



(RKN)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Application No.51 of 1990(L)

In

Registration O.A. No.792 of 1986

Bachan Ram ..... Applicant

Versus

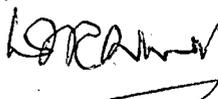
Union of India & Others ..... Respondents

Hon. Mr. Justice K. Nath, V.C.  
Hon. Mr. K. J. Raman, Member (A)

(By Hon. Mr. Justice K. Nath, V.C.)

This is an application for review of our judgement dated 19.12.89 whereby the applicant's regular Civil Suit to quash the penalty order of withholding one increment for a period of one year without cumulative effect in consequence of a departmental enquiry was dismissed.

2. We have carefully gone through the contents of the review application and we find that the points raised therein were considered in the judgement under review. The submissions are merely in the nature of arguments for an appeal rather than for rectification of any error apparent on the face of the record. The review application has no substance and is dismissed.

  
~~Member (A)~~

  
Vice Chairman

Dated the 4<sup>th</sup> Oct., 1990.

RKM

Review 8/1906  
792/06 (17)

X

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
		<p>A. CM (Review AN. NO. has been filed in O.A. ....  T.A. 792/06  a. 5-1-90  The case bearing O.A. was decided T.A. by the Bench of Hon'ble Justice K. Nall, V.C. Hon'ble K.S. Ramaswami on dated 19-12-1989.  The author of the judgement is Hon'ble Justice K. Nall.  Submitted for order.  A/c for the applicant has been filed on 5-1-90  Application is within time  SFO L  306</p>

Dinesh

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW CIRCUIT BENCH: LUCKNOW.

Miscellaneous Petition No. 5/ of 1990

In T.A.No.792 of 1986

Bachan Ram. ....Plaintiff/ Applicant.

Versus

Union of India and others. ....Defendant/Opp. parties  
Respondents.

-...-

Take notice that the Court will be moved by the undersigned on 22<sup>nd</sup> day of January, 1990 at 10.30 A.M. O'Clock in the forenoon or so soon thereafter as the parties or their counsel can be heard.

The object of the <sup>motion</sup> notice is <sup>briefly</sup> hereby indicated below

A copy of the application is enclosed herewith.

Dated this the...<sup>12</sup>...day of...<sup>90</sup>January...198<sup>9</sup>.

*Shukla*  
**V. D. SHUKLA** Signature.  
Advocate for the petitioner.

M. A., LL.B., D.P.A.,  
ADVOCATE,  
84/333, Katra Maqboolganj,  
LUCKNOW.

To,

1. The Union of India,  
Through the General Manager,  
Northern Railway,  
Head Quarters Office, Baroda House, New Delhi.

2. The General Manager,  
Northern Railway, Head Quarter Office,  
Baroda House, New Delhi.

3. The Divisional Railway Manager,  
Northern Railway. Division Railway Manager's Office  
Hazratganj, Lucknow.

4. Sri Arjun Bhargava,  
Advocate,  
Counsel for the Respondents.

*Bachan* *Shukla*

41-7  
5/1/90

(14)

In the Central Administrative Tribunal,

Lucknow Circuit Bench, Lucknow.

Review Petition No.                      of 1990.

District Lucknow.

Bachan Ram, son of late Sri Jag Deo, Asstt. Goods Clerk,  
Northern Railway, Goods Shed, Lucknow, and resident of  
House <sup>L 63 B</sup> NO. ~~L 30 B~~, Munawar Bagh, Lucknow.

.....Applicant/Petitioner.

Versus.

1. The Union of India, through the General Manager,  
Northern Railway, Head Quarter Office, Baroda  
House, New Delhi.
2. The General Manager,  
Northern Railway, Head Quarter's Office,  
Baroda House, New Delhi.
3. The Divisional Railway Manager,  
Northern Railway, Divisional Railway Manager's  
Office, Hazratganj, Lucknow.

.....Respondents/Opposite parties

.....

REVIEW PETITION against the judgement and orders  
dated 19th December, 1989 passed by the Bench consisting of  
Hon'ble Member Kamleshwar Nath (V.C.) and Hon'ble Member

contd.2

*Bachan Ram*

*Blues*

(1/3)

K.J.Raman(A.M) of this Hon'ble Tribunal in Registratkon  
no.T.A.792 of 1986; Bechan Ram.Versus.Union of India  
and others dismissing the plaintiff/applicant's suit/  
application is preferred inter-alia on the following  
amongst others:-

G R O U N D S

1. Because there are errors apparants on the  
face of the records in the judgement and order of the  
Hon'ble Tribunal.

2. Because the Hon'ble Tribunal could not  
consider the facts of the case according to law.

3. Because there is no evicence of the respondents  
on record proving the connivance (which is misconduct)  
of the petitioner with Sri Moti Lal ,the Chief Goods  
clerk ,for which Disciplinary action was taken against  
him.

4. Because there is an apparent error on the very  
fact of the record in the judgement passed by the  
Hon'ble Tribunal that therew was no charge of (Person  
Gain' against the petitioner.

5. Because there is no 'evidence' on record proving  
the charge of 'Personal gain(which is a misconduct)

...3

Bechan Ram

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against the petitioner .

6. Because there is also no 'evidence' on <sup>✓</sup> either by the conduct of the petitioner & record proving the loss to the Railway Revenue / or by any evidence on record of the Railway against the petitioner. Actually no loss of revenue accrued to the railway.

7. Because there are apparent errors on the very face of the record that the findings of the Disciplinary authority are not supported by evidence both document<sub>a</sub>ry and oral ; an record and they are based on mere presumptions and conjectures.

8. Because in the absence of any orders <sup>✓</sup> from ~~deem~~ the Divisional Commercial Superintendent , the Disciplinary authority, (and not the Divisional Operating Superintendent which has erroneously been mentioned in the judgment) to override the orders contained in the Gazette Notification of the General Manager Northern Railway, New Delhi , the findings of the Hon'ble Tribunal that there was <sup>✓</sup> no evidence in existence to support the basis of the findings of the Enquiry Committee is an apparent error on the face of the judgement.

9. Because there is an apparent error on the face of the judgement (in para 11 thereof) of the Hon'ble Tribunal, that there is no 'Inspection Report'

Bechan Ram (Sd/-)

on record off the applicant although the same is mentioned in para 13 of the plaint. The requisite copy of the report was in the custody of the defendants/ respondents and was demanded along with other 10 documents detailed therein by the plaintiff/applicant by paper no.C.16 but it was not produced by the defendant/respondents. other papers were also not provided except paper no.(i)(ii) (iv) and (vi) despite explaining their relevancy (paper no.G-38§ by the plaintiff /applicant.

10 Because there is apparent error on the record of the judgement that a copy of the preliminary fact finding Enquiry Report was not necessary to be supplied to the plaintiff/applicant.

11. Because there are apparent errors in the judgement and order of the Hon'ble Tribunal as they are not <sup>in</sup> conformity with the facts and law on record.

12. Because the Hon'ble Tribunal also failed to consider the documents C-32, C-34 Wagon Transfer Register and Position Book filed by the plaintiff/applicant which clearly prove that the wagons in disputes were shown out of position on 24.10.1975. This apparent error had led to the judgement and order passed against evidence on record of the applicant.

13. Because <sup>the</sup> Hon'ble Tribunal has committed an error of law in not considering that the order of the Disciplinary authority clearly deprives the petitioner of

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the reasonable opportunity under Article 311(2) of the Constitution of India and the principles of natural justice ; The Hon'ble Tribunal has failed to notice the points of facts and law on record (detailed in his written arguments dated 31.12, 1986).

14. Because the Hon'ble Tribunal erred in law by failing to examine that the respondents did not file any documents stock book or any other documents in support of their defence. The Hon'ble Tribunal mechanically relying upon the mere written statement of the respondents passed judgement and order on presumptions and conjectures against the petitioner without evidence on record.

15. Because in any view of the matter the judgement and order passed by the ~~same~~ Hon'ble Tribunal are liable to be set aside.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Tribunal may graciously be passed to allow this Review petition, reverse the judgement and order dated 19.12.1989 and pass necessary order in favour of the petitioner, allowing the application.

Lucknow dated  
January 1, 1990.

*V. D. Shukla*  
(V. D. SHUKLA)  
Advocate  
Counsel for the petitioner.

*Bichan Ram*

V. D. SHUKLA  
M. A., LL.B., D.P.A.,  
ADVOCATE,  
84/303, Katra Maqboolganj,  
LUCKNOW.

In the Central Administrative Tribunal  
Lucknow Circuit Bench, Lucknow

8/8

Miscellaneous Application No. — 11990

in T.A. No. 792 of 1986

Bechan Ram - - - - - Plaintiff / Applicant

vs

Union of India & others - - - - - Defendants / Opposite Party

PL No

<b>बीमा नहीं NOT INSURED</b>		क्रमांक No.	<b>5070</b>
लगाये गये डाक टिकटों का मूल्य Amount of Stamps affixed	रु० 650 Rs.		
एक रजिस्ट्री* Received a Registered*	प्राप्त किया Received	तारीख बोहर Date Stamp	
पानेवाले का नाम Addressed to	Neel Debra		
		पानेवाले अधिकारी के हस्ताक्षर Signature of Receiving Officer	

PL No

<b>बीमा नहीं NOT INSURED</b>		क्रमांक No.	<b>5071</b>
लगाये गये डाक टिकटों का मूल्य Amount of Stamps affixed	रु० 650 Rs.		
एक रजिस्ट्री* Received a Registered*	प्राप्त किया Received	तारीख बोहर Date Stamp	
पानेवाले का नाम Addressed to	Neel Debra		
		पानेवाले अधिकारी के हस्ताक्षर Signature of Receiving Officer	

PL No

<b>बीमा नहीं NOT INSURED</b>		क्रमांक No.	<b>5072</b>
लगाये गये डाक टिकटों का मूल्य Amount of Stamps affixed	रु० 650 Rs.		
एक रजिस्ट्री* Received a Registered*	प्राप्त किया Received	तारीख बोहर Date Stamp	
पानेवाले का नाम Addressed to	Neel Debra		
		पानेवाले अधिकारी के हस्ताक्षर Signature of Receiving Officer	

18/11/90  
Consider for the Applicant

A/D

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
Circuit Bench at Lucknow  
Registration T.A. No.792 of 1986  
{ Regular Civil Suit No.181 of 1981 of the }  
{ Court of Munsif, Hawali, Lucknow }

Bechan Ram ..... Plaintiff-Applicant

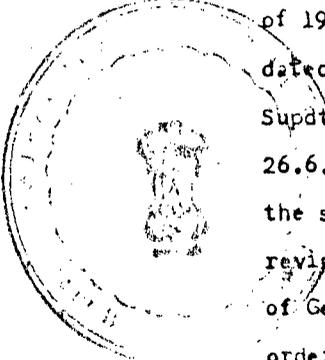
Versus

Union of India & Others ..... Defendants-Opposite Parties

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, A.M.

(By Hon. Justice K.Nath, V.C.)

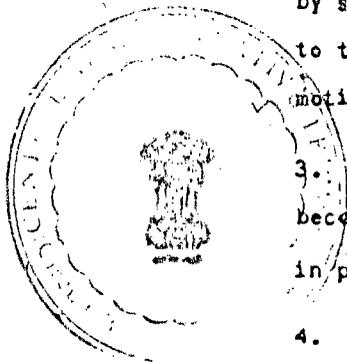


The regular Civil Suit referred to above, is before this Tribunal for disposal by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff's prayer is to quash an order dated 28.2.78 passed by the Senior Divisional Commercial Supdt, Northern Railway, Lucknow, the order dated 26.6.78 of the Divisional Superintendent confirming the same, and further order dated 2.9.78 rejecting the review and lastly the order dated 20.5.79 on behalf of General Manager, Northern Railway upholding the orders mentioned above. The impugned orders withheld one increment of the applicant for a period of one year without cumulative effect in consequence of a departmental enquiry. The applicant has also prayed for refund of Rs. 242-52 recovered from him in consequence of the stoppage of increment.

2. The plaintiff was working as Asstt. Good Clerk at the Railway Station Lucknow on 24th and 25th of October, 1975. A chargesheet dated 29.7.77 for minor

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penalty was served upon the applicant by the Senior Divisional Commercial Supdt., Lucknow. The charge was that the applicant had shown six wagons (whose particulars had been specified) containing cement bags from Churk to Lucknow as placed "out of position" on 24.10.75 although they were in position for unloading between 10.30 A.M. and 11.00 A.M. as indicated by the Stock Report at 8 P.M. The consignee did not turn up on 24.10.75; on 25.10.75 the consignee took delivery of those bags separately between 7.00 A.M. and 2.30 P.M. The result was an ultimate financial loss to the railway and undue benefit to the consignee by saving them from paying demurrage, which, according to the charge, could only be for the plaintiff's motive for personal gain.



3. It is not disputed that payment of demurrage becomes due after five hours of placing the wagons in position.

4. On 31.1.78, the applicant furnished his reply to the chargesheet. He gave details of the various places where the wagons had been placed on 24.10.75 and said that these wagons were not unloaded on open platforms for want of proper protection like tarpaulin etc. in the interest of saving claims in view of the circular dated 20.1.71 that cement wagons should not be unloaded in open platforms. He further said that the 8.00 P.M. Stock Report dated 20.4.75 was neither prepared by him nor the relevant records appear to have been consulted before recording the stock position.

5. On conclusion of the inquiry a finding was

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recorded on 28.2.78 and orders were passed by the disciplinary authority, being the Senior Divisional Commercial Supdt. that there was no difficulty in unloading cement consignment on the open platforms because the month of October was not rainy weather and that the consignments could have been covered by tarpaulin. The disciplinary authority observed that the stock position reported at 8.00 P.M. (20 hours) showed that initially these wagons had been considered as properly placed and had been shown under demurrage on consignee's account. With these findings, the disciplinary authority passed the penalty order directing that one increment of the plaintiff at the stage of Rs.360/- in the scale of Rs.260 - 430 due on 1.4.78 will be stopped for one year.

6. The appeal against the punishment order was dismissed by the Senior Divisional Commercial Supdt. on 26.6.78; he also dismissed the review application on 2.9.78. The applicant took the matter to the General Manager who also dismissed the appeal on 20.5.79. The plaintiff filed the present suit on 16.2.81 for the reliefs mentioned above.

7. It is stated in the plaint that the applicant had recorded remarks on 24.10.75 that wagons No.10077, 63913, 41183 and 23814 were in open platform at Bhusa Shed, Wagon No.67971 was out of platform and wagon No.23165 was in lime shed. It was also said that during the duty hours of the applicant from 7 to 11 A.M. and 4 to 8 P.M. there was a clerk in charge of the

Lucknow Industrial Area siding (LIAS) who had agreed with the position of the wagons as recorded by the applicant, and ~~that~~ the said clerk has shown the position and release of wagons on 25.10.75 in his own hand writing in the Wagon Transport Register. It was further said that the alleged stock report relied upon by the disciplinary authority was quite wrong, that it had neither been prepared by the applicant nor reliable records were consulted by the staff who prepared it. The applicant further said that the consignment had not been booked for the LIAS but for goods shed Lucknow and therefore their placement for unloading at LIAS ~~was~~ without prior sanction of the competent authority and against Railway

Rules.

8. The written statement of the opposite parties is that the clerk Incharge of the LIAS verified wrong position of wagons placed for unloading in connivance with the applicant, that there was heavy congestion at the Lucknow Goods Shed, hence wagons were diverted to LIAS for unloading for which the provision by competent authority already existed and that there was no rains during the period in question and cement wagons used to be unloaded in open platform. The opposite parties further said that the Lucknow Goods Shed is a Depot station for storage of tarpaulin and that the applicant could have easily demanded tarpaulin from the Goods Shed to utilise them in unloading of the cement wagons.

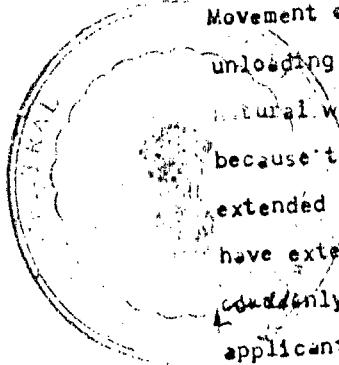
9. It appears to us in the first instance that the controversy which has been raised by the applicant is beyond the scope of regular Civil Suit in so far as

concerns the merits <sup>and</sup> facts of the case. The Inquiry Officer/Disciplinary Authority is the appropriate person to determine the facts and we cannot examine the validity of the findings <sup>on</sup> the facts recorded by them except on the ground that no evidence existed in support of the findings or that the findings were mala fide. The scope of judicial review of disciplinary proceedings is limited and, broadly speaking, is confined to the commission of irregularities and illegalities in the process of inquiry. These grounds would consist of violation of principles of natural justice, total absence of evidence in support of the findings, mala fides and the like. There is no allegation of mala fides in this case.

10. On the point of "no evidence", the learned counsel for the applicant has relied upon a Gazette Notification of the Railway Board that the period from July to October is treated as Monsoon period and therefore the applicant could not have arranged to unload cement at open places. It appears that the Northern Railway Gazette of 1st July, 1975 had set out that the Monsoon period over the Northern Railway would extend from July to October. The Gazette further requires that the goods should be protected from damage by staking them in a well-protected, covered space and for further protection should be covered with tarpaulins (Paper No. GA-29). The reply of the opposite parties is that the description of the period of Monsoon in the Gazette is not absolute, that in fact there had been no <sup>rains</sup> ~~rain~~ in the



last week of October, 1975 to which the consignment in question related, that orders had already been issued earlier to unload the wagons at LIAS and that tarpaulins could have been made use of for covering the cement bags. It is pointed out that in the applicant's memo of appeal to the Divisional Commercial Supdt., paper No.KA-25, the applicant had admitted that orders had been passed on 10.9.75 by the Divisional Operating Supdt. to transfer the cement wagons from Lucknow Goods Shed to LIAS for unloading. The contention of the counsel for the applicant is that in the face of the Gazette Notification of the Railway Board, the applicant was not bound to abide by the orders of the Divisional Operating Supdt. This contention is misconceived. Movement of goods for the purposes of loading and unloading is a constant and quick process and the natural weather conditions cannot be ignored. Simply because the Gazette said that the Monsoon period extended upto October, it could not mean that it would have extended upto 31st of October and would have suddenly ceased from 1st of November. Indeed, the applicant had stated in his appeal, Paper No.25-KA, that the order of the Divisional Operating Supdt. had been complied with, but the order had authorised placing of only 10 wagons at the LIAS which had already been completed on 24.10.75 before the arrival of the wagons in question. In other words, it is not as if the order of the Divisional Operating Supdt. was of no effect or valid<sup>ly</sup> simply because of the stipulation of



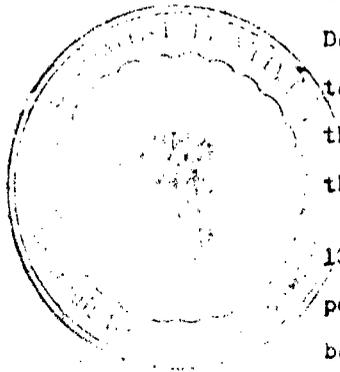
period of Monsoon in the Gazette. The entire operation must depend upon the facts and circumstances of each case. On principle, the directions of the Superior Officer on the spot must prevail over the general directions of the still higher authorities unless the directions of the superior officer unmistakably violate the directions of the higher authorities. The risk in the applicant's complying with the directions of the Divisional Operating Supdt. would have been of the Divisional Operating Supdt. and not of the applicant, because he would have acted within the scope of the authority given by the Divisional Operating Supdt. which was not clearly in violation of the Gazette Notification in the light of the facts and circumstances then prevailing. It is not possible for this Tribunal to scan the evidence in greater detail about the number of wagons authorised by the Divisional Operating Supdt. to be placed at the LIAS and the actual number of wagons which were already there on 24.10.75; that was the function of the Inquiry/Disciplinary Authority. In view of the existence of the orders of the Divisional Operating Supdt. mentioned above, it cannot be said that there was no evidence in existence to support the basis of the findings of the Inquiry Authority that there was no difficulty in unloading the cement wagons on open platform and that October was not a rainy weather.

11. The learned counsel for the applicant then urged that the Inspectors who had been deputed by the Department to investigate into the lapse on the part of the applicant reported that tarpaulines were not available. There is no such statement of case in the plaint; the record does not contain any such

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inspection report. The only allegation on the subject in the applicant's written statement of defence or petition of appeal/review to the disciplinary authorities is that tarpaulines were not available at LIAS. The case of the opposite parties is that Depot Station for storage of tarpaulines is the Lucknow Goods Shed, and the applicant could have obtained tarpauline from there. The applicant has not been able to show that statement to be incorrect.

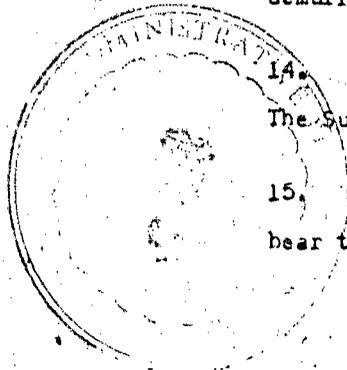
12. The next point urged on behalf of the applicant's counsel is that the report dated 25.10.75 of the Vigilance Inspector after which the inquiry was instituted was neither made available to the plaintiff nor he was examined as a witness. That was only at the investigation stage and in so far as the Department has chosen not to use it or Inspector's testimony as evidence, there was no question on the part of the Department to furnish its copy to the applicant.



13. The last contention is that the charge of personal gain to the applicant is wholly misconceived because both the consignor and the consignee were Govt. and non-payment of demurrage, if at all due, could not bring any benefit to the plaintiff. The contention however is misconceived because the charge contained in papers No.18-KA and 19-GA does not mention that the applicant acted in the impugned manner.

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in order to gain undue advantage for himself; the charge is that it resulted in heavy loss to the railway revenue and brought undue benefit to the consignee by saving the latter from payment of demurrage.



14. These are all the points in this case. The suit deserves to fail.

15. The suit is dismissed; parties shall bear their costs.

Member (A)

Vice Chairman

Dated the 19<sup>th</sup> Dec., 1989.

*Attested*

RKM

*[Signature]*  
Deputy Registrar 20/12/89

Central Administrative Tribunal  
Lucknow Bench,  
Lucknow

**TRUE COPY  
ATTESTED**

*[Signature]*

**V. D. SHUKLA**

M. A., U. S., D.P.A.,  
ADVOCATE,

84/333, Karna Maqboolganj,  
LUCKNOW.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Restoration Application no. 17-E/87(T)

in 792/867

Bechan Ram ..... Applicant

Versus

Union of India & others ..... Respondents

Hon'ble D.S. Misra-Member(A)

Hon'ble G.S. Sharma-Member(J)

(Delivered by Hon'ble G.S. Sharma)

This is an application for the restoration of T.A. No. 792 of 1987 dismissed in default of the applicant on 15-1-1987. The application was moved the same day with the allegation that on account of late arrival of the Train from Lucknow, the applicant's counsel could not appear before the Tribunal at the time when the case was taken up.

2- We have heard the learned counsel for the parties. The cause shown appears to be sufficient. The case is restored to its original number accordingly. Let the main case be listed for hearing on 2.3.86

A.M.

J.M.

February 2, 1987/

Shahid.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Restoration Application no. 17-B/87(T)

in 792/867

Bechan Ram ..... Applicant

Versus -

Union of India & others ..... Respondents

Hon'ble D.S. Misra-Member(A)

Hon'ble G.S. Sharma-Member(J)

(Delivered by Hon'ble G.S. Sharma)

This is an application for the restoration of T.A. No. 792 of 1987 dismissed in default of the applicant on 15-1-1987. The application was moved the same day with the allegation that on account of late arrival of the Train from Lucknow, the applicant's counsel could not appear before the Tribunal at the time when the case was taken up.

2- We have heard the learned counsel for the parties. The cause shown appears to be sufficient. The case is restored to its original number accordingly. Let the main case be listed for hearing on 2-3-87

A.M.

J.M.

February 2, 1987

Shahid.

