्यक्ति (यों) द्वारा दिया गया वचन नामन-पत्र के साथ निम्न हस्ताक्षरी/महाप्रबन्धक ..... रेलवे को भेजा जाना चाहिए।

4. Shri. **L.P. Nigam** ..... is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of a Railway Trade Union who satisfies the requirements of Rule 9 (9) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting railway servant (s) or Railway Trade Union Official (s), Shri. **L.P. Nigam** ..... should obtain an undertaking from the nominee (s), that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case (s), if any, in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager, ..... Railway alongwith the nomination.

5. श्री ..... को एतद्द्वारा निर्देश दिया जाता है कि यदि उसे अपना प्रतिवाद तैयार करने के लिए किसी प्रलेख का निरीक्षण करना अपेक्षित न हो, तो इस जांच की प्राप्ति के लिए दस के भीतर और यदि वह प्रलेखों का निरीक्षण करना चाहे तो प्रलेख का निरीक्षण पूरा होने से दस दिन के भीतर निम्नहस्ताक्षरी के पास (महाप्रबन्धक\*\* ..... रेलवे के मार्फत) अपने प्रतिवाद का लिखित कथन (जो उक्त महाप्रबन्धक के पास पहुंचना चाहिए) प्रस्तुत करें और—

(क) बतायें कि क्या वह व्यक्तिगत रूप में कुछ कहना चाहता है, और

(ख) उन साक्षियों के, यदि कोई हो, नाम और पता बतायें जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है, और

(ग) उन प्रलेखों की सूची, यदि कोई हो, पेश करें जिन्हें वह अपने प्रतिवाद के समर्थन में प्रस्तुत करना चाहता है।

5. Shri. **L.P. Nigam** ..... is hereby directed to submit to the undersigned (through General Manager ..... Railway) @ a written statement of his defence (which should reach the said General Manager)\*\*within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence; and within ten days after completion of inspection of documents if he desires to inspect documents, and also—

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

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

(c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

6. श्री ..... को सूचित किया जाता है कि आरोप के केवल उन अनुच्छेदों के बारे में जांच की जायेगी, जो स्वीकार नहीं किये गये हैं। इसलिए उन्हें चाहिए कि आरोप के प्रत्येक अनुच्छेद को खास तौर से स्वीकार करें या इनकार करें।

6. Shri. **L.P. Nigam** ..... 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.

7. श्री ..... को आगे यह भी सूचित किया जाता है कि पैरा 5 में विनिर्दिष्ट अवधि के भीतर यदि वह अपना लिखित बयान प्रस्तुत नहीं करता या जांच अधिकारी के सामने व्यक्तिगत रूप से हाजिर नहीं होता या रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 के नियम 9 के उपबन्धों या उक्त नियम के अनुसरण में जारी आदेशों/निर्देशों का अनुपालन करने में अन्यथा असफल रहता है, या इनकार करता है तो जांच प्राधिकारी एक पक्षीय जांच कर सकता है।

7. Shri. **L.P. Nigam** ..... is further informed that if he does not submit his written statement of defence within the period specified in para 5 or does not appear in person before the inquiring authority or otherwise fails or refused to comply with the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the orders, directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

*L.P. Nigam*  
2/2/90

8. श्री ..... का ध्यान रेल कर्मचारी (आचरण) नियम, 1966 के नियम 20 की ओर दिलाया जाता है, जिसके अंतर्गत कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से सम्बन्धित मामलों के सम्बन्ध में अपने अपने के लिए किसी वरिष्ठ अधिकारी पर कोई राजनीतिक या अन्य प्रभाव न तो डालेगा अथवा न डालने का प्रयत्न करेगा। यह न कार्यवाहियों से सम्बन्धित किसी मामले में उसकी ओर से किसी अन्य व्यक्ति से कोई अभ्यावेदन प्राप्त होता है तो या प्रकल्पना की जायेगी कि श्री ..... को उस अभ्यावेदन की जानकारी है और वह उसके कहने पर दिया गया है और उसके विरुद्ध रेल कर्मचारी (आचरण) नियम, 1966 के नियम 20 का उल्लंघन करने के लिए कार्यवाही की जायेगी।

8. The attention of Shri **L.P.Nigam** ..... is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any, representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri ..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

9. इस ज्ञापन की पावती भेजें।

9. The receipt of this Memorandum may be acknowledged.

\*(राष्ट्रपति के आदेश और उनके नाम से)

सक्षम प्राधिकारी का नाम और पदनाम

\*By order and in the name of  
the President

( V. Singh ) 27/12

हस्ताक्षर Signature

Sr. DME/LJN

Name and designation of Competent authority.

संलग्न :  
Encls :

सेवा में  
To

श्री ..... **L.P.Nigam**, .....  
Shri

पदनाम .....  
Designation **Fireman/II**

स्थान आदि .....  
Place, etc. **Charbagh shed.**

- ① प्रतिलिपि श्री ..... (उधारदाता प्राधिकारी का नाम और पदनाम) को सूचनार्थ प्रेषित।
- ② Copy to ~~SRM~~ **L.F./Charbagh** ..... (name and designation of the lending authority) for information.

\*यदि आदेश का राष्ट्रपति के नाम से दिया जाना अभिव्यक्त किया जाय।

\*यह समय-सीमा सक्षम प्राधिकारी के निर्देश से दस दिन तक बढ़ाई जा सकती है।

\*This time limit may be extended upto ten days at the direction of the competent authority.

*L.P.Nigam*  
21/2/90

- \*\* यह समय सीमा सक्षम प्राधिकारी के निर्देश से बीस दिन तक बढ़ाई जा सकती है।  
 \*\* This time limit may be extended upto twenty days at the direction of the competent authority.

† जहां कहीं राष्ट्रपति या रेलवे बोर्ड सक्षम प्राधिकारी हो वहां इसे रहने दिया जाय।  
 † To be retained wherever President or the Railway Board is the competent authority.

† जहां राष्ट्रपति अनुशासक प्राधिकारी हो।  
 † Where the President is the disciplinary authority.

- @ जहां कहीं लागू हो वहीं इस्तेमाल किया जाये। देखिये रेल कर्मचारी (अनुशासन और अपील) नियम, 1968 का नियम 16 (1)।  
 रेल कर्मचारी को भेजी जाने वाली प्रतिलिपि में इसे शामिल न किया जाय।  
 @ To be used wherever applicable—See Rule 16 (1) of the Railway Servant (Discipline and Appeal) Rules, 1968—Not to be inserted in the copy sent to the Railway Servant.

