

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT OA.157.....of 2090

Harish Chandra Sivastava.....Applicant(S)

Versus

B.O.G......Respondent(S)

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B.C. File weeded and destroy

Certified that the file is complete in all respects.

Pger
.....
Signature of S.O.

Amir
21/6/11
.....
Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

7/5/90

(41)

Registration No. 157 of 1989

APPLICANT(S) H. C. Srivastava

RESPONDENT(S) N. O. Z. (NER)

<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1. Is the appeal competent?	YA
2. a) Is the application in the prescribed form?	YA
b) Is the application in paper book form?	
c) Have six complete sets of the application been filed?	
3. a) Is the appeal in time?	Yb
b) If not, by how many days it is beyond time?	
c) Has sufficient case for not making the application in time, been filed?	
4. Has the document of authorisation/ Vekalatnama been filed?	Yb
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	Yb
6. Has the certified copy/copies of the order(s) against which the application is made been filed?	Yb
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?	Yb
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?	Yb
c) Are the documents referred to in (a) above neatly typed in double space?	Yb
8. Has the index of documents been filed and paging done properly?	Yb
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?	Yb
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	du

(12)

Particulars to be Examined

Endorsement as to result of examination

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

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

Ym

Yn

Yh

YNo

YA

Yn

NA

Yn

YD

YA

dineer/

157/90(1)

19.11.90

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

Mr Anil Srivastava has responded
a request's time to file counter
Sh. A. K. Chaturvedi points out that
man of interim relief against
narrow order is pending and the
applicant is suffering heavy
loss. The case be listed for
showing in 10-12-90 during which
are the applicant's ^{respondent} reply file
order.

M. H. L.
M.

R

VC

BL

No CA filed.
S.F.C.

10/12/90

Mr Justice K. Nath, VC
Mr K. Obanya, AM.

Sh. A. K. Chaturvedi for the applicant.
Sh. Anil Srivastava for respondents
file a counter. The applicant may
file a rejoinder within two weeks.
The case may be listed for
final hearing on 28/1/91.

AM.

R

VC

20.1.91

R

No Sittings Adj. to 18.3.91

J

18.3.91

No Sittings Adj. to 4.4.91

J

OK

No RA filed

10/12

R

No RA filed
- MP 532/90
filed by the VC
v the applicant
by L.R.

dt. 157/90

(4)

4/4/91

Hon. Mr. ~~Dr.~~ A. B. Costi, Am.
Hon. Mr. S. R. Prasad, Jm.

The learned Counsel for the
applicant files rejoinder. The
case is ready for final hearing.
List the case for final hearing
on 8/7/91

Jm.

Am.

8-7-91 Hon Mr. S. R. Prasad Jm.

None appear on behalf
of Respondents. List this case
for final hearing on 26-8-91

Jm.

26-8-91

No S. R. Prasad adjn 13.9.91
Jm.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

O.A.No. 157/90

H.C. Srivastava

Applicant

versus

Union of India & others

Respondents.

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

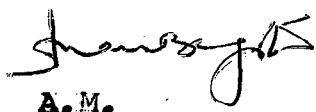
(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who is an employee of N.E. Railway, has approached the Tribunal challenging the punishment order dated 27.12.89 passed by the Divisional Commercial Superintendent N.E. Railway, Lucknow imposing the punishment of reduction to the lower stage of the time scale from Rs 1410 to 1320 as well as the order passed by the appellate authority dated 20.1.90 and the order of Reviewing authority dated 26.3.1990 dismissing the appeal of the applicant.

The applicant was chargesheeted and thereafter enquiry proceeded and the enquiry officer submitted his report to the disciplinary authority who concurred with the report of the enquiry officer and passed the punishment order without assigning any reason. The appellate authority also did not give any personal hearing to the applicant and the appeal was dismissed by the appellate authority.

As

The enquiry officer's report was not given to the applicant to make effective representation. Not giving of the enquiry report is violative of principles of natural justice and depriving of personal hearing thereby denying the opportunity for making effective representation by the applicant, is also against the rules. In Union of India vs. Mohd. Ramzan Khan (AIR 1991 Supreme Court, 471) it has been held that not giving the report of enquiry officer is violative of principles of natural justice and vitiates the enquiry and the punishment. Accordingly, this application deserves to be allowed. The punishment order dated 27.12.89, the appellate order dated 20.1.90 and the order dated 26.3.90 passed by the Reviewing authority are ~~quashed~~ set aside. However, it will not preclude the respondents to proceed with the enquiry from the stage of giving the copy of enquiry report and opportunity of hearing.


A.M.


V.C.

Lucknow Dated: 20.9.91.

Deputy Registrar

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW

O.A. No. 157 of 1990(L)

Harish Chandra Srivastava ... Applicant

Versus

Union of India & others ... Opp. Parties

I N D E X

1. Memo of application 1-9
2. Annexure No. 1
Copy of impugned order dated 27.12.89 10-17
3. Annexure No. 2
Copy of impugned order dt. 20.1.90 18
4. Annexure No. 3
Copy of impugned order dt. 26.3.90 19
5. Postal Order No. B 02414166 dated 7.5.90
for Rs 50/- only.
6. Vakalat nama

Place: Lucknow

Dated: 7-5-90

Raju/-

Asit Kumar Chaturvedi

Advocate,
Counsel for the applicant

Noted for 10.5.90
Asit Chaturvedi
Adv

7/5/90

Deputy Registrar

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A. 107 NO. 1990(L)

HARISH CHANDRA SRIVASTAVA,
Aged about 45 years,
Son of Meral Lal,
R/O T.I. GNER. Colony, Lucknow City

... Petitioner/
Applicant

Versus

1. Union of India through Ministry of Railways, New Delhi.
2. Divisional Commercial Superintendent, N.E.R., Ashok Marg, Lucknow.
3. Senior Divisional Commercial Supdt., N.E.R., Ashok Marg, Lucknow.
4. Addl. Divisional Railway Manager, N.E.R., Ashok Marg, Lucknow.

... Respondents/
OPs.APPLICATION UNDER SECTION 19
OF THE TRIBUNALS ACT, 1985.

1. Particulars of the order against which the application is made;

The above said application is being
preferred before this Hon'ble Tribunal against
the impugned orders ;

Harish Chandra Srivastava

(2)

(i) The order dated 27th December, 1989 passed by the Divisional Commercial Superintendent N.E.R., Lucknow imposing the punishment of reduction to the lower stage of the time scale i.e. from Rs 1410 to 1320.

(ii) The order dated 20.1.1990 passed by the Senior Divisional Commercial Superintendent, N.E.R. Lucknow in the appeal of the applicant, rejecting the same and upholding the above mentioned order.

(iii) The order dated 26.3.1990 passed by the Addl. Divisional Railway Manager, N.E.R., Lucknow rejecting the review application of the applicant.

2. Jurisdiction of the Tribunal;

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal as all ^{impugned} the orders have been passed at Lucknow and the applicant is also posted at Lucknow, N.E.R. Station Lucknow city.

3. Limitation;

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

4. Facts of the case;

The brief facts of the case are as under;

Jagdish Chandra Singh

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i. That the applicant was originally appointed as Goods Clerk in the N.E.R. in 1963. He performed his duties honestly and efficiently and he was promoted to the post of Senior Goods Clerk in 1980. and in 1980 the applicant was posted as Senior Goods Clerk in Gonda. The applicant became victim of some of the Political Personalities of Gonda whom the applicant could not keep satisfied and they made certain complaint. Apart from this Sri Uma Niwas Singh, Vigilance Inspector attached to Railway Board was also unhappy with the applicant. Originally he was Train Ticket Examiner with the Head Quarter at Gonda in the N.E.R. and he was unhappy with the applicant since he was posted at Gonda. In 1980 he was posted at Gonda as Train Ticket Examiner and he was entrusted with the job of enquiring the complaint and he may be with full bias against the applicant.

ii. That in the year 1982 the applicant at the initiative of above mentioned Sri Uma Niwas Singh was transferred from Gonda. However in 1984 the applicant was again posted at Gonda as Senior Clerk and remained at Gonda till November 1987.

iii. That when the applicant was again posted at Gonda a complaint was manipulated against him and the departmental proceedings were initiated against the applicant for major penalties. Proceedings were conducted against the applicant with haste and illegality at the initiative of

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said Sri Uma Niwas Singh. In that proceedings the punishment of reversion for 5 years was imposed upon him which was reduced to 2 years in appeal. However the applicant challenged it in the Central Administrative Tribunal At Allahabad through an application no. 418 of 1987 which is still pending.

iv. That the petitioner's reversion for a period of 2 years has passed away and now the applicant is posted again as Senior Goods Clerk.

v. That on 08.8.88 another chargesheet was issued to the applicant in which it was alleged that on 14th July, 1987 and 15th July, 1987 the applicant allotted a bogy for the transportation of 'Arhar' while posted at Gonda inspite of the restriction. The charge was wholly baseless and unwarranted. The bogy was arranged before the receipt of the restriction message. The other charge was related to the same office i.e. of cutting the date which was also wholly false and baseless.

vi. That the Enquiring Officer was Sri S.N. Srivastava. The copy of the enquiry report was received by the applicant along with the first order of punishment i.e. dated 27.12.1989. It was found in the enquiry report, the petitioner was exonerated from these charges. However the punishment order was passed on 27.12.1989 reduction in the time scale. A copy of this order of punishment is annexed herewith as ANNEXURE No. 1

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vii. That in the above said annexure no. 1 no reasons have been recorded nor any reasons have been recorded by the punishing authority in the disagreement with the enquiry officer or the findings of the enquiry officer, nor on that point the applicant was afforded any opportunity to make his submission on the enquiry report. Actually the enquiry report should have been furnished to the applicant before passing the punishment order, so that the applicant could make his submissions before the punishing authority on the findings of the enquiry officer. The punishment order, Annexure no. 1 is absolutely a void order without any reasons for awarding the punishment nor the reasons for disagreement with the findings of the enquiry officer.

viii. That similarly in the other 2 orders i.e. order dated 20.1.90 passed in appeal and order dated 26.3.90 passed in the revision no reasons have been recorded by the authorities and the Opposite Parties 2, 3 & 4.

ix. That it is also not been pointed out in any of the 3 orders as to why this punishment is being imposed upon the applicant and as to whether the punishment of reduction to the lower scale of time scale at any nexus with the quantum of charges.

x. That the main fact in connection with the occurrence of Gonda was the Rama Kant, Goods

Harish Chandra Sarda

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Superintendent, N.E.R. Gonda, who was there posted at the relevant time i.e. on 14 & 15 July, 1987 to which the charge is related. He was examined on behalf of the department and on behalf of the punishing authority but he deposed nothing against the applicant rather his statement also indicate the innocence of the applicant. The other witness of the department was the Vigilance Inspector who prompted the enquiry against the applicant. He could not be the witness of that and it was obvious for him to defend his own action. His evidence is no evidence. Thus in the present case there is no evidence against the applicant to support warrant or justify the order of punishment.

xi. That inspite of the request of the applicant the personal hearing was not given either by the punishing authority of the appellate authority or by the reviewing authority, though every time the applicant made this approach. The copy of order dated 20.1.90 and 26.3.90 are also annexed herewith as ANNEXURE No. 2&3 to this application.

5. Grounds for relief with legal provisions;

1. Because the department should have been furnished the copy of enquiry report before passing the order of punishment according to law laid down by the Hon'ble Supreme Court, 1988 S.C. 1000.

Harish Chandra Sahu

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(7)

ii. Because the entire enquiry is in violation of the principle of natural justice.

iii. Because there is no evidence against the applicant to justify or support the punishment.

iv. Because the punishing authority, appellate authority and the reviewing authority had not recorded any reasons. They have not applied mind into the merits of the case.

v. Because the punishing authority did not record any reasons for disagreement with the findings of the enquiry officer.

vi. Because none of the 2 ~~charges~~ authorities, appellate and reviewing applied their mind on the question of disagreement between the enquiry officer and the punishing authority.

vii. Because the appellate authority took the ground in rejecting the appeal of the applicant which was not taken by the enquiry officer or the punishing authority. The appellate authority could not initiate the new point in appeal.

viii. Because the applicant was not granted personal hearing at any stage inspite of the demands.

ix. Because the whole case is fraud upon the law as on 15.7.87 the applicant was not on duty at all.

Harish Chandra Saini

6. Details of remedy exhausted;

under

All the remedies available ~~in~~ the Rules have been availed of and exhausted.

7. The matter is not previously filed or pending without any other court;

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

8. Relief Sought;

In view of the facts and grounds mentioned in paras 4 & 5 of this application, the applicant prays for following reliefs;

(A) That this Hon'ble Tribunal may be pleased to very graciously set aside the impugned orders contained as Annexure no. 1, 2 & 3 after summoning the records from the Opp. Parties with all consequential benefits arising there on.

(B) That any other and further relief which this Hon'ble Tribunal deems fit and proper may also be awarded in favour of applicant with cost.

Harishchandra S. B.

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9. Interim order if any prayed for;

Pending final decision, on the application the applicant seeks the following reliefs;

i. That on the basis of facts and circumstances grounds mentioned in the application along with its annexures it is most respectfully prayed that this Hon'ble Tribunal may be pleased to issue a suitable direction/order staying the operation of the impugned orders contained as Annexures 1,2&3 in the interest of justice.

10. The humble applicant wants oral hearing through his counsel.

11. Particulars of the postal order;

Postal Order No. 46241466 dated 7-5-90 for Rs 50/- only.

VERIFICATION

I, Harish Chandra Srivastava, Aged about 45 years, Son of Sri Meral Lal, Resident of T 1 G NER. Colony, Lucknow do hereby solemnly verify that the contents of paragraphs 1 to 11 are true to my personal knowledge except para-5 which is true on the basis of legal advice received and that I have not suppressed any material facts.

Application is being provided wide notification No. A-A.T. 11019/44/87 dated 11th Oct. 1988.

Place: Lucknow

Dated: 7-5-90

Harish Chandra Srivastava

Signature of the
Applicant

At Kumar Chakraborty

Advocate,
Counsel for the applicant

In the Central Administrative Tribunal
Circuit Bench Lucknow

O.A.No. of 90

Harish Chandra Srivastava ... Applicant
Vs.
Union of India & others ... Respondents

Annexure No. 1

NORTH EASTERN RAILWAY

FORM No.2

Orders of imposition of penalty or reduction to a lower stage
in the time scale of pay under Rule 6(v) of the Railway Servants
(D & A) Rules, 1968.

No. LD/SS-C/Vig./60/88

Dated 27.12.89

To,

Name - Shri H.C.Srivastava,
Father's name - Shri Meral Lal Srivastava
Designation - Sr.G.C.
Department - Commercial
Ticket No. -
Date of appointment - 27.2.63
Station - LG
Scale of pay - 1200-2040.