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Registration NO. 792(T) OF 1986

Beehan Ram vs. Union of India and others

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
			<p><u>Office Report</u></p> <p>1- Rs. No. 121/81 received on transfer from Ministry of Education</p> <p>2- <u>Cause of Action</u> withholding of increment.</p> <p>3- <u>Position at the stage of transfer</u></p> <p>i- W.S. filed ii- Issue framed.</p> <p>4- Notice issued to both the parties by Regd. post.</p> <p>5- No undelivered Regd. cover returned back to Govt.</p> <p>Submitted for order.</p> <p><u>For File</u> 8/10/83</p>

**ORDER SHEET**

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD**

.....Reg. NO. 792.....OF 1986

..Beehan Ram.....VS.....Union of India and others.

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	11.12.1986	<p><u>Contd. from pre-page</u></p> <p>Court set aside the ex-parte order on payment of Rs.60/- as costs to be paid by 17.10.1984 failing which the application for setting aside the ex-parte order was deemed to be rejected. The defendants have not paid the said costs so far. They have also not produced the required documents. The plaintiff further moved an application 53-C on 29.7.1985 that the defendants have not paid Rs.150/- awarded as costs in this case against them so far and that the application is still lying undisposed of.</p> <p>3. In view of the facts stated above, we directed the defendants to produce the remaining 7 documents of the application 16-C or their certified copies before the Tribunal by 15.1.1987. In case, any document is not traceable, the affidavit of the keeper of the record duly forwarded by head of the office under his signatures be submitted by that date stating as to what happened to the said documents. we further direct the defendants to pay Rs.210/- to the plaintiff personally by 15.1.1987 failing which they shall not be heard.</p> <p align="right">AM</p>	

JM

Dated. 11.12.1986  
kbb

Before the Central Administrative Tribunal  
Allahabad Bench  
Allahabad

Restoration Application No 17-B/87(5)

Reg. No 792 (CT)/86

Beehan Ram - - - - - Plaintiff / applicant

vs.

Union of India & others - - - - - Defendants / opp Parties  
F.F. 15/1/87.

The plaintiff / applicant respectfully begs to submit:  
(1) That the Counsel for the plaintiff was coming to attend Court 7<sup>th</sup> day from Lucknow but unfortunately the train 412 he got late by 4/45 hrs and reached Allahabad railway station at 3/45 P.M

(2) That he rushed to the Tribunal, reached office at 4 and enquired into the hearing of the case he found from the reader that case was dismissed in default.

(3) That the plaintiff and pressing and unavoidable circumstances could not attend the Court in time. That was no other way out to reach here earlier.

(4) That the plaintiff will suffer irreparable loss if the case is not restored.

Wherefore, it is prayed that the order dated 15/1/87 passed by the Hon'ble Court may kindly be set aside in the interest of justice and a date be fixed for hearing.

So (granted)

may be laid up before Court for orders on 2/2/87 along with P's

Allahabad  
15/1/87.

18/1/87  
(V.D. Shukla)  
Counsel for the plaintiff

ms  
15/1/87 Shri SKS II

15/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
23-A, Thornhill Road, Allahabad-211 001

\*\*\*\*

No. CAT/A11d/Jud/

Dated the &

T.A.No. 792 of 1986 (T)

Bechan Ram Applicant's

Versus

Union of India & others. Respondent(s)

- To ✓
- ① Sri V. D. Shukla, Advocate / for applicant.  
84/383, Katra Macaboolgany, Lucknow.  
Bhiknd old, R.T.O office Ganeshgany Lucknow.
  - ② Sri G. P. Agarwal, Advocate / for Respondent  
C.A.T. Allahabad  
Allahabad.

Whereas the marginally noted cases has been transferred by ~~High Court Lko~~ under the provision of the Administrative Tribunal Act (No.13 of 1985) and registered in this Tribunal as above.

O.S. NO. 121-81

Writ Petition No. \_\_\_\_\_  
\_\_\_\_\_ of 198 \_\_\_\_  
of the Court of Muzirif  
Lko arising out  
of Order dated \_\_\_\_\_  
passed by \_\_\_\_\_ in

The Tribunal has fixed date of 22-2-1988. The hearing of the matter.

If no appearance is made on your behalf by your some one duly authorised to Act and pled on your behalf

the matter will be heard and decided in your absence.

Given under my hand seal of the Tribunal this \_\_\_\_\_ day of 8/2 1988.

[Signature]  
DEPUTY REGISTRAR

Dk

In the ~~Courtesy~~ Central Administrative Tribunal,  
Allahabad Bench,  
Allahabad

8/2/88

Beehan Ram - - - - - Plaintiff

vs.

Union of India & others - - - - - Defendants.

Reg No: 792(T)/86

F. R. 5/2/88

The Counsel for the plaintiff begs to submit: -

- (1) That the above case was fixed for hearing before the single Bench for 5/2/88 before Hon'ble Member, Sri D. S. Mishra.
- (2) That the hearing of the case has to-day been adjourned for 5/2/88.
- (3) That the Counsel has other very important cases fixed for <sup>5/2/88 for</sup> hearing at Lucknow in the Civil Courts and he feels his inability to attend the Hon'ble Court on 5/2/88 here for hearing of the case.

(4) That the Counsel has to attend this Tribunal in other cases on 8/2/88.

wherefore, it is prayed that the hearing of this case may kindly be fixed for 8/2/88.

Allahabad  
2/2/88

Plaintiff.  
V. S. Shukla  
(V. S. Shukla)  
Counsel for the plaintiff.

Noted  
2/2/88



In the ~~Court~~ Central Administrative Tribunal 111  
Allahabad, <sup>Bench</sup> Allahabad. 11/16

Beehan Ram

Plaintiff/Applicant

Union of India & others

vs.

Defendants/Respondents

Registration No. 792(T) / 1986.

F. F. 12/7/1988.

The applicant most respectfully begs to submit:-

1. That the above case is fixed for 12.7.1988 for hearing before the Court No. 2 <sup>(Single Bench)</sup> of the Honble Tribunal.
2. That fortunately very recently from 21.3.88 a circuit Bench has started functioning at Lucknow.
3. That both the applicant and his counsel belong to Lucknow and not only they have to go to Allahabad for each hearing facing lot of trouble in the journey from Lucknow to Allahabad and back but they have also to incur railway fare and other expenses which become unavoidable.
4. That the transfer of this case from the Tribunal at Allahabad to Lucknow Circuit Bench will remove all our troubles.
5. That this case is not tied up with any court.

Wherefore, it is respectfully prayed that the above case may kindly be transferred from the Central Administrative Tribunal Allahabad Bench, Allahabad to the Central Administrative Tribunal Lucknow Circuit Bench Lucknow and the applicant be informed of the order of transfer and the <sup>next</sup> date fixed for the next hearing.

Lucknow  
28/4/1988.

Plaintiff/Applicant

Shukla  
(v.s. Shukla)  
Counsel for the applicant  
Advocate

84/383, Kabra Maghrol gauri

Lucknow

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
Circuit Allahabad Bench Lucknow

23-A Thornhill Road, Allahabad-211 001

Civil Block opp. Presidency Lucknow

\*\*\*

No. CAT/Alld/Jud/30/29 Dated the 17-5

T.A.No. 772 of 1988 (T)

Bachchan Ram Applicant's

Versus

Union of India Respondent's

To  
① Sd/- V.D. Shukla Advocate 84/383 Katre Marg, Meerut, Gaj Lucknow.  
② Sd/- G.P. Agrawal Advocate P.A.T. Allahabad,

Whereas the marginally noted cases has been transferred by District Judge under the provision of the Administrative Tribunal Act (No.13 of 1985) and registered in this Tribunal as above.

Writ Petition No. 121/81  
O.S. of 1988 of the  
court of Munsif Haveli  
arising out of order dated  
passed by  
in  
on your behalf the matter will be heard and decided in your absence.

The Tribunal has fixed date of 26/5 1988. The hearing of the matter.

If no appearance is ~~made~~ made on your behalf by your some one duly authorised to Act and plead

Given under my hand seal of the Tribunal this 12<sup>th</sup> day of May 1988.

DEPUTY REGISTRAR (J)

dk

Recd (6) for C.P. Agrawal  
21/5/88  
203  
17/5

[Signature]

34

In the Court of C.A.T. Allahabad

158

व अदालत श्रीमान \_\_\_\_\_ महोदय

वादी (मुद्दई) Page no 792186(T) Kulkarni

प्रतिवादी (मुद्दालेह) का वकीलतामा

Bachan Ram

Wol  
वनाम

वादी (मुद्दई)

प्रतिवादी (मुद्दालेह)

नं० मुकदमा सन् 19 पेशी की ता० 19 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

एडवोकेट

C. P. Agarwal

महोदय

वकील

को अपना वकील नियुक्त करके प्रतिष्ठा (इकरार) करता हूँ और लिखे देता हूँ इस मुकदमा में वकील महोदय स्वयं अथावा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रस्ताव करें या अन्य कोई कामज दाखिल करें या लौटा दें या हमारी ओर से डिमरी जारी करावें और रुपया वसूल करें या सुलह वामावसा इकबाल दावा तथा अी त व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा खर्चों या कोई कामज जमा करें या हमारी या विपदा (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 मुकदमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकीलतामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर आनंद माथ  
24/9/86

साक्षी (गवाह)-----

साक्षी (गवाह)-----

दिनांक----- महीना

वाम अदालत-  
नं० मुकदमा  
वाम करीब

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Restoration Application no. 17-B/87(T)

w/ 792/867

Bechan Ram ..... Applicant

Versus

Union of India & others ..... Respondents

Hon'ble D.S.Misra-Member(A)

Hon'ble G.S.Sharma-Member(J)

(Delivered by Hon'ble G.S.Sharma)

This is an application for the restoration of T.A. No. 792 of 1987 dismissed in default of the applicant on 15-1-1987. The application was moved the same day with the allegation that on account of late arrival of the Train from Lucknow, the applicant's counsel could not appear before the Tribunal at the time when the case was taken up.

2- We have heard the learned counsel for the parties. The cause shown appears to be sufficient. The case is restored to its original number accordingly. Let the main case be listed for hearing on 2.3.87

*[Signature]*  
A.M.

*[Signature]*  
J.M.

February 2, 1987/

Shahid.



ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Page NO. 792 OF 198 (T)

Beehan vs Union of India  
Ram

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
2-3-87		<p>Hon. A Jay Johri — AM. Hon. G. S. Sharma — JM</p> <p>Sri V. D. Shukla for the plaintiff and Sri G. P. Agrawal for the defendants are present. on the request of Sri Agrawal, the case is adjourned to 6/4/87 for hearing.</p>	<p>OT Written pleading filed by Sri V. D. Shukla. Submitted. 14/10.</p>
6-4-87		<p>Hon. G. S. Mishra — AM Hon. G. S. Sharma — JM</p> <p>On the application of plaintiff's counsel, the case is adjourned to 5.5.87</p>	

NO. of order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
	11.12.1986	<p>Hon. D.S. Misra, AM  <u>Hon. G.S. Sharma, JM</u></p> <p>Due to mistake, the record could not be put up before us to enable us to pass order on 1.12.1986. The order is being passed today and the learned counsel for the parties be informed about it.</p> <p>2. In this case, the plaintiff vide his application 16-C had applied to the Court below to direct the defendants to produce 11 documents mentioned therein. It appears that 4 documents were filed by the defendants and the remaining 7 documents were not filed and the plaintiff was required to explain the relevancy of the remaining documents which he did by moving another application 38-C. On 24.11.1983, the trial Court directed the defendants to produce the required documents by 16.1.1984. The said documents have not been produced by the defendants in Court so far. On 12.9.1984, the trial Court directed the defendants to show cause by 17.10.1984 as to why the defendants be not struck off for not producing the summoned documents in the Court. On 17.10.1984, none appeared for the defendants and the case was ordered to proceed ex-parte on 13.11.1984. The application given by the defendants for setting aside the ex-parte order was rejected by the trial Court on 16.4.1985 but the defendants again moved an application for setting aside the ex-parte order and ultimately vide order dated 29.7.1985, the trial</p>	

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Reg. T.A. 792

NO

OF 1986

Beehan Ram VS Union of India and others.

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	11.12.1986	<p><u>Contd. from pre-page</u></p> <p>Court set aside the ex-parte order on payment of Rs.60/- as costs to be paid by 17.10.1984 failing which the application for setting aside the ex-parte order was deemed to be rejected. The defendants have not paid the said costs so far. They have also not produced the required documents. The plaintiff further moved an application 53-C on 29.7.1985 that the defendants have not paid Rs.150/- awarded as costs in this case against them so far and that the application is still lying undisposed of.</p> <p>3. In view of the facts stated above, we direct the defendants to produce the remaining 7 documents of the application 16-C or their certified copies before the Tribunal by 15.1.1987. In case, any document is not traceable, the affidavit of the keeper of the record duly forwarded by head of the office under his signatures be submitted by that date stating as to what happened to the said documents.</p> <p>We further direct the defendants to pay <del>the unpaid costs amounting to</del> Rs.210/- to the plaintiff personally by 15.1.1987 failing which they shall not be heard.</p> <p>AM <i>[Signature]</i></p>	<p>JM</p>

Dated. 11.12.1986

kbb

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

1/2

5

..... NO. TA-792/86 OF 1988  
 ..... VS .....  
 .....

No. of Order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
		<p><u>Office Report</u></p> <p>An application has been filed in this Tribunal for transferring the case No. <u>792/86(T)</u> of _____ to the Circuit Bench, Lucknow.</p> <p>If approved, <u>26 April, May</u> 1988 may kindly be fixed for hearing at Circuit Bench, Lucknow. In this regard the notices may be sent to the parties counsel.</p> <p><u>JKS</u> <u>5/5/88</u></p> <p>List this case before Court on <u>26th May</u> 1988 for hearing at Circuit Bench Lucknow.</p>	
	<u>26.5.88</u>	<p>Men. Ajay Johri, Am                      Men. G.S. Sharma, JM</p> <hr/> <p>Sri V.K. Shukla is present for the applicant. Sri Arjun Bhargava takes notice on behalf of the respondents. He wants time to prepare the case.</p> <p>The case is adjourned to final hearing on <u>21.7.88</u></p> <p><u>Am</u> }  <u>JM</u> }</p>	<u>D.P.(5)</u>
	<u>26.5.88</u>		

JKS

आदेश पत्रक  
ORDER SHEET



अपील  
निर्देश आनेदन रजिस्टर में सं०

TA - 792(T)/86

No. in Reference Application Register  
Appeal

पील अधिकरण  
Appellate Tribunal

अपीलार्थी  
आनेदक

Appellant  
Applicant

अपीलार्थी  
आनेदक द्वारा

Appellant  
Applicant

प्रत्यर्थी द्वारा  
Respondent

बनाम

प्रत्यर्थी

Vs.

Respondent

आदेश की क्रम संख्या  
और तारीख  
Serial number of  
order and date

संक्षिप्त आदेश, निर्देश दते हुए, यदि आवश्यक हो  
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पालन  
करने की तारीख  
How complied with and  
date of compliance

14/11/07

Hon. D.S. Mishra - AM  
Hon. G.S. Sharma - JM

Sri. V.D. Shukla for  
the plaintiff and Sri G.P. Agrawal  
for the defendants are present  
on the request of Sri Agrawal,  
he is allowed to file an  
affidavit regarding the  
non-availability of the records  
ordered to be produced  
by him. He is allowed to do  
so within a month. The case  
is adjourned to 20/11/07  
for hearing.

AM

JM

20/11/07

no filing. Adj to 15/12/07

15/12/07

Order Sheet

5.2.88

Hon. D.S. P. Siva - AM

None is present for the parties. It is an old case of 1981. Adjourn to 22.2.88. No further adjournment will be allowed. Both parties be informed.

DL

AM

24/2/88

on account of advocates' strike no cases  
adjourn to 7.4.88.

DL

7.4.88

DL

on the request of plaintiffs counsel, list before court for hearing on 27.4.88

DL

27.4.88

No selling. Adj to 6.12.7.88

DL

LKO Bench.

Order-sheet.

T.A. NO. 792/86 (1/6)

21.7.88

Hon. A. Johri, A.M.

Shri V.D. Shukla for the applicant and Shri A. Bhargava for the respondents. are present.

Shri Bhargava prays for and is allowed one month's further time as he had noted the wrong date earlier.

List this case for final hearing on 23.8.88.

A.M.

23.8.88  
23.8.88 Fixed for Hearing with Court's order, dated 21.7.88.

23.8.88.

Hon. A. Johri, A.

On the request of learned counsel for the parties list this case on 28.10.88.

A.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

ORDER SHEET



REGISTRATION No. 792 of 1986

05/21/01

Bechan Ram

APPELLANT  
APPLICANT

VERSUS

DEFENDANT  
RESPONDENT

U.O.R.

Final number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
28/6/89	<p>Hon' Mr. Justice K. Nath, V.C. <u>Hon' Mr. K.J. Raman, A.M.</u></p> <p>Shri V.D. Shukla, learned counsel for the applicant and Shri A. Bhargava, learned counsel for respondents are present. and request for adjournment.</p> <p>It is an old matter and it appears to have been argued once.</p> <p>List this case for <u>final hearing on 19/7/89.</u></p> <p>It is expected that adjournment will not be sought on that date.</p> <p><i>[Signature]</i> A.M.</p> <p><i>[Signature]</i> V.C.</p> <p>(sns)</p>	<p>OK The case has been received. C.A.T. filed on 26.6.89. Notices issued from 27.6.89 till 28.6.89 for both the parties. Counsel of the office copy attached on record. Submitted to court.</p> <p>lv 27/7</p>
19.7.	<p>No sitting. Adj. to 9.8.89 for hearing.</p>	<p>OK Case was adj. to 9.8.89 for hearing. Submitted for hearing.</p> <p>lv 8/89</p>
9/8/89	<p><u>Hon' Mr. D.K. Agrawal, J.M.</u></p> <p>On the request of the learned counsel for the parties the case is listed for <u>final hearing on 22/8/89.</u></p> <p><i>[Signature]</i> J.M.</p> <p>(sns)</p>	<p>OK Case is submitted for hearing 22.8.89</p> <p>lv 21/8</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

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O.A. NO. 792-1986  
T.A. NO.

DATE OF DECISION \_\_\_\_\_

Bechan Ram

PETITIONER

V.D. Sunkla

Advocate for the  
Petitioner(s)

VERSUS

Union of Moha Brothers

RESPONDENT

Asim Dhanpava

Advocate for the  
Respondent(s)

CORAM :

The Hon<sup>ble</sup> Mr. Justice Kamleshwar Nath, re.

The Hon<sup>ble</sup> Mr. R. J. Raman, J.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

Dinesh/

\*\*\*\*\*

19/12/89



penalty was served upon the applicant by the Senior Divisional Commercial Supdt., Lucknow. The charge was that the applicant had shown six wagons (whose particulars had been specified) containing cement bags from Churk to Lucknow as placed "out of position" on 24.10.75 although they were in position for unloading between 10.30 A.M. and 11.00 A.M. as indicated by the Stock Report at 8 P.M. The consignee did not turn up on 24.10.75; on 25.10.75 the consignee took delivery of those bags separately between 7.00 A.M. and 2.30 P.M. The result was an ultimate financial loss to the railway and undue benefit to the consignee by saving them from paying demurrage which, according to the charge, could only be for the plaintiff's motive for personal gain.

3. It is not disputed that payment of demurrage becomes due after five hours of placing the wagons in position.

4. On 31.1.78, the applicant furnished his reply to the chargesheet. He gave details of the various places where the wagons had been placed on 24.10.75 and said that these wagons were not unloaded on open platforms for want of proper protection like tarpaulin etc. in the interest of saving claims in view of the circular dated 20.1.71 that cement wagons should not be unloaded in open platforms. He further said that the 8.00 P.M. Stock Report dated 20.4.75 was neither prepared by him nor the relevant records appear to have been consulted before recording the stock position.

5. On conclusion of the inquiry a finding was

recorded on 28.2.78 and orders were passed by the disciplinary authority, being the Senior Divisional Commercial Supdt. that there was no difficulty in unloading cement consignment on the open platforms because the month of October was not rainy weather and that the consignments could have been covered by tarpaulin. The disciplinary authority observed that the stock position reported at 8.00 P.M. (20 hours) showed that initially these wagons had been considered as properly placed and had been shown under demurrage on consignee's account. With these findings, the disciplinary authority passed the penalty order directing that one increment of the plaintiff at the stage of Rs.360/- in the scale of Rs.260 - 430 due on 1.4.78 will be stopped for one year.

6. The appeal against the punishment order was dismissed by the Senior Divisional Commercial Supdt. on 26.6.78; he also dismissed the review application on 2.9.78. The applicant took the matter to the General Manager who also dismissed the appeal on 20.5.79. The plaintiff filed the present suit on 16.2.81 for the reliefs mentioned above.

7. It is stated in the plaint that the applicant had recorded remarks on 24.10.75 that wagons No.1007 63913, 41183 and 23814 were in open platform at Bhusa Shed, Wagon No.67971 was out of platform and wagon No.23165 was in lime shed. It was also said during the duty hours of the applicant from 7 to 11 and 4 to 8 P.M. there was a clerk Incharge of the

Lucknow Industrial Area siding (LIAS) who had agreed with the position of the wagons as recorded by the applicant, and ~~that~~ the said clerk has shown the position and release of wagons on 25.10.75 in his own hand writing in the Wagon Transport Register. It was further said that the alleged stock report relied upon by the disciplinary authority was quite wrong, that it had neither been prepared by the applicant nor reliable records were consulted by the staff who prepared it. The applicant further said that the consignment had not been booked for the LIAS but for goods shed Lucknow and therefore their placement for unloading at LIAS <sup>would be</sup> without prior sanction of the competent authority and against Railway Rules.

8. The written statement of the opposite parties is that the clerk Incharge of the LIAS verified wrong position of wagons placed for unloading in connivance with the applicant, that ~~there~~ was heavy congestion in the Lucknow Goods Shed, hence wagons were diverted to LIAS for unloading for which the provision by competent authority already existed and that there was no rains during the period in question and cement wagons used to be unloaded in open platforms. The opposite parties further said that the Lucknow Goods Shed is a Depot station for storage of tarpaulin and that the applicant could have easily demanded tarpaulin from the Goods Shed to utilise them in unloading of the cement wagons.

9. It appears to us in the first instance that the controversy which has been raised by the applicant is beyond the scope of regular Civil Suit in so far as

entirely concerns the merits <sup>on</sup> facts of the case. The Inquiry Officer/Disciplinary Authority is the appropriate person to determine the facts, and we cannot examine the validity of the findings <sup>of</sup> the facts recorded by them except on the ground that no evidence existed in support of the findings or that the findings were malafide. The scope of judicial review of disciplinary proceedings is limited and, broadly speaking, is confined to the commission of irregularities and illegalities in the process of inquiry. These grounds would consist of violation of principles of natural justice, total absence of evidence in support of the findings, malafides and the like. There is no allegation of malafides in this case.