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

- ⋄ यदि कर्मचारी इस अपेक्षा का अनुपालन नहीं करता, तो इस प्रक्रम में ऐसी सूची प्रस्तुत करनेपर जोर देने की आवश्यकता नहीं है।  
 ⋄ Submission of such list at this stage need not be insisted upon if the employee does not comply with this requirement.

NER--83841475-10,000—May 84

Since the major penalty charge sheet issued vide no. M/175/4/11 29-10-82 has been cancelled vide your letter no. M/275/Gr.Dm.1/4 4-2-86 without assigning any reason.

It is to my utter surprise that again a major penalty charge sheet for the same charges has been issued vide no. M/175/4/11 3-3-86 to me. This action is against natural justice and in violation of article 311 of Constitution of India & tantamount to harassment of your humble employee.

In view of the above it is requested that the fresh charge sheet on identical charges which has been cancelled may also please be cancelled.

Blue pen  
 21/2/90

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(36)

ANNEXURE -I

STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI L.P.NIGAM  
FIREMAN-II, LOCO SHED/CHARBAGH.

....

That the said Shri L.P.Nigam while functioning as Fireman-II of loco shed/Charbagh during the period 10.7.82 to 19.7.82 committed "MISCONDUCT" as he failed to maintain absolute integrity and devotion to duty, and acted in such a manner which is unbecoming of a Railway servant.

ANNEXURE -II

STATEMENT OF IMPUTATION ON THE BASIS OF WHICH ARTICLE OF  
CHARGES FRAMED AGAINST SHRI L.P.NIGAM, FIREMAN-II OF LOCO-  
SHED/CHARBAGH.

....

That during the period 10.7.82 to 19.7.82 while functioning as Fireman-II Shri L.P. Nigam has submitted engine tickets showing himself as on "WAITING DUTY" at GKP for Loco No. 2562 YP. These engine tickets although bearing the stamp of Loco Foreman, Gorakhpur have not been signed by any supervisors of Gorakhpur shed which indicates that Shri Nigam has forged these tickets with malafide intention to fraud the Administration, as he was not allowed any "WAITING DUTY" at Gorakhpur for the aforesaid period.

2. That he was booked on 9.7.82 for bringing light engine No. 2562 YP from GKP shops to Loco shed, Charbagh, Lucknow but he did not do so.

3. That in absence of FM-B and Driver 'C', Shri Nigam proceeded to Gorakhpur without intimating the position either to LF or LF(R)/CB shed and reported to shed Representative at Gorakhpur on 10.7.82 without crew and thereafter fled away and came back only on 19.7.82.

The above act on the part of Shri L.P.Nigam, Fireman-II of Loco shed/Charbagh tentamounts to "MISCONDUCT" under section 3 Rule 1 (i) (ii) (iii) of Railway Services Conduct Rules, 1966.

(V. Singh)  
Sr. DME/LJN.

*Certified that Photo Stat  
Copy is True Copy  
of the charge-sheet received  
by me*

*Shreehari*  
21/2/90

9.

⑨

ANNEXURE -III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGES FRAMED AGAINST SHRI L.P. NIGAM, FIREMAN-II, LOCO SHED, CHARBAGH ARE PROPOSED TO BE SUSTAINED.

.....

1. Engine tickets for the period from 10.7.82 to 19.7.82 submitted by Shri L.P.Nigam, Fireman-II Locoshed, Charbagh.
2. Report of Shri T.N.Pathak, Fireman-II, Locoshed, Gorakhpur (Shed Representative for shop engines).
3. Application of Shri L.P.Nigam, Fireman-II, Loco shed, Charbagh to DME(Loco)/Gorakhpur.

.....

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGES FRAMED AGAINST SHRI L.P.NIGAM, FIREMAN-II, LOCOSHED, CHARBAGH ARE PROPOSED TO BE SUSTAINED.

.....

1. Shri T.N.Pathak, Fireman-II, Locoshed, Gorakhpur (Shed Representative for shop engines.).

*Issue*  
27/2  
( V.Singh )  
Sr. DME/LJN.

*Certified that Photo  
Stat copy is the True  
copy of the copy. received  
by me*

*L.Nigam*  
21/2/90

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Signature  
21/2/90

5. Sri L. P. Nigam is informed that a hearing will be held only in respect of these articles or charges as are not admitted. He should, therefore, specifically admit or deny each article of charges.
6. Sri L. P. Nigam is further informed that if he does not submit his written statement of defence within the period specified in para 2/4 or does not appear in person before the Inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants' Discipline and Appeal Rule 1968 or the orders/directions issued in pursuance of the said rule, the Inquiring authority may hold the inquiry ex parte.
7. The attention of Sri L. P. Nigam is drawn to Rule 20 of the Railway Services Conduct Rules under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service with the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these Rules, it will be presumed that Sri L. P. Nigam is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services Conduct Rules 1968.
8. The receipt of this memorandum may be acknowledged.

Signature \_\_\_\_\_  
(Name and Designation of Competent Authority) (S. M. PRASAD)  
Enclosures: — (3) *ADME/4/131*  
To: Sri L. P. Nigam, Designation \_\_\_\_\_  
Place or words \_\_\_\_\_ *Charbagh Station*

Certified that Photo  
Stat copy is the True copy  
of the Charge Sheet received by  
me  
*L. Surjan*  
*21/2/90*

Annexure-I

Statement of article of charges framed against  
Shri L.P.Nigam, F/M II, Charnagh Shed.

...

Shri L.P.Nigam, F/M II, CB shed while working as Phone-Attendant in 8 to 16 shift on 18.11.88 in CB shed failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant in as much as that he fraudulently recorded the signing on time of the driver of 160 Dn (S/on time 12/20) and the driver of 55 Up (S/on time 14/15) in advance on 18.11.88 and also made false entry that they have been tested on Breathe-Analyser and found OK well in advance of their signing on in the signing on Register of the drivers of CB shed which is highly irregular and complete disregard to safety precautions. This was checked by CME/GKP during his inspection to CB shed at 11-05 hrs on 18.11.88. Thus Shri L.P.Nigam, F/M II, CB shed violated sub-rule (ii) & (iii) of Rule 3(i) of Railway Services (Conduct) Rule 1966.

( S.M.Prasad )  
AME/L/LJN.

Annexure-II

Statement of imputation of misconduct or misbehaviour in support of the article of charges framed against Shri L.P.Nigam, F/M II, CB shed.

...