Shri H.C.Srivastava, Sr.GC/LG.

(name, designation & office in which he is employed)

* (under suspension) is informed that the Inquiry Officer/Board of Inquiry appointed to enquire into the charge(s) against him has/have submitted his/their report. A copy of the report of the inquiry Officer/Board of Inquiry is enclosed.

2. On a careful consideration of the inquiry report aforesaid the under-signed agrees with the findings of the Inquiry Officer/Board of Inquiry and holds that the article(s) of charge ~~is~~/are proved.

OR

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

3. The undersigned has, therefore, come to the conclusion that the penalty of reduction to the lower stage at Rs. 1320/- in the time scale of pay of Rs. 1200-2040 may be imposed on Shri H.C.Srivastava for a period of 5 years (here state the period).
Shri H.C.Srivastava, Sr.GC/LG is, therefore, reduced from the stage of Rs. 1410/- to the stage of Rs. 1320/- in the scale of pay Rs. 1200-2040 at present held by him for a period of 5 Years 1 months from the date of this order with/without postponing future increments.

4. Under Rule 18 of the railway Servants (D&A) Rules 1968 an appeal against those orders lies to Sr.DCS provided :-

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

5. Please acknowledge receipt of this letter.

DA/EO's report
in 7 pages.

Signature.....
Name & Desig., of the (S.F.KUSHAL)
disciplinary authority. DIV. COMM. SUPPL. / L.N.
मण्डल वाणिज्य अधिकारी

*Strike out whichever is not applicable.

पूर्वोत्तर रेलवे
उत्तर

Harishchandra Srivastava

T.C.
Ant

In the Central Administrative Tribunal
Circuit Bench Lucknow

O.A.No. of 90

Harish Chandra Srivastava ... Applicant
Vs.
Union of India & others ... Respondents
Annexure No. (

निका।

- 1-(i) केस नम्बर - स्ल०डी० / एस०एस०-सी०/विज/ 60/88
- (ii) आरोपित रेल कर्मचारी का नाम - श्री हरिचन्द्र श्री वास्तव, माल लिपिक
गोष्ठा जंक्शन।
- (iii) दोषी आरोप पत्र नं० - स्ल०डी०/एस०एस०-सी०/विज/ 60/88
दिनांक 8/8/88.
- (iv) जीव अधिकारी का नाम - स्ल०एस० श्री वास्तव
जीव निरीक्षक (डी०एस०)
- (v) ब्यावसायिक सहायक का नाम - श्री आर्डीएस० खरे, मू०पू० जीव निरीक्षक
(डी०एस०)
- (vi) प्रेजिटिंग अधिकारी का नाम - कोई नहीं
यदि कोई।
- (vii) अनुशासनिक अधिकारी - सवाधि / 11/लखनऊ

2-(अ) ऑटो की ल आफ चार्ज:-

श्री हरिचन्द्र श्री वास्तव दिनांक 14-7-87 तथा 15-7-87 को जब गोष्ठा जंक्शन रेलवे स्टेशन माल गोदाम पर माल लिपिक के पद पर कार्यरत थे अपने कर्तव्यों का पूर्णतः ईमानदारी एवं एक कर्तव्यनिष्ठ रेलवे कर्मचारी के रूप में अनुपालन किए जाने में निम्नलिखित संदर्भ में असफल पाए गए।

प्रतिवन्ध के बावजूद भी तृती कोरेन गनतव्य के लिए 14-7-87 को एक गाड़ी जरूर बुक किए जाने का मांगपत्र (आरेफा नोट पत्र) स्वीकार किया, पंजीकरण किया तथा माल लोडिंग के लिए वेगन संख्या 20630 हजार सी 21 को प्लेस/ऑटोडिट भी किया। प्रतिवन्ध अनिश्चित कालिन होने के कारण उक्त वेगन पार्टी द्वारा प्रयोग में नहीं लाया गया और पंजीकरण निरस्त हो गया। श्री श्री वास्तव ने वदैनयली से 14-7-87 का पक्षी द्वारा रेलवे को दिया गया आरेफा नोट पत्र पर लिखी तारीख का कटिंग/ओवर राश्टिंग करके 25-7-87 बनाया और बिना पंजीकरण के वेगन संख्या 35762 यस्.हं.सी. लोड करवाया। इस प्रकार फ्रट आचरण करके उन्होंने स्थानशुल्क का 4533/- रमया तथा पंजीकरण शुल्क की ऊँची का 150/- रमया जो रेलवे को प्राप्त होता जानबूझ कर घाटा पहुँचाया।

श्री हरिचन्द्र श्री वास्तव द्वारा किया गया उक्त आचरण उनका अपने कर्तव्यों के प्रति ईमानदारी होने का सबूत प्रस्तुत करता है। इस संदर्भ में उन्होंने भारतीय रेलवे वाणिज्य नियमावली भाग II के नियम 1405 तथा 1407 का पूर्णतः उल्लंघन किया और उनका आचरण रेलवे कर्मचारी सेवा आचरण नियम 1966 के नियम 3(1)(i), 3(1)(ii) तथा 3(1)(iii) के विपरित पाया गया।

(ब) स्टेट आफ इम्पुटेशन:-

श्री हरिचन्द्र श्री वास्तव दिनांक 14-7-87 को जब गोष्ठा जंक्शन रेलवे स्टेशन माल गोदाम पर कार्यरत थे उन्होंने वाया कल्लाशाब के स्टेशनों का माल की लुकिंग न करने का प्रतिवन्ध भेजे ज नम्बर टी/221/एससी/229 दिनांक 13-7-87 / 14-7-87 को स्पष्ट रूप से अवहेलना करके टी/80 क्रम नम्बर 5 पर तृती कोरेन गनतव्य के लिए एक गाड़ी

Harish Chandra Srivastava

क्रमा: - - - 2/

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आहर बुक विस्जाने का मांग पत्र (अफ़ेण नोट पत्र) स्वीकार किया तथा पंजीकरण किया जिसके लिए मनी रसीद संख्या 043496 बनाया। पंजीकरण के पक्ष में उन्होंने 21 बजे वेगन संख्या 20630 ई0आर0सी0 22-4 माल लदाई के लिए प्लेस/आवॉटित भी किया। टूटी कीरेन गनतव्य जिसे वाया कल्लाशाह हाकर जाना था के लिए माल की बुकिंग/लोडिंग पर लगाया गया प्रतिबन्ध वगैर किसी समय सीमा के था अतः पाटी'द्वारा वेगन सम्भरण के बावजूद भी प्रयोग में नहीं लाया गया। माल भाड़ा दर सूची संख्या 37 भाग 1 (जिद्द) सामान्य नियम 201 के अनुसार चूँकि वेगन सम्भरण के बावजूद भी पाटी'द्वारा उपयोग नहीं किया गया। अतः पंजीकरण निरस्त हो गया और पाटी'का कोई दावा नहीं रहा। नियमानुसार 150/- स्मया पंजीकरण शुल्क भी जकत हो गया।

मेसेज संख्या टी/221/एस सी 244 दिनांक 22-7-87 /24-7-87 के अनुसार लगाया गया प्रतिबन्ध निरस्त हो गया। मेसेज 24-7-87 को स्टेशन पर प्राप्त भी हुआ। श्री हरि-शचन्द्र श्रीवास्तव की डिप्टी 25-7-87 को माल लिपिक के पद पर थी। उन्होंने 14-7-87 के पंजीकरण क्रम नं05 जो निरस्त था के पक्ष में 25-7-87 को नया वेगन संख्या 35762 जो यस.ई.सी. नाजयज रू में आवॉटित किया और लोडिंग कराया और बुक किए गए माल का कार0आर0 क्रम नम्बर 759977 से 759982 दिनांक 25-7-87 को बनाया। टी/80 क्रम संख्या 5 पर टूटी कीरेन गनतव्य के लिए किया गया पंजीकरण स्टवान्स पंजीकरण नहीं था। चूँकि स्टवान्स पंजीकरण नहीं था अतः दिनांक 14-7-87 को पाटी'द्वारा माल स्टेशन मालगोदाम पर लाया गया और बुकिंग/लोडिंग के लिए उचित रू में भागया अफ़ेण नोट पत्र दिया गया। उक्त तिथि को वेगन लोड का माल लदान के लिए प्लेट फर्म पर उपलब्ध था और ~~20630~~ पंजीकरण के पक्ष में वेगन 20630 सम्भरण के बावजूद भी प्रयोग में नहीं लाया गया अतः नियमानुसार 14-7-87 के अ 21 बजे से 15-7-87 के 11 बजे कुल 14 घंटे पाटी'के स्काउट पर वेगन अड़ा रहा जिसके लिए वाहन विलम्ब शुल्क का 193/- स्मया तथा स्थान शुल्क का 2533/- स्मया दाय हुआ जो पाटी'से वसूला जात्रा बाँटिए था। उपरोक्त राशिका जो रेलवे को आय के रू में प्राप्त होती। पाटी'का नाजयज रू में फायदा पहुचाने के लिए श्री श्रीवास्तव ने वदनियती से 14-7-87 को प्राप्त हुए अफ़ेण नोट पत्र पर लिखी तारीख कटिंग/ओवरराइटिंग करके फेरबदल किया जो भारतीय रेलवे वणिज्य नियमावली भाग-11 के नियम 1461 तथा 3024 का स्पष्ट उल्लंघन था।

श्री हरिचन्द्र श्रीवास्तव द्वारा दिनांक 14-7-87 को 12 बजे टूटी कीरेन वाया कल्लाशाह के लिए स्क गाड़ी आहर बुक किए जाने का मांग पत्र स्वीकार किया गया है। टी/80 क्रम 5 पर उनके द्वारा ही स्पष्ट रू से लिखा गया है कि लदान के लिए माल गोदाम पर माल उपलब्ध है। पंजीकरण के पक्ष में उन्होंने उसी दिन वेगन संख्या 20630 प्लेस/आवॉटित भी किया है फिर उसी पंजीकरण के पक्ष में दिनांक 25-7-87 को वेगन संख्या 35762 यस.ई.सी. प्लेस/आवॉटित किए जाने का कोई प्रश्न ही नहीं था। श्री श्रीवास्तव ने उक्त वेगन का जो प्लेसमेंट लदान कराया है वह बिना पंजीकरण के कराया है और इस मामले में उसका वदनियती का ह्रादा स्पष्ट पाया गया। उपरोक्त तथ्यों के आधार पर प्रतिबन्ध के बावजूद माल की बुकिंग/लोडिंग का मांग पत्र स्वीकार करने, पंजीकरण करने, स्वीकार किए गए पंजीकरण के पक्ष में आली वेगन सम्भरण करने सरकारी/कानूनी अधिकारों का

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अभिलेखों में कपटपूर्ण जलसज्जी (कटिंग/ओवरराइटिंग) करने, बिना पंजीकरण के वेगन को लदान करने तथा जानबूझ कर रेलवे को 4726/- रुपये का घाटा पहुंचाने के लिए श्री हरिश्चन्द्र श्रीवास्तव को जिम्मेदार पाया गया।

उनके द्वारा किया गया उक्त आवरण उनका कदाचार/भ्रष्टाचार में लिप्तता एवं भ्रष्ट आचरण करके रेलवे को नति पहुंचाने का ठोस सबूत प्रस्तुत करता है। इस संबंध में उनका आवरण सरकारी रेलवे कर्मचारी आचार संहिता नियमावली नियम 1966 के नियम 3(1)(i), 3(1)(ii) एवं 3(1)(iii) के विपरीत पाया गया।

3- जीव करने का आदेश :-

प्रशासनिक अधिकारी ने अपने पत्र संख्या - एल०डी०/एस०एस०-सी०/विज/60/88 दिनांक 8-8-88 के द्वारा अधीक्षक को जीव अधिकारी नियुक्ति किया है जो टी० एस०आर० केस में पृष्ठ संख्या 10/सी पर उपलब्ध है।

4- अभियोजन पक्ष का केस एवं साक्ष्य :-

अभियोजन पक्ष द्वारा आ०रे० कर्मचारियों के विरुद्ध यह अभियोग लगाया गया है कि जब वह दिनांक 14-7-87 एवं 15-7-87 को गोन्डा स्टेशन पर मालबन्ध के पद पर कार्यरत थे तो प्रतिबन्ध के बावजूद भी तृतीकोन गन्तव्य के लिए 14-7-87 को एक गाड़ी अहरार बूक किए जाने का मींग पत्र (अफ्रेण नोट पत्र) स्वीकार किया, पंजीकरण किया तथा माल लोडिंग के लिए वेगन संख्या 20630 रजि०सी० 21 ब्ले जेस/अर्वाइत किया। प्रतिबन्ध अनिश्चित कालीन होने के कारण उक्त वेगन पट्टी द्वारा प्रयोग में नहीं लाया गया और पंजीकरण निरस्त हो गया। श्री श्रीवास्तव ने कानूनी से दिनांक 14-7-87 को पट्टी द्वारा रेलवे को दिया गया अफ्रेण नोट पत्र पर लिखित तारीख का कटिंग/ओवर राइटिंग करके 25-7-87 काया और उन्होंने धान शुल्क का 4533/- रुपये तथा पंजीकरण शुल्क की जर्जी का 150/- रुपये जो रेलवे को प्राप्त होता जान बूझकर घाटा पहुंचाया।

उपरोक्त के सिद्ध करने हेतु निम्नलिखित सरकारी गवाहक बयान एवं जिराह लिया गया :-

- 1) श्री पी०पी० श्रीवास्तव, मुसतानि/गोरखपुर-आरोपि 2 स।4 एवं 18 से 19.
- 2) " रामाकान्त, माल अधीक्षक - आरोपि 15 से 17.

उपरोक्त के अतिरिक्त निम्नलिखित डॉक्यूमेंटरी प्रमाण भी जीव के दौरान प्रस्तुत किया गया है :-

- 1) केस संख्या- टी/221/एस-सी/229 दिनांक 13-7-87.
- 2) टी/80 रजिटर अवधि (जुलाई 1987)
- 3) एस०एस०/76 रजिटर (जुलाई 1987)
- 4) आ०आ० नोट नं० 759976, 77, 78, 79 और 80 तथा संलग्न अफ्रेण नोट पत्र।
- 5) केस संख्या- जेड/13/सी/10-87/629 दिनांक 1-2-88.