10. On the point of "no evidence", the learned counsel for the applicant has relied upon a Gazette Notification of the Railway Board that the period from July to October is treated as <sup>Monsoon</sup> period and therefore the applicant could not have arranged to unload cement at open places. It appears that the Northern Railway Gazette of 1st July, 1975 had set out that the <sup>Monsoon</sup> period over the Northern Railway would extend from July to October. The Gazette further requires that the goods should be protected from damage by <sup>st</sup>aking them in a well-protected, covered space and for further protection should be covered with tarpaulins (Paper No. GA-29). The reply of the opposite parties is that the description of the period of <sup>Monsoon</sup> in the Gazette is not absolute, that in fact there had been no <sup>raims</sup> ~~reasons~~ in the

- 6 -

last week of October, 1975 to which the consignment in question related, that orders had already been issued earlier to unload the wagons at LIAS and that tarpaulins could have been made use of for covering the cement bags. It is pointed out that in the applicant's memo of appeal to the Divisional Commercial Supdt., paper No.KA-25, the applicant had admitted that orders had been passed on 10.9.75 by the Divisional Operating Supdt. to transfer the cement wagons from Lucknow Goods Shed to LIAS for unloading. The contention of the counsel for the applicant is that in the face of the Gazette Notification of the Railway Board, the applicant was not bound to abide by the orders of the Divisional Operating Supdt. This contention is misconceived. Movement of goods for the purposes of loading and unloading is a constant and quick process and the natural weather conditions cannot be ignored. Simply because the Gazette said that the Monsoon period extended upto October, it could not mean that it would have extended upto 31st of October and would have suddenly ceased from 1st of November. Indeed, the applicant had stated in his appeal, Paper No.25-KA, that the order of the Divisional Operating Supdt. had been complied with, but the order had authorised placing of only 10 wagons at the LIAS which had already been completed on 24.10.75 before the arrival of the wagons in question. In other words, it is not as if the order of the Divisional Operating Supdt. was of no effect or valid<sup>ity</sup> simply because of the stipulation of

R

14/14

period of Monsoon in the Gazette. The entire operation must depend upon the facts and circumstances of each case. On principle, the directions of the Superior Officer on the spot must prevail over the general directions of the still higher authorities unless the directions of the superior officer unmistakably violate the directions of the higher authorities. The risk in the applicant's complying with the directions of the Divisional Operating Supdt. would have been of the Divisional Operating Supdt. and not of the applicant, because he would have acted within the scope of the authority given by the Divisional Operating Supdt. which was not clearly in violation of the Gazette Notification in the light of the facts and circumstances then prevailing. It is not possible for this Tribunal to scan the evidence in greater detail about the number of wagons authorised by the Divisional Operating Supdt. to be placed at the LIAS and the actual number of wagons which were already there on 24.10.75; that was the function of the Inquiry/ Disciplinary Authority. In view of the existence of the orders of the Divisional Operating Supdt. mentioned above, it cannot be said that there was no evidence in existence to support the basis of the findings of the Inquiry Authority that there was no difficulty in unloading the cement wagons on open platform and that October was not a rainy weather.

11. The learned counsel for the applicant then urged that the Inspectors who had been deputed by the Department to investigate into the lapse on the part of the applicant reported that tarpaulines were not available. There is no such statement of case in the complaint; the record does not contain any such

*Dr*

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inspection report. The only allegation on the subject in the applicant's written statement of defence or petition of appeal/review to the disciplinary authorities is that tarpaulines "were not available at LIAS". The case of the opposite parties is that Depot Station for storage of tarpaulines is the Lucknow Goods Shed, and the applicant could have obtained tarpauline from there. The applicant has not been able to show that statement to be incorrect.

12. The next point urged on behalf of the applicant's counsel is that the report dated 25.10.75 of the Vigilance Inspector after which the inquiry was instituted was neither made available to the plaintiff nor he was examined as a witness. That was only at the investigation stage and in so far as the Department has chosen not to use it or Inspector's testimony as evidence, there was no question on the part of the Department to furnish its copy to the applicant.

13. The last contention is that the charge of personal gain to the applicant is wholly misconceived because both the consignor and the consignee were Govt. and non-payment of demurrage, if at all due, could not bring any benefit to the plaintiff. The contention however is misconceived because the charge contained in papers No.18-KA and 19-GA does not mention that the applicant acted in the impugned

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in order to gain undue advantage for himself; the charge is that it resulted <sup>m</sup> heavy loss to the railway revenue and brought undue benefit to the consignee by saving the latter from payment of demurrage.

14. These are all the points in this case. The Suit deserves to fail.

15. The Suit is dismissed; parties shall bear their costs.



~~Member (A)~~



Vice Chairman

Dated the 19<sup>th</sup> Dec., 1989.

RKM

In the Court of Magistrate, ...

R.S. No. 121 of 181

Shri Bechan Ram

vs

Union of India & others

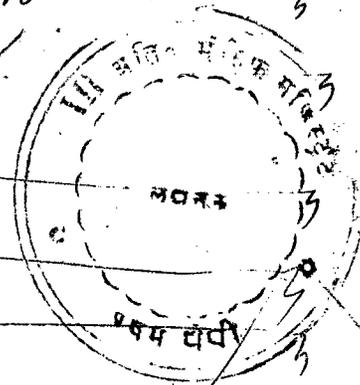
Plaintiff

Defendants

27/11/18

1/11/18

10	A 1. मेरका	1	1-4-81
5	A 2. मरका	15	6-5-81
	A 3. मरका	1	
	C-4. Regd. Address	1	
	C-5. मेरका	1	
	A 6. मरका	18	
	C-7. Power	1	3-1-81
	C-8. मरका	2	6/1/81
	C-9. Address	2	20-2-81
	C-10. मरका	2	
	" "	2	
	C-12. a	1	
	C-13. u	1	
	C-14. u	1	
	C-15. मरका	1	21-1-82
	C-16. मरका	5	1-3-82
	C-17. मेरका	7	3-1-82 24-3-82
	C-18. memo No. 41/74/D/77	1	



LCs/-218 of 29-9-77

ST-32	ଅନୁ କାଗଜ	1	14/11
ST-33	Register	1	
ST-34	Position Book (Register)	1	1/8
ST-35	Photo state copy of book of Staff		
ST-36	Photo state copy Duty List Assst to roads Inspector		
ST-37	Adjournment	1	23/2/83
ST-38	ଅନୁ କାଗଜ	4	13/8
ST-39	ଅନୁ କାଗଜ	1	
ST-40	Adjournment by Default	1	30/5/83
ST-41	Adjournment by Default	1	17/7
ST-42	ଅନୁ କାଗଜ	2	22/3
ST-43	objection by Plaintiff	1	24/7/77
ST-44	Application	1	8/7/77
ST-45	objection	1	
ST-46	ଅନୁ କାଗଜ	7	
ST-47	ଅନୁ କାଗଜ	1	
ST-48	ଅନୁ କାଗଜ	9	8/11/81
ST-49	ଅନୁ କାଗଜ	9	2/1/81
ST-50	ଅନୁ କାଗଜ	9	2/1/81
ST-51	ଅନୁ କାଗଜ	1	
ST-52	ଅନୁ କାଗଜ	1	27/7/81
ST-53	ଅନୁ କାଗଜ	1	25/5/81
ST-54	ଅନୁ କାଗଜ	1	3-1/50 - 28/5/81
ST-55	ଅନୁ କାଗଜ	7	29/10/82
ST-56	ଅନୁ କାଗଜ	6	19/10/81
ST-57	ଅନୁ କାଗଜ	2	

ଅନୁ କାଗଜ 922 9/8 - 93/70

In the Court of Mr. Justice, Lucknow

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R.S. No. 121/81

Sh. Bechan Ram

Plaintiff

versus

Union of India & others — Defendants

24-2-81

Date of Instt = 1-4-81

Nature of Suit = Suit for declaration

Valuation = Rs 542:52

C.F. paid = Rs 58:75

Counsel for the plaintiff = Sh. V. D. Shukla & Co.

" " " defendant = Sh. K. C. Sambram

Plaintiff with munsharif report is being put up for orders.

Seen in <sup>order</sup> report of Retired C.A. plaintiff for presentation in proper Court.

M. H. Handa  
Adv.

1-4-81

Plaint on request of the counsel is being put up for orders

Heard Counsel. Rep. Sh. & Adv. etc.  
The case is transferred to the Court of  
D. 12 Adl. M. H. Handa

M. H. Handa  
Adv.

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17-8-01

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at - 10 & receipt of 371 of ...  
MP (of ... of cost Rs 15.00)  
ws of MP 17-9-01 at ...

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at - 11 & receipt of ... Cost Rs 15.00  
MP (of ... of ws. of MP-17-10-01 at  
Issue of MP 21-10-01 at ...

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17.10.01 No res. filed before  
the date fixed.

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C-12 for time to  
file res. P.O. is  
on leave. Petitioner's  
counsel present.  
Petitioner 13.11.01  
for issues & ws.

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1-3-02  
18/3/02

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24-3-02

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24-3-02

24-16 यादीनात documents  
यादीनात 3 ले यादीनात हेतु obj & disp  
के लक्ष 26-4-02 को पेरा हेतु  
e-14 लिख ले यादीनात यादीनात यादीनात  
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10-5-02 को पेरा यादीनात  
obj & disp के लक्ष 10-5-02

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3.9.82 Transfer to case no  
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vide Dy's order dt

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4/9/82 File received on transfer from the Court of  
L. M. Registrar the case.

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Defendant

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12/10/82

अपनी-ने 25/10/82 को प्रतिबन्धी एडिशन  
कोर्ट में गीत एडिशन  
अपने 25/10/82 को  
कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

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प्लानटिफिस

Defendant

अपनी-ने 25/10/82 को प्रतिबन्धी एडिशन  
कोर्ट में गीत एडिशन  
अपने 25/10/82 को  
कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

25/10

25/10/82

अपनी-ने 25/10/82 को प्रतिबन्धी एडिशन  
कोर्ट में गीत एडिशन  
अपने 25/10/82 को  
कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

अपने 25/10/82 को

कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

VIII AM

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Plaintiff

अपनी-ने 25/10/82 को प्रतिबन्धी एडिशन  
कोर्ट में गीत एडिशन  
अपने 25/10/82 को  
कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

25/10/82

25/11/82

अपनी-ने 25/11/82 को प्रतिबन्धी एडिशन  
कोर्ट में गीत एडिशन  
अपने 25/11/82 को  
कोर्ट को नोटिस के प्लानटिफिस/वफ  
पेश की

18/11/82

27/11/82

18/11/82  
Defendant

27/11/82

27/11

VIII AM

28/1/83

27/1/83 को हुए एजेंटों के साथ  
आज काद प्रमाण/अप पत्र 34/अप  
आदेश 374 कि काद 14.2.83 को  
दिए। (अप का दिनांक प्रमाण)

विवरण

14.2.83

अप पत्र 34/अप/2/6/अप  
आदेश 374 कि काद 23/2/83 को  
दिए। (अप का दिनांक प्रमाण)

विवरण

23.2.83

आदेश 374 कि काद 23/2/83 को  
दिए। (अप का दिनांक प्रमाण)

5.7.83

आदेश 374 कि काद 23/2/83 को  
दिए। (अप का दिनांक प्रमाण)

① Whether the order dated 28.2.78  
passed by Senior Divisional  
Commercial Superintendent North  
railway and subsequent order of  
higher authorities on appeal and  
review applications are illegal?

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28/1/83

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18/5/83  
19/7/83

16.8.84

121/01

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Court closed on 14.8.84

General date was fixed for 12.9.84

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12.9.84

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10.10.84

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Becharlee & Co S.

13-3-85. case collection  
present parties counsel <sup>B/W</sup>

copy

But copy on 8-4-85 for  
disposal

Becharlee & Co

8/10/85

वा.प.स.का.ग. गण  
प.प.उ. जलवादी की को 10  
वस प्रस्ताव पत्र वा.प.  
लगात वा.प. उन्मुक्त  
नहीं किन्तु किन्तु जलवादी  
वा.प. को/निर्माण C-44  
दिनांक - 16/4/85 के  
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अप

16/4/85

वा.प.स.का.ग. गण  
वा.प. उन्मुक्त  
C-44 में एका गण  
जलवादी के अन्तर्गत  
पत्र में एक पत्रिका आदेश  
की तिथि 17.10.84 में  
अन्तर्गत रचना की वरिष्ठ  
नहीं प्रस्ताव है। अन्तर्गत  
प्रस्ताव पत्र में अन्तर्गत  
किन्तु अन्तर्गत किन्तु की  
जायगी नहीं की, एका  
वरीष्ठ में सुट नहीं किन्तु  
हाल में अन्तर्गत पत्र में नहीं  
अन्तर्गत एक पत्रिका आदेश की  
वा.प.स.का.ग. की अन्तर्गत  
नहीं किन्तु एका है  
अन्तर्गत पत्र C-44 में की

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AL on 12/81  
Beck on law in wrong side.

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Can call at  
Next Plain ill. Cant.  
Now in default  
or is 11.40 AM.

~~Change in case~~ <sup>2</sup>  
~~case~~ <sup>2</sup> No  
application. has also been  
moved to obtain adj. int.

orders.

Defdt C-49 is dismissed.  
for default of Dfoll. fix.  
16.7.85 for report brief

Sluka  
4/7/85

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16.12/85

Can call on  
C-51 application.  
on behalf Dfoll. for  
recall of experts order  
Put up on 29/7/85  
for O/disposal.

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16/7/85

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 अदिन पारि न मती सारि  
 वरु की शोभ राक पारि  
 C-53 वाति कर दिना दिना  
 ए वाति शो. निताए  
 C-53 दिनाक 13/8/85 पेशा.

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क्रमबद्ध आदेश-पत्र

(अध्याय 4, नियम 3)

5/2/6

न्यायालय

स्थान

भाबहा संख्या

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वि.वा.सं.

क्र. संख्या	दिनांक	आदेश अथवा आदेश का संक्षेप	मैजिस्ट्रेट के हस्ताक्षर	टिप्पणी
7/2	20/1/66	आदेश संख्या १०५५ एडमिशन के लिए मि. अ. सं. १०२-४६७/२० के लिए प्रदान की गई।		
	१-२-१९६६	आदेश संख्या १०३-२८६७/२० के लिए प्रदान की गई।		
	१०-३-१९६६	आदेश संख्या १०५-२८६७/२० के लिए प्रदान की गई।		

In the Court of Addl Munsif VIII/Lucknow

C-45

Bechan Ram - - - - -

vs.

union of India + others - - - - -

Plaintiff

Defendants

R.S No 101/1981

R.P. 3/1/85

Objections on behalf of the plaintiff

The plaintiff most respectfully begs to state, as under:-

- ① That in the instant case the Honble Court was pleased to order on 13/11/84 to proceed ex-parte for evidence of the plaintiff as the defendants have been absenting themselves to attend the Honble Court since long on each date of hearing.
- ② That the defendants cared little to find out the dates of hearing of the cases and it was on account of their sheer negligence that the Honble Court had to pass orders to proceed with the case ex-parte after giving them innumerable opportunities to attend the Court for proper hearing.
- ③ That the cause of non-appearance of the defendants as stated in the application dated 13.11.84 is not at all sufficient.
- ④ That the negligence is never a ~~cause~~ sufficient cause and the defendants are not liable to get any benefit for their lapses.
- ⑤ That the application is liable to be rejected straight way on the above grounds.

Wherefore it is prayed that the application of the defendants be rejected.

Lucknow  
3/1/85

Plaintiff  
Shukla  
3/1/85  
Counsel for the plff

In the Court of the AD District Judge

P

ST-49

Bechar Ram

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32

Plaintiff

vs

Defendant

Union of India

R.O no

D.O. 13.11.1984

Application filed in R.O. no  
13.11.1984

In the above named case  
defendant's appeal filed on

13.11.1984 is pending for disposal

and it is requested that the court may

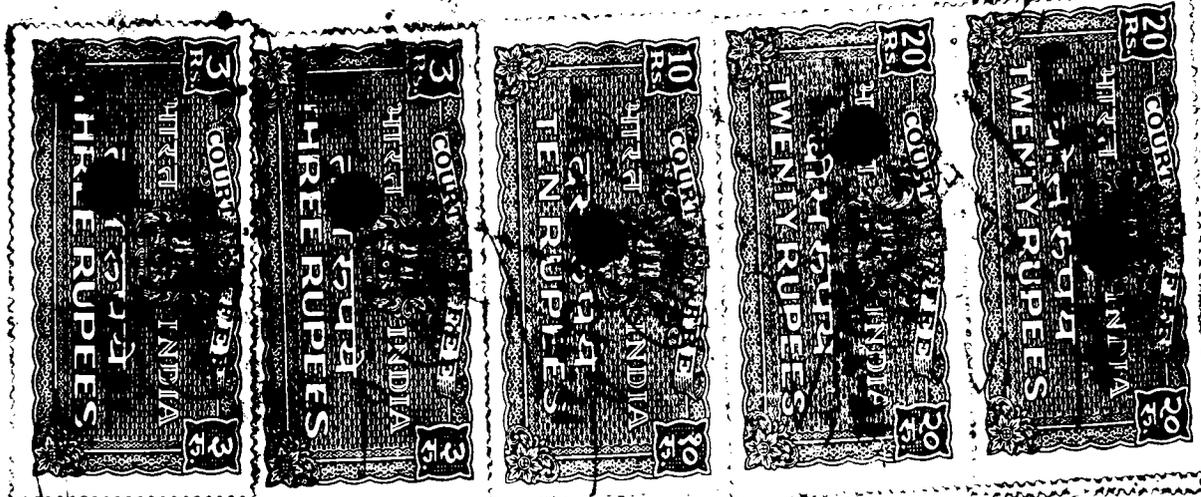
be pleased to proceed on behalf of the

plaintiff in the above case as the defendant

is not appearing in the proceedings and the

proceedings are being conducted in the absence of the defendant.

It is requested that the court may be pleased to proceed on behalf of the plaintiff in the above case as the defendant is not appearing in the proceedings and the proceedings are being conducted in the absence of the defendant.



IN THE COURT OF MINSIF HAVALI, LUCKNOW

SUIT NO. 121 OF 1981.

*6 = 52  
S.M.  
16/2/81*

Shri Bechan Ram S/O Late Shri Jagdeo,  
Assistant Goods Clerk, Northern Railway  
Goods Shed, Lucknow resident of House No.  
5/3B, Sleeper Ground, Railway Colony,  
Alambagh, P.S. & Ward, Alambagh, Lucknow .....

Plaintiff.

*452*  
Vs

*452*

1. The Union of India,  
Through the General Manager,  
Northern Railway,  
Headquarters Office, Baroda House,  
New Delhi.
2. The General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House,  
New Delhi.
3. The Divisional Railway Manager,  
Northern Railway,  
Divisional Railway Manager's Office,  
Hazratganj, LUCKNOW.

*18/2/81*

.....

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Defendants.

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A/17

The plaintiff begs to submit as under:

1. That the plaintiff is serving as an Assistant Goods Clerk, in Northern Railway, under the Divisional Railway Manager, Lucknow in scale Rs 260-430 RS on pay Rs 380/- per month. His work throughout his whole term of service has been meritorious and without blemish.
2. That while working as Assistant Goods Clerk, at Lucknow Industrial Area Siding, a team of Vigilance Inspectors after making a surprise checking on 24 and 25.10.75 at Lucknow Industrial Area Siding reported against the plaintiff to the Divisional Railway Manager Northern Railway, Lucknow without disclosing the contents of the report to him. He was also not supplied with copies of statements of prosecution witnesses and also those of his own as recorded by the said Vigilance Inspectors in the preliminary enquiries although the same were relied upon in the departmental enquiry.
3. That a memorandum No. Vig/74/D/77/LCS -218 dated 29.9.1977 was illegally issued to the plaintiff for *the* on the basis of the aforesaid report on standard form No.11 for imposition of minor penalties by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow with the following allegations against him :
 

" Shri Bechan Ram S/O Shri Jagdeo while working as a Goods Clerk in L.I.A.S. in October, 1975, failed to maintain absolute devotion to duty inasmuch as he had shown wagon No. ERC. 10077, NRC. 63913, NRC 41183 SRC 23814, ERC 67971, and SEC 23165 holding bags of cement booked ex C UK to LKO as placed in position for

*Shri*

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A 1/5

unloading on 24.10.75, at 10/30 hours, 10/30 hrs, 10.30/ hrs, 10/30 hrs, 11.00 hrs and 11.00 hrs respectively, but the consignee did not turn up for unloading and these wagons were shown as for want of consignee in 20 hrs, stock report on 25.10.75. The consignee got these wagons released at 7/- hrs, 11.00 hrs, 10.45 hrs, 10.45 hrs, 14.30 hrs and 14.30 hrs respectively. Shri Bechan Ram with the connivance of Shri Moti Lal, CGC/LIAS got these wagons verified as out of position which could only be for some personal gain, which resulted in ultimately heavy loss to the Railway revenue. Shri Bechan Ram gave undue benefit to the party and saved him from the payment of demurrage due.

The above acts of omission and commission on the part of Shri Bechan Ram, GC/Lucknow are serious and he acted in a manner unbecoming of Railway Servant. His action adversely reflect upon his conduct. He has thus failed to maintain absolute integrity and devotion to duty and has thus contravened Rule No. 3(1)(ii) & (iii) of the Railway Services Conduct Rules, 1966. "

4. That the said memorandum required the plaintiff to submit his reply, if any, within 10 days from 8.10.77 the date of its receipt.

5. That the Senior Divisional Commercial Superintendent, Lucknow neither supplied the plaintiff with a copy of the said report dated 25.10.75 of the Vigilance Inspector nor other relevant records relied upon by him. The plaintiff

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A/30

was also not afforded reasonable opportunity to cross-examine the Vigilance Inspector and other prosecution witnesses concerned in the instant case in a confronted or any other enquiry and the Disciplinary Authority ~~is~~ blindly relied upon the said report and issued the aforesaid memorandum dated 29.9.1977 after a lapse of about 2 years which appears to be an afterthought or pressure or fear of the Vigilance Inspector.

6. That alongwith the aforesaid memorandum dated 29.9.1977 it was mandatory on the part of the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow, the Disciplinary authority, to supply the plaintiff with the copies of the 'Articles of Charge' a list of documents relied upon, and a list of the prosecution witnesses, if any, to prepare his reply. But he was not furnished the requisite documents by the said authority.

7. That the plaintiff requested the Disciplinary Authority to allow him to inspect other relevant documents but he was denied access to such records without ~~giving~~ giving reasons thereof.

8. That the plaintiff was forced to submit <sup>his</sup> reply dated 31.1.78 to the aforesaid memorandum dated 29.9.77 under threats and pressure without supplying him the copies of "Articles of Charge," "Relied upon documents" and a 'list of witnesses'.

9. That the Senior Divisional Commercial Suptd.,

*18/1/78*

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Lucknow, getting prejudiced against the plaintiff issued a notice No. Vig/74/D/77/LCS dated 28.2.78 imposing upon him a penalty of withholding of his increment against raising his pay from Rs 360/- p.m. to Rs 370/- p.m. in scale Rs 260-4<sup>00</sup> RS due on 1.4.78 for a period of one year without the effect of postponing future increments, without applying his mind to the facts and circumstances of the case, without affording him reasonable opportunity of defence, without examining the illegalities committed in the conduct of enquiries, without supplying the plaintiff with a copy of his 'own findings' alongwith the aforesaid notice against the alleged statement of imputations.

10. That the Disciplinary authority failed to examine the alleged charge of omission and commission for some personal gains with the connivance of concerned Chief Goods Clerk is a 'serious criminal offence' and without establishing the said charge against the plaintiff by the prosecution beyond reasonable doubt after affording reasonable opportunity and natural justice to him in the conduct of enquiry, the aforesaid arbitrary decision dated 28.2.78 based on presumptions and mere conjectures is quite wrong, illegal and cannot sustain the said charge, if any, in the eye of law.

18/2/78

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11. That it is wrong to allege that all the wagons containing bags of cement were shown as 'out of position.' The specific remarks were given by the plaintiff as under :

' wagon No. ER 10077, NR 63913, NR 4118<sup>3</sup>~~2~~ and SR 23814 were in open platform at Bhoosa Shed, ER 67971 out of platform and SE 23165 opposite contents (Lime) in Lime Shed. '

12. That the plaintiff was to perform intermittent duty from 7 to 11/- hours and 16/- to 20/- hours and in between the spells of duties one clerk-in-charge of Lucknow Industrial Area Siding performed duty who totally agreed with the position of the aforesaid wagons on 24.10.75 as shown by the plaintiff. The aforesaid clerk-in-charge showed the position and release of wagons on 25.10.75 with his own handwriting independently in the Wagon Transfer Register without the least disagreement with the remarks of the plaintiff.

13. That vide publication in the Northern Railway Gazette No.13 of 1.7.75, the Monsoon periods for Northern Railway were declared from July to October under the heading 'MONSOON NOTICE' and all concerning employees including the plaintiff were bound to follow the instructions contained in the said notice. He was liable to be seriously taken up for any departure from the said notice.

18/11/75

*[Handwritten signature/initials]*

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*Bu* He was liable to be seriously taken up for any departure from the said notice. *Bu* The action of the plaintiff was also supported by C.M.I. and Goods Inspector concerned. The contention of the Senior Divisional Commercial Superintendent, that there ~~are~~ *are* are no monsoons in October month is quite contradictory to the aforesaid G.M.'s notice. The plaintiff could not foresee a clear weather on 24.10.75 and had he acted independently without following the instructions of G.M. incorporated in the Notice and per chance the rains would have set in that day, what would have been the fate of the poor plaintiff and who would have spared him from the the responsibilities for the loss and deterioration to the consignment of cement which belonged to the government. The senior Division<sup>al</sup> Commercial Superintendent, had also not issued any circular prior to the date of incident requiring the plaintiff to act against the G.M.'s instructions. He has also overlooked the fact that tarpaulins were not available in the Shed to cover up the cement that day and it was only in the interest of administration to prevent the heavy claims as per circular No. CCB/1/POC/Policy Cement dated 20.1.71 that the cement was not unloaded in the open platform.