Shri L.P. Nigam, F/M II, CB shed was on duty in 8 to 16 shift on 18.11.88 as Phone Attendant in CB shed. At 11-05 hrs on 18.11.88 CME/GKP during his inspection to CB shed checked the Signing on Register of the drivers and detected that Shri L.P.Nigam, F/M II had recorded the signing on of driver Shri Ama Ben of 160 Dn at 12/20 hrs and driver Shri R. S. Misra driver of 55 Up at 14-15 hrs although they had not yet signed on upto 11-05 hrs of 18.11.88. Sri L.P.Nigam also recorded in the Signing on Register about testing of the drivers on the Breathe Analyser and found them OK. These entries were deliberately made by Shri L.P.Nigam fraudulently in advance which is highly irregular and in complete disregard to safety precautions.

Shri L.P.Nigam, thus failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant in violation of sub-rule (ii) & (iii) of Rule 3(i) of Railway Services (Conduct) Rule-1966 which is an act of serious misconduct on the part of Shri L.P.Nigam, F/M II CB shed.

( S.M.Prasad )  
AME/L/LJN

Annexure-III

List of documents by which the article of charge framed against Shri L.P.Nigam, F/M II, CB shed.

Remarks of CME/GKP on the "Signing on Register" of drivers dt.18.11.88

( S.M.Prasad )  
AME/L/LJN

List of witness by whom the article of charge framed against Shri L.P.Nigam, F/M II, CB shed.

....

LF/Co Shri V.K.Pandey

( S.M.Prasad )  
AME/L/LJN

*Buegan*  
21/2/90

*TEH*

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of 1989-90

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Am 12 Nov 1964

No. 37/275/1 Date 10-4-89

TO

Designation का. सैन II/चा.वा.ग. Department सा.ग.व.

Ticket No.     X     Date of appointment                     

Station पुणे Scale of pay 1000

Shri. एल. पी. निगम, कानून एवं चारखाग शेड  
(Name, designation & Office in which he is employee).

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

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

OR

\* On a careful consideration of the enquiry report afore-  
said, the undersigned agrees with the findings of the Inquiry  
Officer/Board of Inquiry in so far as it relates to article(s)  
of charge NO.(s) \_\_\_\_\_ and for  
reasons stated in the attached Memorandum holds that article(s)  
of charge NO.(s) \_\_\_\_\_ which the Inquiry  
Officer/Board of Inquiry has/have held as not proved/proved,  
is also proved/not proved.

3. The undersigned has therefore come to the conclusion that Shri श्री एम. पी. निगम is not a fit  
(Name of the Rly servant)

person to be retained in service and has decided to impose upon him the penalty of dismissal/removal/compulsory retirement from service, Shri6 - एल. प्र. निरयम - is, therefore, (Name of the Railway Servant) immediate dismissed/removed/compulsory retired from service with effect from 20.4.68

Contd.... 2/-

Дуған  
21/2/90

Under Rule 78 of the Railway Servant (R & A) Rules,

1968 on appeal against these orders dated to

मखमडा

पु.स. यो. ई

1) the appeal is submitted within 41 days from the date of receipt of the order and

ii) the appeal does not contain improper or disrespectful language

5. please acknowledge receipt of this letter.

\* Strike out where not applicable.

DAY/नाम/जांच रिपोर्ट

Signature

(पु.स. यो. ई. पु.स. यो. ई)

कृति

(1) का.अ. (यो.)/कि./मखमडा

Name & Design.

पु.स. यो. ई/लोको/मखमडा

(2) का.अ. (यो.)/कै.अ./मखमडा

of the disciplinary authority.

(3) एम.फो./चारलाग

(4) सम्बन्धित कमीषनर \*\*\*\*

To

Divl. Dy. Manager,  
N.E. Railway  
Lucknow.

Received your N.E.P. No. 21/275/1

dated 10.6.88 along with four enclosures.

WITNESSES

SIGNATURE :

DATE :

Asstt. Mechanical Engr.

Certified That Photo  
Stat copy is True copy  
of the Punishment order  
received by me

Chugan  
21/2/90

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Before the Honble Central Administrative Tribunal  
(Additional Bench)

Sitting at Lucknow.  
Claim Petitioner No. 1989-90.  
Laxman Parshad Nigam  
C.M.E. (Loco) dole

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Amrno —

पूर्वोत्तर रेलवे

या/275/1

कार्यालय मंडल रेल प्रबंधक(यांत्रिक)  
लखनऊ दिनांक 22/6/89

श्री स्ल पी निगम,  
फायरमैन/II,  
द्वारा लोको फोरमैन/चारबाग  
=====

विषय:- श्री स्ल पी निगम फा0मै0/II की नौकरी से निकाले  
जाने पर अपील।

===

आपकी उपरोक्त अपील के ऊपर विचार करने पर प्रमथाइ/लखनऊ ने निम्नलिखित  
आदेश पारित किया है।

“अपील पर विचार किया तथा संबंधित कागजात देखे। श्री निगम अपने कार्य के  
दौरान गलत entry sign on register पर किये जो serious misconduct  
है। अतः सयाइ द्वारा दी गई सजा सही है। लेकिन श्री निगम की पारिवारिक  
परिस्थितियों को ध्यान में रखकर तथा लम्बी सेवा का ध्यान रखते हुये सुधारने  
का एक और मौका दिया जाता है तथा कार्य पर वापस लेने का आदेश दिया  
जाता है और basic of the grade में नियुक्ति दिया जाता है।  
Intervening period को leave due में treat  
किया जाये।

32

मंडल रेल प्रबंधक(यांत्रिक)लखनऊ

प्रतिलिपि  
=====

- 1- मंडल रेल प्रबंधक(का0)लखनऊ
- 2- लो0फै/चारबाग को सूचार्य एवं आवश्यक कार्यवाही हेतु।
- 3- कैडर लिपिक तथा बिल लिपिक मंडल कार्यालय को उचित कार्यवाही हेतु।
- 4- श्री स्ल पी निगम द्वारा लोको फोरमैन/चारबाग

मंडल रेल प्रबंधक(यांत्रिक)लखनऊ

Railways

① Divisional Manager, Rosta  
N.E. Rly, LKO.

DME  
Appeal

Certified that Photo stat  
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Chauhan  
21/2/90

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Before the Honble Central Administrative Tribunal  
(Additional Bench)  
Sitting at Lucknow.

Claim Petitioner No  
Laxman Parshad Nigam  
C.M.E. (Loco) dole

1989-90

16/11/89

----- Lucknow  
----- Off. Secy

2-30/11/89

कार्यालय  
म.रे.पू(को)/म.पं.