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5- ख़ाव पक्ष का केस स्व साक्ष्य :- ख़ाव पक्ष ने अपने को नि दोषी बताया, पारसु अपने पक्ष से कोई ख़ाव गवाह प्रस्तुत नहीं किया ।

6- आरोपों का विवेक्षण स्व साक्ष्य :- श्री हरिचन्द्र श्रीवास्तव, माल बाबू के विरुद्ध निम्नलिखित आरोप लगाये गये हैं :-

आरोप नं० -1) श्री हरिचन्द्र श्रीवास्तव दिनांक 14-7-87 एवं 15-7-87 को जब

गोन्डा जंक्शन स्टेशन पर कार्यरत थे तो उन्होंने प्रतिबन्ध के बावजूद भी सूती कोरन गन्तव्य के लिए एक गद्दी बाहर निकाले जाने के लिए मोग पत्र (अप्रेषा नोट पत्र) स्वीकृत किया एवं पंजीकरण किया तथा माल लोडिंग के लिए वेगन संख्या 20630 रॉआर0सी0 21 को प्लेस/यार्डिंग कर दिया । प्रतिबन्ध अनिश्चित होने के कारण ऊक्त वेगन पाटी द्वारा उपयोग नहीं लाया गया और पंजीकरण निरस्त हो गया ।

आरोप नं०- 2) श्री हरिचन्द्र श्रीवास्तव, माल बाबू एवं आरोपित रेल कर्मचारी ने पाटी द्वारा दिनांक 14-7-87 को दिया गया अप्रेषा नोट पत्र लिखित तारीख में कटिंग/ओवर राइडिंग करके 25-7-87 काया एवं बिना पंजीकरण के वेगन संख्या 35762 एस0रॉसी0 लोड कराया ।

आरोप नं०-3) श्री हरिचन्द्र श्रीवास्तव, माल बाबू ने अपने छुट आवागमन करके उन्होंने रेलवे को खान शुल्क का 4533/- रुपये तथा पंजीकरण शुल्क के लक्ष्मी का 150/- रुपये जो रेलवे की प्रकृत होता जान झूठा धाटा पहुँचाया ।

उपरोक्त तीनों आरोपों के सन्दर्भ में रिवाइडों एवं प्रस्तुत साक्ष्य के आधार पर आरोपित रेल कर्मचारी के विरुद्ध निम्नलिखित मुद्दा करते हैं जिस पर चर्चा के पश्चात ही लगाये गये आरोपों के निष्कर्ष प्राप्त होंगे :-

मुद्दा सं०-1) क्या आरोपित रेल कर्मचारी ने दिनांक 14-7-87 एवं 15-7-87 के अपने कार्यलय में वेगन संख्या 20630 रॉआर0सी0 को 21 को प्लेस किया और प्लेस करके उन्होंने कोई भूल नहीं किया ।

मुद्दा सं०-2) क्या आरोपित रेल कर्मचारी ने पाटी द्वारा अनिश्चित कालीन प्रतिबन्ध के कारण वेगन उपयोग में नहीं लाया गया फिर भी उसका पंजीकरण निरस्त नहीं किया ।

मुद्दा सं०-3) क्या आरोपित रेल कर्मचारी को यह जानकारी थी कि सूती कोरन गन्तव्य के लिए प्रतिबन्ध लागू किया गया है और पंजीकरण निरस्त हो जाना चाहिए था ।

आरोप नं० - 2

मुद्दा सं०-4) क्या आरोपित रेल कर्मचारी ने पाटी द्वारा दिनांक 14-7-87 को दिया गया अप्रेषा नोट में कटिंग/ओवर राइडिंग किया और यदि दिया तो उसका हस्ताक्षर था एवं नियमक विरुद्ध था ।

मुद्दा सं०-5) क्या नियमानुसार पाटी को ही उसके द्वारा भरे गये अप्रेषा नोट में

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ताम्रचिह्न बदलने के लिए एवं स्पष्ट रूप से काटकर अपना हस्ताक्षर कर देना चाहिए था ।

आरोप नम्बर - 3

मुद्दा सं० -6) क्या अधिष्ठित रेल कर्मचारी न टी/80 (रजिस्टर में माल उपलब्ध होना दिखाना है यदि दिखाना है तो ऐसा करके उसने कानूननित एवं फ्रट आचरण का परिचय दिया है या भूल कर ऐसा हो गया है ?

मुद्दा सं० -7) क्या रेलवे की श्री हरिश्चन्द्र श्रीवास्तव माल बाबु के भूल एवं गलत कार्य से ध्यान शुल्क का 4533/- रुपये का घटा हुआ ?

मुद्दा सं० -8) क्या नियमानुसार जब पट्टी द्वारा प्रशासनिक आधार पर भी वेगन उपयोग में नहीं लाया गया तो पंजीकरण निरस्त माना जायेगा तथा पंजीकरण शुल्क कुल 150/- रुपये जब्त हो जाना चाहिए था ?

मुद्दा सं० -9) क्या श्री हरिश्चन्द्र श्रीवास्तव माल बाबु ने अपने फ्रट आचरण एवं गलत कार्य करके रेलवे कर्मचारी आचरण नियम 1966 के नियम 3(1)(i), (ii) एवं (iii) का उल्लंघन किया है ?

आरोप नम्बर - 1

मुद्दा सं० -1) इस सम्बन्ध में अभियोजन पक्ष के तर्फ से दो गवाहों का बयान लिया गया । जिससे श्री पी०पी० श्रीवास्तव, मुसतानि एवं श्री रामाकान्त, माल अधीक्षक हैं । श्री पी०पी० श्रीवास्तव ने अपने बयान में कहा है कि गोन्डा रेलवे स्टेशन के मालबाबु ने दिनांक 14-7-87 के । माल गोदाम पर 'ब्रीच' का ब्रेसेज प्राप्त होने पर जो तत्काल प्रभाव से लागू माना जाता है तृती कोरेन गन्तव्य के लिए एक वेगन नम्बर - 20630 रं०आर०सी० 21 को प्लेस /गार्डिंग किया एवं उसका पंजीकरण किया तथा वेगन लोडिंग के लिए उपलब्ध कराया (आ०रो०पी० 3 मुख्य बयान)

इस सम्बन्ध में श्री रामाकान्त माल अधीक्षक का भी बयान लिया गया । उन्होंने अपने बयान में स्पष्ट किया है कि 'ब्रीच' का ब्रेसेज कब प्राप्त हुआ । यह उन्हें याद नहीं है फिर उन्होंने ब्रेसेज की प्रतिलिपि देकर बताया कि उस पर हस्ताक्षर स्टेशन अधीक्षक का दिनांक 25/7/87 का है । जो०एस०/जी०डी० का अर्थ होता है माल अधीक्षक गोन्डा - मने उपलब्ध 'ब्रीच' ब्रेसेज पर हस्ताक्षर नहीं किया है ।

(आ०रो०पी०-15 प्रश्न नं० 3)

माल अधीक्षक श्री रामाकान्त ने पुनः स्पष्ट किया है कि जहाँ तक उन्हें याद यह ब्रेसेज दिनांक 14-7-87 को 16 बजे टेलीग्राम द्वारा प्राप्त हुआ था अतः यह दि० 15-7-87 से हो प्रभावी माना जायेगा । (आ०रो०पी०-16 प्रश्न नं० 4)

ऐसी स्थिति में श्री हरिश्चन्द्र श्रीवास्तव माल बाबु को यह कहना कि ब्रेसेज 14/7 को उनके मालुम था फ्रट होना सही नहीं है उन्होंने ने 14/7 को वेगन नम्बर 20630 प्लेस करके कोर भूल नहीं किया ।

मुद्दा सं० -1 सिद्ध नहीं पाया गया ।

मुद्दा सं० -2) श्री हरिश्चन्द्र श्रीवास्तव माल बाबु दि० 15/7/87 को कार्य पर नहीं थे एवं दि० 15/7/87 को श्री जगदीश प्रसाद ने देखा कि वेगन नम्बर

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18472 एन०आर०सी० अराब निकला और बुरी तरह चू रहा है तो उसे प्रशासनिक आधार पर वीथड़ा किया गया। इसे माल अधीक्षक ने भी स्थापित किया है कि जगदीश प्रसाद ने अपना रिमार्क सही लिखा है और वेगन नं० 19472 प्रशासनिक आधार पर वीथड़ा किया गया। (आ०पी०पी०-1 प्रश्न 13)

पुनः यह भी सुनिश्चित किया है कि वेगन का वीथड़ा प्रशासनिक आधार पर हुआ। अतः पंजीकरण शुल्क जगत नहीं होना चाहिए (आ०पी०पी०-1 प्रश्न 13) तथा इसमें कोई अक्षर जाल साजो नहीं हुआ है। इस पर न तो कोई वाहन शुल्क ही लगाया जा रहा है। मुद्दा सं० 2 भी सिद्ध नहीं होता है।

मुद्दा सं०-3) चूंकि माल अधीक्षक ने अपने बयान में यह स्वीकार किया है कि उन्होंने दिनांक 14-7-87 को 16 बजे टेलीग्राम प्राप्त किया था कि तृती कोरन गन्तव्य स्टेशन के लिये *in ch* में सेज जारी हुआ है अतः इसे दिनांक 15-7-87 से प्रमाणी माना जायेगा। (आ०पी०पी०-16 प्रश्न नं० 4)

श्री पी०पी० श्रीवास्तव ने अपने बयान में कहा है कि पंजीकरण शुल्क जगत हो जाना चाहिए था क्योंकि वेगन पाटी द्वारा उपयोग में नहीं लाया गया।

उपरोक्त कथन सही है कि वेगन पाटी द्वारा उपयोग में नहीं लाया गया फिर भी यह सही है कि वेगन नं० 20630 को क्र० सं०-4 को दे दिया गया क्योंकि वेगन नं० 18472 का प्रशासनिक आधार पर वीथड़ा किया गया। माल अधीक्षक ने अपने उत्तर में यह स्वीकार किया है कि श्री हरिश्चन्द्र श्रीवास्तव द्वारा एस० एन०/76 के क्र० सं०-5 पर अपने हस्त लिखित में बदलाव किया है उस पर श्री मेसर्स राम देव ओंकार मल्ल का भी हस्ताक्षर होना चाहिए था जो नहीं हुआ। यदि पाटी न भी हस्ताक्षर करे तो उसका प्रतिनिधि को हस्ताक्षर करना चाहिए था यह माल बाबू की भूल है। (आ०पी०पी०-17 प्रश्न 17)

पंजीकरण शुल्क जगत नहीं होना चाहिए क्योंकि वेगन नं० 18472 का वीथड़ा हायल प्रशासनिक आधार पर हुआ है और क्र० सं० ~~5~~ वेगन नं० 20630 क्र० सं० 4 को नियमतः दे दिया गया।

मुद्दा संख्या 3 सिद्ध नहीं पाया गया।

आरोप नं०-2

मुद्दा सं०-4 और 5) आरोपित रेल कर्मचारी ने अफ्रेण नोट (Forwarding Note) पर दिनांक 10/7 को काटकर दिनांक 25-7-87 लिखा और उस पर पाटी का हस्ताक्षर न लेकर के कार्य में भूल किया तथा नियमनं० 1405 एवं 1407 भारतीय रेलवे वाणिज्य नियमावली भाग-II का उल्लंघन किया है क्योंकि किसी कटिंग/ओवर राइटिंग पर पाटी द्वारा हस्ताक्षर होना आवश्यक है।

मुद्दा सं० 4 सिद्ध पाया गया क्योंकि अफ्रेण नोट में कोई भी बदलाव ~~किसी~~ द्वारा नहीं किया जाना चाहिए था।

मुद्दा सं०-7) इस मुद्दा के सम्बन्ध में श्री पी०पी० श्रीवास्तव सरकारी गवाह ने अपने बयान में कहा है कि टी/80 रजिस्टर के कालम "क्या माल आ

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गया है।" मैं स्पष्ट लिखा हुआ है कि 'यस' इससे स्पष्ट होता है कि माल आ गया था।" (आ० री० पी० २/३) परन्तु मालवाहक अधीक्षक ने यह सुनिश्चित की स्टे किम रजिस्टर में माल आने का कोई इन्दराज नहीं है अतः माल नहीं आया था (आ० री० पी० १६/६) ऐसी दशा में माल का आना नहीं माना जायेगा। (आ० री० पी० ०/६ पृ० ६)

दूसरा प्रश्न यह उठता है कि माल बाबू श्री हरिश्चन्द्र श्री वास्तव ने टी/८० रजिस्टर में क्यों माल आने का प्रान्त होना दिखाना है। ~~आ० री० पी० २/३~~ आरोपित रेल कर्मचारी नियम ९ (२१) के दौरान अपने स्फटीकरण में यह कहा है कि यह अव्यक्त नहीं है कि माल आने पर ही फारवार्डिंग नोट भरा जाय। (आ० री० पी०-२१ प्रश्न ६)

माल बाबू ने अपने स्फटीकरण नियम ९(२१) के दौरान स्वीकार किया- टी/८० रजिस्टर में उल्टा-पल्टा इन्दराज कर दिया गया है। यह अपनी भूल के कारण हुआ है तथा यह भूल क्र. सं० १६ से ठीक कर दिया गया है।

विकारों में गलती करना भी नियम विरुद्ध है अतः आ० री० कर्मचारी को ऐसा गलत इन्दराज नहीं करनी चाहिए चूंकि लेन-देन की शिकायत किसी ने नहीं किया है अतः यह गलती ही माना जायेगा।

अतः रेलवे को स्थान शुल्क का ४५३३/- रुपये का कोई घाटा नहीं हुआ क्योंकि माल-माल गोदाम में लरीं छत्र लाया गया जैसा कि रामा कान्त ने अपने बयान स्पष्ट किया है।

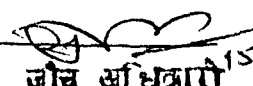
मुद्दा संख्या ७ असिद्ध पाया गया।

मुद्दा सं०-८) नियमानुसार यदि वेगन प्रशासनिक आधार पर 'वीथड़ा' किया जाता है तो ऐसी स्थिति में पंजीकरण शुल्क जगत नहीं होता है पार्टी को पिछले पंजीकरण पर वेगन का आवंटन होता है।

मुद्दा सं०-९) श्री हरिश्चन्द्र श्री वास्तव माल बाबू ने फारवार्डिंग नोट में दिनांक १०/७ में कटिंग एवं ओवर राइटिंग करके २५/७ अपने हस्तलिपि में नहीं करना चाहिए था ऐसा करने उन्होंने भारतीय वाणिज्य नियमावली भाग-२ के प्रविषम का उल्लंघन किया है। इसी प्रकार टी/८० रजिस्टर में इन्होंने बिना स्टिकिंग रजिस्टर में माल आना दर्शाए हुए कालस में (ही - एच) दर्शाया है जिसे इन्होंने भूल बताया है और कहते हैं कि वह क्र. सं० १६ से ठीक कर दिया गया है।

अधिकांश नोट में दिनांक १०/७ को २५/७/८७ उनको पट्टी से ही कटवा करके या दूसरा अधिकांश नोट भरवाना चाहिए था ऐसा करके इन्होंने भारतीय सेवा आचरण अधिनियम ३(१)(ii) एवं ३(१)(iii) का उल्लंघन किया है।

निकाश:- श्री हरिश्चन्द्र श्री वास्तव, माल बाबू, गोन्डा (अब लखनऊ शहर) उपलब्ध रिक्तों एवं साक्ष्यों के आधार पर भारतीय रेल सेवा आचरण अधिनियम १९६६ के नियम ३(१)(ii) एवं ३(१)(iii) के उल्लंघन के दोषी पाये गये।


जय अधिकारी



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In the Central Administrative Tribunal
Circuit Bench Lucknow
O.A.No. of 90

18

A25

Harish Chandra Srivastava ... Applicant
Vs.
Union of India & others ... Respondents

Annexure No. 2

N. E. RLY.

DIVL.RLY.MANAGER(C)'S OFFICE
LUCKNOW: Dated 30/1/90

No. ID/SS-C/Vig/60/88.