14. That the alleged Stock Report blindly relied upon by the Disciplinary authority was quite wrong. It was neither prepared by the plaintiff nor relevant records were consulted before showing any reasons for detention to stock by the staff concerned who prepared it.

*Blake*

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- 8 -

Out of 45 = 49 load on 24.10.75, 18 = 23 cement wagons were received and placed at 10/30 to 11/- hours on 24.10.75 i.e. 11 = 11 in Bhoosa shed and 10 = 15 including 2 = 2 Urea in Lime Shed. The same position was recorded by the plaintiff in the Wagon Transfer Register as well as in Position Book. The capacity of shed is 11 in Lime shed and 6 in Bhoosa Shed in terms of 4 wheelers. So the Disciplinary authority totally failed to examine the correct position of wagons in the shed on 24.10.75 and acted wrongly and illegally in making a decision against the plaintiff without giving him an opportunity to prove otherwise in the departmental enquiry. Thus his orders are in clear defiance of the principles of Natural Justice and violation of the law of reasonable opportunity.

15. That the Senior Divisional Commercial Superintendent also failed to examine that the cement consignments were not booked to Lucknow Industrial Area Siding but they were booked to Goods Shed Lucknow and placed for unloading at Lucknow Industrial Area Siding without prior sanction of the competent authority and against railway rules.

16. That the plaintiff felt aggrieved by the order dated 28.2.78 of the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow and he preferred an appeal dated 25.4.78 against it to the Divisional Superintendent, Northern Railway, Lucknow to consider his case in the light of the facts and

*18/10/78*

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~~Re~~ and circumstances and prescribed rules thereunder.

But the said authority by a notice No. VIG/74/D/77/LCS dated 26.6.78 rejected the appeal of the plaintiff.

17. That aggrieved by the aforesaid orders dated 26.6.78 of the Divisional Superintendent, Lucknow, the plaintiff submitted petition dated 5.8.78 for review to the Divisional Superintendent, Northern Railway, Lucknow drawing kind attention of the said authority to the rules and instructions laid down in Northern Railway Gazette No.13 of July '75, notifying the monsoon season from July to October, Railway Board's letter No. 70-TG/IV/816/NR/UGC dated 18.9.70 directing staff to unload cement consignments in covered shed instead of open platforms and to D.S., Lucknow's letter No. TG/64/DOS/6/75 dated 10.9.75 conveying orders to transfer and unload 10 wagons ( 5 of cement and 5 of fertilizers from Goods Shed to Lucknow Industrial Area Siding). The cement consignment under dispute were originally booked to Lucknow Goods Shed but were transferred to Lucknow Industrial Area Siding and the requisite quota of 10 wagons per day was completed on 24.10;75 by unloading 10-~~out of~~<sup>in</sup> 18 wagons. The orders were followed by the plaintiff in toto. But the Divisional Superintendent, Northern Railway, Lucknow did not pay any heed to these things and by a notice No. VIG/74/D/77/LCS dated 2.9.78 (through the D.C.S./Lucknow) upheld his previous orders dated 26.6.78.

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18. That the plaintiff felt aggrieved by the aforesaid orders dated 2.9.78 of Divisional Superintendent, Lucknow and he submitted a petition dated 13.12.78 to the the General Manager, Northern Railway, New Delhi. The Chief Commercial Superintendent, Northern Railway, New Delhi who examined the plaintiff's review application on behalf of General Manager, Northern Railway, New Delhi without applying his mind to the facts and circumstances of the case, without issuing speaking orders and without giving reasons therefor rejected the review application of the plaintiff by an order No. VIG/74/D/77/LCS dated 20.5.79.

19. That the Divisional Superintendent, Northern Railway, Lucknow, the Chief Commercial Superintendent, Northern Railway, New Delhi, the appellate and reviewing authorities respectively totally failed to apply their mind to the facts and circumstances of the case. They rejected the appeal and review applications of the plaintiff without examining the illegalities committed in the conduct of enquiries by the Senior Divisional Commercial Superintendent, Lucknow without issuing speaking orders and giving reasons thereof and without supplying a copy of their own findings alongwith the notices of their decisions blindly upheld the orders of the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow.

20. That neither the plaintiff has been afforded the reasonable opportunity of defence nor the charge,

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if any, could be established by the prosecution beyond reasonable doubt against him. The punishment imposed upon him is based on mere presumption and conjectures and against the principles of natural justice.

21. That the plaintiff has been deprived of his due promotion from scale Rs 260-430 RS to that of Rs 330-560 RS on account of the illegal orders dated 28.2.78 passed by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow, upheld by the orders dated 26.6.78 and 2.9.78 by the Divisional Superintendent, Northern Railway, Lucknow and dated 20.5.79 by the General Manager, Northern Railway, New Delhi and his juniors were promoted ignoring him. He has sustained heavy loss of seniority and pay and allowances for their illegal orders.

22. That the plaintiff felt dissatisfied by the said decisions of the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow and also those of the Divisional Superintendent, Northern Railway, Lucknow and the Chief Commercial Superintendent, Northern Railway, New Delhi. Their orders are illegal, arbitrary and perverse and being without application of mind, without speaking orders and not supported by reasons.

23. That the defendants are liable to pay Rs 242.52 as arrears of pay and allowances <sup>as per annexure A enclosed</sup> for illegally withholding increment of the plaintiff from 1.4.78 to 31.3.79

18/11/79

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- 12 -

against raising his pay from Rs 360/- to Rs 370/- p.m. on the basis of impugned orders dated 28.2.78 passed by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow and upheld by the Divisional Superintendent, Northern Railway, Lucknow and the Chief Commercial Superintendent, Northern Railway, New Delhi, <sup>on</sup> the aforesaid appeal and review applications.

24. That a notice under Section 80 CPC was served upon the defendants No.1 and 2 and 3 each on 14.7.80 but they have failed to reply to the plaintiff as yet.

25. That the cause of action arose to the plaintiff within the jurisdiction of this Hon'ble Court against the defendants on 28.2.78 when the penalty orders dated 28.2.78 for withholding of increment were passed by the Senior Divisional Commercial Supdt., Lucknow on 26.6.78 when his appeal was rejected by the Divisional Superintendent, Lucknow on 2.9.78, when his review application was rejected by the Divisional Superintendent, Lucknow, on 20.5.79, when the Chief Commercial Superintendent, Northern Railway, New Delhi rejected the review application on behalf of the General Manager, Northern Railway, New Delhi and finally on 14.9.80 when the Notice period expired.

26. That the valuation of the suit -

a) for declaration is Rs 300/- on which a court

slu

-13 -

fee of Rs 30/- has been paid and;

- b) for pay and allowances is Rs 242.52 on which a court fee of Rs 28.75 has been paid.

Thus the total valuation is Rs 542.52 on which total court fee of Rs 58.75 has been paid for the purpose of jurisdiction and payment of court fee.

27; The plaintiff, therefore, prays for the following reliefs :

- a) That it be declared that the impugned orders dated 28.2.78 passed by the Senior Divisional Commercial Supdt., Northern Railway, Lucknow, the orders dated 26.6.78 passed by the Divisional Superintendent, Northern Railway, Lucknow on orders appeal, ~~dated 28.2.78 & 20.5.79~~ dated 2.9.78 passed by the Divisional Superintendent, Lucknow on review application, orders dated 20.5.79 passed by the Chief Commercial Superintendent, Northern Railway, New Delhi on behalf of the General Manager, Northern Railway, New Delhi on further review application upholding the aforesaid orders of withholding of increment are illegal, void, arbitrary, inoperative, ineffective, and the plaintiff is entitled to his annual increment withheld illegally;
- b) That a decree for Rs 242.52 as arrears of pay and allowances in favour of the plaintiff and against the defendant is passed;
- c) That the plaintiff be awarded costs of the suit against the defendants and

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- 14 -

d) he be kindly granted any other relief which the Hon'ble Court may deem fit.

*Bechar*  
Plaintiff.

Lucknow dated the  
16/2  
~~January,~~ '81.

VERIFICATION

I, the above named plaintiff, do hereby verify that the contents of paras 1 to 4, 7 to 8, 11 to 12, 15,16 and 21 of the plaint are true to my personal knowledge and those of paras 5,6,9,13,14,17,18 and 23 are partly true on personal knowledge and partly are believed by me to be true on legal advice and the rest of the paras 10,19 to 20, 22,24 to 27 are believed by me to be true on legal advice.

Signed and verified this the ...16.02... day of ...Feb....1981 in the Civil Court compound at Lucknow.

*Bechar*  
Plaintiff.

Lucknow Dated

16/2~~January~~/81.

18/2/81  
16/2/81

2/15

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IN THE COURT OF MUNSIF HAVALI, LUCKNOW

R.S. No. \_\_\_\_\_ 1981.

BECHAN RAM

....

Plaintiff.

V/S

UNION OF INDIA & OTHERS ..... Defendants.

Annexure 'A'

Statement of Pay & Allowances

& Allowances due on 1st April, 78				Pay & Allowances drawn in April, 78.					Difference of Pay & Allowance due.
HA	CA	Total	PAY	DA	HA	CA	TOTAL	Rs	
58	- 16.65	544.65	360	148	- 16.45		524.45	20.21	

Difference for the period 1.4.78 to 31.3.1979 i.e. 12 months

X 12
<hr/>
= 242.52

(Rupees two hundred forty two and paise fifty two only.)

*Bechan Ram*  
Plaintiff.

*18/1/81*

*16/2/81*

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Bechan Ram

... Plaintiff.

Versus

Union of India and others.

... Defendant.

R.S.No. 121 of 1981.

Fixed for

WRITTEN STATEMENT ON BEHALF OF THE DEFENDANT.

- Para 1. It is not denied that the plaintiff is serving as an Assistant Goods Clerk in grade Rs.260-430. Remaining allegations are denied.
- Para 2. It is not denied that a report was made against the plaintiff by Vigilance. Remaining allegations are denied.
- Para 3. It is not denied that alleged memorandum was issued. The statement of imputation as given in para is correct. Remaining allegations are denied.
- Para 4. The allegations are not denied.
- Para 5. Contents of para 5 are denied. Please see additional pleas.
- Para 6. Contents of para 6 are denied. In case of SF-11 the list of witnesses and the list of relied upon documents are not required to be supplied.
- Para 7. Contents of para 7 are denied. The documents which were considered relevant to the case were shown to the plaintiff.
- Para 8. Contents of para 8 are false and wrong and as such are denied.
- Para 9. Contents of para 9 are denied. Please see additional pleas.

Para 10. Contents of para 10 are denied. Please see additional pleas.

Para 11. Contents of para 11 are denied. Please see additional pleas.

Para 12. Contents of para 12 are not correct and as such are denied.

The clerk Incharge of Lucknow Industrial Area Siding verified wrong position of wagons placed for unloading and was found in connivance with the plaintiff.

Para 13. Contents of para 13 are not correct and as such are denied.

There was no rains during the said period and the cement wagons used to be unloaded in open platform. Lucknow Goods shed is a Depot station for storage of tarpaulins and the plaintiff could have easily demanded the tarpaulins from the Goods shed to utilize them in the unloading of cement wagons.

Para 14. ~~Cement~~ Contents of para 14 are not correct and as such are denied.

Para 15. Contents of para 15 are denied. There was a heavy congest at the Goods shed and being emergent and exception, the wagons were diverted to LIAS for unloading. In this case permission of the competent authority already existed.

Para 16. In reply to para 16 it is submitted that appeal does not lie against alleged order. As such the filing of appeal and its rejection are admitted. The legality and validity of the alleged appeal are challenged. As such the allegations in the light of aforesaid averments are denied.

Para 17. It is not denied that the plaintiff filed appeal against the Divisional Superintendent, after considering all the facts and circumstances. He communicated the fact to the plaintiff that he had already considered the appeal and rejected the same. As such the allegations of para 17 are denied.

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Para 18. Contents of para 18 are denied. The Chief Commercial Superintendent after applying his mind to the facts of the case minutely and after considering the whole file rejected the review.

Para 19. Contents of para 19 are denied.

Para 20. Contents of para 20 are denied. The plaintiff was afforded full opportunity to defend his case. The guilt was fully proved documentarily and there was no question of presumption and conjectures.

Para 21. Contents of para 21 are denied.

Para 22. Contents of para 22 are denied.

Para 23. Contents of para 23 are denied. The plaintiff is not entitled for arrear of pay and allowances as claimed in the plaint as he was found guilty of charges levelled against him.

Para 24. Denied. The validity of alleged notice is challenged.

Para 25. Denied. No cause of action accrued in favour of the plaintiff against the defendants.

Para 26. Denied. The plaintiff has less valued his suit and insufficient court fee has been paid. The valuation of the suit is Rs.4000/-.

Para 27. Denied. The plaintiff's suit is liable to be dismissed with costs.

ADDITIONAL PLEAS.

Para 28. That the plaintiff's suit is not maintainable as the claim prayed for is not justiciable.

Para 29. That the plaintiff's suit is not maintainable as the arrears of salary etc. can be claimed under Payment of Wages Act.

Para 30. That the services of the plaintiff have never been meritorious and without blame as he has been awarded the following punishments:

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- (i) Censure 4 times.
- (ii) S.O.P. 1
- (iii) Withholding of increment 2 times.

Para 31. That the plaintiff was served with a memorandum No. Vig/74/D/77/LCS-218 dated 29.9.77 for minor penalty. A statement of the imputations of misconduct or misbehaviour on which action was taken was also given to him alongwith the Memorandum. He was supplied with all the necessary documents relevant to his case before submitting his defence to the Memorandum.

Para 32. That the competent authority after satisfying himself that a prima facie case existed against the plaintiff, he was issued SF-11. He was given access to all the documents which were considered relevant to the case before he submitted his defence. The plaintiff had given a certificate to that effect. He was afforded all reasonable opportunity before inflicting the punishment.

Para 33. That it is absolutely wrong to state that the plaintiff was forced to submit his defence. While giving a certificate to the effect that he had inspected the document, he himself committed to submit his defence within 7 days. The list of relied upon documents and the list of witnesses are not required to accompany in the cases of minor penalty charge sheets.

Para 34. That the defence of the plaintiff was carefully considered by the disciplinary authority and while awarding the punishment of WIT one year, the reasons of the defence of plaintiff not found to be satisfactory were communicated to him alongwith the orders of imposition of penalty vide No. Vig/74/D/77/LCS dated 28.2.78.

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Para 35. That the decision of the disciplinary authority is not based on presumption and it is not arbitrary. The plaintiff was given full opportunity to explain the conduct. It was fully established by documentary evidence that plaintiff was guilty of the charges.

Para 36. That the alleged notice u/s 80 CPC is illegal and invalid.

Para 37. That the order was according to the rules and there was no violation of principles of natural justice.

Para 38. Under the circumstances stated above the plaintiff's suit is liable to be dismissed with costs.

*H. B. Chauria*  
1. Divl. Railway Manager,  
N.Rly., Lucknow  
On behalf of Defendant No.1.

*H. B. Chauria*  
2. Divl. Railway Manager,  
N.Rly., Lucknow.  
Defendant No.3.

Lucknow

Dated . . . 1982.

VERIFICATION.

I, S.K.Nanda, Sr. Divl. Comml. Supdt., N. Rly., Lucknow on behalf of Defendant No.1 and 3 do hereby verify that the contents of paras 1 to 23 and 30 to 35 are true to my personal knowledge based on official records maintained by the Railway Administration and those of paras 24 to 27 and 36 to 38 are believed by me to be true on legal advice.

Signed and verified this day . . . of Feb. 1982 in my office compound at Lucknow.

*S.K. Nanda*  
(S.K.NANDA)  
Sr. Divl. Commercial Supdt.  
Lucknow.

Lucknow,

Dated . . . 1982.

# वादी प्रतिवादी द्वारा किये गये दस्तावेजों की सूची

( आदेश १३, नियम १ )

न्यायालय *In the Court of Munsif Havoli Ludhiana*

नियम

वाद संख्या *R.S. no* सन *१९८१/ई०*

.....वादी *Sri Bechan Ram*

बनाम

.....प्रतिवादी *The Union of India & others*

*Bechan Ram*

वादी प्रतिवादी की ओर से वाद-पत्र के साथ पेश किये गये दस्तावेजों की सूची

—प्रथम सुनवाई के समय—

इस सूची को *Plaintiff* के द्वारा सन *१९८१* ई० के *16/2/81* दिवस को पेश किया

१	२	३			४
क्रम संख्या	दस्तावेज का अभिवर्णन और उसकी तारीख यदि कोई हो	कागज क्या हुआ			टिप्पणी
		यदि अभिलेख में सम्मिलित किया गया तो प्रदर्शन चिन्ह जो उस पर डाला गया	यदि न मंजूर हुआ तो पक्षकार को लौटाये जाने की तारीख और पक्षकार या उसके अभिवक्ता के हस्ताक्षर जिसको कागज लौटाया गया	यदि बाद के विनिश्चय के पश्चात कागज अभिलेख में रह जाये और अध्याय ३ नियम २४ के अधीन लिफाफा में बन्द किये जाने की तारीख	
1	Copy of notice by Sri Bechan Ram to M.O.G. dated 12.7.80. 4/5, 80 C.F.C.				<div style="border: 1px solid black; padding: 5px;">                     न्यायालय का नाम— <i>Munsif Havoli Ludhiana</i>                      वाद संख्या—                      पक्षकारों के नाम— <i>Bechan Ram</i> </div>
2	Post office receipt no 350 to M.O.G. dt/12.7.80.				
3	Post office receipt no 351 to G.M. dt/12-7-80.				
4	Post office receipt no 352 to Divisional Rly. manager dt/12-7-80.				
5	A.D. form no 350 to M.O.G. dt/14-7-80.				
6	A.D. form no 351 to G.M. dt/14-7-80.				
7	A.D. form no 352 to Divisional Rly. manager dt/16.7.80				
8	Letter no 74/2/77 L.S. dated 20-5-79 by S. Richard Gov Divisional Rly. manager Ludhiana to Sri Bechan Ram.				

सूची को पेश करने वाले पक्षकार या अभिवक्ता के हस्ताक्षर

*Whila*

*Bechan Ram*

Registered Ack. Due.

NOTICE  
(Under Section 80 C.P.C.)

On behalf of -

Sri Bechan Ram S/O Late Shri Jagdeo,  
Asstt. Goods Clerk, Northern Railway,  
Goods Shed, Lucknow  
resident of House No. S/3B, Sleeper Ground,  
Railway Colony, Alambagh,  
P.S. & Ward Alambagh,  
Lucknow.

Through:

Shri V.D. Shukla,  
Advocate,  
84/383, Vishwakarma Mandir Lane,  
Katra Maqboolganj,  
Lucknow.

To

1. The Union of India,  
Through the General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House,  
New Delhi.
2. The General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House,  
New Delhi.
3. The Divisional Railway Manager,  
Northern Railway,  
Divisional Railway Manager's Office,  
Hazratganj,  
Lucknow.

Dear Sir,

Under the instructions from and on behalf  
of the above mentioned client, Shri Bechan Ram, I give  
you this notice u/s 80 C.P.C. to inform you as follows:-

Shukla

1. That the aforesaid client is serving as Asstt. Goods Clerk, in Northern Railway, under the Divisional Railway Manager, in scale Rs 260-430 RS on pay Rs 380/- per month. His work throughout his whole term of service has been meritorious and without blemish.

2. That while working as Assistant Goods Clerk, at Lucknow Industrial Area Siding a team of Vigilance Inspectors after making a surprise checking on 24 & 25.10.75 at Lucknow Industrial Area Siding reported against my client to the Divisional Railway Manager, Northern Railway, Lucknow without disclosing the contents of the report to him. He was also not supplied with copies of statements of prosecution witnesses and also those of his own and as recorded by the said Vigilance Inspectors in the preliminary enquiries although the same were relied upon in the departmental enquiry.

3. That a memorandum No. Vig/74/D/77/LCS-218 dated 29.9.1977 was illegally issued to my client on the basis of the aforesaid report on standard form No.11 for imposition of minor penalties by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow with the following allegations against him :

*Shukla*

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" Statement of imputations against Shri Bechan Ram,  
Goods Clerk/L.I.A.S., Lucknow  
...

Shri Bechan Ram S/O Shri Jagdeo while working as a Goods Clerk in L.I.A.S. in October, 1975, failed to maintain absolute devotion to duty inasmuch as he had shown wagon No. ERC 10077, ERC 63913, ERC 41183, ERC 23814, ERC 67971 and SEC 23165 holding bags of cement booked ex CUK to LKO as placed in position for unloading on 24.10.75 at 10/30 hrs, 10.30 hrs, 10.30 hrs, 10.30 hrs, 11.00 hrs, and 11.00 hrs respectively but the consignee did not turn up for unloading and these wagons were shown as for want of consignee in 20 hrs. stock report. On 25.10.75, consignee got these wagons released at 7.00 hrs, 11.00 hrs, 10.45 hrs., 10.45 hrs, 14.30 hrs <sup>and 14.30 hrs.</sup> respectively. Shri Bechan Ram with the connivance of Shri Moti Lal, CGC/LIAS got these wagons verified as out of position which could only be for some personal gain, which resulted in ultimately heavy loss to the Railway Revenue. Shri Bechan Ram gave undue benefit to the party and saved him from the payment of demurrage due.

The above acts of omission and commission on the part of Shri Bechan Ram, GC/Lucknow are serious and he acted in a manner unbecoming of Railway servant. His action adversely reflect upon his conduct. He has thus failed to maintain absolute integrity and devotion to duty and has thus contravened Rule No.3(1), (ii) (iii) of the Railway Service Conduct Rules, 1966."

*Shute*

4. That the said memorandum required my client to submit his reply, if any, within 10 days from 8.10.77, the date of its receipt.

5. That the Sr.D.C.S., Lucknow neither supplied him with a copy of the said report dated 25.10.75 of the Vigilance Inspector nor other relevant records relied upon by him. My client was also not afforded reasonable opportunity to cross examine the Vigilance Inspector and other prosecution witnesses concerned in the instant case in a confronted or any other enquiry and the Disciplinary authority blindly relied upon the said report and issued the aforesaid memorandum dated 29.9.1977 after a lapse of about 2 years which appears to be an afterthought or pressure or fear of the Vigilance Inspector.

6. That along with the aforesaid memorandum dated 29.9.1977, it was mandatory on the part of the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow, the Disciplinary authority, to supply my client with the copies of 'Articles of charge', a list of documents relied upon and a list of the prosecution witnesses', if ~~xxx~~ any, to prepare his reply. But he was not furnished the requisite documents by the said authority.

*W. L. D. S.*

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7. That my client requested the Disciplinary authority to allow him to inspect other relevant documents but he was denied access to such records without giving reasons therefor.

8. That my client was forced to submit his reply dated 31.1.78 to the aforesaid memorandum dated 29.9.77 under threats and pressure without supplying him the copies of Articles of Charge, relied upon documents and a list of witnesses.

9. That the Sr.D.C.S. getting prejudiced against my client issued a notice No. Vig/74/D/77/LCS dated 28.2.78 imposing upon my client a penalty of withholding of his increment against raising his pay from Rs 360/- to Rs 370/- in scale Rs 260-430 RS due on 1.4.78 for a period of one year without the effect of postponing future increments, without applying his mind to the facts and circumstances of the case, without affording him reasonable opportunity of defence, without examining the illegalities committed in the conduct of enquiries, without supplying my client with a copy of his 'own findings' along with the aforesaid notice against the alleged statement of imputations.