सं. मां/२७५/१

दिनांक 25.9.89

प्रेषक  
म.रे.पू(को)  
लखनऊ

श्री एल.पी.निगम,  
फा.मैन/प/चारलाग रोड,  
(द्वारा-लोको/चारलाग)

Received on  
date 2-10-89  
at Lucknow  
by

विषय :- पत्र संख्या मां/२७५/१ दिनांक 22/6/89  
के विरुद्ध अ.म.रे.पू/लखनऊ को की गई  
अपील

आपके अपील पर विचार करने के बाद अ.म.रे.पू/ल.पं.  
निम्नलिखित आदेश पारित किया। —

12.10.89  
12.11.89  
30 days  
27.11.89

“ मैंने श्री एल.पी.निगम, फायरमैन (II)/चारलाग की दिनांक 27-7-89  
की पुनरीक्षण याचिका सहित पूरे केस का भलीभांति अध्ययन  
किया। लोको फोरमैन/चारलाग का प्र.म.मां.६(लोको)/लखनऊ को  
सम्बन्धित पत्र सं. ० एम/II/डी.ए.आर/शी.सी/३३ दि. 18.11.88  
वारन्त में एक फैकचुअल रिपोर्ट है, जिसमें मु.मां.६ के निरीक्षण  
के समय पाए गये श्री निगम के कदाचार को दर्शाया गया है।  
मुख्य अभिलेख तो साइनिंग आन रजिस्टर, ही है जो आरोप  
पत्र के संलग्नक III में दर्शाई गई 'लिस्ट ऑफ डाकुमेंट्स' में  
सम्मिलित है। उपरोक्त साइनिंग आन रजिस्टर, तथा सम्पूर्ण  
केस को देखने से यह स्पष्ट हो जाता है कि श्री निगम ने  
सर्वश्री शमादीन तथा आर.एस.मिश्रा, चालकों के इयुटी पर  
उनके का समय (साइनिंग आन टाइम) साइनिंग आन रजिस्टर  
में पहले से ही लिख रखा था। श्री निगम ने उपरोक्त चालकों  
की तैय अनालाइजर द्वारा जांच किये जाने के सम्बन्ध में  
टिप्पणी भी उक्त रजिस्टर में पहले से ही कर रखी थी, जानकि  
ऐसा कोई जांच नहीं हुई थी। श्री निगम के विरुद्ध यह एक  
बख्शीर और अधुआ आरोप है विशेषरूप से इसलिए कि  
इसमें रेल संस्था के नियमों की अवहेलना हुई। अपनी  
पुनरीक्षण याचिका में श्री निगम ने इस सम्बन्ध में अपने  
वचाव के लिये कोई तर्क प्रस्तुत नहीं किया है।

जंदा तक जांच प्रक्रिया का सम्बन्ध है, मैं इस बात से  
संतुष्ट हूँ कि जांच सम्बन्धी नियमों का पूरी तरह पालन किया  
गया है और उसमें कोई त्रुटि नहीं है।

यह भी देखा गया कि श्री एल.पी.निगम के मामले में  
प्र.म.मां.६(लोको) ने अपीलार्थ अधिकारी के रूप में पहले ही  
काफी अदानुभूतिपूर्वक विचार कर लिया है। अतः अल इनके  
मामले में और अधिक विचार किये जाने का औचित्य नहीं है।  
अतः श्री निगम की उपरोक्त अपील अस्वीकार की जाती है।

Certified that Photo  
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of the copy received by  
M.A.R.

कुते म.रे.पू(को)  
लखनऊ  
12/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

LUCKNOW

Civil Misc. Petition No. 65P of 90

In Re:

Registration (O.A.) No. 65/90

Laxman Prasad Nigam

Applicant.

versus

Union of India & others

Respondents.

Fixed for 20-11-90

APPLICATION FOR CONDONATION OF DELAY IN  
FILING COUNTER REPLY.

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

PRAYER

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

Lucknow

Dated: 8-11-90

(Anil Srivastava)  
Advocate

Counsel for Respondents.

Filed today

8/11/90

Received on  
dated 22-11-90

Laxman Prasad Nigam

AUB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH

LUCKNOW

Registration No. (O.A.) 65/90

Laxman Prasad Nigam

Applicant

versus

Union of India & others

Respondents.

COUNTER REPLY ON BEHALF OF ALL THE RESPONDENTS.

----

I, Keshava Deo working as S.DME/LTN in the office of Divisional Railway Manager (P) North Eastern Railway, Ashok Marg, Lucknow do hereby solemnly affirm and state as under:

1. That the official above named is working as S.DME/LTN in the office of Divisional Railway Manager (P) North Eastern Railway, Ashok Marg, Lucknow, as such he is fully conversant with the facts and circumstances of the applicant's case and has been authorised to file this counter reply on their behalf.

Contd....2

प्रवर मण्डल यांत्रिक इंजीनियर,  
पुणे-४०००२०, लखनऊ

2. That the contents of para 1 of the Original Application are admitted. It is true that the applicant was originally appointed as Engine Cleaner. The major charge-sheet dated 3.3.86 issued against the applicant was withdrawn by the respondents on the appeal preferred by the applicant to Senior Divisional Mechanical Engineer, North Eastern Railway, <sup>Lucknow</sup> ~~Gomakhaur~~ vide order dated 23/28.6.88.
3. That in reply to the contents of para 2 of the Original Application it is stated that in the findings of the enquiry report the charges~~x~~ framed against the applicant were not proved.
4. That in reply to the contents of para 3 of the Original Application, it is stated that since disciplinary ~~authorityxxx~~ enquiry was pending against the applicant, hence he could not be promoted.
5. That in reply to the contents of para 4 of the Original Application, it is stated that no formal training is required for working as Phone Attendant in the Shed.
6. That in reply to para 5 of the Original Application, it is stated that no training

contd.... 3

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-3-

is required for filling columns of 'Sign... on Register'.

7. That in reply to the contents of para 6 of the Original Application it is stated that while the applicant was performing the duty of Phone Attendant on 18.11.88, ~~an~~ irregularities were detected in the 'Sign...on ..Register' by the Chief Mechanical Engineer, North Eastern Railway, Gorakhpur during his inspection in C.B. shed on 18.11.88 at 11.05 hrs. The said entries could not be made in advance.
8. That the contents of para 7 of the Original Application are not admitted. Before the applicant joined his duty as Phone Attendant and even thereafter also, he was duly explained procedure and safety precautions and all other steps which he has to take as part of his duty. The applicant was fully aware of the procedure and the steps he has to take at the time of the said incident but inspite of this the entries in the 'Sign...on... Register' were made in advance, which is highly irregular and which is done in violation of safety precautions. However, it may be clarified here that it is not important that the entries which were made in advance later on proved to be ~~incorrect~~, but the important

cont d....4

मुख्य मण्डल यांत्रिक इंजीनियर,  
पुणे, महाराष्ट्र

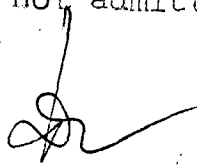
point here is that the entries have been made in advance in violation of safety precautions.