Shri H.C. Srivastava,
Sr. GC/LC through DCI/ASH.

Ref: Your appeal dated 22.1.90
against the orders of DCS.

.....

Having considered your appeal dated 22.1.90
the undersigned has passed the following orders:-

" At the time of registration SPS has written in T-80 Register that goods was available at the time of registration. At the time of registration 5 Forwarding Notes of 45 bags and 4 of 150 bags each confirms that consignment were available on 14.7.87. Since restriction was imposed on 14.7.87, some consignments were booked on 25.7.87 with over writing in dates without any initials. Hence his appeal is rejected".

(V. K. Tewari)

प्रवर महल वॉनिज्म अर्थात्

पूर्वोत्तर रेलवे, लखनऊ

Harish Chandra Srivastava

T-80
A25

In the Central Administrative Tribunal
Circuit Bench Lucknow
O.A.No. of 90

19
A26

Harish Chandra Srivastava ... Applicant
Vs.
Union of India & others ... Respondents
Annexure No. 3

पूर्वोत्तर रेलवे

कार्यालय मण्डल रेल प्रबन्धक,

प०स० एलडी/एसएस-सी/विज/60/88 लखनऊ दिनांक 26-3-1990

श्री एच०सी०श्रीवास्तव,
प्रवर माल बाबू/लखनऊ सिटी,
द्वारा प्रवानि० ल०ज०

सन्दर्भ : आपकी रिवीजन पेटिशन दि०9-2-90 ।

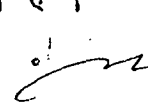
आपकी दिनांक 9-2-90 की रिवीजन पेटिशन पर
विचारोपरान्त अधी-हस्ताक्षरी ने निम्न आदेश पारित किए हैं : -

" मैंने श्री एच०सी०श्रीवास्तव, प्रवर माल बाबू/लखनऊ
सिटी की दि० 9-2-1990 की संदर्भित पुनरीक्षण याचिका सहित पूरे
केस का भली भांति अध्ययन किया । इस सम्बन्ध में मैं इस निष्कर्ष
पर पहुंचा कि :-

- 1) टी - 80 रजिस्टर की प्रविष्टियों के अनुसार वेगन
पंजीकरण के समय माल उपलब्ध था ।
- 2) सम्बन्धित फारवाडिंग नोट में कटिंग/ओवर राइटिंग
स्पष्ट है दिनांक 14-7-87 को ओवर राइटिंग द्वारा
25-7-87 किया गया है) । इस प्रकार के ओवर
राइटिंग पर पार्टी के हस्ताक्षर होने चाहिए थे, जो इस
केस में नहीं हैं । मैंने स्वयं उक्त फारवाडिंग नोट को
देखा है ।

उपलब्ध अभिलेखों तथा साक्ष्यों से उपरोक्त बातों की पुष्टि
होती है अतः श्री श्रीवास्तव को व्यक्तिगत सुनवाई की सुविधा दिए
जाने का कोई कारण प्रतीत नहीं होता ।

अतः श्री श्रीवास्तव की संदर्भित पुनरीक्षण याचिका
अस्वीकार की जाती है । उन्हें सक्षम अधिकारी द्वारा किंतिया गया
दण्ड उचित और व्यापक समझा जाता है ।"


27.3.90
(अनिल आर०के०सिंह)

अपर मण्डल रेल प्रबन्धक/लखनऊ



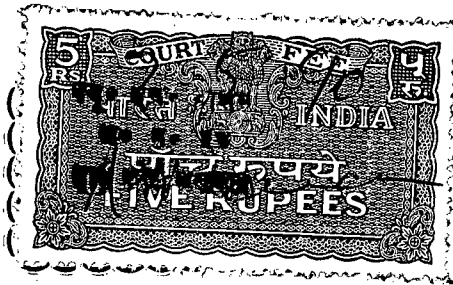


ब अदालत श्रीमान

[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेन्ट]

Central Administrative
Tribunal
महोदय
वकालतनामा



(अपीलान्त)

Harish Chandra Srivastava

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

सन्

Union of India ई०

पेशी को ता०

A. Manna

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Shri A. K. Chatterjee

वकील

महोदय

एडवोकेट

नाम अदालत
मुकदमा नं० नाम
फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपबे या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा छपर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आबे।

Accepted

A. Chatterjee

Harish Chandra Srivastava
हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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महीना

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW.

O.A. No. 157 of 1990 (L)

Harish Chand Srivastava

.....Applicant

Versus

Union of India and Others

.....Respondents

COUNTER REPLY ON BEHALF OF ALL THE RESPONDENTS

I, ~~Harish Chand Srivastava~~ S. P. Kaushal working as
Deputy Comptroller-Supdt in the office of the
Divisional Railway Manager (P), North Eastern Railway,
Ashok Marg, Lucknow, do hereby solemnly affirm and
state as under:-

1. That the official abovenamed is working
as Deputy Comptroller-Supdt in the office of the
Divisional Railway Manager(P), Ashok Marg,
Lucknow and he is fully conversant with the
facts and circumstances of the case and has
been authorised by the respondents to file this
counter reply on their behalf.
2. That the contents of paras 1, 2, and 3 of
this original application do not call for
reply.
3. That reply to the contents of para 4 of this
original application are as below:-

S. P. Kaushal
प्रमुख नायिका अमीर
पूर्वोत्तर रेलवे
लखनऊ

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3. That the contents of para 4(i) of the original application are not admitted as alleged. The applicant namely Harish Chand Srivastava was appointed as Goods Clerk in scale of Rs. 110-200 on 27.2.63 in Jodhpur Division of Northern Railway. The applicant was transferred to North Eastern Railway on mutual exchange with Janki Lal Chitra and was posted under Divisional Commercial Superintendent, Gonda. The applicant was promoted as Senior Goods clerk in scale of Rs. 330-560 on 26.2.80 and was posted at Gonda. The applicant was awarded following punishments during his posting in North~~ern~~ Eastern Railway.

1. Withholding of Increment for one year-
NIP No. C/PMY/251/12/65/LA/26 dt. 2.8.67
2. Censure - NIP No. C/Claim/73/53 dt.
29.11.73.
3. Censure C/HCS/GC/76 dated 19.1.77
4. Withholding of Increment for ^{6 months} ~~6 months~~-
NIP No. C/Claim/73/93 dated 4.3.78.
5. Withholding of Increment of 6 months NIP
No. LD/SS-C/Vig./52/78 dt. 17.11.78
6. Recovery of Rs. 73.50 - NIP No. C/8/TIA/
GD/8/19 dated 20.11.79
7. WIR - 2 years - NIP No. LD/SS-C/Vig/3/82
dated 30.8.82.

Contd.....3

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8. Stoppage of 3 set of passes for one year
NIP No. T/Rest/GD/820 dated ~~20.8.82~~
13-9-82
 9. Withholding of Increment for one year -
NIP No. LD/SS-C/Vig./48/89 dated 26.11.83.
 10. Withholding of increment for one year-
NIP No. C/316/T-5/86 dated 21.7.86.
 11. Reduction of 2 years to lower grade -
NIP No. LD/SS-C/Vig./50/82 dated 25.11.80.
revised vide order dated 10.4.87.
 12. Censure - NIP No. C/65/CI/Saharsa/86
dated 19.12.86.
 13. ^{of increment} Withholding/for one year - NIP No.
LD/SS-C/Vig./21/87 dated 26.5.87.
 14. Withholding of Increment for one year -
C/82/1/34/Misc/87 dt. 16.10.88.
 15. Reduction to lower stage of time scale
for 3 years - NIP No. LD/SS-C/Vig./60/88
dated 27.12.89.
4. That the contents of para 4(ii) of the original application are not admitted as stated. The applicant was only temporarily transferred from Gonda to other station till the resumption of duty of another Senior Goods Clerk namely Sri S.P. Tiwari in the Administrative interest vide order dated 28.5.82. He was again transferr

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अण्डल वाणिज्य अधिकारी


पूर्वोत्तर रेलवे

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back to Gonda in the same capacity vide another order dated 9.11.84. The applicant remained at Gonda upto November , 1987.

5. That first half of the para 4(iii) of this original application are categorically denied. Regarding second half of the said para so far it is matter of record are admitted but rest of the contents of the said para are denied.
6. That the contents of para 4(iv) of the original application are admitted, After completing the term of his punishment of reduction to lower grade for two years awarded to the applicant vide NIP No. LD/SS-C/Vig./50/82 dated 25.11.86 and revised vide NIP No. even dated 10.4.87 the applicant was again put back to his substantive post of Senior Goods clerk Grade Rs. 1200-2040.
7. That in reply to the contents of para 4(v) of the original application, it is stated that the applicant was served with a major penalty memorandum No. LD/SS-C/Vig./60/88 dated 8.8.88 on the basis of Vigilence check. Any allegation contrary to it are denied.
8. That in reply to the contents of para 4(vi) of the original application, it is stated that the Enquiry Officer held the applicant


अण्डल वाणिज्य अधीक्षक
पूर्वोत्तर रेलवे
लखनऊ

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responsible for violation of rules 3(i), (ii) and (iii) of Railway Service Conduct Rules, 1966. Any other allegation contrary to it are denied.

9. That the contents of para 4(vii) of the original application are categorically denied. The notice ~~x~~ for imposition of penalty was correctly been issued strictly as per DAR Rules. The applicant was also provided with the reasonable opportunity available under the rules and the order has been passed after due consideration and application of mind. There is no illegality or irregularity in the said order.
10. That the contents of para 4(viii) of the original application are categorically denied. The said orders have been passed after due consideration and application of mind strictly as per DAR Rules.
11. That the contents of para 4(ix) of the original application being vague, hence denied. The reasons for imposing the penalty has clearly been ~~ix~~ indicated in the orders passed by the competent Authorities. Any allegations contrary to it are denied.
12. That the contents of para 4(x) of the original application are wrong, hence

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अण्डल वाणिज्य अवीक्षक

पूर्वोत्तर रेलवे

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denied. Sri Rama Kant Goods Superintendent North Eastern Railway, Gonda has clearly deposed the responsibilities of the applicant in his statement. Any allegation contrary it are denied.

13. That in reply to the contents of para 4(xi) of the original application, it is stated that it is not mandatory for the Appellate Authority or the Reviewing Authority to give personal hearing to the employees in each and every case. Accordingly in this ~~case~~ case also the said authorities did not consider the personal hearing of the employee necessary hence the same was not granted to the applicant.
14. That the grounds mentioned in para 5 of this original application are vague, irrelevant, misconceived, illegal and not applicable to the instant case and being devoid of any merit, this original application deserves to be dismissed.
15. That the contents of paras 6 and 7 of the original application do not call for reply.


अण्डल वाणिज्य प्रबन्धक
पूर्वोत्तर रेलवे
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16. That in reply to the contents of para 8 and 9 of this original application, it is stated that the applicant is not entitled to any relief. This original application has no merits and accordingly is liable to be dismissed with costs in favour of the answering respondents and against to the applicant.

Lucknow.

Dated: 6/12/90

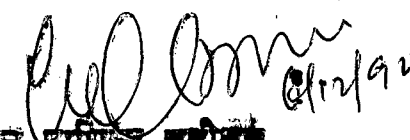

अण्डर सार्जिन्ट जमींदार
पूर्वोत्तर क्षेत्र
बलनगढ़

VERIFICATION

I, the official abovenamed do hereby verify that para 1 of this reply is true to my personal knowledge and those of paras 2 to 16 of this reply are believed by me to be true on the basis of records and legal advice.

Lucknow.

Dated: 6/12/90


अण्डर सार्जिन्ट जमींदार
पूर्वोत्तर क्षेत्र
बलनगढ़

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S No 14
After Lunch

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW

O.A.No. 157 of 1990 (L)

Harish Chandra Srivastava

...Applicant

Versus

Union of India & others

...Opp. Parties

Rejoinder to the counter reply on
behalf of respondents filed by Sri
S.P.Kaushal.

Recd duplicate
dnt ltr
Adv
4/4/91

1. That the contents of paragraphs 1 and 2
of the counter reply need no comments.

2. That the contents of paragraph 3 of the
counter reply as alleged are wrong hence denied and
those of contents of paragraph 4(i) of the
application are reiterated as correct. It is
stated that the applicant was promoted as Senior
Goods Clerk in the scale of Rs 330-560 on 26.2.80
keeping in view the experience and service record
and as such the adverse material related prior
to that date is of no significance thereafter.
Sri Uma Niwas Singh was transferred and posted
as Vigilance Inspector attached to the Railway
Board, New Delhi in March/ April, 1982 and as such
thereafter he manipulated and concocted stories
and allegations against the applicant which
resulted into punishment, transfers and harass-

Filed today
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4/4/91

Harish Chandra Srivastava

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ment in other manner which is evident from the perusal of the punishment stated in the para under reply. The punishment ~~ANNEXURE~~ indicated at serial number 11 has been challenged before the Hon'ble Tribunal at Allahabad through original application number 418 of 1987. The next date of hearing in the said case is fixed for February, 1991. The punishment at serial number 15 is under challenged in the above said application. However the statement of Sri P.P.Srivastava, the defence witness of this case stated in the entire departmental enquiry on 3rd January, 1989 that the action against the petitioner is being initiated on the directives of the Railway Board as an exparte enquiry has already been conducted at the level of the Railway Board in which it is stated that the charges have already been proved. As such the departmental enquiry conducted against the applicant was only an eye wash and completion of formalities as the punishment was pre-determined and decided by the Railway Board itself. A copy of the statement given by Sri P.P.Srivastava on 3rd Jan. 1989 is being annexed herewith as ANNEXURE No. R-1 to this Rejoinder.