9A. That the Disciplinary authority failed to examine that the alleged charge of omission and commission for some personal gains with the

*Shukla*

A 6/6  
P/59

connivance of concerned Chief Goods Clerk is a 'serious criminal offence'<sup>and ✓</sup> without establishing the said charge against my client by the prosecution beyond reasonable doubt after affording reasonable opportunity to him in the conduct of enquiry, the aforesaid arbitrary decision dated 28.2.78 based on presumption and mere conjectures is quite wrong and cannot sustain the said charge, if any, in the eye of law.

10. That it is wrong to allege that all the wagons containing bags of cement were shown as 'out of position.' The specific remarks were given by my client as under :

' Wagon No. ER 10077, NR 63913, NR 41183 and SR 23814 were in open platform at Bhoosa shed, ER 67971 out of platform and ~~XXXXXXXXXXXX~~ SE 23165 opposite contents (Lime) in Lime shed.'

11. That my client was to perform intermittent duty from 7 to 11/- hrs and 16/- to 20/- hrs and in between the spells of duties one Clerk-in-Charge of Lucknow Industrial Area Siding performed duty who totally agreed with the position of the aforesaid wagons on 24.10.75 as shown by my client. The aforesaid Clerk-in-charge showed the position and release of wagons on 25.10.75 with his own handwriting independently in the Wagon Transfer Register without the least disagreement with the remarks of my client.

*Sharma*

12. That vide publication in the Northern Railway Gazette No.13 of 1.7.75, the monsoon ~~provides~~ periods for Northern Railway were declared from July to October under the heading 'Monsoon Notice' and all concerning employees including my client were bound to follow the instructions contained in the said notice. He was liable to be seriously taken up for any departure from the said notice. The action of my client was also supported by C.M.I. and Goods Inspector concerned. The contention of the Senior Divisional Commercial Superintendent, that there are no monsoons in October month is quite contradictory to the afore-said G.M's notice. My client could not foresee a clear weather on 24.10.75 and had he acted independently without following the instructions of G.M's notice and per chance the rains would have set in that day, what would have been the fate of my poor client and who would have spared him from the responsibilities for the loss and deterioration to the consignment of cement which belonged to Government. The Senior Divisional Commercial Superintendent had also not issued any circular prior to the date of incident requiring my client to act against the G.M's instructions. He has also overlooked the fact that Tarpaulins were not available in the shed to cover up the cement that day and it was only in the interest of administration to prevent the heavy claims as per circular No. CCB/1/POC/Policy Cement dated 20.1.71 that the cement was not unloaded in the open platform.

A 6/8

6/1

13. That Stock Report blindly relied upon by the Disciplinary authority was quite wrong. It was neither prepared by my client nor relevant records were consulted before showing any reasons for detention to stock by the staff concerned who prepared it. Out of 45 = 49 load on 24.10.75, 18 = 23 cement wagons were received and placed at 10/30 to 11/- hrs on 24.10.75 i.e. 11 = 11 in Bhoosa Shed and 10 = 15 including 2 = 2 Urea in Lime shed. The same position was recorded by my client in the Wagon Transfer Register as well as in Position Book. The capacity of Shed is 11 in Lime Shed and 6 in Bhoosa Shed in terms of 4 wheelers. So the Disciplinary authority totally failed to examine the correct position of wagons in the Shed on 24.10.75 and acted wrongly in making a decision against my client without giving him an opportunity to prove otherwise in an enquiry.

14. That the Sr.D.C.S. also failed to examine that the cement consignments were not booked to Lucknow Industrial Area Siding but they were booked to Goods Shed Lucknow and placed for unloading at Lucknow Industrial Area Siding without prior sanction of the competent authority and ~~witout~~ against railway rules.

15. That my client felt aggrieved by the order dated 28.2.78 of the Sr.D.C.S., Northern Railway, Lucknow and he preferred an appeal dated 25.4.78 against it to the Divisional Superintendent, Northern Railway, Lucknow to consider his case in the light of the facts and

*White*

A 6/9

- 9 -

and circumstances of the case, ~~without issuing speaking authority by a notice No. Vig/74/D/77/LCS dated 26.6.78 rejected orders and without giving reasons therefor rejected the appeal of my client.~~ ~~review of application of my client by an order No. 2~~

~~Vig/74/D/77/LCS dated 20.5.79.~~

16. That aggrieved by the aforesaid orders dated 26.6.78 of DS/Lucknow, my client submitted a petition dated 5.8.78 for review to the DS, Northern Railway, Lucknow drawing attention of the said authority to the rules and instructions laid down in Northern Railway Gazette No. 13 of July 75, notifying the monsoon season from July to October., Railway Board's letter No. 70-TG/IV/816/NR/UGC dated 18.9.70 directing staff to unload cement consignments in covered shed instead of open platforms and to DS/Lucknow's letter No. TG/64/DOS/6/75 dated 10.9.75 conveying orders to transfer and unload 10 wagons ( 5 of cement and 5 of fertilizers from Goods Shed to Lucknow Industrial Area Siding. The cement consignment under dispute were originally booked to Lucknow Goods Shed but were transferred to Lucknow Industrial Area Siding and the requisite quota of 10 wagons per day was completed on 24.10.75 by unloading 10 out of 18 wagons. The orders were followed by my client in toto. But the Divisional Superintendent, Northern Railway, Lucknow did not pay any heed to these things and by a notice No. Vig/74/D/77/LCS dated 2.9.78 (through the Sr.DCS/Lucknow) upheld his previous orders dated 26.6.78.

17. That my client felt aggrieved by the aforesaid orders dated 2.9.78 of DS/Lucknow and he submitted a petition dated 13.12.78 to the G.M./Northern Railway, New Delhi. The

*18/ Lucknow*

A 6/10  
8/3

Chief Commercial Superintendent, Northern Railway, New Delhi who examined my client's review application on behalf of GM/NR New Delhi without applying his mind to the facts and circumstances of the case, without issuing speaking orders and without giving reasons therefor rejected the review application of my client by an order No. Vig/74/D/77/LCS dated 20.5.79.

18. That the DS/NR Lucknow, CCS/NR, New Delhi, the appellate and reviewing authorities totally failed to apply their mind to the facts and circumstances of the case. They rejected the appeal and review application of my client without examining the illegalities committed in the conduct of enquiries by the Sr. DCS/Lucknow without issuing speaking orders and giving reasons thereof and without supplying a copy of their own findings along with the notices of their decisions blindly upheld the orders of the Sr. DCS/N. Railway, Lucknow.

19. That neither my client has been afforded the reasonable opportunity of defence nor the charge, if any, could be established by the prosecution beyond reasonable doubt against him. The punishment imposed upon him is based on mere presumptions and conjectures.

20. That my client feels dissatisfied by the said decisions of Sr. D.C.S., Northern Railway, Lucknow and also those of DS/Lucknow and C.C.S./ N. Railway, New Delhi.

① P 9/11  
A 6/11

- 10 -

Their orders are illegal, arbitrary and perverse and being without application of mind, without speaking orders and not supported by reasons.

I, accordingly, give you this notice requiring you to re-consider the whole case of my client and after examining the impugned orders in the light of paras 1 to 20 above, cancel the said orders of withholding of increment dated 28.2.78 passed against my client by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow; orders dated 26.6.78 passed by the Divisional Superintendent, Northern Railway, Lucknow on appeal; Orders dt. 2.9.78 passed by DS/LKO on review \* and orders dated 20.5.79 passed by Chief Commercial Superintendent, Northern Railway, New Delhi on behalf of G.M., Northern Railway, New Delhi on review application, within two months from the date of receipt of this Registered notice and cancel the said orders with full emoluments, benefits and privileges admissible to him under rules failing which my client will be painfully compelled to seek his redress against you through Law Courts at your risk and expense.

Yours faithfully,

Lucknow  
12<sup>th</sup> July June, 1980.

*V. D. Shukla*  
( V.D. Shukla )  
Advocate.

*Bech*

In the Court of Munsif Haroli  
Ludhiana

(2)

Sri Bechan Ram ———— Diff 15

Tharwan of India 20th ———— Diff  
R.S. no 781.

क्रमांक/No. 350 28/12

किसी एक डाक टिकटों का मूल्य रु. 3  
Amount of Stamps affixed Rs. 3

एक रसिद का नाम  
Received by Bechan Ram Insured\*

पानेवाले का नाम  
Addressed to  
The Union of India

बोमे की रकम (अंकों में) Through the Principal Manager  
Insured for Rs. (in figures) (in words)

बोमे शुल्क रु. Delhi  
Insurance fee Rs.

पानेवाले का नाम व पता  
Name and address of sender  
Delhi

अपघटन, निर्देशिका में दी गई  
अर्थात् के अधीन जारी की गई  
Issued subject to terms and conditions in P. O. guide

पानेवाले का हस्ताक्षर  
Signature of sender

29 21/1/81  
—————  
16/2/81

Shula

In the Town of Haridwar  
Lucas

Mr. Bechar Ram - Deft

The Union of Insurers - Deft  
R. S. no of 81

क्रमांक/NO. 126/13

उत्पाए गए डाक टिकटों का मूल्य रु. 351  
Amount of Stamps affixed Rs. 351

एक निश्चित बीमा\* 351 पैसे 60 पैसे  
Registered Insured\* 351 प्राप्त किया 60

भेजनेवाले का नाम The General Manager  
Addressed to North Eastern Railway

बीमा की रकम (अंकों में) 351  
Insured for Rs. (in figures) 351 (in words)

बीमा शुल्क रु. 16 पैसे 29 पैसे (शब्दों में)  
Insurance fee Rs. 16 (in words)

भेजनेवाले का नाम व पता  
Name and address of sender

डाकघर निर्देशिका में दी गई शर्तों के अधीन जारी की गई  
Issued subject to terms and conditions in P. O. guide

भेजनेवाले का हस्ताक्षर  
Signature of Bechar Ram Official

27 21/1/81  
16/29/81

18/1/81

In the care of newsy Haroh (5)  
Lugana

Mr. Bechar Ram — — — DfB  
84

The unions of India — DfB  
R.S, no 981.

प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGMENT	
*एक रजिस्ट्री बीमा पत्र/पोस्टकार्ड/पैकेट/पासल प्राप्त हुआ	{ क्रमांक No. 20350 12/11/80
*Received a Registered Letter/Postcard/Packet/Pargal Insured The Union of India	
पाने वाले का नाम Addressed to (भारत) कार्यालय	Through the General Manager, 15 Baroda Railway, Head quarters office, Baroda House NEW DELHI
† बीमे का मूल्य (रुपयों में) † Insured for Rupees 4000.00	
वितरण की तारीख Date of delivery } 1978	पाने वाले के हस्ताक्षर/Signature of addressee
*अनावश्यक को काट दिया जाए *Score out the matter not required.	
†केवल बीमा के सुअर्थों के लिए दिक्कत insured articles only.	

29/2/1/81  
16/2/81

18/1/81

In the Court of Munsif Haroh (7)  
Lucknow

Dr. Beshan Ram - off

The Union of India - Dept  
R.S. no 0781

A 6/17

**प्राप्ति स्वीकृति (सहीद) ACKNOWLEDGMENT**

एक रजिस्ट्री व/वा पत्र/पोस्टकार्ड/पैकेट/पार्सल प्राप्त हुआ  
\*Received a Registered Letter/Postcard/Packet/Parcel  
Insured No. 19/11/81

पाने वाले का नाम }  
Addressed to (name) } Northern Railway  
Divisional Railway Manager  
Muzaffargarh, Lucknow.

बीमा का मूल्य (रुपयों में)  
Insured for Rupees

वितरण की तिथि } ..... 197  
Date of delivery } 16/11/81

पाने वाले के हस्ताक्षर/Signature of addressee  
[Signature]

\*अनावश्यक को काट दिया जाए \*Score out the unnecessary required.  
†केवल बीमा वस्तुओं के लिए †For insured articles only.

27 21/11/81  
16/11/81

18/11/81

In the Court of Munsif Javed  
Lucknow

Shri Bechan Ram - - - - - 1/16

The Union of Indians - - - - - 1/16  
R.S., vs 1/81-

R/24/5/28

NORTHERN RAILWAY

A 6/78

~~15~~

8

No: Vig/74/D/77/LCS

Divisional Office,  
Lucknow

20th May, 1979

Shri Bechan Ram,  
A.C.C./Lucknow.

Sub : Review petition against the punishment of  
WIT one year imposed by Sr.D.C.S./LKO-

In terms of Rule 25 of RS (D&A) Rules, 1968, the Chief  
Commercial Supdt., New Delhi has carefully considered your Review  
petition against the penalty of WIT one year imposed by Sr.D.C.S.  
Lucknow vide NIP No. Vig/74/D/77/LCS dated 28.2.1978 and has  
rejected the same.

(S.L. Chand)  
for Divisional Rly. Manager,  
Lucknow.

29 21/4/81  
16/2/81

18/1/81

वादी प्रतिवादी द्वारा पेश किये गये दस्तावेजों की सूची

न्यायालय Addl. JUDGE V स्थान Lucknow आदेश १३, नियम ९ जिला

वाद संख्या 121 सन १९८१ ई०

X  
✓

..... वादी  
Bechan Ram..... वादी

बनाम

..... प्रतिवादी  
Union of India and others..... प्रतिवादी

..... वादी/प्रतिवादी की ओर से वाद-पत्र के साथ पेश किये गये दस्तावेजों की सूची

प्रथम सुनवाई के समय

इस सूची को P.M. .... ने आज सन १९.८.२ ई० के 3.....के 24. दिवस को पेश किया।

१	२	३	४
दस्तावेज का अभि- वर्णन और तारीख याद कोई हो	कागज क्या हुआ		
	यदि अभिलेख में सम्मिलित किया गया तो प्रदर्शन चिन्ह जो उस पर डाला गया।	यदि नामजुद हुआ तो पत्र काग को लौटाये जाने की तारीख और पत्रकार या उसके अभिवक्ता के हस्ता. जिसको कागज लौटाया	यदि वाद के विनिश्चय के पश्चात कागज अभिलेख में रह जाय और अध्याय ३ नियम २४ के अधीन लिफाफा में बन्द किया गया तो लिफाफा में बन्द करने की तारीख
① Memo No Vig/74/D/77/Les-218 of 29/9/77			
② Reply of memo dt. 29/9/77 by Sri Bechan Ram in 2 pages			
③ Copy of letter No eeB-/POC/Poetry Cement-30/11/71			
④ Remunishment notice No Vig/74/D/77/Les of 28/2/78 from S.D. Chand. Sr DCS/Lko			
⑤ Appeal dated 25/4/78 by Bechan Ram to Dist. Subd. N.R., Lko			
⑥ Reply to appeal No Vig/74/D/77/Les dt. 26.6.78.			
⑦ Appeal (renewal) dated 5/8/78 by Sri Bechan Ram (2 pages) to Sr S.D. Chand. Sr DCS/Lko.			
⑧ Reply of renews dated 2/9/78 No Vig/74/D/77/Les by S.D. Chand Sr DCS/Lko			
⑨ Appeal to G.M., N. Rly, New Delhi, dated 13-12-78 by Sri Bechan Ram in 4 pages.			
⑩ Copy of surprise inspection dated 10/9/75 of goods shed/Lko by DCS/M.R., Lucknow			
⑪ Copy of 'Monsoon Notice' of N. Rly Gazette No 13, New Delhi issued on 1.7.1975 Page 15. by CES/New Delhi			

न्यायालय का नाम— In the Court of Addl. Judge V/Lko.  
वाद संख्या— 121/81  
पत्रकारों का नाम— Bechan Ram V00948106

Bechan Ram

सूची पेश करने वाले पत्रकार या अभिवक्ता के हस्ताक्षर  
24/3/82

Standard Form of Memorandum of charge for imposing minor penalties  
[Rules 11 of RS (D&A) Rules, 1968]

No. .... VIG/74/D/77/LCS-218

Name of Railway Administration ..... Divl. Supdt's Office,

Place of issue ..... Lucknow.

Dated. 29th Sept. 1977

MEMORANDUM

Shri. Bechan Ram (Designation) GC/LIAS (Office in which working) Lucknow. is hereby informed that the President/Railway Board/undersigned propose(s) to take action against him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. Shri. Bechan Ram is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager, .....xxxx..... Railway, so as to reach the said General Manager)\* within ten days of receipt of this Memorandum.

3. If Shri. Bechan Ram fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri. Bechan Ram ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri. Bechan Ram

†(By order and in the name of the President).

Signature..... (F. J. Correya)

Name..... Sr. Divl. Comml. Supdt., Lucknow.

Name and designation of the Competent Authority.....

*cc below*

To

Shri. Bechan Ram, GC/LIAS Lucknow Thro. GS/Lucknow. (Name, designation and office of the Railway Servant).

\* To be retained wherever this Memorandum is issued by the Railway Board/the President. Where the President is the disciplinary authority.

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STATEMENT OF IMPUTATIONS AGAINST SHRI BECHAN RAM, GG/LIASIKO

Shri Bechan Ram S/O Shri Jag Dev while working as a goods clerk in LIAS in October, 1975 failed to maintain absolute devotion to duty inasmuch as he had shown wagon No. ERC 10077, NRC 63913, NRC 41183, SRG 23314, ERC 67971 and SEC 23165 holding bags of cement booked ex-cum loco as placed in position for unloading on 24.10.75 at 10.30 hrs, 10.30 hrs, 10.30 hrs, 10.30 hrs, 11.00 hrs and 11.00 hrs respectively but the consignee did not turn up for unloading and these wagons were shown as for want of consignee in 20 hrs Stock Report. On 25.10.75 consignee net these wagons released at 7.00, 11.00, 10.45, 10.45, 14.30 hrs and 14.30 hrs respectively. Shri Bechan Ram with the connivance of Shri Moti Lal CGC/LIAS got these wagons verified as out of position which could only be for some personal gains, which resulted in ultimately heavy loss to the Railway Revenue. Shri Bechan Ram gave undue benefit to the party and saved him from the payment of demurrage due.

The above acts of omission and commission on the part of Shri Bechan Ram, GG/Lucknow are serious and he acted in a manner unbecoming of railway His actions adversely reflect upon his conduct. He has thus failed to maintain absolute integrity and devotion to duty and has thus contravened Rule No. 3(1)(ii)(iii) of the Railway Service Conduct Rules, 1966.

Sd/-  
( F.J. Correya )

Senior Divisional Commercial Superintendent,  
Lucknow.

T 28 / 1 (2)

A/S

The Sr. Divisional Commercial Superintendent,  
Northern Railway,  
Lucknow.

Sir,

Ref: Your memorandum No. Vig/74/D/77/LCS-  
218 of 23-9-1977

In reply to your memorandum under reference I have to submit as under for your kind consideration :

1. That on 24-10-75 I was working as the position Clerk at LIAS and my duty hours were from 7/- to 11/- hrs and 16/- to 20/- hrs.
2. That out of 45-49 load the same day 18-23 cement wagons were received and placed 10/30 to 11 on 24-10-75 i.e. 11-11 in Khoosa Shed and 10-15 including 2-2 Uria in Lime Shed. The same were recorded by me in wagon transfer Register as well as in Position Book. The capacity of Shed is 11 in Lime Shed and 6 in Khoosa Shed in terms of 4 wheeler.
3. That it is not correct as alleged that all wagons in question were out of position but the actual remarks were given against each wagons regarding its position of placement i.e. wagon Nos. ER 10077, NR 63913, NR 41183 and SR 23814 were in open platforms at Khoosa Shed, ER 67971 out of platform and SE 23165 opposite contents (Lime) in Lime Shed.
4. That according to existing instructions the remarks given by me were verified by the immediate superior i.e. AGI/LIAS.
5. That in case my remarks were with the malafide intention and with the connivance of AGI/LIAS as alleged by the VIs the Clerk Incharge (CIC) of LIAS who performed my duties during my broken duty hrs i.e. from 11/- to 16/- on same day instead of disagreeing with my remarks as stated in para 3 above recorded the wagons in question in position next day i.e. on 25/10/75 after being repositioned by Shunting Engine. The timing of position and released were given by him in wagon transfer register i.e. not by me, this fact is proof that my action was quite correct and position shown in the records was actual.
6. That it is not correct that the wagons in question were not unloaded because the party concern did not turned up but they were not unloaded in open platform for want of proper protection i.e. Tarpoulin etc. which were not available at LIAS. This was only in the interest of preventing the claims as per circular No. CCB/1/POC/Policy cement dated 20-1-71 that the cement consignment should not be unloaded in open platform is attached.
7. That the 20 hrs stock Report was neither prepared by me nor perhaps the relevant record were consulted before showing ~~xxx~~ any reason for the detention to the stocks hence this controversy arised.

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8. That the VIs were present on 24/10 and 25/10/75 but they did not like to know the actual ground position and wagons position where these wagons were placed, only they alleged the charges on the base of stock diary.
9. That I, <sup>am</sup> shocked to find the V.I.'s remark, the remark passed on wagon transfer register regarding the Demurrage against the wagon in question after seizing the record in their own possession. I am unable to understand, when the demurrage were due, why they did not bring in the knowledge of GS or in your honour before delivery when delivery was affected after seizing the records. It is all nothing but fabrication of the case simply to harass the dutiful persons.
10. That it is absolutely incorrect to say that any benefit was given to the party to save them from payment of demurrage but the entire action was according to the existing instruction as well as in the interest of Rly Administration.
11. That whatever facts were there the same were recorded by me in relevant record without any interest the same were agreed upon as well as verified by my superiors i.e. C/C/LIAS and AGI/LIAS as per working procedure.
12. That it is much painful to have such a serious acquisition against my integrity and devotion to duty even when I have acted according to rules by observing normal working procedures. That facts stated by me in your honour.
13. It is not out of question to say that the cement consignment was not booked to LIAS but it were booked to LKO Goods Shed placed for unloading at LIAS without any order of your office, but how it was get released in the interest of administration. It was very well known by the GS/LKO and Sr.DCS.

At last I request your honour Sir, if not satisfied with my explanation, please give me an opportunity for personal hearing.

Submitted for your sympathetic consideration.

DA: one

Yours faithfully,

Dated: 31-1-78

( Bechan Ram )  
AGC/NR/LKO

Recd  
lr  
01/02/78

No. CCB.- 1 / POC/ Lolicy Cement 20 /1/71

All S.M.S.

C/- CES. (C) Barado House 16/POC/43

C/- CES /Rates 9 RCA BLDG. 185-1 Policy

C/- CES(Claims) Barado House.

CS. 3 JUC/768-11-68 of 22/9/70.

Sub:- Unloading of cement wagons in covered shed.

Ref:- Lly. Board letter No. 70/IG IV/816/N.R. U.C.C. of  
18/9/70

-----  
As suggestion made by Dr. F.P. Antimember N.R. U.C.C. at  
the 28th meeting of the National Rly. users consultative  
council is reproduced below for necessary action.

He also desired that unloading of cement bags should be  
done in covered sheds only, not left in open Platform. Please  
see that this instruction be rigidly complied with.

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11/2/78

22

Northern Railway

Orders of imposition of penalty under Rule 6 (IV) of the Railway Servants Discipline Rules (D&A) RULES, 1968.

No. VIG/74/D/77/LCS.  
Date 28 February, 1978.

Divisional Supdt's Office,  
Lucknow.

Shri Bechan Ram  
AGC/Lucknow  
Thro' GS/Lucknow.

I have carefully considered your representation dated 31.1.1978 in reply to the Memorandum of charge sheet No. VIG/74/D/77/LCS-218 dated 29.9.1977. I do not find your representation to be satisfactory due to the following reasons :

"The plea of Shri Bechan Ram is not acceptable. As pointed out by CMI and GS there was no difficulty in unloading cement consignments on the open platform. The Goods Supdt's plea that the month of October is a rainy weather is not correct. There are no rains in October and hence the argument that the cement consignments could not be unloaded on the open platform is not acceptable. The wagons should have been unloaded and the consignments covered with tarpaulins.

Moreover its position reported in 18 hrs. stock report goes to prove that initially these wagons have been considered properly placed and had been p.t.o.

I, therefore, hold you guilty of the charge(s)

as per memorandum.

levelled against you and have decided to impose upon you the penalty of withholding of increment. Your increment raising your pay from Rs 360/- to 370/- in scale Rs 260-430 which was due on 1.4.78 is withheld for a period of one year with/without the effect of postponing future increments.

2. Under Rule 18 of the Railway Servants (D&A) Rules, 1968, an appeal against these orders lies to DS/LKO provided --

- i) the appeal is submitted through proper channel within 45 days from the date you receive the orders and
  - ii) the appeal does not contain improper or disrespectful language.
3. Please acknowledge receipt.