9. That the contents of para 8 of the Original Application are denied. The applicant was not illegally suspended as alleged by him, and he was issued the major memorandum dated 19.11.88 by the competent authority. It is also clarified that the opposite party No. 4 has right to pass the said orders against the applicant, as per rules. In case of the applicant, the opposite party No. 4 is the disciplinary authority as per rules. The applicant had the knowledge and he was accordingly fully aware with the nature of the duties he is performing.

10. That the contents of para 9 of the Original Application, so far it is matter of record, are admitted, but the rest of the contents of the para are denied. The plea taken by the applicant in his reply could not be substantiated by the applicant ~~xxxxxxx~~ during D.A.R. enquiry and on the other hand, he was found guilty of the charges framed against him.

11. That the contents of para 10 of the Original Application are not admitted. It is the duty

contd...5



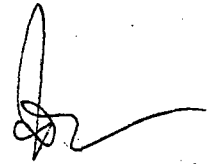
महल पालिक इजानय

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of the applicant to check every individual driver to the effect whether they are on intoxication or not. It is wrong on his part to presume in advance that they were not intoxicated. Only after checking, he could have made entries on the 'Sign...on Register'. Any prior entry is, therefore, irregular, as well as violative of safety precautions.

12. That in reply to the contents of para 11 of the Original Application it is stated that all these facts have been considered in the enquiry.
13. That in reply to the contents of para 12 of the Original Application, it is stated that the applicant was rightly found guilty of the charges by the enquiry officer. The applicant, even if he fully knew about the personal habits of the said drivers, even then he should have ~~examined~~ tested the drivers.
14. That the contents of para 13 of the Original Application are denied. The applicant was afforded every opportunity available under the rules to defend himself. The opposite party No. 4 is the disciplinary authority for the applicant as per rules and there is

contd...6



प्रमुख मण्डल यांत्रिक इंजीनियर,  
पुणे-४, लखनऊ

748

-6-

no illegality in the said order.

15. That in reply to the contents of para 14 of the Original Application, the submission of the appeal by the applicant is admitted.
16. That in reply to the contents of para 15 of the Original Application, only this much is admitted that on considering the appeal of the applicant the Additional Divisional Railway Manager, that is the appellate authority, set aside the removal order and put back the applicant in service, with certain directions. A perusal of the order would further clarify the position.
17. That in reply to the contents of para 16 of the Original Application, it is stated that the Revision Petition preferred by the application was duly considered by the competent authority and who after applying his mind rejected the same.
18. That in reply to the contents of para 19 of the Original Application, it is stated that the grounds mentioned in the application are vague, misconceived, irrelevant, baseless,

contd....7



एम्पायर मशीन इंजीनियर,  
पुणे-०२०, लखनऊ

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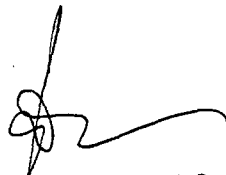
-7-

and not applicable to the instant case.

19. That the applicant is not entitled to any relief as claimed, rather this application is liable to be dismissed with costs in favour of the respondents against the applicant.

Lucknow

Dated: 8-11-90

  
श्रीमान ब्रजेश चंद्रिका इंजीनियर,  
बूंदेलखंड, लखनऊ

Verification

I, the official above named do hereby verify that the contents of para 1 of the counter reply is true to my personal knowledge and those of paras 2 to 19 of the counter reply are believed to be true on the basis of records and legal advice.

Lucknow

Dated: 8-11-90

  
श्रीमान ब्रजेश चंद्रिका इंजीनियर,  
बूंदेलखंड, लखनऊ

ASo

IN THE CENTRAL ADMINISTRATION TRIBUNAL  
CIRCUIT BENCH  
LUCKNOW.

Registration No. (O.A.) 65/90

Laxman Prasad Nigam.....Applicant.

Vs.

Union Of India & others.....Respondents.

Rejoinder reply on behalf of the Petitioner to the  
gifted  
Counter reply/on behalf of the Respondents.

I, Laxman Prasad Nigam aged about 45 years s/o late Sri Permatma Prasad Nigam, Fireman Grade-II Loco-Shed, N.E. Railway Charbagh, Lucknow do hereby solemnly affirm and state as under:

1. That the contents of paras 1, 3 and 15 need no reply.
2. That in reply to para 2 of the Counter reply, replying para 1 of the Original Application only this much is denied that the Major Chargesheet dated 3.3.86 was not issued after withdrawal of the earlier Chargesheet issued by the Authority which was issued by the Officer who was not competent to issue the chargesheet and as such, the chargesheet dated 3.3.86 was not on any new Schedule of Charges, but was on the same old charges i.e., for the absence from 9.7.82 to 19.7.82. When the Petitioner was already in the Scale of Rs. 210-Rs. 270 and was drawing the maximum of the Scale.

...2/

Recd duplicate  
Anil Srivasth  
1/2/91

F.T.  
5/2/91  
1/2/91

Shreegaur

3. That in reply to para 4 of the Counter Reply replying para 3 of the Original Application it is stated that from 5.12.83 to 3.3.86 the Petitioner was not facing any disciplinary proceeding and it has not been stated nor indicated or specified in any manner that why the Petitioner was not promoted during this period when several other Juniors to ~~Respondent~~<sup>the petitioner</sup> were promoted and why not order <sup>on</sup> his representations <sup>for</sup> promotion had been ~~made~~<sup>passed</sup>. When it is admitted to the opposite parties that Representations for promotion were pending.