3. That the contents of paragraph 4 of the counter reply as alleged are wrong hence denied and those of paragraph 4(ii) of the application are reiterated as correct. It is stated that the applicant was transferred on the initiative of

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Sri Uma Niwas Singh and the transfer of Sri S.P. Tewari has no relation or link with the transfer of the applicant.

4. That the contents of paragraph 5 of the counter reply as alleged are wrong hence denied and those of contents of paragraph 4(iii) of the application are reiterated as correct.

5. That the contents of paragraph 6 of the counter reply as alleged are wrong hence denied and those of contents of paragraph 4(iv) of the application are reiterated as correct. It is stated that the said punishment was awarded due to Sri Uma Niwas Singh on false and fabricated charges.

6. That the contents of paragraph 7 of the counter reply as alleged are wrong hence denied and those of contents of paragraph 4(v) of the application are reiterated as correct. It is stated that the chargesheet was issued on 8th August, 1988 on the basis of which the humble applicant has been punished which is under challenge in this case. It is here relevant to be stated that the entire chargesheet dated 6.7.1988 was issued to the petitioner for major penalties which was dropped due to the statement of Sri P.P. Srivastava on 3rd January, 1989 which has been annexed as Annexure No. R-1 to this Rejoinder. The chargesheet which resulted into the punishment is under

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challenge in this application was issued for the reasons that the said chargesheet dated 6.7.1988 was dropped. The complete stories were concocted against the applicant by Sri Uma Niwas Singh. A copy of the chargesheet dated 8th August, 1988 is being annexed herewith as ANNEXURE No. R-2 to this Rejoinder.

7. That the contents of paragraph 8 of the counter reply as alleged are wrong hence denied and those of paragraph 4(vi) of the application are reiterated as correct. It is stated that the perusal of the enquiry report dated 15th November, 1989 reveals that none of the charges were proved against the petitioner. However, while deciding the issue number 4 and 5 the enquiry officer has held that the change in date should not be done by the concerned party and at the same time he has held that the date was changed by the applicant. In the concluding paragraph of the enquiry report only rule 3(ii) and 3(iii) were sought to be proved without any basis and reason which shall be evident from the perusal of the enquiry report itself. The punishing authority without giving the show cause to the applicant punished him which is bad in the eyes of law keeping in view the Hon'ble Supreme Court judgment. The punishing authority has punished the applicant through a nonspeaking order as no evidence, documentary statement has been discussed by the punishing authority.

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8. That the contents of paragraph 3 of the counter reply as alleged are wrong hence denied and those of paragraph 4(vii) of the application are reiterated as correct. It is stated that as per Hon'ble Supreme Court judgment the show cause notice prior to the punishment was necessary and as such the principle of natural justice has not been complied with and the punishment order is liable to be set aside by this Hon'ble Tribunal. The applicant submitted an appeal dated 22.1.1990 to Opposite Party No. 3 and also demanded for personal hearing. The Opposite Party No. 3 without giving any opportunity of personal hearing to the applicant rejected the appeal of the applicant through order dated 30th January, 1990. A perusal of the appeal's rejection order dated 30th January, 1990 reveals that the availability of consignment on 14th July, 1987 is said to be proved where as according to the report of the enquiry officer, it is evident that due to the statement of Sri Rama Kant the said charge was not said to be proved. Also the findings given by the enquiry officer regarding cutting of date from 14th July, 1987 to 25th July, 1987 in the hand writing of the applicant has also not been referred and reversed by the appellate authority. The only allegation proved by the enquiry officer has been reversed by the appellate authority and in regard to entire charge the findings of the enquiry officer has been reversed by the appellate authority.

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and the entire record of the enquiry is bad in the eyes of law. But yet the appeal of the applicant has been rejected as no opportunity was given by the appellate authority, Opposite Party No. 3 prior to reversing the findings of the enquiry officer in regard to availability of the assignment of 14th July, 1987 but it was necessary in compliance of the principle of natural justice. The appeal rejection order is bad in the eyes of law. The facts and reasons stated in the appeal may be treated as a part of the rejoinder. A copy of the statement of Sri Ramakant recorded on 2.8.1989 in the departmental enquiry and the appeal dated 22.1.90 is being annexed herewith as ANNEXURE No. R-3 and R-4 to this Rejoinder.

9. That the contents of paragraph 10 of the counter reply as alleged are wrong hence denied and those of paragraph 4(vii) of the application are reiterated as correct. It is stated that the applicant submitted a revision petition to Opposite Party No. 2 on 9.2.1990 against the appeal/representation's rejection order dated 30th January, 1990. The applicant submitted before the revision authority that the findings recorded by the appellate authority is in conflict with the entire record of the enquiry officer and as such the appeal rejection order is bad in the eyes of law. But the Opposite Party No. 2 rejected the revision petition of the applicant

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by a nonspeaking order through order dated 26th March, 1990, and reiterated the findings recorded by the appellate authority. It is here relevant to be stated that the applicant demanded an opportunity of personal hearing before the revision authority but the same was rejected by the revision authority also without any reason and rhyme. The review petition's rejection order is in utter violation of the principle of natural justice as such it is bad in the eyes of law. A copy of the revision petition is being annexed herewith as ANNEXURE No. R-5 to this Rejoinder.

10. That the contents of paragraphs 11 and 12 of the counter reply as alleged are wrong hence denied and those of paragraph 4(ix) and (x) of the application are reiterated as correct. It is stated that no reasons have been recorded by the punishing authority while passing the order dated 27th February, 1989. The enquiry officer has only proved the charge pertaining to cutting of date from 14th July, 1987 to 25th July, 1987 in the hand writing of the applicant which has been reversed by the appellate authority and the reviewing authority but yet the punishment has been reiterated and imposed upon the applicant. No opportunity of personal hearing or show cause was given either by the punishing authority appellate authority and reviewing authority prior to passing the order which was necessary in the compliance of the principle of natural

Harish Chandra

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justice. A perusal of statement of Sri Rama Kant Annexure No. R-3, it will be evident that no charge is proved against the applicant, but yet the applicant has been punished without any rhyme and reason.

11. That the contents of paragraphs 13 and 14 of the counter reply as alleged are wrong hence denied and those of paragraphs 4(xi) and 5 of the application as alleged are reiterated as correct. It is stated that the orders imposing punishment upon the applicant were passed in utter violation of the principle of natural justice. The findings have been recorded against the petitioner without any basis which shall be evident from the perusal of the appeal and the review petition. No opportunity of personal hearing was given despite demand, according to the law. Grounds are tenable in the eyes of law and the application is full of merits and deserves to be allowed with all reliefs claimed in the application.

12. That the contents of paragraph 15 of the counterreply need no comments.

13. That the contents of paragraph 16 of the counter reply as alleged are wrong hence denied and those of paragraphs 8 & 9 of the application are reiterated as correct. It is stated that the applicant is entitled for the relief claimed in the application along with interim relief.

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The applicant has also moved an application for interim relief on 3rd September, 1990 due to the fact that the applicant is suffering irreparable loss due to punishment imposed upon the applicant. The applicant is suffering about Rs 1000/- per month due to the punishment imposed upon him by the Opposite Parties which is under challenge by the applicant. The applicant and his family members are also suffering financial hardship due to the bad and illegal punishment order. The application is full of merits and deserves to be allowed.

VERIFICATION

I, Harish Chandra Srivastava, Aged about 45 years, Son of Sri Merai Lal, Resident of T I G NER Railway Colony, City Station, Lucknow do hereby solemnly affirm and state and do hereby verify that the contents of paragraphs 1 to 13 of this Rejoinder are true to my personal knowledge except the legal averments, which are believed to be true.

Nothing material has been concealed and no part of it is false, so help me God.

Signed and verified on this day of.
January, 1991 at Lucknow. *Harish Chandra Srivastava*
Place: Lucknow

Dated:

APPLICANT.

Annexure No. R-1

Page

Annexure No. R-1

पेज नं० ३

सं० ए० डी/एसएस-स/विज/51/88

श्री स्व० श्रीवास्तव माल बाबू/गोंडा के विरुद्ध अनुशासनिक जांच कार्यवाही ।

दिनांक, 3-1-1989

स्थान - मोरारपुर ।

श्री पी०पी० श्रीवास्तव मुस्तानि (सहायक गवाह) का बयान :-

श्री हरिश्चन्द्र श्रीवास्तव माल लिपिक गोंडा के विरुद्ध बोर्ड द्वारा भेजा गया एक पारोका प्राप्त हुआ था । विरुद्ध परिवार में माननीय संसद सदस्य श्री चन्द्र शेखर त्रिपाठी द्वारा इनके विरुद्ध कुछ आरोप लगाया गया था । आरोपों के सम्बन्ध में विस्तृत जांच पड़ताल किया गया एवं सम्बन्धित अभिलेखों को बान-बोन किया गया । बान-बोन में एक आरोप जो कमचारी एवं अपने अनुभाग प्रभारों के साथ अशुद्ध आचरण करने का आरोप अंतः सही पाया गया था । एवं मस्टर रोल में कटिंग ओवर राइटिंग करके अनुचित लाभ प्राप्त करने के सम्बन्ध में लगाया गया आसत्य पाया गया था । इस सम्बन्ध में विस्तृत जांच रिपोर्ट बोर्ड को प्रेषित किया गया । बोर्ड ने निर्देश दिया कि श्री श्री हरिश्चन्द्र श्रीवास्तव के विरुद्ध दीर्घ दंड आरोप पत्र लि कार्यवाही कि जाय एवं गोंडा से इनका स्थानान्तरण किया जाय । इसी संदर्भ में अनुशासनिक पदा धितारी मजत रेल प्रबन्धक लखनऊ को सूचित किया गया और अनुशासनिक पदाधिकारी द्वारा श्री श्रीवास्तव के विरुद्ध अनुशासनिक कार्यवाही के लिए दीर्घ दंड आरोप पत्र जारी किया गया । इस सम्बन्ध में मेरा यही बयान है । जोर में अपना बयान समाप्त करता हूँ ।

सहायक गवाह

बयान सहायक द्वारा पूछे गये प्रश्न व उत्तर

बयान सहायक ने इसका व्यक्त किया है कि वे उनसे इस मामले में अध्ययन सम्बन्धित अभिलेखों को नहीं दे पाये हैं । अतः जिरह के लिये अन्य सिद्धि निर्धारित कि जाय । इनका अनुरोध जांच अधिकारी ने मान लिया ।

हरिश्चन्द्र श्रीवास्तव
आरोप मंचारी

बयान सहायक

सहायक गवाह

जांच अधिकारी

=====

Harish Chandra Sola

Annexure No. R2

aus

समवारी रेलवे कर्मचारी सेवा अनुशासन एवं अपील विभाग 1968 के विभाग 9 के अंतर्गत अनुशासनात्मक कर्मचारी के लिए श्री हरिश् चन्द्र श्रीवास्तव माल लिफ्ट गोण्डा जंक्शन के विरुद्ध विपरीत आरोप पत्र/

अनुलग्नक - 1

1. श्री हरिश् चन्द्र श्रीवास्तव माल लिफ्ट गोण्डा जंक्शन के विरुद्ध बगाना/प्रस्तावना में लिखता है कि प्रत्येक आचरण करके रेलवे को क्षति पहुँचाए जाने का आरोप।

श्री हरिश् चन्द्र श्रीवास्तव दिनांक 14.7.87 तथा 15.7.87 को जब गोण्डा जंक्शन रेलवे स्टेशन माल गोण्डा या माल लिफ्ट के पट्टे पर कर्मचारी के अपने कर्तव्यों का पूर्ण निष्ठा, ईमानदारी एवं एक कर्तव्य निष्ठ रेलवे कर्मचारी के रूप में अनुपालन किए जाने में विफलता से रूबरू हो अस्वस्थ बने।

प्रतिबन्ध के बावजूद भी दली कोरेन गतत्व के लिए 14.7.87 को एक गाड़ी आरहाट्ट कर जाने का मांगपत्र (अप्रेषण नोट पत्र) सीमाएँ किए, पंजीकरण किए तथा माल लोडिंग के लिए बैग सेवा 20630 ई आर सी 21 बजे प्लेस/अवधि भी किए। प्रतिबन्ध विरोधी कार्रवाई होने के कारण उक्त बैग चारों द्वारा प्रयोग में ली लाजा बाजा और पंजीकरण विरुद्ध हो गया। श्री श्रीवास्तव ने वफादारी से 14.7.87 को चारों द्वारा रेलवे को पैनागण अप्रेषण नोट पत्र पर लिखी तरीक का कटिंग/अवधि/डिप्टी करके 25.7.87 बाराणसी और पैना पंजीकरण के बैग सेवा 35762 बल 25 ई सी लोड करण। इस प्रकार प्रत्येक आचरण करके अन्तर्गत स्वातंत्र्य का 4533/- (रुपया) तथा पंजीकरण शुल्क की जल्दी का 150/- (रुपया) रेलवे को प्राप्त होता जायगा का धारा पहुँचाया।

श्री हरिश् चन्द्र श्रीवास्तव द्वारा किए गए उक्त आचरण उक्त अपने कर्तव्यों के प्रति ईमानदार होने का स्पष्ट प्रमाण बताते हैं। इस से रूबरू में उन्हें भी भारतीय रेलवे वाणिज्य विभागावली भाग II के नियम 1405 तथा 1407 का पूर्ण रूप से उल्लंघन किया और उक्त आचरण रेलवे कर्मचारी सेवा अनुशासन विभाग 1968 के विभाग 3(1)(i), (ii) तथा 3(1)(iii) के विपरीत जाया गया।

(रु. 14.7.87)
संवा. 14.7.87/ल. 14.7.87

अनुलग्नक - 2

2. श्री हरिश् चन्द्र श्रीवास्तव माल लिफ्ट गोण्डा जंक्शन के विरुद्ध बगाना/प्रस्तावना में लिखता है कि प्रत्येक आचरण करके रेलवे को क्षति पहुँचाए जाने का दोषारोप।

श्री हरिश् चन्द्र श्रीवास्तव दिनांक 14.7.87 को जब गोण्डा जंक्शन रेलवे स्टेशन माल गोण्डा या कर्मचारी के अपने कर्तव्यों का पूर्ण निष्ठा, ईमानदारी एवं एक कर्तव्य निष्ठ रेलवे कर्मचारी के रूप में अनुपालन किए जाने में विफलता से रूबरू हो अस्वस्थ बने। श्रीवास्तव माल लिफ्ट गोण्डा जंक्शन के विरुद्ध विपरीत आरोप पत्र/

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उपरोक्त हथियों के आधारे पर प्रतिवध के बावजूद माल की लुकिंग/लोडिंग मानेस पता सीमा करने, पंजीकरण करने, स्वीकार किए गए पंजीकरण के पक्ष में रताती वैगत संस्करण करने, सरकारी/कारणी अपिलेटोने में अपर युनि आलसजरी (कटिंग/ओवर/ईडिंग) करने, निवेदन माण के वैगत का लदाग करने तथा आगएन कर रेलवे को 4725/- (चौपा भा बाटा पुहुना) के लिए जिम्मेदार पापा गया।