( S.D. Chand )  
Senior Divisional Commercial Supt., Lucknow.  
(Signature of Disciplinary Authority)

(6)

5/23

7/10

The Divisional Superd.,  
M. Rly, Lucknow.

Subj: Appeal against punishment notice  
No: VI G/24/D/77/LCS of 28/2/78

Sir,

Most humbly I beg to explain my feelings that the punishment notice was a bolt from Blue. It is strange that when my higher ups were fully satisfied with my version I worked all along instructions and satisfaction of my superiors by which I am bound to work as per Rly rules and instructions issued from my superiors. As such I can not be held guilty on any account.

I, therefore, request you for personal hearing before your gracious authority before deciding my appeal.

dt 25/4/78

Yours faithfully

Bechari

Perd

ld

25/4/78

27/6/78  
7  
524  
NORTHERN RAILWAY

CONFIDENTIAL

NO. VIG/74/D/77/LCS

Divl. Supdt's Office, LUCKNOW.

Dated, the 26<sup>th</sup> June, 1978.

Shri Bechan Ram,  
Asstt. Goods Clerk,  
Northern Railway, LUCKNOW.

Re: Your appeal dated 25.4.78 against the orders of Sr. DCS imposing a penalty of W.I.T. one year vide NIP No. Vig/74/D/77/LCS dated 28.2.1978

\*\*\*\*\*

In terms of Rule 22(2) of the Railway Servants (D&A) Rules, 1968, the Divisional Superintendent, the appellate authority, has carefully considered your appeal dated 25.4.78 against the orders of Sr. Divl. Comml. Superintendent, Lucknow, imposing upon you a penalty of W.I.T. one year vide NIP No. Vig/74/D/77/LCS dated 28.2.1978 and has observed as under :-

- a) The procedure laid down has been complied with;
- b) The findings of the disciplinary authority are warranted by the evidence on record;
- c) The penalty imposed is adequate.

Rejecting the appeal, the Divisional Superintendent, Lucknow, has passed the following orders :-

"I had given personal hearing to Sh. Bechan Ram as requested by him. His plea before me during personal hearing is not acceptable in the light of his own statement where he mentioned "as per my position shown in the Wagon Transfer Register these 8 Wagons except Wagon No. WR 62940 & NR 18401 were on open platform and hence shown out of position and as such no Demurrage is due from the time of original placement on 24.10.75 till replaced on 25.10.75".

He has, therefore, been rightly punished. There is no procedural irregularity. Appeal is Rejected."

( S. D. CHAND )

for Divisional Superintendent  
Lucknow

(8) 25/11

The Divisional Supdt.  
N. Rly. Lucknow.

Sub: - appeal for review of punishment notice No. VI6/10/77  
L.C.S. Dated, the 26th June, 1978.

Sir,

With reference to your punishment notice, I beg to submit my defence against the punishment given to me as under :-

That I have been wrongfully punished though I have not violated any rules and procedures and have performed my duty with full integrity and devotion in terms of service conduct Rule No. 3(2) (i)(ii) of 1966. Extracts of Rly. rules and procedures are enclosed herewith in support of my case for your perusal.

(i) That vide Northern Railway gazette No. 13 of July 1975 page No. 15 & 16 serial No. 87-1, The monsoon season over N.Rly. have been notified from July to October and vide serial No. 87-2

(iv) it has further been notified that the damagable goods must be unloaded in cover shed and for further protection these should be covered by tarpauline even when unloaded in covered shed.

Extract enclosed for ready reference as enclosure No. 1.

There was no proper protection available at LIAS as explained by me vide para No. 6 in my reply of 29/9/77. :-

(ii) That the Rly board, vide their circular and letter No. 70-TG/TV/816/N.R./U.C.G. of 18/9/70 have already directed that the cement consignment should be unloaded in covered shed and not on open Plat Form. Extract enclosed for ready reference as enclosure No. 2.

(iii) That the consignments of cement were originally booked to Lucknow goods shed and were unloaded at LIAS under the order of the DOS conveyed vide your office Order No. TG/64/DOS/6/75 of 10/9/75 with the order that 10 wagons (5 wagons of cement and wagon as fertilizer) should be transferred from Lucknow goods to LIAS for unloading. Thus the quota of 10 wagons was already completed on 24/10/75 by unloading of 10=18 wagons. Extract

9

25/2

(2)

Order enclosed for ready reference as enclosure No. 3.

(1) That I performed my duty strictly according rules which are still in force and my action was quite correct which was duly verified by my superiors.

In view of the above noted facts and circumstances, I plead myself not guilty and request your kind haunour to withdraw the punishment of 1 year W I T.

With Kind regards.

Your faithfully.

*Bechan Ram*

(BECHAN RAM)

Asstt. Goods Clerk.

N. Rly. Lucknow.  
U.P.

Dated:- 5/8

*DA*  
*3*

*Recd*  
*for*  
*08/8/58*  
*for As/uxo*

10

NORTHERN RAILWAY

8-26

Confidential  
No: Vig/74/D/77/LCS

Divisional Supdt.'s Office,  
Lucknow: September 2, 1978

Shri Bechan Ram,  
A.G.C.  
N.Rly., Lucknow.

through G.S./Lucknow.

RE : Your appeal dated 5.8.1978 addressed to  
D.S., Lucknow.

Divisional Superintendent has already considered your appeal and his orders given on your appeal dated 25.4.78 preferred against the orders of Sr.D.C.S. imposing a penalty of W.I.T. one year vide N.I.P. No. Vig/74/D/77/LCS dated 28.2.1978, has already been communicated to you, vide this office confidential letter of even number dated 26th June, 1978. No further appeal lies to D.S. now.

*ra*

(S.B. Chand)  
Senior Divisional Comml. Supdt.,  
Lucknow.

*Q. deliver to [unclear] 21/9.*

(11) 27  
~~28~~

To  
The General Manager (Commercial)  
Northern Railway,  
Baroda House,  
New Delhi.

14/8/75

Respected Sir,

Sub: Appeal against punishment notice  
No. Vig/74/P/77LCS dated 2-9-1978  
awarded by Divl. Supdt., Lucknow.  
=====

Original memorandum  
+ statement of imputation  
of charges.

Most humbly and respectfully I beg to submit that

2) CCS circular  
not to unload  
cement in open

I have been wrongly punished by Sr. D. C. S./LKO subsequently  
on my appeal the Divisional Superintendent, Lucknow  
confirmed, then I again applied to DS/LKO for the revision  
of case but unfortunately Divisional Supdt., rejected my  
appeal hence I am compelled to lodge my appeal before  
your honour for justice.

3) Gazette No 13  
Page 15 of July  
1975

4) Copy of wagon  
transfer register

The facts are as under :-

5) Copy of 18 hrs  
Performance  
Stock report

1. I am a Asstt. Goods Clerk in scale of 260-430.

6) Remarks re  
each wagon  
& its verification

2. I was working at LIAS (a siding of Lucknow Goods  
Shed). This siding is ment for mineral only not for

7) CMR 135  
report copies  
as cited in  
G.D.S replies.  
the CMR 135  
says there was  
no difficulty  
in unloading  
wagons in open

Bagging consignment, however there are only two open sheds  
one for Bhoosa and one for Lime thus there is no provi-  
sion for the unloading of bags consignment.

3. In the month of September 1975 Sr. DOS inspected  
the goods shed Lucknow on 10/9/75 and found poor release  
of cement and fertilizer at Lucknow Goods Shed. Therefore  
he ordered that 5 wagons cement and 5 wagons fertilizer  
should be placed and release at LIAS due to non-avail-  
ability of suitable space which confirmed vide letter  
No. DOS/LKO on 10/9/75 in para 7, copy of extract attached  
for ready reference.

contd..2

That on 24-10-75 I was working at LIAS as position Clerk from 7/- to 11/- and 16/- to 20/- hrs. My broken duty hours. The Senior Goods Clerk performed my duty of ~~all~~ unloading <sup>and</sup> work. position

5. That on 24-10-75 18=23 wagons were placed at 10/30 to 11/- hrs i.e. 11 wagons in Bhoosa shed and 8=13 wagons in lime shed excluding 2 wagons Urea in lime shed. These were recorded by me in position book and wagons transfer register, according to the capacity of shed, actual position shown against each wagon regarding its placement i.e. wagon No. ER10077 NR 63913 NR 41183 and SR 23814 were in open platform at Bhoosa shed ER 67971 out of platform and SE 23165 opposite goods on ground in lime shed then I made over the charge to Senior Goods Clerk, he and AGI/LIAS checked the physical position of all wagons and verified in wagons transfer register. It was the duty of Sr. G. C. and AGI/LIAS to correct if any work was done by me wrong, it is procedures of all services.

(b) The capacity of shed - 11 wagons in lime shed and 6 wagons in Bhoosa shed only in terms of 4 wheelers.

6. On 25/10/75 a vigilance party checked LIAS and took a statement from me on same date.

Defence

1. It is not correct as alleged that all wagons were shown out of position in wagons transfer register. But actual remarks were given against each wagon and these remarks were verified by CIC and AGI/LIAS as per procedures of Rly, my responsibility was seized.

2. That in case of my remark were with malafide

attention and with the connivance of AGI/LKO as alleged by VI the Senior Goods Clerk who performed my duty during my broken duty hours the position should be checked up and given <sup>up</sup> in a position <sup>of its own</sup>, but he recorded the question wagons in position for unloading on 25/10/75 after repositioned by shunting Engine.

If I am responsible for recording the position, he would be responsible for one day. I was working under his supervision whereas he was independent. But it is not out of question, why he was not asked by V.I. and also my Divisional authority. It seems this charges was made against me with bad intention to harass me.

3. The wagons in question were not unloaded on open platform, because it was period of monsoon over northern Rly has been notified from July to October vide N.R. Gazette No.13 page 15 of 1st July 1975, the alleged occurrence on 24/10/75 comes within the notified period. Extract enclosed.

4. The quota of 10 wagons was also completed on 24/10/75 by 10=18 wagons were already unloaded.

5. I have merely been punished on the basis of reason for left over shown in the stock Diary i.e. for consignee unloading. This remark was given by Siding Clerk, the clarification should be asked by Siding Clerk.

6. That the Vigilance Inspector lodged charges without having the knowledge of extents rules and standing orders.

Wrong-ful punishment without  
considering the following facts

====

1. Only 10 wagons quota was fixed by DOS was already

contd..4

been completed by unloading of 10-18 wagons cement and Urea.

As

2. Without considering the N.Rly Gazette No.13 of July 1975.
3. That moreover there was no turpolin at LIAS on 24/10/75, Divisional Supdt. not consider this fact.
4. That the explation of Sr. Goods Clerk and Siding Clerk were not taken by DS before deciding the case who were more responsible than myself.
5. That the questioned wagon were verified by AGI/ LIAS who is empowered.

I fervently pray to your honour that I performed my duty with full devotion and observed all commercial rules and standing order. Kindly consider my case sympathetically and give me justice and save me from wrong punishment which was given me without any fault, for which act of your kindness I shall remain ever grateful to you.

Submitted.

Yours faithfully,

*Bechan Ram*  
( BECHAN RAM )  
AGC/LKO/NRLY

Dated: 13.12.78

*enclose*

- ① Defact of gazette no 13
- ② Inspector Report of DOS/LKO
- ③ of 4/74/D/22 or 28/78 with Reply
- ④

*Recd for*  
13/12/78

3 copy 5/28 (16)

Surprise inspection of godshed and LIAS. -Lucknow  
by DCS/ LKO. on 10/9/1975

---

Para (7):- The releases of wagons carrying cement and fertilizers was getting delayed in the godshed area itself and there was heavy backlog of such wagons awaiting placement because the removal of unloaded consignments by the parties concerned was unsatisfactory on the previous day only 50% of stock placed in the various sheds could be released because of non availability of suitable space in the shed. It was therefore considered unavoiably necessary to transfer 5 wagons each of cement and fertilizer from godshed to LIAS for placement and release till such time as the congestion in godshed is cleared.

Sd/-

DCS. / N. R. / LKO.

3 c/c  
copy of Monsoon Notice

ST 29 (17)

Northern Railway Gazette No. 13.

New Delhi Tuesday the 1st July 1975 Page No. 15

The Monsoon period on Indian Railways, as under:-

<u>Railways</u>	<u>Period of Monsoon</u>
Northern	July to October
Central	June to October
Western	'' ''
Eastern	'' ''
North Eastern	'' ''
Southern	June to Spt. (South West) October to Feb. (North Estr.)

2(iv) Goods should be protected from damages by wet by stacking them in a well protected cover space at the station. as further protection such goods should be covered with Tarpaulins.

(v) Wooden sleeper or cement Blocks should be spared under the consignments when stacked on open Plate form so as to allow free flow of water on the floor. Such stacks should be securely covered with Tarpaulins.

(vi) Commodities which are liable to damage by wet. e.i. C.P. goods. Cement, Cigarettes, Spius, Sugar, Jagri, Medicines, Pules, foodgrain.

Sd/-  
For chff Commercial Supdt.  
(CP.)

व अदातत श्रीमात- *In the Court of Municipal Magistrate*  
वादी/अपीलान्त श्री

प्रातिवादी/रेस्पान्डेन्ट *Babbar Ram*

बनाम

वादी/अपीलान्त

*Union of Lumber*  
प्रातिवादी/रेस्पान्डेन्ट

सं० मुदमा सं० 19 पेजी की नं० 19 सं०  
ऊपर मुदमा में अपील ओर से श्री- *K. A. Jaiswal R.A.*

एडवोकेट/वकील महोदय को अपना वकील नियुक्त करके हस्ताक्षर करता हूँ और लिख देता हूँ कि मुदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रस्तोत करे या जोई लागू वाजिब करें या लौटावें या हमारी ओर से डिबरी जारी करावें याद रुपया चुका करें या मुहनामा या इजाजत काका तथा अपील व विनयादी हारी ओर से हमारे या अपने हस्ताक्षर से वाजिब करें और तसवीह करें या मुदमा उठावें या जोई रुपया जमा करें या हमारी विपक्षी/प्रातिवादी/प्रातिवादी का वाजिब किया हुआ रुपया अपने या हमारे हस्ताक्षर भवन/मुदमा/रसीद से लेवें या पंच नियुक्त करें— वकील महोदय द्वारा की गई वह सब कार्यवाही हमको जथा सीकार है और होनी इसलिये यह अदाततनामा लिख दिव्य कि प्रमाण रहे और सरप/पर-जाम बायें

*Accepted*  
*K. A. Jaiswal*

*K. A. Jaiswal*  
*Union of Lumber*  
हस्ताक्षर  
वादी/अपीलान्त  
प्रातिवादी  
महीना  
सं० 19

ब अदालत श्रीमान In the Court of Mr. Justice Hanab महोदय

वादी मुद्दे Sri Bechan Ram  
प्रतिवादी (मुद्दालेह) का

# वकालतनामा



₹ = 1.50

8/2  
16/2

Sri Bechan Ram

वादी (मुद्दे)  
(अपीलान्त)

बनाम

The Union of India प्रतिवादी [मुद्दालेह]  
(रेस्पॉण्डेंट)

ने मुकद्दमा सन् १६ पेशी की ता० १६ ई०  
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Sri V. D. Shukla

Advocate Lucknow

एडवोकेट  
वकील

महोदय

नाम अदालत Mr. Justice Hanab  
नं० मुकद्दमा 8/2  
नाम फरीकान Bechan Ram  
The Union of India

को अपता वकील नियुक्त करके प्रतिज्ञा [इकरार] करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरबी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी [फरीकसानी] का दाखिल किया रुपया अपने या हमारे हस्ताक्षर युक्त [दस्तखती] रसीद में लेवें वा पेच नियुक्त करें। वकील महोदय द्वारा की गई वह सब कार्यवाही हमको स्वंथा स्वीकार है और होगी में यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अवय पैरबी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालतनामा दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted  
Shukla  
21/1/81  
16/2/81

हस्ताक्षर

हस्ताक्षर १

Bechan Ram

स्वीकृत

३

साक्षी (गवाह)

S. Subramanian साक्षी (गवाह)

दिनांक

माह

सन् १९८१

ई०

21/1/81  
16/2/81

On the Court of Jtho Ad. Munsif Lucknow

Lucknow

C-9

20/7/81

Bechan Ram \_\_\_\_\_ Plaintiff

VS

Union of India \_\_\_\_\_ Defendant

R.S. 121 of 1981

F.F. 20-7-81

Application U/S 151 e. P. e

On the above noted case the Defendant respectfully states as under -

1) That my Counsel Sri K. C. Sarkar Advocate has not received complete instructions. So he is not in a position to file W.S. today.

Wherefore it is most respectfully prayed that one month time be allowed for filing W.S.

*(Signature)*

(Senior Sri K. C. Sarkar  
Counsel for Defendant

Lucknow  
20/7/81

Approved for costs  
18/8/81  
20/7/81

On the Court of II<sup>th</sup> Additional Munsif Lucknow

Lucknow

C-12

A  
92

Bechan Ram. - - - - - Plaintiff

vs

Union of India - - - - - Defendant

F.F. 21-10-81

Application u/s 151 C.P.C.

On the above noted case the defendant respectfully

states as under:-

1) That my Counsel Sri K.C. Jauhari Advocate has not received complete instructions. So he is not in a position to file written statement today.

Wherefore it is most respectfully prayed that two months time allowed for filing written statement

Lucknow

21-10-81

  
(Junior) Sri K.C. Jauhari  
Counsel for defendant

on the Court of ITR Additional Munsif, Lucknow

Lucknow

C-13

Bechan Ram \_\_\_\_\_ Plaintiff

VS

Union of India \_\_\_\_\_ Defendant

F.F 13/11/81

Application 4/5 151 C.P.C

on the above noted case the Defendant respectfully states as under-

1) That the defendant Counsel has not received complete instruction. So not in a position to file written statement today

Wherefore it is most respectfully prayed that one month time allowed for filing written statement.

Strongly opposed  
The Honble court has already given sufficient time and opportunity to file WS but the WS has not been filed as yet.

(Shukla)  
13/11/81

Lucknow  
13-11-81

*(Signature)*  
N. S. Singh  
Counsel for Defendant

Beehan Ram \_\_\_\_\_ Plaintiff

vs

Union of India \_\_\_\_\_ Defendant

F.F. 21-1-82

Application u/s 151 C.P.C.

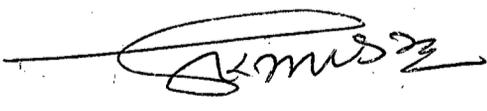
on the above noted case the defendant respectfully states as under:-

strongly opposed. The applicant has been ample opportunity by allowing several adjournments to file W.S. but no W.S. has been filed despite that. He has no qualification for any adjournment now.

1) That my Counsel Sr K.E. Jauhari has not received complete instructions So he is not in a position to file W.S. today

Wherefore it is most respectfully prayed that ~~case may~~ <sup>one month time may</sup> be kindly allowed for filing W.S. ~~by or on any other date~~

The Hon'ble court is requested to kindly pass order under order 8 r 10.



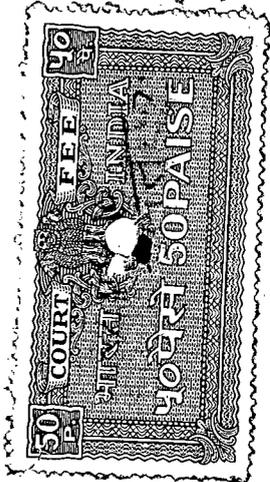
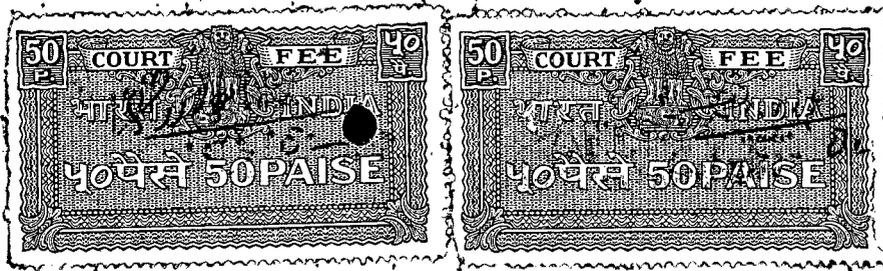
(Senior) K.E. Jauhari  
Adv  
Counsel for Defendant

18/1/82  
21/1/81  
Counsel for Plaintiff

Lucknow  
21-1-82

516  
1

In the court of Additional Munsif V, Lucknow,



Bechan Ram

.. Plaintiff

Versus

Union of India and others.

.. Defendants.

R.S. No. 121/1981.

F.F. 24-3-1982.

The plaintiff most respectfully begs to submit :-

1. That the following documents are in the custody of defendant no. 3 :-
  - i) Wagon Transfer Register of L.I.A.S. for the period 24-10-1975 to 25-10-1975.
  - ii) Position Book of L.I.A.S. for the period 24-10-1975 to 25-10-1975
  - iii) Wagon Transfer Register of Lucknow Goods Shed for October, 1975.
  - iv) Duty List of Position Clerk of L.I.A.S. of 1975.
  - v) Duty List of Clerk-in-charge of L.I.A.S of 1975.
  - vi) Duty List of Assistant Goods Inspector of L.I.A.S of 1975.
  - vii) Permission of competent authority for unloading of cement in L.I.A.S. instead of Lucknow when booked to Lucknow in connection with this case.

516  
2  
18/26

- viii) Original letter no. CCB-1/POC/Policy Cement dated 20-1-1971 from C.C.S., New Delhi.
- ix) Original letter no. TG/74/DOS/G/75 of 10-9-1975
- x) Original copy of report of C.M.I. and G.S. Lucknow in connection with this case.
- xi) Original copy of report of Vigilance Inspector in connection with this case.

2. That the aforesaid documents are not only relevant but also absolutely necessary to be filed for the proper decision of the case.

3. That the documents are very material .

Wherefore it is prayed that in the interest of justice the defendant no. 3 be ordered to produce the aforesaid documents in the Hon'ble Court.

Lucknow, dated :  
24-3-1982.

*18/26*  
Counsel for the plaintiff.

51-38  
IN THE COURT OF ADDITIONAL MUNSIF VIII, LUCKNOW.

BACHAN RAM

... Plaintiff

VS

Union of India & others

... Defendants.

R.S.NO . 181 / 1981

F.F. 13.4.1983.

The plaintiff most respectfully submits as  
under:-

That in compliance with the orders of the  
Hon'ble Court on last hearing the plaintiff is  
enclosing annexure I, showing the requisite  
details of documents required and their relevancy  
in the instant case.

Lucknow,  
Date 13.4.1983.

PLAINTIFF

*Shukla*  
13/4/83  
Counsel for the Plaintiff

In the Court of Additional Munsif VIII  
Lucknow  
Bachan Ram v UOI & others  
R.S. No. 181/81

ANNEXURE I.

38  
2  
9/8/75

(iii) Wagon Transfer Register of Lucknow Goods Shed for October 1975. This document is under the custody of Chief Goods Superintendent, Goods Shed, Northern Railway, Lucknow, a servant under Divisional Railway Manager, Northern Railway, Lucknow and defendant No. 3 in the instant case. The document is relevant to prove that the cement consignments were not allowed to be unloaded in the open platform at that period in the Goods Shed, Lucknow.

(v) Duty list of Clerk-in-Charge of Lucknow Industrial Area Siding of 1975.

This document is also under the custody of the Chief Goods Superintendent, Northern Railway, Goods Shed, Lucknow, who is a servant under defendant No. 3.

The document is quite relevant to prove that the wagons in question were released in the duty hours of the clerk-in-charge and not in the duty hours of the plaintiff.

(vii) The authority letter, if any, issued by the Sr. Divisional Commercial Superintendent, Northern Railway, Lucknow, in the month of October or before it for unloading of cement consignment & fertilizer from wagons in Lucknow Industrial Area Siding instead of Goods Shed, Lucknow, beyond the quota of 5 wagons of cement and five of fertilizer. The document is relevant to show that no such specific orders were ever issued for unloading of cement consignment in dispute in the Lucknow Industrial Area siding instead of Goods Shed, Lucknow, to which the consignment was booked.