4. That in reply to paras 5 and 6 of the Counter Reply filed by the Respondents replying paras 4 and 5 of the Original Petition it is stated that under different safety circulars the duty which was assigned to the Petitioner on 18.10.88 were of such a nature which under the safety circular No. 121 are to be discharged by an Officer not below the rank of Assistant Loco Foreman/ Diesel Foreman, who under the Safety Rules and Circulars shall be required to have the test by Breath Analyser (i.e., Intoxication Test) and appliance <sup>the eye</sup> (Eye Test) for testing <sup>and</sup> the drunkenness or orderly manner of the Station Staff who reports for duty. And it was not the duty of the Fireman Grade-II who has been asked to work as Telephone Attendant on the Station. And for such purpose the Assistant Loco-Foreman/Diesel Foreman <sup>are</sup> are the persons competent to fill Signing on Register entries and to initial the register after conducting all the above tests and for all purposes Loco-Inspectors/ Traffic Inspectors and Safety Counsellors are responsible under the Safety Circular No. 121 as they are the trained persons for the purpose. The working of the Phone-Attendants has not been specified and the requirement of the Technical knowledge for

Telephone Attendant is a must who is to be required to fill the Signing on Register and it is <sup>also</sup> not disputed that any training or Refresher Course was imparted <sup>to the petitioner before 18.11.88</sup> ~~was also not been disputed~~. Hence, the charge of irregularity is based on incorrect information furnished to the Authority who has inspected the working. The Petitioner was never asked to do the duty of Telephone Attendant before 18.11.88.

5. That in reply to para 7 of the Counter Reply filed by the Respondents replying para 6 of the Original Application it is stated that the Petitioner before 18.11.88 was never informed in any manner by any one that how he has to conduct the required tests for filling the entries on the signing on Register, ~~filled~~ <sup>he was never given any instructions that</sup> and before what period it cannot be filled and when the note by the opposite party No. 1 was given even then the Officers present did not inform the opposite party No. 1 i.e., <sup>petitioner</sup> he <sup>is</sup> has not a regular staff <sup>A Telephone Attendant</sup> but <sup>is</sup> a Fireman Grade-II and has not been given any training under the rules for filling the entries <sup>which</sup> could not be made <sup>at that time when made</sup> even though, the person has reported for duty before time. And, there is no rule that if a person has ~~actually~~ reported <sup>at duties</sup> for duty much before time <sup>the entries</sup> could not be made as alleged by the Respondents, <sup>as there is no rule specify up to the time before which the entries could not be filled</sup>

6. That in reply to para 8 of the Counter Reply replying para 7 of the Original Application it is stated that it is totally incorrect to say that the Petitioner was ever informed or explained by any one about the procedure or the manner in which the entries are to be filled and the steps required to be taken before filling the entries and also <sup>was</sup> made aware of any Safety Circular <sup>by</sup> which he ~~was~~ required to <sup>fill the entries</sup> ~~observe~~ while discharging the duties of Telephone Attendant.

*Dr. S. S. Gaur*

It is totally incorrect to say that any one ever explained the procedure and Safety precautions and other steps which are expected from him to be taken as <sup>or</sup> part of the duty ~~and~~. It is totally incorrect to say that the applicant was ~~the~~ ~~not~~ aware of the procedure and the steps he has to take at the time <sup>while discharging the Duty of Telephone Attendant</sup> when the person comes for reporting ~~the~~ duty and how it is said that the entries are made ~~there~~ in advance when there is no rule or Railway Board Order to the effect that entries cannot be made ~~when~~ <sup>even though</sup> the person comes to report for duty and reported for duty. ~~And~~, There is no violation of any Safety precautions as no minimum or maximum time for filling the entries have been ever indicated <sup>or indicated</sup>. It has not been indicated in the Counter Reply that what Safety precautions were circulated by Safety Circulars <sup>and are to be observed by Telephone Attendant and</sup> were actually violated. As such, the allegation in the para under reply are wholly vague and cooked up for defending the illegal action taken against the Petitioner on the basis of Inspection note of opposite party No. 1 who was also not made aware of the true facts when the Inspection was going on.

7. That in reply to para 9 of the Counter Reply replying para 8 of the Original Application it is stated that the applicant was illegally suspended and chargesheeted by opposite party No. 4 especially when in the earlier proceedings the Petitioner was suspended and chargesheeted by Opposite Party No. 3 and the holding of enquiry on the order of Opposite Party No. 4 was also illegal and entire proceedings have been vitiated because the entire action from the ~~beginning~~ <sup>are by</sup> till the passing of the Removal Order <sup>who is not the Competent Authority and</sup> the Opposite Party No. 4 <sup>are by</sup> were without jurisdiction <sup>and</sup> were not conducted by a Competent Authority <sup>The petitioner was also</sup> ~~who has~~ not afforded opportunity in any

manner as required under the disciplinary rules as the documents asked for were not supplied even after request

8. That in reply to para 10 of the Counter Reply replying para 9 of the Original Application it is stated that the Petitioner <sup>admits</sup> in the proceedings also stated that facts stated in the para under reply. ~~and~~ The opposite party be directed to produce the Record relating to disciplinary enquiry which will show that the Petitioner specifically stated in D.A.R. enquiry the facts stated in the petition as is <sup>also</sup> evident from the enquiry report of the Enquiry Officer on page 2 of the enquiry report which is as follows:

"D.A.R. janch key samay uprokt key atirikt unhoney apney bachao salahkar key sahyog sey yeh bhi kaha ki (maukhik bahas men) ki shed records key poorna rakh-rakhao va Breath Analyser sey testing hetu sahayak loco foreman (Parichalan) jimmedar hain. Unka yah bhi kahara tha ki ve Fireman Grade-II key, tatha unhein phone attendant ka karya karaney (jo lipik pad ka karya hai) kee koi training nahi di gae, ve kewal anumen sey kam karane ko kaha gaya."

9. That in reply to para 11 of the Counter Reply replying para 10 of the Original Application it is stated that the applicant when he has already worked for long time with the Drivers <sup>who reported for duty</sup> and was personally confident because he was not given any training for "Glass Test" and "Intoxication Test" by applying Breath Analyser Machine & other Machine which can only be used by the persons who have been given a training for the purpose. Hence, it is not in any manner against any security rules to fill the entries

*Dr. Singh*

which were correct because the work of Telephone Attendant was manifold. The Petitioner was never a regular worker on the said post and, under the security rule the duty is of Assistant Loco-Foreman/ Diesel Foreman/Loco Inspectors/<sup>To the Inspectors</sup> ~~PLS~~ and Safety Counsellors who are trained for the work of using Breath Analyser Machine and "Glass Test" Machine. The entry was not prior as there is no time schedule fixed under any rules and the Petitioner was never informed of any rule for such time schedule as alleged in the D.A.R. Enquiry.

10.. That in reply to para 12 of the Counter Reply replying para 11 of the Original Application it is stated that the Petitioner denied having any knowledge of such safety rules as he was not aware of any such safety rules which prohibits the filling of entries well in time before the start of actual duty of the Drivers. And, neither in the enquiry report anything has been stated for holding guilty that what safety circular or what safety rule providing time for filling entries has been violated by the Petitioner and this fact was not also taken into consideration that the Petitioner was not given any training or Refresher Course for conducting such test before filling the entries on the signing on Register, when he was already over worked.