उत्तरे हमा किपा गया उत्तरे आगवण उत्तरे मंदाना/मुल्हाना में लीपता के प्रसंग में माल के लोडिंग के दोर स्पष्ट प्रसंग बहाल है। इस संदर्भ में उत्तरे आगवण सरकारी रेलवे मरिनाली आगएन संहिता निम्नवासी निम्न 1966 के नियम 3(1)(i), 3(1)(ii) एवं 3(1)(iii) के निपरीति पापा गया।

(एन.पी. सिंह)
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सुपुत्रगद - 3

3. पिब्रज दानीप प्रलोक जिनके आधारे पर आरोप/दोषारोप उठाया वहे है।

3.01. मेसेज संख्या टी/221/50/229 (1) दिनांक 13.7.87 यह प्रस्तावित होगा कि वाण वल्लभा/काट माल की लुकिंग/लोडिंग के लिए प्रतिवध लासु डिपार्च और निरुपस्थान 14.7.87 को उक्त वाण लकि गुजरने वाले किसी भी स्टेशनों के लिए माला/पंजीकरण स्वीकार नहीं किया जाता चाहिए था।

3.02. टी/80 दिनांक 13.7.87 पर अग नल 5 पर किपा गया पंजीकरण यह प्रस्तावित होगा कि ली मेरेन वाण वी.पी.एम. गतहत्व के लिए 14.7.87 की लीप के 12वें मी. निवेदन हमा पंजीकरण स्वीकार किया गया और नतीरसई संख्या 043496 जारी किया गया।

3.03. गल भत/76 दिनांक दिनांक 13.7.87 पर किपा गया लोड करण यह प्रस्तावित होगा कि श्री श्रीवास्तव हमा पंजीकरण अग नल 5 दिनांक 14.7.87 के पक्ष में 21 वें वैगत संख्या 20630 प्लेट/आवर्त किया गया।

3.04. गल भत/76 दिनांक पुन यह प्रस्तावित होगा कि पंजीकरण अग नल 5 के पक्ष में 14.7.87 को वैगत संख्या 20630 प्लेट/आवर्त किए जाने के बावजूद भी पुनः उली पंजीकरण के पक्ष में 25.7.87 को वैगत संख्या 35762 550 प्लेट किया गया जो नजाना था।

3.05. आर आर नल 759976, 77, 78, 79, 80 के साथ सेलजत अग्रेषण नोट पक्ष यह प्रस्तावित होगा कि पुन अग्रेषण नोट पक्ष पर जारी हमा 14.7.87 का लोडिंग/लोडिंग कटिंग/ओवर/ईडिंग कसे 25.7.87 बताया गया।

3.06. मेसेज संख्या 2/13/0/10-87/624 दिनांक 1.2.88 यह प्रस्तावित होगा कि श्री श्रीवास्तव को अपना पक्ष प्रस्तुत करने के लिए लाभोगी सौभा दिया गया किंतु के अंश में ही अग।

मुद्रा/8/8

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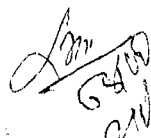
Annexure No. R-3

पेज नं 15

प्रमाणित माल बाबु गोडा वर्तमान में लखनऊ। सदैव। विवाद
अनुशासनिक और कार्यवाही।
दिनांक -2-8-89
गोखपुर।

श्री. प्रमाणित। माल अधोक्ष (सारा) गोख का बयान -

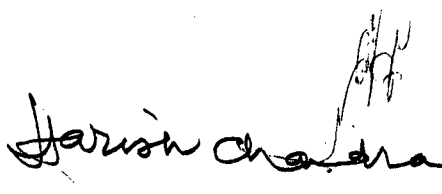

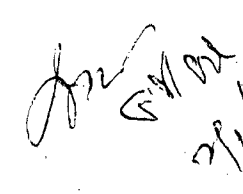
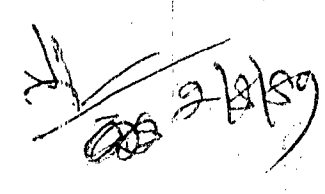
दिनांक 14-7-87 को 2 बेगन स्क सनद नगर एवं एक तृतीकोरन के लिये 21 बजे रात में स्लाट हुये। चूंकि रात का समय था इसलिए दोनों बेगन उस। दननरी जव सके। 1। द0 15-7-87 को सुबह देखा गया कि गाड़ी सं0 18472 में रात के पानी बरसने से पानी बू कर कुछ झट्टा हुआ था। बरसात का समय होने के कारण तथा माल को दूर जाने के कारण चला हुआ बेगन न तो पाटी ने लहदा न हो उसको स्लाऊ किया गया। क्योंकि रात में पानी बरसने से माल बुरा तरह भोग सकता था तथा हेवी क्लेम हो सकता था। तथा कर्मचारी के विवाद लापरवाही पर आरोप लग सकता था। अतएव उस गाड़ी को विद हा कर दिया गया। तथा दूसरी गाड़ी सं0 20630 जिसका नम्बर जॉर्जिन रजिस्टर में पड़े था अर्थात् सं0 4 पर सनद नगर के लिये लदवाया गया। जिसको टिप्पणी एस सन/76 में कर्तृत कर्मचारी श्री जगदीश प्रसाद द्वारा 1। द0 15-7-87 को लिखा गया। तथा मेरे द्वारा सत्यापित किया गया। मेरा बयान समाप्त हुआ।

 सारा गोख
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ब्याप सहायक द्वारा पूछे गये प्रश्न व उत्तर:-

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- 1-जो बेगन तृतीकोरन एवं सनद नगर के। स्लाट हुये उनके स्लाटमेंट में कोई भी नया रस्ता नहीं लिखा गया।
- 2-जो तृतीकोरन के लिये 18472 सी स्न जार विद हा हुआ वह प्रशासनिक आधार पर विद हा हुआ। और इसका पंजीकरण चला रहा।
- 3-जो पड़े सनद नगर के लिये गाड़ी नं0 18472 स्लाट किया गया था।
- दि0 14-7-87 को 21 बजे जा कर यह गाड़ी देखा गया कि चूंकि रात की इसलिये उसको विद हा किया गया जसा कि एस सन/76 में लिखा विदया गया है। और सनद नगर के बेगन सं0 20630 विदया गया जो ठेक हंडा और चला गया। एस सन/76 में बेगन सं0 18472 के जागे जो मने वेरीफाई करके अपना स्लाधार किया है। उसके नीचे मने लिखा है जो उस जो ही 15-7 न 1। द0 16 बजे। जो एस जो ही से मेरा तत्पर्य गुजरा सुपा रटेन्डेंट गोडा।
- प्रमाणित सं0 मेसेज 1। द0 13-7-87 (जॉर्जिन सं0 3-01) मने जांच में देखा उस पर एस सन/गोडा का 25-7-87 का स्लाधार है और जो एस को मार्क है उस पर मेरा स्लाधार नहीं है। मुझे पता नहीं है कि यह मेसेज मुझे कब प्राप्त हुआ था।

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4-30 मेसेज दि० 13-7-87 में यह नहीं लिखा है कि यह इमजिनेट इपेक्ट (तत्काल रूप से प्रभावी होगा) यह मैं मिसेज देखा कर बता रहा हूँ। यह मेसेज जहाँ तक मुझे याद है कि गोवा स्टेशन पर 14-7-87 (टेलीग्राम) को प्राप्त हुआ था। करीब 16 बजे अतः यह 15-7- से प्रभावी होगा क्योंकि उसमें ही नोटेड इपेक्ट का बतलाना नहीं करी गयी है।

बही लिखा है कि जोर और रोजाना का यह नियम हर केस में लागू किया जाता है।

5-30 स्टैंडिंग राजस्टर के अनुसार तुलीकोरन की भेजा जाने वाला माल स्टेशन पर उपलब्ध नहीं था।

6-30 टी० 80 राजस्टर में कालम 'क्या माना जा गया है' के अन्तर्गत, सं० 5 के अन्तर्गत जो एस लिखा है जिसका मतलब यह लगाया जा रहा है कि माल जा गया है वह सही नहीं है। क्योंकि अगर माल जा गया होता तो जोर माल स्टेशन पर उपलब्ध होता तो स्टैंडिंग राजस्टर में इन्दराज होता जो नहीं है।

7-30 तुलीकोरन के सम्बन्ध में पंजीकरण शुल्क फॉरवर्ड नो किया गया क्योंकि बैगन प्रशासनिक आधार पर विद्वद् हो किया गया। जोर राजस्थान चालू रहा।

8-30 प्रतिबन्ध समाप्त होने के बाद सं० 5 का माल तुलीकोरन के लिये दि० 25-7-87 को बैगन सं० 35762 में भेजा गया। इसमें कोई अनियमितता नहीं हुई है।

9-30 इस केस में पाटी के प्रश्नों पर कौन्सिल नहीं किया गया था तथा इसलिये विलम्ब शुल्क का कोई प्रश्न ही नहीं होता। तथा माल माल गार्डम पर स्टैक नहीं था अतः स्थान शुल्क का भी प्रश्न नहीं था।

10-30 यह आवश्यक नहीं है कि फॉरवर्डिंग नोट माल लाने के बाद ही भरा जाय। फॉरवर्डिंग नोट पंजीकरण कराने में समय भरना आवश्यक है।

11-30 मुझे फॉरवर्डिंग नोट मेसर्स रामदेव ओंकार मल्ल का दिखाया गया जो 45 औरों जगहों पर है जोर जिसमें तारीख 14 को 25 बनाया गया है। मैं इसे देख कर यह बता रहा हूँ कि 14 को 25 बनाने में कोई अनियमितता नहीं है। इसे देख कर यह नहीं कहा जा सकता कि 14 को 25 श्री हरिश्चन्द्र श्रीवास्तव ने बनाया है। जोर माल 25 को लादा गया इसलिये तारीख बदलवायी गयी।

जोच अधिकारी द्वारा पूछे गये प्रश्न:-

12-30 मेने दि० 14-7-87 एवं 15-7-87 का स्न०/76 राजस्टर देखा और देखा कर यह बता रहा हूँ कि उसमें कालम 3 में जो कंटिंग किया गया वह श्री जगदीश प्रसाद द्वारा किया गया है। जोर तमकि भी श्री जगदीश प्रसाद द्वारा लिखा गया है। जो मेरे द्वारा सत्यापित किया गया है। जिसमें मैंने अपने हस्ताक्षर के नीचे जोर स्न० जो डी 15-7 लिखा है।

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पेज नं. 17

13-उ० चूंकि बैगन सं० 18472 सनआसी द्वारा निकला तथा इसका विवर दान प्रशासनिक तौर पर हुआ इसलिये इसका पंजीकरण शुल्क जगत नही होना चाहिये तथा यह रिमार्क सहो लिखा गया था न कि किसी साजिस के लखद । न इस पर न तो बादन शुल्क हो सोगा ।

14-उ० जो भी बैगन जो सनले नगर(एस सन स्प.) या दूतीकोरन दो० सन० जायेगा वह दोनों ही बत्तारशाह होकर जायेगा ।

15-उ० जो भी प्रतिबन्ध सन्देश प्राप्त करते है उसे प्रतिबन्ध री. स्टर पर चढ़ाते है ।

16-उ० जो भी प्रतिबन्ध सन्देश मिला उसे हम चढाये इसको भी हम अवश्य चढाये होंगे जो रीजिस्टर देखने से पता चलेगा कि वह किस तिथि को चढाये है ।

17-उ० एस० सन०/76 में प्र० सं० 5 पर जो श्री हरिचन्द श्री० ने किया है और अपने हस्ताक्षर में लिखा है उस पर पाटो श्री मेसर्स रामदेव जांकार मल्ल का भी हस्ताक्षर लेना चाहिये था या उसके कि सो प्रति निधि का हस्ताक्षर लेना चाहिये था । यह श्री श्रीवास्तव ने न लिखा कर भूल किया है ।

मो० री० के० मे०

क्वाय सदस्यक

स० गवाह

अति अधिकारी
=====

Hansen camera Seph

Annexure No. R-4 (A50)

R-4

To

The Senior Divisional Commercial Superintendent,
N. E. Railway,
Lucknow.

(APPELLATE AUTHORITY)

Reg:- Appeal against the penalty of reduction to the Lower Stage of pay from 1410 to 1320 in the time Scale of Pay Rs. (1200-2040) for three years imposed by Divisional Commercial Superintendent through order No. LD/SS-C/Vig./60/88 Dated 27.12.89.

Respected Sir,

Being agrieved by the said order of the disciplinary authority (DCS/LJN) in finalisation of major memorandum No. LD/SS-C/Vig./60/88 dated 8.8.88 served on the appellant, this appeal is preferred for consideration and judicious orders with the following facts:-

1. That through the said major memorandum the appellant was charged for violation of rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of RS9C) 1966,
2. That after having conducted proper DAR enquiry under rules, Enquiry Officer could not find either violation of any such conduct rules or any such commission or Omission by which the railway have suffered any revenue loss and, therefore, he held the charge of violation of rule 3(1)(i) not proved.
3. That while dealing with charge of violation of rule 3(1)(ii) and 3(1)(iii) also the enquiry officer could not get it proved but for the clerical over writing in the date in the forwarding notes the appellant has been held responsible.
4. That the appellant in this connection invites

contd....2

58/22/11
Hemendra Chandra Saha

attention of the appellate authority to the following facts which perhaps could not get due weightage uptill now.

- (a) That the enquiry officer without any valid proof documentary or otherwise, at his own came to the conclusion that the over writing in the dates in the subject for-warding notes was done in none else than in the hand writing of the appellant only.
- (b) That in reply to Question No. 11 at page 16 put by the defence counsel the prosecution witness Shri Rama Kant who also happened to be Goods Superintendent, Gonda has categorically clarified that the date from 14 to 25 has not been made by the appellant his verbatim reply reads as under:-

11 - उ० नुं फारवार्डिंग नोट मेर्स राम देव आकार मल

का दिखाया गया जो 45 बोरा अरहर का है और जिसमें तारीख 14 को 25 बनाया गया है इसे देखाकर यह बता रहा है कि 14 से 25 बनाने में कोई अनिर्णयिता नहीं

है इसे देखाकर यह नहीं कहा जा सकता कि 14 को 25 श्री हरीशचन्द्र श्रीवास्तव ने बनाया है बल्कि माल 25^{वां} लादा गया इसलिए तारीख बदलवाई गई।

In reply to Question No. 13 at page 22 during cross examination by enquiry officer the appellant clarified the position in this regard as under:-

"No other Forwarding note was received by me for the subject consignment on 25.7.57. The consignment was booked on the same forwarding note as there was no change in any matter excepting the date which the consignor changed himself."