*[Handwritten signature]*

(viii) Original letter No. CCB.1/POC/Policy Cement dated 20.1.71 from Chief Commercial Superintendent Northern Railway, Headquarters Office, Baroda House, New Delhi -

This document is in the custody of the Chief Commercial Superintendent, Northern Railway, Headquarters Office, Baroda House, New Delhi.

This is relevant to prove that the wagons containing the consignment of cement should never be unloaded in open platforms.

(ix) Original letter No. TC/74/DOS/G/75, of 10.9.75

This is a letter from the Divisional Operating Superintendent, Northern Railway, Lucknow, a subordinate authority of Defendant No. 3, to the Goods Superintendent, Northern Railway, Lucknow.

This is in the custody of the Divisional Operating Superintendent, Northern Railway, Lucknow.

This is relevant to prove that only five wagons of cement and five wagons of fertiliser - total 10 wagons should be unloaded daily in the Industrial Area Siding, Lucknow, in the covered shed and not more than that.

(x) Original copy of Report in connection with this case of Commercial Inspector (Movement) and Goods Superintendent, Northern Railway, Lucknow, the subordinate authorities of the defendant No. 3 who is the custodian of the document. This document is quite relevant to prove that the report was in favour of the plaintiff.

*Shua*

52 38  
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(\*) Original copy of Report concerning this case of  
Vigilance Inspector of Northern Railway, Head qrs.  
office, Baroda House, New Delhi.

The document is in the custody of the Divisional  
Railway Manager, Northern Railway, Lucknow.

This is quite relevant as by this the plaintiff  
will prove that the document was relied upon and  
was made the basis of the charge but no such  
document was supplied to the plaintiff along with  
the memorandum of charge although it is a  
mandatory provision of law.

18/11/52

91-43

1/17

Beehan Ram

vs.

Plaintiff

Union of India

Defendants

R.S. No 181/81

F.F. 24/11/83

The plaintiff most respectfully begs to submit:-

- 1) That the defendant had already been given the opportunity of filing objections on 'Ka-16' by the Honble Court by his order dated 13.7.82.
- 2) That the defendants were given several opportunities on different dates for filing objections but no objections were filed by them. It means it had no objections to file.
- 3) That the case was argued on 'Ka-16' and after detailed arguments the defendant agreed to file the remaining seven documents out of eleven; as he had already filed on demand four documents, on furnishing the details of these seven documents.
- 4) That the Honble Court also desired from the plaintiff the relevancy of these seven documents.
- 5) That the plaintiff has filed an application dated 13.4.83 along with annexure giving the details of requisite documents as in the custody of the defendant and also showing the relevancy thereof.
- 6) That to give the defendant further opportunity of filing on the same issues and filing the date 24/11/83 is quite illegal against the principles of law. The opportunity once offered of an not liable to be repeatedly offered to the plaintiff. It does not appear to be proper and admissible in principles of law.

Wherefore the Honble Court is prayed to examine and re-call his order finding opportunity of filing and disposal, as application dated 13.4.83 is not a fresh issue and it is nothing a clarification of 'Ka-16'

Live!

83

21/11/83

Court

In the Court of Addl. Magistrate VIII, Lucknow

91-43

Beehan Ram

Plaintiff

vs.

Union of Indit

Defendants

R.S.N. 181/81,

F.F. 24/11/83.

The plaintiff most respectfully begs to submit:-

- 1) That the defendants had already been given the opportunity of filing objections on 'Ka-16' by the Honble Court by his order dated 13.7.82.
- 2) That the defendants were given several opportunities on different dates for filing objections but no objections were filed by them. It means it had no objections to file.
- 3) That the Case was argued on 'Ka-16' and after detailed arguments the defendants agreed to file the remaining seven documents out of eleven; as he had already filed on demand four documents, on furnishing the details of these seven documents.
- 4) That the Honble Court also desired from the plaintiff the relevancy of these seven documents.
- 5) That the plaintiff has filed an application dated 13.4.83 along with annexure giving the details of requisite documents which are in the custody of the defendants and also showing the relevancy thereof.
- 6) That to give the defendants further opportunity of filing objection on the same issues and fixing the date 24/11/83 is quite illegal and against the principles of law. The opportunity once offered and availed of or not liable to be repeatedly offered to the parties. It does not appear to be just, proper and admissible under the principles of law.

Wherefore the Honble Court is prayed to examine the Case and recall his order for extending opportunity of filing objections and disposal, as application dated 13.4.83 is not a fresh issue and it is nothing but a clarification of 'Ka-16'

Lucknow  
20/11/83  
21. 24/11/83

Plaintiff  
Shukla  
Counsel for the Plaintiff

In the Court of Addl. Magistrate VIII, Lucknow

A/102

Bechan Ram

Plaintiff

vs.

Union of India

Defendants

R.S. No 181/81,

F.F. 24/11/83.

The Plaintiff most respectfully begs to submit:-

- (1) That the defendants had already been given the opportunity of filing objections on 'ka-16' by the Hon'ble Court by his order dated 13.7.82
- (2) That the defendants were given several opportunities on different dates for filing objections but no objections were filed by them. It means it had no objections to file.
- (3) That the case was argued on 'ka-16' and after detailed arguments the defendants agreed to file the remaining seven documents out of eleven; as he had already filed on demand four documents, on furnishing the details of these seven documents.
- (4) That the Hon'ble Court also desired from the Plaintiff the relevancy of these seven documents.
- (5) That the Plaintiff has filed an application dated 13.4.83 along with annexure giving the details of requisite documents which are in the custody of the defendants and also showing the relevancy thereof.
- (6) That to give the defendants further opportunity of filing objections on the same issues and fixing the date 24/11/83 is quite illegal and against the principles of law. The opportunity once offered and availed of can not be later to be repeatedly offered to the parties. It does not appear to be just, proper and admissible under the principles of law.

Wherefore the Hon'ble Court is prayed to examine the case and to call this order for extending opportunity of filing objections and disposal as application dated 13.4.83 is not a fresh issue and it is nothing but a clarification of 'ka-16'

Lucknow

21. 30/11/83

*[Signature]*

Plaintiff

18/11/83

Counsel for the Plaintiff

VIII Addl; Munsif; Lucknow

*Handwritten signature*  
27/10

Case No. 121/01

F.F. 25/10

Bechari Ram vs Union of India

To  
S<sup>r</sup> V.D. Shukla Adv.  
Plaintiff

Please take notice that  
a suit above noted case  
has been filed for D/S and  
you are hereby required  
to attend the court  
on the date fixed.

Given under my hand  
of Secy of C.A. on  
27/10



*Handwritten signature*  
VIII Addl; Munsif; Lucknow

सं. क्र. 11

R.S. No. 121/01

FF 25/02

Bechan Law Vs Union of India

To  
Sri V.D. Shukla Advl  
Plaintiff

Please take notice that  
in the above case a case  
has been filed to the US and  
you are hereby required  
to attend the court  
on the date fixed  
above with my hand  
& seal of the court  
10.02

*[Signature]*



सं. क्र. 11

In the Court of Munsif Hawabi Lucknow.

C-4

A/104

Sri Bechan Ram - - - - - Plaintiff

v

The Union of India & others - - - - - Defendants

Registered address of Plaintiff

SHRI BECHAN RAM S/O LATE SHRI JAGDEO  
ASSISTANT GOODS CLERK, NORTHERN RLY,  
GOODS SHED, LUCKNOW, P/O. HOUSE No. S/3B  
SLEEPER GROUND, RAILWAY COLONY,  
ALAM BAGH, P.S. & WARD, ALAM BAGH LUCKNOW.

Lucknow

27/2/1/81.

16/2/81.

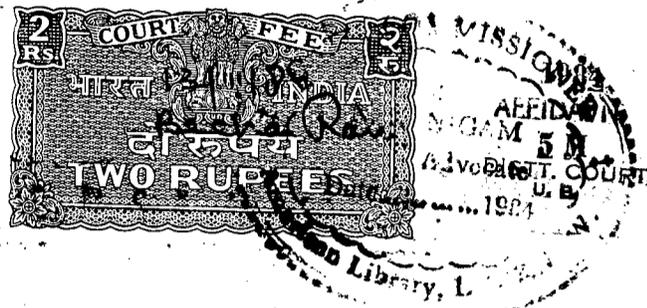
Shukla

Advocate  
for Plaintiff

16/2/81

51-829

In the court of the Additional Munsif VIII, Lucknow.



Bechan Ram

.. Plaintiff

Versus

Union of India and others.

.. Defendants.

R.S. No. 121/81

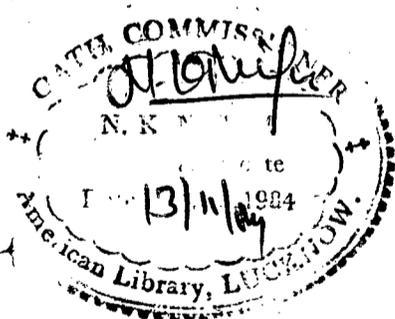
F.F. <sup>13-11-84</sup> ~~13-11-84~~ for ex-parte evidence.

Affidavit.

I, Bechan Ram, aged about 45 years, son of late sir Jagdeo, resident of house no. S/3 B, Sleeper Ground, Railway colony, Alambagh, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the plaintiff in the instant case and is fully conversant with the facts of the case.
2. That while working as an Assistant Goods Clerk in scale Rs. 260-430 (R.S.) on pay Rs. 380/- P.M. at Lucknow Industrial Area Siding, Lucknow a team of Vigilance Inspectors from New Delhi made a surprised checking on 24 and 25/10/75 and submitted a report against the deponent to the Divisional Railway Manager, Northern Railway, Lucknow. The deponent demanded a copy of the ~~saxa~~ said report vide paper no. C-16 through the Hon'ble Court but it has not been filed by the defendants inspite of order of

*Bechan Ram*



1/100 2152

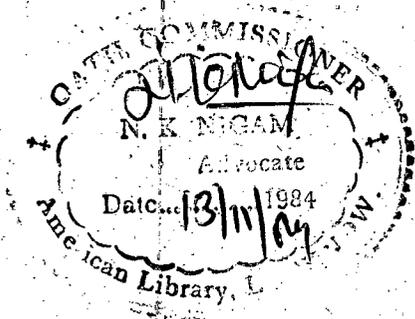
the Hon'ble Court but it has not been filed by the deponent despite order of the Hon'ble Court and repeated opportunities afforded to them.

3. That a memo dated 29-9-77 (paper No.G-18-19) was illegally served upon the deponent by the Senior Divisional Commercial Superintendent, Northern Railway, Lucknow with certain allegations as detailed in the memo against him. This document is signed by Shri S.D. Chand, who <sup>was then</sup> ~~is~~ working as Senior Divisional Commercial Superintendent, Northern Railway, Lucknow. The deponent recognises his signature as he has seen him signing many <sup>a</sup> ~~times~~ <sup>times</sup> letters many a times on other occasions.

4. That the deponent was forced to submit his reply (paper No. G-21/1 - 2) to the said memo within 10 days from the receipt thereof under threats and pressure. This document is signed by the deponent himself.

5. That the Senior Divisional Commercial Superintendent with a prejudiced mind issued a notice (Paper no. G-22) imposing upon the deponent a penalty of withholding of the increment against raising his pay from Rs. 360/- P.M. to Rs. 370/- P.M. in scale Rs. 260-430 (R.S.) due on 1-4-78 for a period of one year without affording him reasonable opportunity of defence. This document is signed by Sri S.D. Chand, the then Senior Divisional Commercial Superintendent, Northern Railway, Lucknow whose signature he fully recognizes as he has seen

Bechar Ram



him signing on many other occasions.

6. That the Senior Divisional Commercial Superintendent, who was the Disciplinary authority of the deponent in the instant case committed the following illegalities in the conduct of the departmental enquiry and denied the reasonable opportunity to him in the following respects :-

i) He did not examine that the preliminary enquiry was conducted behind the back of the deponent but he was neither given an opportunity to cross-examine the prosecution witnesses nor was he supplied with a copy of the report of such an enquiry although the contents of such a report were relied upon by the Disciplinary authority and report was made the very base of the charges levelled against him.

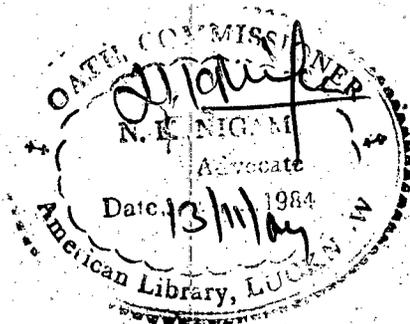
ii) The contents of this report were also not disclosed to the deponent.

iii) The copies of the statements of the prosecution witnesses were also not supplied to him.

iv) The Disciplinary authority did not supply a copy of 'relied upon documents', a list of prosecution witnesses, a copy of the statements of articles of charges along with the memorandum (Paper no.G-18) to the deponent.

v) The Disciplinary authority was bound to supply a copy of his 'own findings' along with the punishment

*Becharan*



notice (G-22) but he did not furnish a copy of such 'findings' alongwith that document.

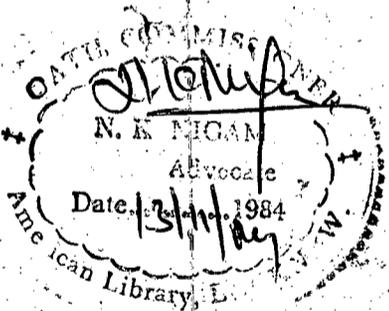
vi) The deponent was not offered an opportunity to cross-examine the Vigilance Inspectors who conducted the enquiry against him and submitted the report to the Disciplinary authority. The Disciplinary authority without applying his mind to the facts and circumstances of the case blindly relied upon the report of the Vigilance Inspectors and passed the impugned orders of punishment arbitrarily against the deponent.

vii) He did not examine that the alleged charges of omission and commission for some personal gains with the connivance of Sri Moti Lal, Chief Goods Clerk, Lucknow was a serious offence. But neither he afforded the deponent with an opportunity to cross-examine Sri Moti Lal or any other prosecution witness nor adduced his own evidence in defence to dig out the truth of the case.

viii) The Disciplinary authority did not see that the charge was never established against the deponent beyond reasonable doubts and no evidence was led against him to prove the charge. The punishment was imposed upon him on mere presumptions and conjectures simply to save his own skin lest the vigilance party should not implicate him for his lapses.

ix) The Disciplinary authority also failed to

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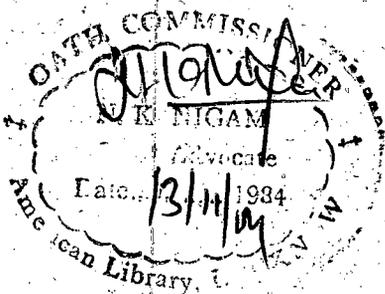
7/10 25-52/4

notice published in the Northern Railway Gazette no. 13 of 1-7-1975 at page 15 issued by the General Manager, Northern Railway, New Delhi, copy filed (paper no. G-29) in the Hon'ble Court the monsoon season falls between July and October each year. The incident in the instant case is of 24-10-75 so the deponent was bound to follow the instructions contained in the Gazette and the Senior Commercial Superintendent who was a lower authority was neither competent to supersede General Manager's orders nor did he issue his own orders ~~canceling~~ cancelling the orders of the General Manager. The tarpaulins were also not available in the shed on the date of incident. Moreover, there can be no chances of a personal gain from the consignment of cement which belonged to the government.

xiii) ~~That~~ The deponent acted strictly in accordance with the instructions laid down in (paper G-20) which is a copy of the original document ~~xxxxxxx~~ which is in the custody of the defendants and which was demanded by the deponent by (paper no. C-16-item VIII) but it has not been filed by them despite orders of the Hon'ble Court. This document proves that unloading of cement bags should be done in covered sheds only and not left in open platforms.

xiv) The Disciplinary authority blindly relied upon incorrect stock report which was neither prepared by the deponent nor relevant records were consulted by the disciplinary authority. The Disciplinary

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7/8  
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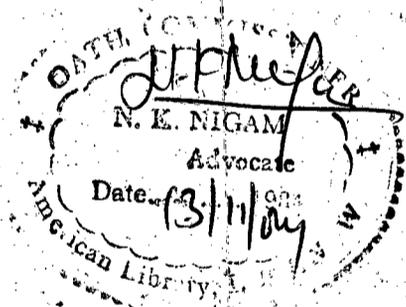
examine the remarks of the deponent made in the <sup>W</sup> Wagon Transfer Register filed under Paper No. <sup>G-33</sup> ~~G-22/1~~ for period 5-10-74 to 25-10-74 which are in his hand writing and which totally falsify the allegations of the prosecution as detailed in para 11 of the <sup>is a</sup> plaint. This document which has been obtained from the custody of the deponent and is in original.

x) The disciplinary authority also utterly failed to examine that the deponent performed intermittent duty on 24-10-75 from 7 to 11/- hrs, and 16 to 20/- hrs and in between the spells of duties one clerk - in-charge Sri Baboo Ram Misra of Lucknow Industrial Area <sup>Siding</sup> performed duty who totally agreed with the position of wagons in dispute on 24-10-75 as shown by the deponent in the wagon Transfer Register. He showed the release of wagons on 25-10-75 with his own hand writing in the wagon Transfer Register <sup>G-33</sup> (Paper no. ~~G-22/2~~). But neither the deponent was afforded an opportunity to cross-examine this clerk-in-charge nor adduce his own evidence in defence.

xi) The Disciplinary authority also did not examine that the duty-list (paper No. <sup>35</sup> G-32/3) of clerk-in-charge prove that the wagons in question were released in the duty hours of clerk-in-charge and not in the duty hours of the deponent.

xii) The Disciplinary authority also totally failed to examine that the consignment of wagons contained government cement and the consignment of cement should be unloaded in a covered shed specially during the monsoon season. According to , monsoon

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authority neither afforded an opportunity to furnish this document along with the memorandum for deponent's <sup>inspection</sup> ~~instruction~~ nor the stock report writer was adduced for deponent's cross-examination and also adduce his evidence in defence.

xv) The Disciplinary authority also failed to examine the report of Commercial Movement Inspector which was in favour of the deponent. This report was demanded by the deponent vide paper No. C-16 but the defendants did not file the same in the court.

xvi) The Disciplinary authority passed the punishment ~~with~~ against the deponent without examining the position book (paper no. G-32/2) filed by the deponent after obtaining the same from the custody of defendants on a demand by the deponent (paper no. C-16 para 1-II).

xvii) The punishing authority also failed to examine that the consignments were booked to Lucknow Goods Shed and not to Lucknow Industrial Area siding where the deponent was working on 24-10-75.

7. That the deponent preferred an appeal (paper no. K-23) against the orders of the Disciplinary Authority to the Divisional Superintendent, Northern Railway, Lucknow duly signed by him. But he rejected his appeal by an order (paper No. Ka-24) passed by the Divisional Superintendent and signed by Sri S.D. Chand, the then Senior Divisional Commercial

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Superintendent, Northern Railway, Lucknow, whose signature the deponent recognizes.

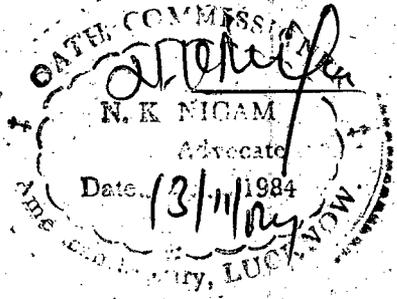
8. That the deponent aggrieved by the orders of the Divisional Superintendent filed (paper no. K-25) duly signed by him for review to Divisional Superintendent, Lucknow but the said authority rejected his petition also by his order (paper no. K-26) communicated by the Senior Divisional Commercial Superintendent, Sri S.B. Chand whose signature the deponent recognizes.

9. That aggrieved further by the review orders of the Divisional Superintendent, Northern Railway, Lucknow, the deponent sent an appeal to the General Manager, Northern Railway, New Delhi (paper no. K-27) duly signed by him but this was also rejected by the Chief Commercial Superintendent, Northern Railway, New Delhi by an order passed by him and communicated through a letter (paper no. A-6 /18). It is signed by Sri S.B. Chand, the then Commercial Superintendent, Northern Railway, Lucknow whose signature the deponent recognizes.

10. That the appellate and reviewing authority also did not examine the illegalities in conducting the enquiry and also the facts and circumstances of the case as under :-

1) They passed their orders without supplying a copy of their own findings along with their orders to the deponent.

Bechar



ii) They did not issue any speaking orders showing reasons and applying their mind to the facts and circumstances of the case.

iii) They did not see that the charge was not established by a full-fledged joint enquiry affording reasonable opportunity to the deponent and there was no evidence at all establishing the charge against him. The punishment was on mere presumptions and conjectures.

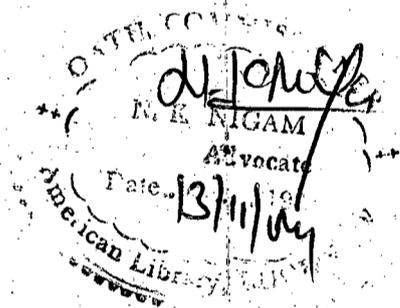
11. That the promotion of the deponent to higher grade was not made on account of the illegal orders passed by the Disciplinary and Appellate authorities on the basis of an enquiry which was ab-initio wrong and liable to be set aside.

12. That the deponent demanded original documents detailed in paper no. C-16 and also filed relevancy thereof (paper no. G-38) but the defendants filed only 4 papers (G-32) and despite orders of the Hon'ble Court and repeated opportunities offered to them did not file them. The deponent has filed a copy (K-28) of document (no. 1-XI), detailed in paper No. C-16). This is a true copy of the original and the original is in the custody of the defendants.

13. That aggrieved by the illegal orders of the Disciplinary authority and the appellate authority and other higher authorities the deponent sent a legal notice (paper no. A-6) under registered A.D. Covers to the defendants which were served upon them

(paper no. A-6/12, A-6/13, A-6/14, A-6/15, A-6/16,

*Becharan*



A/11/11/84  
13/11/84

A-6/17) but no reply was given by them despite expiration of notice period. The notice is signed by Sri V.D. Shukla, Advocate and the deponent also.

14. That the deponent is due to Rs. 242.52 from the defendants for illegally withholding his increment for the period 1-4-78 to 31-3-79.

15. That the deponent's case is quite genuine and the impugned orders dated 28-2-78 of the Disciplinary authority and also the orders of the appellate and reviewing and other higher authorities are illegal and liable to be set aside and the defendants are also liable to pay Rs. 242.52 to the deponent and deem him promoted to the higher grade Rs. 330-560 (RS) with effect from 1978.

Lucknow, dated :  
13-11-1984.

*Bechan Chandra*  
Deponent.

Verification.

I, the above named deponent do hereby verify that the contents of paras 1 to 15 of this affidavit are true to my own knowledge, no part of it is false and nothing material has been concealed, so help me God.

S.M/01

Solemnly affirmed before me in office to-day at 11:20 AM by *Sri. Bechan Chandra* Signed and verified this the 13<sup>th</sup> day of November, 1984 in the Civil Court compound at Lucknow.  
who is identified by *Sri V.D. Shukla (Adv)*  
I have satisfied myself by examining the deponent that he understands the contents of this affidavit which he has signed and explained by me.

Lucknow, dated :  
13-11-1984.

*Bechan Chandra*  
Deponent.

*M. Nigam*  
Naval Kishore Nigam  
Oath Commissioner  
American Library Court  
Lucknow

*V.D. Shukla*  
(V.D. Shukla)  
Advocate.

In the Court of XIII Ad. Munsif Courts

5/8/85

Beewan Ram

Plaintiff

vs

Union of India & as

Defendant

R. no 121 of 1985

D. D. 29. 4. 1985

Application by SRTC for recalling

the order dated 16-4-85

strongly opposed

Sluka

29/4/85

Counsel for the plaintiff

In the above-named case the defendant respectfully state as under:-

- 1) That the aforesaid court vide order dated 12-9-84 ordered for the passing of the order on 17.10.84. The notice of the date was not given to the defendant's counsel.
- 2) That the Hon'ble court vide order dated 17.10.84 ordered to proceed

- 3) That the Hon'ble court while passing the order dated 16-4-85 was not brought to the above said fact.