11. That in reply to para 13 of the Counter Reply replying para 12 of the Original Application it is stated that the Petitioner was not found guilty of the violation of any specified rule as for holding a man guilty there must be <sup>a</sup> mention of safety rule or para of safety circular in the charge sheet the violation of which can hold him guilty under the rules. As such the holding of the charge proved is not based on

any admissible facts and evidence.

12. That in reply to para 14 of the Counter Reply replying para 13 of the Original Application it is stated that the applicant was not afforded opportunity as is evident from his applications dated 1.12.88; 28.12.88/30.12.88 and 8.1.89 in which it was stated in para 1 that the required documents which were specifically asked were not supplied and, in case enquiry proceedings are produced before the Tribunal it will be evident that the opportunity was not afforded as provided in the Rules.

13. That in reply to para 16 of the Counter Reply replying in para 15 of the Original Application it is stated that in appeal also the basic consideration should have been that the disciplinary proceedings were without ~~any~~ Jurisdiction and without affording any opportunity when there was neither any violation of any safety Rules nor any paras of safety circular or order specially when the Petitioner was also not appointed for the job of Telephone Attendant and was orally asked to discharge the duty of a Telephone Attendant <sup>on that day</sup> which also requires to work on the Machines for which he had not been given any training <sup>had any</sup> or experience. As such, the punishment <sup>awarded</sup> /is so severe that it has already taken away the entire services from the date of his appointment on the Post of Fireman Grade-II as the order is that the Petitioner is taken back on duty in the Basic of the Grade when he was already drawing the maximum of the senior scale i.e., 290-230 from last several years and was posted and appointed on the basic of the Grade on the Post of Fireman-II on which he was <sup>promoted and</sup> appointed in the year 1964, when he had already been

deprived of his promotion from 1983 till date~~44~~

14. That in reply to para 17 of the Counter Reply replying para 16 of the Original Application it is stated that as stated earlier and in the petition, that the main questions raised were not taken into consideration while deciding the Revision petition and ~~Revision~~ <sup>Appeal</sup>. It has been dismissed by a prototype order without assigning any reasons or mentioning any rule, order or circular which has provided the <sup>minimum and maximum</sup> time for filling the entries of Signing on Register.

15. That in reply to para 18 of the Counter reply replying para 19 of the Original Application it is stated that the Petitioner cannot be chargesheeted under the Rules as his action in filling the entries cannot be said to be in violation of any security Rules or circulars and how such <sup>filled</sup> ~~entries~~ will come within sub-clause (ii) and (iii) of rule 3 of the Railway Servants Conduct and Appeal Rules which specifically provided for what conduct and mis conduct the Railways Servants can be charge-sheeted under the ~~Rule~~ under which he had been chargesheeted and punished.

16. That the Petitioner has neither been afforded any opportunity as documents were not furnished during the proceedings and the entire proceedings upto the passing of removal order were by opposite party No. 4, who is neither the Competent Authority nor the Appointing Authority and cannot be a disciplinary Authority under the Rule. Hence, the entire proceedings from the very beginning are vague bad and without Authority <sup>and</sup> ~~on~~ such enquiry <sup>Refer</sup> the Petitioner ...9/

(9)

ASB

cannot be deprived of his entire seniority from 1964 to 1989 when he was already entitled to promotion as for back as in 1982.

LUCKNOW:

DATED: 30.1.1991

*[Signature]*  
PETITIONER

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

I, the official above named do hereby verify that the contents of para 1 of the Counter reply is true to my personal knowledge and those of paras 2 to 16 of the Counter Reply are believed <sup>by me</sup> to be true on the basis of records and legal advice.

LUCKNOW:

DATED: 30.1.1991

*[Signature]*  
PETITIONER

159

Before The Central Administrative Tribunal

Lucknow Bench, Lucknow.

Central Administrative Tribunal

Circuit Bench, Lucknow

Date of Filing 21-9-92

Date of Receipt by Post.....

Deputy Registrar (J)

Civil Misc. Application No. 84 of 1992

In Re:

Original Application No. 65 of 1990

( Decided on 16.4.1992 )

Laxman Prasad Nigam ..... Applicant,

Versus

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

Application for extension of 6 months further time to  
implement the Judgement dated 16-4-92 passed in  
aforsaid case.

Placed before the  
Hon'ble Bench  
on 28-9-92  
21-9-92

That for the facts and circumstances stated in  
the accompanying supplementary, it is most respectfully  
prayed that in the interest of justice this Hon'ble  
Tribunal may very graciously be pleased to grant six  
months further extension to implement the judgement  
passed by this Hon'ble Tribunal and ad-interim order  
to the said effect may be passed.

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Lucknow:

Dated: 21-9-92

( ANIL SRIVASTAVA )  
Advocate

Counsel for the Respondents,

AG0

Before The Central Administrative Tribunal

Lucknow Bench, Lucknow.

M.P. 848

Original Application No. 65 of 1990.

Laxman Prasad Nigam ..... Applicant,

Versus

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

Supplementary Application.

I, Keshav Deo, working as Sr. Div. Mech. Engg.  
in the office of Divisional Railway Manager North  
Eastern Railway, Ashok Marg, Lucknow do hereby  
solemnly affirm and state as under:-

1. That the official, abovenamed, is working  
in the office of respondents- and as such he is  
fully conversant with the facts and circumstances  
of the case and has been authorised to file  
present application.

2. That in the aforedaid case Hon'ble Tribunal  
has been pleased to allow the application with the  
direction, that it will be open for the respondents  
to impose penalty on the applicant in respect of  
charges after holding enquiry giving full opportu-

Contd..2

nity to defend the applicant, The enquiry to be completed within a period of three months from the date of receipt of copy of this order.

3. That judgement in the aforesaid case was passed on 16-4-92 and the copy of same was received by the respondent's Counsel on 6-5-92 , Thereafter judgement was communicated to respondents on 11.5.92

4. That each and every charge against applicant will have to be dealt with after afording complete opportunity to applicant therefore the respondents are having great difficulty in completing the enquiry within the time prescribed by the Hon'ble Court.

5. That it takes considerable time to complete the enquiry if proper procedure as per D & A Rules is adopted.

6. That during enquiry the deliquent also takes considerable time to fulfil his part of obligations.

7. That <sup>as</sup> per direction of the Hon'ble Tribunal the respondents have to give full opportunity to applicant.

उपर्युक्त याचिका इंजीनियर  
प्रदीप रैतरे, अहमदाबाद

8. That in view of the aforesaid facts and

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circumstances, the ~~of~~ respondents need six months further time to complete the enquiry as per procedure giving full opportunity to the applicant.