In this connection further clarification given in reply to question ~~13~~ No. 14 is also worth perusing.

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- (c) That it is not understood how and why the enquiry officer has ignored the vital clarification as above given by none than a prosecution witness who fortunately happened to be a very responsible supervisor holding independent charge of an important and big Goods Shed like of Comd as also the immediate incharge supervisor of the appellant knowing fully well all his minute to minute working behaviour. This prosecution witness thus infact should have been more relied upon by enquiry officer with respect to the opinion about the hand writing (figures or words) of the appellant.
- (d) That it seems that the aforesaid vital facts could not be considered in sprit by the disciplinary authority.

5. That to appriciate the fact that the over writing in date in the subject forwarding notes is not done by the appellant but, was done by and in the hand writing of the party concerned, the following requires special attention of the appellate authority:-

- i) Photo copy of the written brief dated 15.9.89 in seven pages submitted by the appellant to the enquiry officer is enclosed herewith as annexure 'A' for kind perusal.
- ii) Photo Copy of subject forwarding note is submitted herewith as annexure 'B' for kind perusal. The original forwarding note is perhaps with vigilance department and may be called for verification if considered necessary.

Housh Chandra Sen iii) That in the said written brief marked annexure 'A' the digit "2" has been written twenty five times by and in the hand writing of the appellant. The actual places of use
contd.....4

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ASB

of this digit are indicated as A, C, E, F, G, H, I, J, L, M, Y, Z, A1, A2, A3, A4, A5, A7, A9, A12, A13, A14, A15, A16 and A17 in the margin.

- iv) Similary in the same written brief (Annexure A) the digit "5" has been written twenty nine times by and in the hand writing of the appellent the actual places of the use/^{of}this digit are indicated as A, B, D, F, G, H, I, K, N, O, P, R, S, T, U, Y, W, X, A5, A6, A7, A8, A10, A11, A13, A14 and A18 in the margin.
- v) A minute comparison of these two digits written at different places in the hand writting of the appellant in annexure 'A' with those over written by the party in the dates in annexure 'B' would surely reveal the difference in shape, angulation size direction and mode of making these two digits by two different persons. This comparison ~~xxx~~ also proves that the over written date in the forwarding note (Annexure 'B') is in the hand writing of the party and not in the hand writing of the appellant as the applicent is not in the habit of writing circular 5 in all circular motion.
- vi) Attention of the appellate authority is further drawn on the digit "5" written in the hand writing of the party clearly in the column "sender's weight". The over written digit 5 in the date of forwarding note is quite similar when compared with the digit 5 written by the party under the column "sender's weight". This is again an undoubted proof that the over written 5 in the date in the forwarding note is in the hand writting of party only and not in the hand writing of the appellant.

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vii) That similar comparison with respect to digit "2" would also reveal the fact that the over written date in the forwarding note (annexure 'B') is only in the hand writing of the party and not in the hand writing of the appellant.

6. The other irregularity for which the appellant has been held responsible by the enquiry officer is that word "yes" was written under the column "whether Goods on ground" and word "No" was written under the column "whether advance registration" in the T & O register for the subject consignment. In this connection following submissions are made:-

- i) Since Gonda Goods Shed is not authorised to permit "Goods on ground" no such facility was ever given to the trade. In this particular case also goods was neither brought by the party to the Goods Shed ~~Now~~ the goods was available on the ground at any moment before 25.7.87 i.e. the date of loading. This fact has also been categorically certified and ~~clarified~~ before the enquiry officer by the prosecution witness and then Goods Superintendent of Gonda Goods Shed in reply to Question No. 6 page 16 put by the defence counsel.
- ii) Shri Ramakant was responsible Supervisor-incharge of the Goods Shed during the material period and later on ^{was} made a prosecution witness by the enquiry officer.

In both these capacities Shri Rame Kant bore the moral responsibility of proving the charges and allegation against the appellant by collecting and producing as many evidence, as he can and also by giving his own statement before the enquiry officer during D.A.R. enquiry.

contd....6

Harish Chandra Sarda

ASS

R-4
-6-

- iii) Shri Rama Kant the Goods Superintendent has not only denied the fact that the Goods was on ground but also proved the fact on the basis of record as prosecution witness.
- iv) In this connection the appellant also draws the attention of the appellate authority that all the formalities for advance registration with respect to the subject consignment were observed which under rule is a proof that the registration for booking the Goods was done prior to the Goods was brought to the Goods Shed.
- v) The enquiry also ^{Officer} ~~had~~ ^{had} convinced hi self during the DAR enquiry that the Goods was not "on ground" and hence railway had not suffered any revenue loss on account of wharfage charges ^(Page 6 bottom and Page 7 Top of the enquiry report)
- vi) Writing word "Yes" under column "Whether goods on ground, " and "No" under column "advance registration" was nothing but a clerical error which was immediately rectified on detection by the appellant.
7. From the fore going discussions it has become clear that the ~~cutting~~ cutting in the date in the forwarding note was not done by the appellant but was done in the hand writing of the party and that mistake of writing "Yes" and "No" was only a clerical which at no stage proved to be asource of loss to railway revenue and was immediately rectified on detection by appellant himself which also clarifies that there was no motive behind the mistake.

Harish Chandra Sarda

contd....7

AS6

R-4

7.

REASONABLE OPPORTUNITY DENIED

IN THE END, it will not be out of place to mention that I have been denied the reasonable opportunities of showing cause before the punishment has been inflicted upon me. RULES provide that the Disciplinary Authority where it is itself not the Inquiry Officer shall give a Show Cause to the charged employee before imposing the penalty. Had this provision been met, I am sure the issues now raised by me in the above petition would have clarified the situation to the Disciplinary Authority and I would not have been placed to mental agony and torture.

PRAYER

The appellant therefore prays that since the appellant has not violated rule 3(1) (11) and 3 (1) (iii) of RS (C) rules also the penalty imposed on him by the Disciplinary authority may kindly be withdrawn and the appellant be exonerated from all the charges/ allegations.

The appellant also pray, for a personal hearing before deciding the appeal.

Encl: 8

Yours faithfully,

Dated 22-1-90

Harish Chandra Singh

Harish Chandra Singh
(Harish Chandra Srivastava)
Sr. Goods Clerk,
Lucknow City.

AS7

Memorandum No. RRS
5

To

The Additional Divl. Rly. Manager,
N. E. Railway,
Lucknow.

REG:- Review petition against the orders of
appellate authority in case No. LD/SS-C/
Vig./60/88.

Respected Sir,

The petitioner places the following facts for review
of the orders of the appellate authority:-

1) That the appellate authority having considered the
appellate appeal dated 22.1.90 has under letter No. LD/SS-C/
Vig./60/88 dated 30.1.90 conveyed the following orders:-

" At the time of registration SPS has written
in T-80 Register that goods was available
in at the time of registration. At the time of
registration 5 Forwarding Notes of 45 bags
and 4 of 150 bags each confirms that consignment
were available on 14.7.87. Since restriction
was imposed on 14.7.87, same consignments were
booked on 25.7.87, with overwriting in dates
without any initials. Hence his appeal is
rejected."

2) That the petitioner was alleged in the major memorandum
for :-

i) Accepting forwarding Notes and doing registration
for booking Arhar consignments to Tuticorin despite
restriction.

ii) Altering date from 14.7.87 to 25.7.87 in forwarding
note by over-writing with in his own hand writing.

iii) Sustaining loss to Railway of Rs. 4535/- as W/C
and Rs. 150/- as forfeiture of registration fees.

3) That the DAR enquiry into the above allegations was
conducted by Shri S. L. Srivastava, EI/DA appointed as Enquiry
Officer.

4) That after in depth discussions of the evidences
the E.O. came to the conclusion that allegations No. 1 & 3
were not proved. The E.O. however, held allegation No. 2
proved and the petitioner was awarded the penalty of
reduction to the lower stage of pay for three years by
the D.A.

5) That in the appeal dated 22.1.90 the petitioner placing
documentary evidences, tried his best to convince unsatisfy
and satisfy the appellate authority that the over-written
altered date from 14 to 25 was only in the hand-writing of
the party and not in the handwriting of the petitioner for
which the petitioner had been held guilty by the E.O. In
this connection para 5 of the said appeal against the above
order of D.A. is submitted as Annexure 'A' for special
consideration.

Harish Chandra Sarda

Contd....

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412/96

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R-5

-2-

6) The petitioner had also in appeal prayed for a personal hearing before deciding the appeal.

7) That to this misfortune of the petitioner, the appellate authority had in a prejudicial manner deviated himself and rejected the appeal on such a ground which was declared "Not proved" by the E.O. and for which the petitioner was awarded said punishment by the D.A.

8) That an extract of discussion by the E.O. is submitted as Annexure 'B'. The ground on which the appeal of the petitioner has been rejected by the appellate authority was already discussed by the E.O. As would be evident from Annexure 'B'. Taking all factors into consideration and having fully satisfied himself the enquiry Officer found this very ground not proved ~~xxxx~~ which was further agreed to by the D.A. as no disagreement of the D.A. with finding of the E.O. on this issue was communicated to the petitioner alongwith the NIP.

9) That the issues involved in the appeal were only:-

- a) Overwritten date in Forwarding Note.
- b) Words "Yes", "No" written in the Cross column of the L&O register.

'a' discussed in Annexure 'A' & (b) discussed in Annexure 'C'.

10) That neither of the two above issues have been considered by the appellate authority while rejecting the appeal.

11) That it is not understood how and why the appeal has been rejected by the Appellate authority on such a ground against which neither punishment was awarded by the D.A. nor the appeal was preferred by the appellant.

12) That despite prayer, no personal hearing was granted before deciding the appeal.

PRAYER

The petitioner respectfully prays for judicious consideration of this review petition and order for setting aside the punishment imposed on the petitioner by the D.A.

The petitioner further prays for a personal hearing.

Thanking you,

Yours faithfully,

Encls./3

Dated: 9-2 -1990

Harish Chandra Siva
(H. C. SHIVASTAVA)
Sr. G. C. / Lucknow City

Harish Chandra Siva

R-5

तलमनक-८

मुद्दा सं०-7 इस मुद्दा के सम्बन्ध में श्री पी०पी०श्रीवास्तव सरकारी गवाह ने
 अपने बयान में कहा है कि टी/80 रजिस्टर के कालम "क्या माल
 आ गया है।" में स्पष्ट लिखा हुआ है कि "यत" इससे स्पष्ट होता है कि माल
 आ गया था।" । आ०रो०पी० 2,3 । परन्तु माल अधीक्षक ने यह सुनिश्चित की
 स्टैकिंग रजिस्टर में माल आने का कोई इन्दराज नहीं है अतः माल नहीं आया
 था । आ०रो०पी० 16/6 । ऐसी दशा में माल का आना नहीं माना जायेगा ।
 । आ०रो०पी० 16 पृ० 6 ।

दूसरा प्रश्न यह उठता है कि माल बाबू श्री हरिचन्द श्रीवास्तव
 ने टी/80 रजिस्टर में क्यों माल का प्राप्त होना दिखाया है । आरोपित रेल
 कर्मचारी नियम 9।21। के दौरान अपने स्पष्टीकरण में यह कहा है कि यह अन्न
 आवश्यक नहीं है कि माल आने पर ही फारवर्डिंग नोट भरा जाय । । आ०रो०
 पी०-21 प्रश्न 6 ।

माल बाबू ने अपने स्पष्टीकरण नियम 9।21। के दौरान स्वीकार
 किया - टी/80 रजिस्टर में उलटा-पलटा इन्दराज कर दिया गया है । यह
 अपनी भूल के कारण हुआ है तथा यह भूल क्रम सं० 16 से ठीक कर दिया गया है ।

रिकाडों में गलती करना भी नियम विरुद्ध है अतः आ०रो० कर्मचारी
 की हैता गलत इन्दराज नहीं करनी चाहिए चूंकि लेन-देन की शिकायत किसी ने
 नहीं किया है अतः यह गलती ही माना जायेगा ।

अतः रेलवे को स्थान शुल्क का 4533/- रुपये का कोई घाटा नहीं
 हुआ क्योंकि माल - माल गोदाम में नहीं लाया गया जैसा कि रामा कान्त ने
 अपने बयान में स्पष्ट किया है ।

मुद्दा संख्या 7 असिद्ध पाया गया ।

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Hansar Chandra Senar

(A60)

R-5

(B)

ANNEXURE

That to appreciate the fact that the over-writing in date in the subject forwarding notes is not done by the appellant but, was done by and in the hand writing of the party concerned, the following requires special attention of the appellate authority:-

i) Photo copy of the written brief dated 15.9.89 in seven pages submitted by the appellant to the enquiry officer is enclosed herewith as annexure 'A' for kind perusal.

ii) Photo copy of subject forwarding note is submitted herewith as annexure 'B' for kind perusal. The original forwarding note is perhaps with vigilance department and may be called for verification if considered necessary.

iii) That in the said written brief marked annexure 'A' the digit "2" has been written twenty five times by and in the hand writing of the appellant. The actual places of use of this digit are indicated as A, C, E, F, G, H, I, J, L, M, Y, Z, A1, A2, A3, A4, A5, A7, A9, A12, A13, A14, A15, A16, and A17 in the margin.

iv) Similarly in the same written brief (Annexure 'A') the digit "5" has been written twenty nine times by and in the hand writing of the appellant the actual places of the use of the this digit are indicated as A, B, D, F, G, H, I, K, N, O, P, Q, R, S, T, U, V, W, X, Y, A5, A6, A7, A8, A10, A11, A13, A14 and A18 in the margin.

v) A minute comparison of these two digits written at different places in the hand writing of the appellant in annexure 'A' with those over written by the party in the dates in annexure 'B' would surely reveal the difference in shape, angulation size direction and mode of making these two digits by two different persons. This comparison also proves that the over written date in the forwarding note (Annexure 'B' is in the hand writing of the party and not in the hand writing of the appellant as the applicant is not in the habit of writing circular 5 in all circular motion.

vi) Attention of the appellate authority is further drawn on the digit "5" written in the hand writing of the party clearly in the column "Sender's weight". The over written digit 5 in the date of forwarding note is quite similar when compared with the digit 5 written by the party under the column "sender's weight". This is again an undoubted proof that the over written 5 in the date in the forwarding note is in the hand writing of party only and not in the hand writing of the appellant.

vii) That similar comparison with respect to digit "2" would also reveal the fact that the over-written date in the forwarding note (annexure 'B') is only in the hand writing of the party and not in the hand writing of the appellant.