It is therefore prayed that the order dated 16-4-85 be kindly reviewed and the order dated 17.10.84 be kindly set aside and the suit be heard on merits.

K. C. Jaiswal

Ry An

Law D.O

29/4

on the Court of Vth Additional Munsif

Wenow

1/16

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Bechan Ram \_\_\_\_\_ Plaintiff

vs

Union of India \_\_\_\_\_ Defendant

R.S. 12/1/81

F.F. 17/8/81

Application u/s 151 C.P.C.

On the above noted case the Defendant respectfully states as under:-

1) That my Counsel Sri K.C. Sauhari Advocate has not received complete instructions. So he is not in a position to file written statement today.

Wherefore it is most respectfully prayed that one month time allowed for filing written statement

opposed for costs.

18/8/81  
17/8/81

Wenow  
17-8-81

K. C. Sauhari  
(Senior) Sri K. C. Sauhari  
Counsel for Defendant

In the Court of the Hon. Mr. Justice Lawrence

17-9-81

Becheram Ram

Plaintiff

vs.

Union of India

Defendant

R.D. No 121 of 1981  
J.J. 17-9-81

Application for assistance

In the above-noted case the defendant respectfully states as under:-  
1) That the defendant has not yet received complete instructions and as such the written statement could not be prepared.

Strongly opposed.  
The applicant has been sufficient opportunities to file W.S but he has not yet filed the same. The Honble Court is requested to proceed ex-parte No 8r 10.

2) That the defendant are not in a position to file the written statement.

Shukla  
17/9/81

In the above-noted case the defendant has not yet prepared the written statement and the defendant has not yet allowed two weeks time to file the written statement.

17-9-81

N. D. for  
Court of the Hon.

in the case of ...  
w

18  
6-31

Bechan Ram

py

u. o. ...

new

R. D. ...

7. 7. 10. 0. 02

Application

In the above ...  
disposal ...  
be allowed ...  
filing ...  
which is ...  
to the ...  
... in ...

Opposed

15/10/02

u. o. ...

u. o. ...

10/11

2 ...

on the Court of VIIIth Additional Munsif  
Lucknow

A  
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Bechan Ram \_\_\_\_\_ Plaintiff

VS

Union of India \_\_\_\_\_ Defendant  
& others

FF. 6. 5. 83

Application U/S 151 C. P. C.

on the above noted case the Defendant  
respectfully states as under:-

1) That my Counsel Sri K. C. Jauhari Advocate  
is busy in the Hon'ble High Court. So he  
is not in a position to conduct the

strictly opposed.

Care today

Sl. No.  
615183.

Wherefore it is most respectfully  
prayed that care may be kindly  
adjourned any other date.



Lucknow

6/8/83

(Junior Sr. K. C. Jauhari  
Counsel for Defendant

On the Court of VIII<sup>th</sup> Additional Munsif Lko  
Lucknow

12/1

10-40

Beehan Ram \_\_\_\_\_ Plaintiff

vs

Union of India \_\_\_\_\_ Defendant

FF. 30-5. 83

Application u/s 151 C.D.C

On the above noted case the Defendant respectfully states as under

1) That my Counsel Sri K.C. Saubhan Advocate is not in a position to attend the Hon'ble Court today due to injury in leg.

Wherefore it is most respectfully prayed that case may be kindly adjourned any other date

Not opposed

18/11/83  
30/5/83

Lucknow  
30/5/83



(Sumit Srik Saubhan)  
Counsel for Defen

in the Court of VIIIth Additional Munsif  
Lucknow

122  
47

Beehan Ram \_\_\_\_\_ Plaintiff

VS

Union of India \_\_\_\_\_ Defendant

FF. 19/7/83

Application u/s 157 C.P.E

on the above noted case the Defendant respectfully states as under  
1) That Defendant Counsel has not received complete instructions so he is not in a position to file objection today.

Strongly opposed  
Walia  
19/7/83

Wherefore it is most respectfully prayed one month time allowed for filing of objection.

(Senior S.K.E. Singh)  
Counsel for Defndt

Lucknow  
19/7/83

In the Court of VIII Ad. Munim Tho

En-22

Bechan Don \_\_\_\_\_ Plaintiff  
vs  
Union of India \_\_\_\_\_ Defendant

OS No 121/01  
FR 27.7.03

In the above noted case  
the counsel for the defendant  
is not feeling well and as  
such he is not in a  
position to conduct the case today.

Wherefore it is prayed that  
the case be kindly adjourned  
for any other date.

Bechan Don  
Dated 27.7.03

Bechan Don  
for defendant

6/8

on the Court of XIII<sup>th</sup> Additional Munsif  
Lucknow

D-47

Bechar Ram ————— Plaintiff

vs

Union of India ————— Defendant

F.F. 8-4-85

On the above noted case the  
Defendant respectfully states as under -  
1) That Defendant Counsel has gone out  
of station for his personal work  
So not in a position to attend the  
Honble Court today

Wherefore it is most respectfully  
prayed that case may be kindly  
adjournd any other date

Lucknow  
8/4/85

Amis  
Counsel for Defendant

In the Court of XIII AD Munsif Lucknow

7/5 JT-51

Beelam Ram

vs

Per  
Defendant

R. O. Gudi

R. No. 121/81

7.7.16.7.1984

Application No 5151 PC

In the above-mentioned case the defendant respectfully states as under -

- 1) That the Counsel for the defendant was busy in other Courts when the case was called out & so he could not present himself.
- 2) That the Hon'ble vide order dated 4-7-85 rejected application C49.
- 3) That the defendant will suffer an irreparable loss if the order dated 4-7-85 is not set aside & the balance of convenience relies in selling and was dated 4-7-85.

Part no  
fixed. date

7/5

It is therefore prayed that the order dated 4-7-85 be kindly set aside & the application C49 be kindly heard & miti.

Beelam  
July 4, 1985

K. S. Jais  
Sly. Adv.  
Counsel for def.

In the Court of Additional Munsif XIII, Lucknow

1/20

Beehan Ram - - - - -

Plaintiff

v

Union of India & others - - - - -

Defendants

R.S. No. 121/81

F.P. 29/7/85

objection on behalf of the plaintiff against the application dated 4/7/85 Paper No. G-51) of the defendants.

The plaintiff respectfully begs to submit :-

- (1) That the cause of absence of the defendant as stated in the application is not at all sufficient.
- (2) That the case is pending since 1981 on applicant's account. The order-sheets of the court file are clear cut proofs of it.
- (3) That the defendant will suffer no loss even if the application is rejected.
- (4) That the application of the defendant is liable to be rejected.

Wherefore, it is prayed that the application of the defendant be rejected.

Lucknow  
dt-29/7/85.

Shukla  
(Plaintiff)  
Counsel for the plff



1/2

Per

Beevan Ram

vs.

U. O. Sarda

Defendant

R.O.

M. 29. 8. 1985

Application 45151/85 on behalf of the defendant

In the above-named case the defendant respectfully makes an application that the defendant is not well and is unable to attend the Court.

It is therefore prayed

that the case be adjourned

to a date to be fixed

by the Court.

U. O. Sarda

K. S. Jaiswal

for Defendant

Allowed  
19/8/85  
for disposal by  
1/5/85

2/8/85

1/30

(A/P)

**INTERNAL MAIL**

9/125-1-62 P.S./S.M.

Divisional Supt.'s Office,  
Lucknow dated 7-8-1976.

The Goods Inspector,  
Northern Railway,  
Lucknow.

77-35  
1

Re: Duty List of Staff working in IIS  
Lucknow

Herewith please find duty list of staff viz. Position Clerk,  
Coal Clerk, Accounts Clerk & Threading clerk working in IIS in  
duplicate duly signed by the undersigned. Please ensure that one copy  
of the same is placed at the place of work and the other copy  
copy is kept in record. Signatures of staff concerned should be taken  
on the second copy in token of their acknowledgment.

*G. Prasad*  
For Divisional Superintendent,  
Lucknow.

W-

CEL/S. Crs., N. Ry., Lucknow for information and necessary action.

121/-  
15/9

~~Divisional Superintendent,  
Northern Railway, LUCKNOW.~~

Duty List of Position Clerk, LIAS.

Duty Hrs. 11/30 to 20/- hrs.

4/2  
34  
35  
2

1. He will take charge of wagon transfer Register of Loose consignments & Position Book from CI C/LIAS daily.
2. He will maintain Wagon Transfer Register and unloading book of loose consignments placed at Mineral Depot.
3. He will maintain the Position Book for the Consignments placed and unloaded at Mineral Depot.
4. He will effect removal of HD at and get wharfage etc. deposited before removal.
5. He will endorse the BRs.
6. He will issue DD O/S if any for consignments so unloaded by him.
7. He will maintain the Register of unconnected & undelivered consignments and will submit statements relating to it regularly.
8. He will maintain the Register of over due consignments and maintain correspondence relating to same and will also submit necessary statement regularly.
9. He will get verified from AGI or CIO the wagons out of position or detained for room.
10. He will fill up part removals daily at the close of days work.
11. He will relay "On Ground Position" to Siding Clerk for incorporating the same in Daily Stock.
12. If any other job assigned to him by CI or AGI.

Attested

~~Divisional Commercial Superintendent,  
Northern Railway, LUCKNOW~~



31-1-1978.

G- 22

5. The <sup>Senior</sup> Divisional Commercial Superintendent, the Disciplinary Authority, imposed punishment of withholding of increment temporarily for one year by an order dated 28-2-1978 without affecting his seniority.

G- 23

6. Feeling aggrieved the plaintiff preferred an appeal dated 25-4-1978 against the impugned order dated 28-2-1978 of the <sup>Divisional</sup> Senior/Commercial Superintendent to the Divisional Railway Manager, Northern Railway, Lucknow.

G- 24

7. The Divisional Railway Manager rejected his appeal by an order dated 26-6-78.

G- 25/1 & 2

8. Aggrieved with the orders of the Divisional Railway Manager, Lucknow the plaintiff submitted ' review petition ' dated 5-8-78 to the Divisional Railway Manager, Northern Railway, Lucknow.

G- 26

9. This review petition was also rejected by the Divisional Railway Manager, Lucknow by an order dated 2-9-1978.

G- 27/1 & 4

10. The plaintiff feeling <sup>much</sup> aggrieved filed a petition dated 13-12-1978 to the General Manager, Northern Railway, New Delhi.

A-6/18

11. The Chief Commercial Manager who examined the petition on behalf of the General Manager, rejected

17/136

this petition also by his order dated 20-5-1979.

A-6/1 & 11

12. Getting disappointed from all corners plaintiff served a notice under section 80 C.P.C. upon the defendants on 14-7-1980 and 16-7-80 but they did not reply.

A-2

13. The plaintiff filed a suit no. 121 in the court of Munsif Hawali at Lucknow on 16-2-81 seeking declaration that the impugned orders dated 28-2-1978 passed by the Senior Divisional Commercial Superintendent and those of 26-6-78 and 2-9-78 passed by the Divisional Railway Manager, Lucknow and those of 20-5-1979 passed by General Manager, New Delhi on appeal and review petitions are illegal, inoperative and also seeking relief for Rs. 242.52 Paise only as arrears of pay and allowances illegally deducted for withholding of his increment as aforesaid.

G-17 and  
c-5

14. The plaintiff filed documents in support of his claim as under :-

G-29

i) A copy of extract ' MONSOON NOTICE ' of Northern Railway Gazette no. 13 dated 1-7-1973 issued by General Manager, New Delhi showing that on Northern Railway the monsoon period is from July to October.

G-30

ii) A copy of surprised inspection of Goods and Lucknow Industrial Area Siding, North Railway, Lucknow by the Divisional Operating Superintendent, Lucknow on 10-

1/57

A-6/11 (notice)                      iii) A copy of notice under section 80 C.P.C.  
 A-6/12, 13+14 (Postal Receipts)      dated 12-7-1980 with postal receipts  
 A-6/15, 16, 17 (A.Ds) .                      and A/Ds.

(11-17)  
 C-5  
 11-32

C-16

(iv) and other documents<sup>as</sup> detailed in the list (11-17), C-5, and (11-32)  
 15. The plaintiff demanded certain documents which were in the custody of defendant no. 3 (11 in number).

G-38

15. The plaintiff also gave details of these documents and their relevancy in this case by papers dated 13-4-83 on the orders of Munsif.

G-32.

16. Out of these 11 documents the defendants no. 3 filed only 4 documents and they have been filed by the plaintiff in the court on 14-1-83. The defendants did not file the remaining papers from their custody, despite orders of the court of Munsif, Lucknow.

G-48 (11/10).

17. The plaintiff proved these documents and filed his evidence ~~ex~~ ex-parte on affidavit on 13-11-1984.

P.T.O.

Points for argument.

1.(i) The charge sheet against the plaintiff is entirely based on the ~~ex-  
parte~~ report of the Vigilance Inspector of 25-10-1975.

(ii) It is a relied upon document of the defendants.

(iii) But a copy of document was neither supplied to the plaintiff nor was he ever allowed to cross-examine the Vigilance Inspector or any other witnesses whose statements were recorded by him behind the back of the plaintiff although this was mandatory to supply this relied upon document to the plaintiff to pin-point his reply to the charges levelled against him.

(iv) This led to deprive him the reasonable opportunity of defence as required under Article 311(2) of the Constitution of India and also the principles of natural justice.

(A.I.R 1974 SC 1589 (A) - Krishna Chandra Tandon Vs. Union of India (Para 16)

" Departmental Enquiry - Reasonable opportunity, - Report of investigation officer against delinquent, preliminary to starting enquiry when to be supplied - No importance unless the enquiry officer wants to rely on them for the conclusion. In that case it would only be right that copies of the same would be given to the delinquent. "

2. On carefully examining the charge-sheet there appear three main articles of charges against the plaintiff. They are:

- i) showing the wagons in dispute out of position on 24-10-75 instead of 'on position'.
- ii) Doing the above act with the connivance of Shri Moti Lal, Chief Goods Clerk, Lucknow Industrial Area Siding, Lucknow.
- iii) With a motive to personal gain.'

a) In the article of charge no. (ii) it is a charge of connivance with <sup>Shri</sup> Moti Lal, Chief Goods Clerk. This charge has not at all been proved beyond reasonable doubts by the Disciplinary Authority against the plaintiff although it is a very serious charge. Actually this article of charge has not at all been touched. Neither any document was brought to the notice of the plaintiff proving the connivance nor the plaintiff was ever given reasonable opportunity in his defence to disprove the document or any other evidence.

It is primarily the duty of the prosecution to prove the charge beyond reasonable doubts against the accused and not for the accused government servant to substantiate it.

A.I.R. 1962 Tripura 15 (c)

' It is for the prosecution to prove the charge and not for the government <sup>Servant</sup> to prove it. '

So the punishment on <sup>this</sup> ~~the~~ article of charge is based on mere presumption and conjectures and not based on any evidence.

A  
Two

Besides, the Disciplinary Authority has not drawn any 'findings' of his own on the particular article of charge proving the charge.

Thus the charge is not at all proved against the plaintiff beyond reasonable doubts.

(b) As regards article of charge no. (iii) i.e., with a motive to personal gain I have to submit to your honour that all the wagons in dispute containing consignment of cement belonged to government and there could be the least possibility of a personal gain from the government party. The prosecution has totally failed to discharge his burden in proving the charge against the plaintiff and has also not drawn any 'findings' against the plaintiff in his enquiry. The punishment on this article of charge also is based on mere presumptions and conjectures and not on any document or any other proof.

(1) A.I.R. 1962 Tripura 15 (c) Supra

(2) A.I.R. 1964 SC 364 (365) - "The High Court should interfere wherein the orders of dismissal was based on no evidence at all and the conclusion of enquiry officer ~~or any other~~ was wholly arbitrary and capricious. "

✓ (c) Regarding charge no. (i) the position of placing of disputed cement wagon in the Lucknow Industrial Area siding was got examined by the Disciplinary Authority by deputing his Commercial Inspector and Goods Inspector to find out if the consignment of cement could be unloaded in the open platform and whether tarpaulins

were available in the Shed.

These Inspectors inspected the position on the spot in the shed and submitted their report to the Disciplinary Authority [document required from the custody of defendant no. 3 to file in the court (Paper no. C-16) but not filed], stating in the report that it was not safe to unload the cement consignment in the open platform, the consignment being exposed to getting damaged by rains, and it was monsoon season which runs from July to October according to Northern Railway Gazette no. 13 at page 15 and 16 of General Manager, <sup>Northern Railway</sup> New Delhi. They also stated that tarpaulins were not available in the Shed to cover with in case the rains set in.

The Disciplinary Authority did not agree with the report of these Inspectors and held the plaintiff responsible. He passed orders dated 28-2-1978 against the plaintiff as under :-

" There are no rains in October hence report of the Inspector is not accepted. "

If your Lordships peruse the contents of N. Railway Gazette No. 13 of General Manager, <sup>Northern Railway, New Delhi</sup> it is clearly laid down therein that in N. Railway rainy season is from 'July to October' and the incident is also of 24-10-75 i.e., in the month of October. So the reasoning of the Disciplinary Authority that in the month of October there are no rains' falls flat on the ground and is not based on sound footings.

The notification in the gazette is from the General Manager, Northern Railway, New Delhi for all railways all over India including Northern Railway and this authority is <sup>of</sup> much superior rank than the Disciplinary Authority and the plaintiff was bound to comply with the orders of the General Manager which was binding on him; moreover there ~~wax~~ were no orders to the plaintiff from the Disciplinary Authority over-riding the General Manager's orders. In case the cement would have been unloaded in the open and the rains would have set in (as it rained in the month of October, 1986 this year also) what would have been the fate of the poor plaintiff. He could not be spared for the heavy damage caused to the cement consignments specially a government consignment.

The second reasoning of the Disciplinary Authority that the wagons would have been unloaded in the open and consignment covered with tarpaulins.

According to report of the two Inspectors <sup>aforsaid</sup> tarpaulins were not available in the Shed on 24-10-75 and 25-10-75 then what was there to cover with the consignment. Thus the reasons given by the Disciplinary Authority are not tenable and are liable to be rejected.

The plaintiff has filed document no. G-32 and G-34, wagon Transfer Register and Position Book which clearly show that the wagons in dispute were shown 'out of position' on 24-10-75.

The entries in these registers were made by the

Clerk-in-charge who took over charge from the plaintiff after expiry of his duties on 24-10-75. These facts were also not looked into by the Disciplinary Authority before passing the impugned orders against him.

3. The appellate and reviewing authorities mechanically upheld the orders of the Disciplinary Authority without caring to examine the facts and circumstances of the case, without applying their mind and giving reasons thereof and without issuing speaking orders.

A-6/18

The orders of Chief Commercial Superintendent Northern Railway, New Delhi are as under passed on review petition :-

" In terms of <sup>rule 25 of</sup> ~~Rules~~ Railway Servants (D & A) Rules, 1968 the Chief Commercial Superintendent, New Delhi has carefully considered your review petition against penalty of W.I.T. one year imposed by the Senior Divisional Commercial Superintendent, Lucknow vide NIP No. Vig/74/D/77/LCS dated 28-2-73 and has ~~rejected~~ rejected the same. "

From the above it is quite evident that the orders of the Chief Commercial Superintendent, who is the Head of Department of Commercial Staff are neither speaking nor reasons have been given. He did not at all apply his mind to examine the facts and circumstances of the case of the plaintiff and blindly (Mechanically) upheld the orders of the Disciplinary

and appellate authorities.

(1) Rule 1713 of Indian Railway Establishment Code Vol. I - P. 217

(2) In 1970 A.L.J. 1095, Lajpat Rai Malhotra Vs. F.A. & C.A.O., N. Railway and others <sup>the Honble Court</sup>

<sup>held:</sup>  
" The order of the punishing authority is vitiated for non-observance of Rule 1713 of Estt. Code Vo. I. The Disciplinary authority, if not enquiring authority to consider record of enquiry and records its findings on each article of charge. Rule 1713 is mandatory and contains salutary principles and is not meant to be mere ceremony. Rule 1713 provides safe-guard against appointing authority not discharging its responsibility and adopting findings of enquiring authority without applying its own mind. "

A.I.R. 1968 All. 91 (93)

Constitution of India Article 311 - 226.

" Railway Establishment Code Vo. I - Rule 1716 (c) and 1731 - Imposition of minor penalty order <sup>imposing</sup> punishment and appellate order confirming it ~~on~~ omitting to state reasons for holding charges proved - orders are vitiated and have to be quashed. "

4. That it was mandatory to supply the documents relied upon by the prosecution against the plaintiff. But in the instant case the documents have not been supplied to the plaintiff to pin-point his reply to the charges levelled against him.

C-38

The defendants have not filed the documents in the court of Munsif despite orders of the said court lest they should go against their interest. The plaintiff has also shown the relevancy of these documents in this case.

The plaintiff has, thereby been deprived of reasonable opportunity of defence. Documents, if supplied to the plaintiff or filed in the court, the plaintiff would have successfully proved that he was not at all responsible. He is legally entitled to the benefit for lapses of the defendants.

A.I.R. 1968 SC 1413.

" If the documents demanded from the custody of the opposite parties are not supplied to the plaintiff seeking them, the benefit will go to the party who demanded them."

5. The report of Vigilance Inspector is dated 25-10-1975 and memo issued against the plaintiff is dated 29-9-1977 that is, the memo was issued after a lapse of 2 years. In the meantime the concerning records got destroyed or misplaced and it is clear proof that they have not been filed even to this date either deliberately for fear of adverse effect or for lapse of time.

6. The plaintiff was not furnished with the copy of 'findings' on each article of charge along with the notice of punishment. He was, thereby, deprived of the reasonable opportunity of pin-pointing his suitable appeal to the appellate and reviewing authorities.

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S.L.R. (I)- 1971 Vol. V P.113 SC.

State of Maharashtra Vs. Bhaishan<sup>key</sup> & others.

A- Article 311 (2) - Departmental Enquiry - Copy not supplied to delinquent official - It amounts to denial of reasonable opportunity. It is indeed in very rare cases that it could be said that government servant was not prejudiced by non-supply of report of enquiry officer.

To supply a copy of the 'findings' is absolutely necessary along with the punishment orders.

Northern Railway Servants - Disciplinary and Appeal Rules 1968 - Para 11 (4) (vi) - Pages 12 and 13.

7. (a) As regards Written Statement filed by the defendants it is not supported by any document.

(b) The reply in para 12 of the Written Statement is a fresh charge because it is regarding a connivance of the plaintiff with the clerk-in-charge whereas there is no such charge in the memo, and it cannot be considered without giving an opportunity for explaining it to the plaintiff in his rebuttal.

A.I.R. 1957 SC 882 (Para (E))- U.O.I V. T.R. Verma.

" The principles of natural justice require that no material should be relied upon against the persons charged without his being given an opportunity of explaining them. "

(c) The contents of para 15 of the Written Statement are incorrect, as there were orders

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for only 10 wagons to be diverted to Lucknow Industrial Area Siding and not for 14 wagons which were diverted that day i.e., 24-10-1975 to L.I.A.S. (Paper no. G-30).

d) Section 80 C.P.C. was served upon the defendants on 14-7-1980 and 16-7-1980 and it is a legal and valid notice.

e) It is quite wrong that the case is not justifiable.

f) Arrears of salary for withholding of increment is not deduction in wages under section 7 - Explanation 2 (i) - page 5 of the Payment of Wages Act.

The payment of Wages Act authority under the Act has no jurisdiction to entertain the claim for such arrears of pay and allowances and the proper remedy was in the Civil Court having jurisdiction by way of a regular suit and now the Central Administrative Tribunal.

g) The plaintiff was neither supplied the requisite documents relied upon nor was he allowed access to them.

It is, therefore, prayed that the impugned order dated 28-2-78 passed by <sup>the</sup> Senior Divl. Comml. Supdt., N. Railway, Lucknow be declared illegal, inoperative and ineffective and a decree for Rs. 242.50 for arrears of pay and allowances illegally deducted for withholding of the increment of the plaintiff be <sup>also</sup> passed in his favour with costs.

✓ and (C-51) which were pending for disposal prior to transferring of this case to <sup>the</sup> Honble Tribunal

Allahabad, Dated :

30-12-1986.

(V.D. Shukla)  
Advocate,

Counsel for the plaintiff.