9. That balance of conversence also lies in favour of respondents.

Lucknow:

Dated: 18-8-82



प्रमुख न्यायाधीश  
पुणे न्यायालय, पुणे

VERIFICATION

I, the official above named do hereby verify that the contents of paras 1 to 9 of this <sup>and legal advice</sup> supplementary is true to my own knowledge and nothing material has been concealed.

Lucknow:

Dated: 18-8-82



प्रमुख न्यायाधीश  
पुणे न्यायालय, पुणे

AG3

S/CCS  
64

## VAKALATNAMA

Before  
In the Court of

Central Administrative Tribunal Bench Lucknow

OA No. 65 of 1990 (L)

Laxmi Prasad Negam

Versus

Dinl Rly Manager NERly Lucknow and others

I/We

K. P. Singh Dinl Rly Manager NERly  
Lucknow

do hereby appoint and authorise Shri.

Anil Smarata

Railway Advocate, Lucknow to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Application/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

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

Anil Smarata

Railway Advocate,

Lucknow.

in pursuance of this authority.

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

day of

198..

Accepted,  
Anil Smarata  
Adv

23/4

(K. P. Singh)

मंडल रेलवे प्रबन्धक,  
पूर्वोत्तर क्षेत्र, लखनऊ

# VAKALATNAMA

A64

Before Central Administrative Tribunal Bench Lucknow  
In the Court of

OA No. 65 of 1990 (L)

Laxmi Prasad Mishra

Versus

Dist Rly Manager and others

I/We. Keshava Deo St Dist Meeh Engr (L) Lucknow

and Asstt Meeh Engr (L) Lucknow S M Prasad

do hereby appoint and authorise Shri. Anil Smarata

Railway Advocate. Lucknow to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Applicaion/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

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

Railway Advocate, Lucknow

in pursuance of this authority.

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

..... day of ..... 198..

(S M Prasad)

सहायक यांत्रिक इंजीनियर

पु.उ.रे.०, लखनऊ

Keshava Deo

(Keshava Deo)

प्रवर मण्डल यांत्रिक इंजीनियर,

पु.उ.रे.०, लखनऊ

Accepted  
Shri Srivastava  
Adv.

Registered A/D  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

Ghandi Bhawan  
Opp. Residency  
Lucknow.

Registration No. 65/90 199.

No. CAT/Alld/Jud/ 393720 3742

Dated: 8-3-90  
Dated: 12/3/90

Laxman Prasad Nigam APPLICANT(S)

VERSUS

Chief Mechanical Engineer RESPONDENT(S)  
and others

① Chief Mechanical Engineer (Loco) N.E.  
Railway Gorakhpur

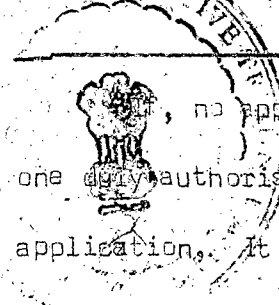
(II) Divisional Railway Manager (Yantrik)  
N.E. Railway Ashok marg Lucknow

Please take notice that the applicant above named has represented

an application a copy of whereof is enclosed herewith has been fixed

registered in this Tribunal and the Tribunal has fixed 10-5-90

day of 1990. FOR Admission

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

Given under my hand and the seal of the Tribunal this

12th day of March 1990.

FOR DEPUTY REGISTRAR  
(JUDICIAL)

(III) Divisional Mechanical Engineer (Loco)  
N.E. Railway Ashok marg  
Lucknow

④ Asstt Mechanical Engineer (Loco)  
N.E. Railway Ashok marg  
Lucknow

Encl - copy of Petition with court's order  
dated 8.3.90 passed there on

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

O.A. NO.65 of 1990 (L)

L.P. Nigam

.....

Applicant.

Versus

Union of India & Ors

.....

Respondents.

8.3.1990

Hon'ble Mr. J.P. Sharma, J.M.

Issue notice, to the respondent, to show cause why the petition may not be admitted. Counter affidavit be filed within 4 weeks and rejoinder affidavit within 2 week, thereafter.

List for admission on 10.5.1990.



Sd/-

J.M.

// True Copy //

rrm/

for Deputy Registrar  
Central Administrative Tribunal  
Lucknow Bench,  
Lucknow

Checked  
13/2

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

O.A.65/90 (L)

L.P. Nigam .....Applicant.

Versus.

Union Of India & Others.....Respondents.

Dated:-21-11-92

Hon'ble Mr. Justice U.C. Srivastava - V.C.

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

This is an application for extension of six month time to implement the judgment dated 16-4-92. On 16-4-92 the tribunal directed the respondents to complete the enquiry within 3 months, but the enquiry has not been completed so far. It appears that the respondents are not interested in conducting the enquiry and they are delaying the matter unnecessarily. However, 4 months ~~time~~ time from 16-7-92 is granted. No further time shall be granted. List this case on 21-1-93 for orders.

Sd/-  
A.M.

Sd/-  
V.C.

CC  
Juc  
G.  
LUCKNOW

Checked  
23/12/92

C116  
A/67

Urgent

18/12

C117

श्रीमान उप निदेशक महोदय

के० प्रो० नं० लखनऊ पो०

लालदा प्रसाद निगम

नाम

65/90

भारत सरकार

सेवा में,

निवेदन है प्राचीन का अखेर मुकदमा में 21/11/92 का आदेश हुआ था  
अतः उस आदेश कि संबंधित कि बोटी का निगम का अनुरोध है  
वृत्त या कापी पलान का आदेश करे

लखनऊ

मार्क 10/12/92

• कृष्ण कुमार पाठक  
कलकत्ता

श्री अमील हींदारवा  
उडकोट

वेरल नं० 4 19 445624

5

Shri. Srivastava

Issue

21/12

Copy received  
23/12/92

23/12/92

Before the Dy. Registrar  
C.A.T. 2Ko C/110<sup>8/9</sup>

Sir

Application for inspection

The O.A. No 65 of 1990

Decided on 16-4-1992

Sir

I respectfully prayed  
that in the abovesaid  
case the Judgment had  
be delivered on 16-4-92  
and the opp. Party receive  
the application for  
extension of time.

Wherefore it is most  
respectfully prayed that  
the above stated case may  
kindly be ordered to  
inspection.

Submitted  
21/4/92  
1.9.92

2Ko DT  
1-9-92

M. C. You  
Applicant