Haron Chandra Suler

R-5

(161)

N. E. Railway
Gorakhpur.

Annexure

Sir,

Sub. Written brief in the DAR
Case No. W/SS-CH/160/85
Dated 8-8-88 issued to me.

In the above DAR case I have been shown
for allowing a wagon No. 20630 against
restriction on 14.7.87 and getting wagon No.
SEC 25762 loaded on 25.7.87 by cutting and
over writing on Forwarding side. I have been
also held responsible for the loss of railway revenue
of Rs 150/- on account of ~~the~~ failure of
restriction fee and Rs 4533/- as of wharfage
charge. For the above it has been held that
I have acted in contravention of Rule 1405 and
of exemption II.

The position as appearing after
the close of the evidence both prosecution
and defence side is explained as under:-

1. That the charges have been based on
the restriction message No. T 221/SC/229 D-
18.7.87 RUD B.O. This message in original
was not produced in the DAR enquiry at
any time. The restriction message is
maintained at Gorakhpur. In which
each message is entered showing the
date and time of its receipt and on which
signature of each ~~dated~~ staff is taken
was also not produced by the vigilance
inspector to show that the restriction
message was in my knowledge and that too
it was noted by me before restriction
of wagon No. 20630 was done for m/s
Kamla Lal on Karmal Gorakhpur which is apparent
from entry 5 of TSO register.

2. That the message dated 18.7.87
entered in the enquiry and listed as
RUD No. B.O. is not a message but is a
written i.e. the cyclo styled confirmation
copy of the original message. This confirmation
was received by SS/AD on 25.7.87

Harni Chandra Sengupta

RS

A62

② Answer 3
that this document RUD 3.01 arrived at
Shri. P.P. Shrivastwa any time only on 25/7/87 or
thereafter and not earlier to 25/7-87.

3. That this document RUD 3.01
shows an endorsement "R" which has
been unauthorisely written by Shri P.P.
Shrivastwa C.V. as accepted by him in the
ROP 0115. Making of this entry by Shri P.P.
Shrivastwa goes to prove beyond doubt that
he was tried to make it appear that this
document was received on 14-7-87 in Ranchi
Shri. P.P. Shrivastwa whereas the endorsement (by SS/C) shows
that it was received on 25/7-87.

Shri. P.P. Shrivastwa has also been accepted by Shri
Rama Kant Shrivastwa ROP 22/16, Shri
it was is evident that Shri P.P. Shrivastwa
C.V. has falsified the records unauthorisely
with undated the receipt of the document
for which he was neither authorised nor
required to do so.

4. That I have registered only
one case at S.No. 3 on 14-7-87 and was on
S.No. 20630 was booked by the Traffic Clerk
Shri Jagdish Pal on 15/7-87 to SANAT
NAGAR (S.N.F) via BALLARSHAH. Shri
P.P. Shrivastwa has not raised any true and
copy as raised any objection on the way on
booked to SANAT NAGAR by Shri Jagdish Pal
the wagon No. 20630 was not connected
with train as such there was no
question of defrauding the registration fee
of 200/- by Shri Jagdish Pal as the
consignment it booked for entry in the above
wagon. The charge levelled against me
concerning wagon No. 20630 & covering the
defrauding of registration money of
Rs. 200/- is charge of Shri Jagdish Pal.

Harihar Chandra Senani

③

(165)

Annexure B

It is in the articles of charge
 Annexure I I have been charged
 with commission and omission of work
 on 14/7/81 and 15/7/81. The SN 76 Register
 clearly shows that on 15/7/81 Shri Jagdish
 was on duty in my place and all the
 work has been made by him on 15/7/81. I was
 on leave on 15/7/81. Shri Jagdish
 making out of charge for all the work done on
 15/7/81 against file is nothing but a
 harassing attitude of Shri P. P. Shrivastava
 CV9. It may not be out of place to
 mention that Shri P. P. Shrivastava CV9 has
 held Shri Jagdish for Goods Clerk responsible
 for work done by him on 15/7/81
 in the above respect and a major
 memorandum issued to him. It is
 known that Shri P. P. Shrivastava was very much
 in the knowledge that on 15/7/81 Shri
 Jagdish was working in my place.
 I was not present on 15/7/81. Even knowing
 this he has met out charges for
 15/7/81 as well, which is nothing but
 a deliberate malafide action of
 Shri P. P. Shrivastava against me.

6. What it has not been proved
 at what time or date the registration
 message was received at Goods
 Clerk's Office. In fact the message in question
 was received after I had given advance
 registration to M/s Ramdeo Chakraborty and
 had realised RS 150/- as registration
 fee. There was therefore no mistake
 in my irregularly done by me in giving
 advance registration at SMO 5 on 14/7/81.
 Now comes the question of allotment of
 wagon to SMO. It was 15/7/81 (i.e. 15/7/81) a
 wagon at 21/- hours on 14/7/81. The
 wagon was allotted by the SMO and not
 by Goods Clerk. It is the Goods Clerk
 who directs about allotment of wagon to
 different parties.

Harish Chandra Sen

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Annexure B

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⑥

Am I am not with the administrative department, since I have already changed the date of birth to 25/11/55 myself. It is incorrect to say that the date etc. has been changed by me. The prosecution has not submitted any proof that the change, strike cutting has been made by me or contains my writing. Since I have also not contacted the party or tried to find out that as such the change, strike cutting etc. has been made by me, it is not stated. I may mention here that in this connection I have explained the position in detail vide Q.P. 24/51. Although the cutting has not been initiated by the party or is not yet a material difference has been found out from which it could be inferred that I facilitated any benefit to the party or any loss to the railway administration due to the withdrawal of the party orders against. As such the question of contravention of Section 161 and 302A of IPC Act VI does not exist.

12 In the annexure II it was given in the end of the Q.P. 306 that I did not attend my self to explain the position through call of vide message dated 1-5-55. I would like to mention that no proof has been submitted that the message was whether received by me or not. I did take a memo from the prosecution that I was sent to the office. In fact I was not attending this period and I was attending the court, attend to the office etc. without ascertaining whether the message was received or not. The message of the Secretary has been to be the disciplinary authority and the enquiry officer, in this respect, just to show that I have no material in my defence though the case has been framed on the ground.

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Harish Chandra Sanyal

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Annexure B

①

Shri. [unclear] above will
beve that neither I have failed to
observe rules as laid down in [unclear]
1105 and 1107, 1161 and 1164 of [unclear] vol II
nor I have contravened any provisions of
Rajya Seva Rules 1966 and I am
quite innocent in this case.

Thanking you

Yours truly

Darish Chandra
Senior Goods Clerk
Lucknow City

Dr. 15/9/69

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Hari Chand Sharma

all over

रामदेव रसदे N. E. Rly. Annexure B

आवधिक मत के लिए प्रत्येक-नोट FORWARDING NOTE FOR GENERAL MERCHANDISE

(भारतीय रेल प्रवर्धन, 1890 के 72 वीं धारा 72 के अंतर्गत) (Approved by the Government of India)

रू ० ३०-१५०००० ३५ (संशोधित) N. E.-S. 35 (Revised)

स्टेशन The Station Master NE रेलवे Railway स्टेशन Station स्टेशन को नीचे लिखें स्टेशन को नीचे लिखें स्टेशन को नीचे लिखें
प्रत्येक नोट 14.50 रुपये का है और इसे मान गाने और या विनि-गुनी गाने / कोचिंग और / या विनि-गुनी गाने से स्टेशन को नीचे लिखें स्टेशन को नीचे लिखें स्टेशन को नीचे लिखें
Please enclose the undermentioned consignment and forward by Goods and/or Mixed train / Coaching and/or Mixed train to Station on the Railway
as consigned below

By whom consigned.		To whom consigned.		स्टेशन को Station to	वस्तु की संख्या No. of articles	विवरण और निजी मार्क Description and private marks.	भेजने वाले के अनुसार Sender's weight.		दर/रेट Freight paid/To pay.
नाम Name.	पता Address.	नाम Name.	पता Address.				वजन Weight.	किलो. Kilo.	
TO: BHAGWANMIL RAMDEO ONKARNAL. COMMISSION AGENT. BARGAON, GONDA (U. P.)		Self		रुसियन	45	45 lbs loose filler medium	45 = 00	19.60000	Todays

- मैं प्रमाणित करता हूँ कि मैंने यह इस्तीफा कर लिया है कि जो माल मैं भेज रहा हूँ उसका विवरण, मार्क और भार वा परिमाण, व. प्रत्येक-नोट में सही सही माल गाना है।
I do hereby certify that I have satisfied myself that the description, marks and weight or quantity of goods consigned by me have been correctly entered in this Forwarding Note.
- (1) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। Outward packing is defective as follows :-
 - (2) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। Internal packing condition I. P. applicable has been complied with.
 - (3) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। The consignment is in bad condition as follows :-
 - (4) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। At my request the consignment is despatched in open.
 - (5) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। At my request the consignment is despatched in open.
 - (6) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। At my request the consignment is despatched in open.
 - (7) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। At my request the consignment is despatched in open.
 - (8) बाहरी पैकिंग में किसी भी प्रकार की त्रुटि नहीं है। At my request the consignment is despatched in open.

* जो लागू न हो, उसे खाली छोड़ें।
State not where inapplicable.

मैं प्रमाणित करता हूँ कि मैंने यह इस्तीफा कर लिया है कि जो माल मैं भेज रहा हूँ उसका विवरण, मार्क और भार वा परिमाण, व. प्रत्येक-नोट में सही सही माल गाना है।
I do hereby certify that I have satisfied myself that the description, marks and weight or quantity of goods consigned by me have been correctly entered in this Forwarding Note.

Signature of sender or his agent
Signature of receiver or his agent

TO: BHAGWANMIL
RAMDEO ONKARNAL.
COMMISSION AGENT.
BARGAON, GONDA (U. P.)

Signature of sender or his agent

Signature of receiver or his agent

Signature of sender or his agent

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ANNEXURE-C

6. The other irregularity for which the appellant has been held responsible by the enquiry officer is that word "yes" was written under the column a whether Goods on ground" and word "No" was written under the column" whether advance registration" in the T & O register for the subject consignment. In this connection, following submissions are made:-

- i) Since Gonda Goods Shed is not authorised to permit "Goods on ground" no such facility was ever given to the trade. In this particular case also goods was neither brought by the party to the Goods Shed Nor the goods was available on the ground at any moment before 25.7.87 i.e. the date of loading. This fact has also been categorically certified and clarified before the enquiry officer by the prosecution witness and then Goods Superintendent of Gonda Goods Shed in reply to question No. 6 page 16 but by the defence counsel.
- ii) Shri Ramakant was responsible Supervisor-in-charge of the Goods Shed during the material period and later on was made a prosecution witness by the enquiry officer.

In both these capacities Shri Rama Kant bore the moral responsibility of proving the charges and allegation against the appellant by collecting and producing as many evidence, as he can and also by giving his own statement before the enquiry officer during D.A.R. enquiry.

- iii) Shri Rama Kant the Goods Superintendent has not only denied the fact that the Goods was on ground but also proved the fact on the basis of record as prosecution witness.

- iv) In this connection the appellant also draws the attention of the appellate authority that all the formalities for advance registration with respect to the subject consignment were observed which under rule is a proof that the registration for booking the Goods was done prior to the Goods was brought to the Goods Shed.

Harish Chandra Saini

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- v) The enquiry officer also had convinced himself during the DAR enquiry that the Goods was not "on ground" and hence railway had not suffered any revenue loss on account of wharfage charges (Page 6 bottom and Page 7 Top of the enquiry report).
- vi) Writing word "Yes" under column "Whether goods on ground," and "No" under column "advance registration" was nothing but a clerical error which was immediately rectified on detection by the appellant.

Harsh Chandra Subbar

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

M. P. No. 552/90 (C)

O.A. No. 157 of 1990

Harish Chandfa Srivastava Petitioner/
Applicant

Versus

Union of India and others Opp-Parties

Application for Interim Relief

The petitioner/applicant most respectfully
submits as under :-

That through the above Original Application
applicant has challenged the validity of the
punishment order dated 27th December, 1989 and the
appellate order dated 30th January, 1990 and the
review order dated 27th March, 1990.

Therefore, it is most respectfully prayed
that for the reasons disclosed in the accompanying
statement and the O.A. filed earlier this Hon'ble
Tribunal may be pleased to stay the operation of
the reversion order dated 27th December, 1989 and
the opposite parties may be directed to pay salary
to the applicant without imposing the penalty
during the pendency of the application in the interest
of justice.

Dated: Lucknow:

~~Aug~~ 3, 1990

Asit Kumar Chaturvedi

(Asit Kumar Chaturvedi)
Advocate
Counsel for the Petitioner/
Applicant

Fixed today
3/9/90

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. No. 157 of 1990

Harish Chandra Srivastava Petitioner

Versus

Union of India and others Opp-Parties

Statement in support of application
for interim relief

Petitioner most respectfully submits as
under :-

1. That through the above application the applicant has challenged the validity of the punishment order dated 27th December, 1989 and the appellate order dated 30th January, 1990 and the review order dated 27th March, 1990. The applicant has been imposed the penalty by de-grading lower ~~scale of Rs. 1200/-~~ in the time scale of Rs 1200-2040 for a period of three years.
2. That the applicant filed the above application before this Hon'ble Court on 7th May, 1990 and the Hon'ble Tribunal was pleased to issue notice on the

Harish Chandra Srivastava

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application for interim relief and fixed 18th July, 1990 on 10th May, 1990.

3. That the opposite parties have filed no objection to the application for interim relief till date. The Hon'ble Tribunal was not sitting on 18th July, 1990 and as such the next date fixed 30th July, 1990 but again the Hon'ble Tribunal was not sitting and as such the next date fixed 28th September, 1990.

4. That the applicant is suffering a loss of Rs.1000/- per month in pursuance of the punishment order dated 27th December, 1989 and as such the Hon'ble Tribunal may be pleased to stay the operation of the reversion order dated 27th December, 1989 as the applicant is suffering irreparable loss.

5. That if the Hon'ble Tribunal is not sitting on 28th September, 1989, the applicant may suffer a further set-back as no orders will be passed on that date also.

Harish Chandra Srivastava
Dated: Lucknow:
August , 1990

Harish Chandra Srivastava
Deponent

Verification

I, Harish Chandra Srivastava, aged about

1974

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45 years, son of Shri Nirai Lal, resident of T.I.G., NER colony, Lucknow, do hereby verify that the contents of paras 1 to 5 of the affidavit are true to my own knowledge. Nothing is wrong in it and nothing material has been concealed, so help me God.

Dated: Lucknow:

~~August~~ ^{Sept} 3, 1990

Harish Chandra Saini

Deponent

Asit Kumar Chaturvedi

(Asit Kumar Chaturvedi)
Advocate

Counsel for the Petitioner/
Applicant